



LUND UNIVERSITY

European Master's Programme in Human Rights and Democratisation

A.Y. 2022/2023

LIBERAL ORDER UNDER STRESS
Arendt, Benhabib, Rancière on the Right to Have Rights

Author: Teresa Heintz

Supervisor: Associate Professor Markus Gunneflo

Word Count Declaration: 21,017

Abstract

In the 20th century, national minorities and stateless people challenged the liberal premise that every human being has inherent human rights. It became apparent that people who have no rights other than that of being a human being enjoy neither rights nor legal protection. This paper examines how the "right to have rights" challenges liberalism's assumptions about self-determination, public and private spheres, and the equality of liberal subjects, and compares how the theories of Hannah Arendt, Seyla Benhabib and Jacques Rancière offer alternative responses to those liberal assumptions. Arendt challenges the liberal distinction between public and private life by emphasizing political action and membership in a community for the realizability of human rights. Rancière criticizes Arendt's depoliticization of marginalized lives and their relegation to the private sphere but recognizes a redistribution of power in political subjectivity through the demand for human rights. Benhabib seeks an ethical foundation for international human rights institutions but does not address Weberian paradox and collective political action. The thesis argues that if the liberal order takes seriously its demands for freedom, equality, and self-determination, it sees human rights not as pre-political, innate, or contractual, but as a disruption of the political order in which rights-holders can act as political subjects among equals.

Contents

Liberal Order Under Stress	4
Literature Review: Political Theory on the Right to Have Rights	8
Three Assumptions Underlying the Liberal Script	10
Core Principles of Liberalism	10
Self-Determination and Individual Liberty	12
Self-Determination and the Private and Public Realm	15
Self-Determination Through Equality	17
Comparative Analysis	19
Hannah Arendt: The Right to Have Rights through Political Agency	19
<i>No Freedom Without Equality</i>	20
<i>Condemned to Private Life</i>	22
<i>Self-Determination as Emancipation</i>	25
Seyla Benhabib: Discourse Ethics of the Right to Have Rights	28
<i>Self-Determination through Communicative Freedom</i>	29
<i>On the Problem with the Circular Reasoning of Equality</i>	31
<i>Public Space Beyond Borders</i>	33
Jacques Rancière: On the Right to Dissensus	36
<i>On the Non-Existence of Equality and Liberty</i>	36
<i>Critique of the Depoliticization of Private Life</i>	40
<i>Self-Determination as a Process of Differentiating the Undifferentiated Demos</i>	43
Findings and Discussion	46
Conclusion	52
References	56

Liberal Order Under Stress

Liberalism is the most important theoretical strand within modern political theory in terms of actual historical impact, as it has continuously and realistically developed due to the dialogic interplay between political reality and theoretical reflection and shapes the overall cultural self-understanding of modernity (Geuss, 2002, p, 335-6). Liberalism is perceived as a reaction to a modern world that, after the European religious wars, sought to create a value base to find social unity among a population that was diverse at its core. Liberalism tried to solve this pragmatically through a rights-based conception of justice (Tomasi, 2001, p. 59).

Human rights legitimise the liberal political order. Douzinas (2013) describes human rights as a symbol of liberalism, however, on a normative and functional level they are even more than that. The liberal order, especially liberal democracy, legitimizes itself by fulfilling pre-political preferences of its citizens, namely human rights. Liberalism thus puts the right of self-determination of the individual in the foreground.

While the precise historical origins of liberalism remain disputed, pivotal moments such as the French Revolution and the Magna Carta shed light on its evolution. The French Revolution served as a significant catalyst for spreading the fundamental principles of liberalism and human right, redefining the term 'liberal' to encompass praiseworthy ideas; often used to praise the America's Declaration of Independence (Rosenblatt, 2018, p. 36). Conversely, Titlestad (2010) traces the roots of liberalism back to the Magna Carta, an agreement that emphasized the subjecting of all, including the king, to the rule of law and unintentionally laying the groundwork for civil rights. Regardless of the ongoing historical debate, liberalism is intricately intertwined with the ideals of civic or human rights.

Hannah Arendt, a Jewish journalist, and political philosopher persecuted by the Nazis, shook this assumption that a liberal order is based on the idea of human rights. In the ninth chapter of Arendt's "The Origins of Totalitarianism", titled "The Decline of the Nation-State and the End of the Rights of Man," Arendt discusses *the right to have rights* for the first and only time in her work. That Hegel used the term earlier is mostly forgotten. But Arendt's understanding of the right to have rights initiated a discussion within the discourse on human rights. It led to a political shift within the metaphysics of human rights, namely away from the question of the normativity of human rights towards

problems of their enforceability and as I will show towards a legitimacy crisis of the liberal order. By exposing the paradox nature of human rights, Arendt's idea served others for the purpose of "revitalizing and radicalizing human rights" (Hunt, 2012, p. 140).

According to Hannah Arendt, the Universal Declaration of Human Rights belongs to the liberal paradigm as it is based on natural rights that precede and justify the political order. By asserting the right to have rights, she not only emphasizes the constructivist nature of the Universal Declaration of Human Rights, but fundamentally raises the question of how human rights can be normatively grounded outside the liberal paradigm.

Arendt notes that individuals who can claim no other rights than those of being a human being have no rights or legal protection, which seems paradoxical. Arendt describes how this paradox has existed since the late 18th century when human rights were linked to national sovereignty and became more apparent after World War I with the emergence of national minorities and stateless persons.

According to Lacroix, Arendt's paradox of human rights stems from both a rejection of any anthropological foundation for human rights and an unwavering defence of their indefinable essence (Lacroix et al., 2018, p. 217). Without a natural or divine justification, human rights lack a transcendent basis and are only guaranteed by humanity itself. But Arendt questions whether humanity can guarantee "every individual's right to belong to humanity" (Arendt, 1973, p. 298). Human rights, according to Arendt, are not inherent, but rather conventions and forms of recognition produced by human agreement. The "political" interpretation of human rights is predicated on the notion that they are an agreement-based form of recognition. The politics of human rights is therefore viewed as the cooperative and active practice of individuals recognizing one another as equals (Lacroix et al., 2018, p. 223).

This master's thesis thus addresses the question to what extent Arendt shakes basic assumptions of liberalism and to what extent Arendt's recipients Seyla Benhabib and Jacques Rancière deepen or smooth out these cracks. I have chosen Benhabib's and Rancière's theories as counterparts to Arendt's reading because they provide quite opposite answers to address the problem of rightlessness. Benhabib attempts to capture the complexity of human rights by using discursive arguments to legitimize an all-encompassing international human rights system that includes every individual. In contrast, Rancière contends that this arguably most intuitive response to Arendt is

inadequate and that Benhabib's solution, which fails to overcome Weber's paradox, only exacerbates the problem rather than solving it.

In order to conduct the analysis systematically, the first step is to define the basic assumptions of liberalism. The core value of liberalism is individual liberty; this is widely agreed upon in research (Wall, 2015; Freedon, 2015; Börzel & Zürn, 2020). Liberty is a political value that is distinct from “primitive freedom” as a “proto-political” value, because it requires political considerations. Authorities need to limit personal freedom to protect the liberty of others, and this authority in turn must be legitimized (Börzel & Zürn, 2020, p. 15; Williams, 2008).

Since individual liberty or self-determination is the core value of liberalism, two further assumptions can be deduced from this idea. Firstly, because personal autonomy is protected by legal limits on individual freedom, there is a distinction between private and public domains. Secondly, liberal subjects are believed to have equal moral worth; “a group which, of course, has become more inclusive only over time” (Börzel & Zürn, 2020, p. 15).

Against this backdrop, then, this thesis specifically questions Arendt, Benhabib, and Rancière on the extent to which the concept of the right to rights challenges liberalism, particularly its underlying assumptions of self-determination, the distinction between the private and public spheres, and the equality of liberal subjects. Benhabib, with her discourse-theoretical reflections, and Rancière, with his critical understanding of politics, offer quite different answers to the same problems that Arendt raised. Comparing these thinkers' ideas to the foundational assumptions of liberalism offers insights into the strengths and limitations of the liberal framework and explores alternative ways of conceptualizing human rights and democracy both outside and within the liberal paradigm.

One could argue that with the Universal Declaration of Human Rights in 1948 and the many human rights doctrines that followed, Arendt's rightlessness problem was solved. After all, the Universal Declaration granted the right to have rights to all people, even if those rights are not always respected or fulfilled. I will argue, however, that Arendt's puzzle is still unsolved, and it is profitable to address the political and philosophical problem, especially for practitioners of human rights law and human rights defenders.

After a literature review and a theoretical outline of liberal assumptions the thesis analyses Arendt, Benhabib, and Rancière on the basis of a threefold assertion of the liberal order. The first assertion relates to the idea of individual self-determination or individual liberty. An examination of Arendt's, Benhabib's, and Rancière's approaches to understanding individual self-determination will reveal internal conflicts and contradictions of liberalism. The second assumption of the liberal order is the distinction between private and public spheres, which serves to preserve or establish individual self-determination by means of state instruments. Arendt, Benhabib, and Rancière raise the question of what politics actually is. From this, I will examine whether their understanding of the political sphere can withstand this great dichotomy of private and public. The third assumption of liberalism is that every liberal subject is equal. It examines how equality is conceptualized from a philosophical and political perspective in the texts of Arendt, Benhabib, and Rancière. This is particularly interesting because Arendt, Benhabib and Rancière appear perplexed in different ways by a liberal order that assumes equality but is unable to deliver on this promise in the face of marginalized subjects.

This thesis belongs to the field of political theory. While it addresses the deontic notion of the right to rights associated with legal theory, it focuses primarily on how this legal, normative, and anthropological construct of the right to rights challenges the basic principles of the contemporary liberal order. While I work with philosophical notions of equality and liberty, I do so in an analytical way in terms of political theory. That is, I refer to an argumentative and problem-oriented approach that does not rely solely on thinkers and exegetes, but “emphasizes logical rigor, terminological precision, and clear exposition”. Analytical also means more than a linguistic investigation of philosophical terminologies but goes beyond conceptual analysis to develop normative theories (List & Valentini, 2016, pp. 525-527). However, this thesis certainly does both: it performs an exegesis of Arendt, Benhabib, and Rancière in order to analyse and discuss the consistency of their normative theories to conclude with a discussion of the possibilities of normative theorizing.

This thesis therefore conducts an immanent critique of liberalism through a close reading of the different interpretations of the right to have rights in relation to core assumptions of the liberal order. In doing so, it sheds light on the relation between human rights and liberalism and contributes to the ongoing discourse on the perplexities of human rights

and questions concerning democratic and political theory. The thesis aims to provide insights into the challenges inherent in human rights as a liberal project.

Literature Review: Political Theory on the Right to Have Rights

In literature it has been argued that Arendt's concept of the right to have rights challenges the liberal form of governance within political theory in one or the other way: either by rejecting human rights (Gosepath, 2007; Agamben, 1998) or by promoting active membership in a community (Ingram, 2008; Lacroix et al., 2018). The following literature review discusses how the literature reflects on how the right to have rights has been discussed as a challenge to liberal governance and the liberal order.

One thinker who uses an analysis of Arendt's right to have rights to answer the question of how Arendt contradicts liberal ideas is Gosepath (2007). Gosepath describes the tension between a democratic-republican theory of governance, represented by Arendt and a liberal one. According to him with Arendt's demand for a right to have rights, she assumes that human rights must first be produced by popular sovereignty, while the liberal view, in the sense of Locke, sees basic rights as a morally legitimate limitation of popular sovereignty. Gosepath criticizes Arendt for her democratic-republican critique of human rights and accuses her of underrating the success story of human rights.

Gosepath does not specify where he derives his optimism from, but he supports the liberal view with the argument that political ideals require a moral, rather than simply a functional or membership-inclusive attitude, and that human rights then no longer remain an empty abstraction but the moral and pre-positivist condition for democracy (Gosepath, 2007, p. 284). This could be countered, however, with why, for Gosepath, the inclusion of every human being in the political community itself has no moral value. Nor does he give an answer as to how he solves the perplexities of human rights revealed by Arendt.

Through Gosepath's analysis it has become clear, that Arendt distinguishes herself from a liberal understanding of democracy (Gosepath, 2007, pp. 284-5). However, it is doubtful that Arendt can be smoothly placed among the proponents of the democratic republicans. Arendt herself is sceptical of humanity's ability to guarantee human rights for everyone. In this way, she does not trust the republican idea that human rights can only be created by the community.

Others see Arendt's right to have rights not as a mere critique of the liberal order but as an outright jettisoning of the idea of liberal states (Agamben, 1998). This critique echoes Edmund Burke, who is most associated with the argument that human rights are worthless without a strong state to protect them. Others dispute that Arendt's critique of human rights is a mere rejection of the nation-state (Canovan, 1992; Lacroix et al., 2018).

Canovan is thus arguing that Arendt is regarding the nation-state as a humanistic institution that establishes a legal order and safeguards rights. However, Arendt's criticism would focus on the fact that the nation-state's weaknesses and tensions have allowed for the rise of totalitarian movements. Drawing on history in which minorities and stateless persons were denied rights after World War I, Canovan points out that Arendt sees citizenship as a crucial condition for individuals to enjoy universal human rights (Canovan, 1992, p. 31).

Canovan argues that those who do not meet this criterion lose their fundamental rights and recognition within the community of rights. Therefore, for Arendt, the right to belong to a political community is the most fundamental and first human right. Later, Seyla Benhabib builds her argument on the Burke-argument emphasizing the significance of international political institutions and strong states as the guarantors of human rights (Benhabib, 2004).

Lacroix emphasizes how Arendt challenges the liberal order in a normative manner. Arendt opposes the idea of natural rights and argues that human rights are not inherent, but rather conventions and forms of recognition produced through agreements between human beings. Lacroix sees this as the "political" interpretation of human rights (Lacroix et al., 2018).

Menke opposes Agamben conclusion to Arendt's critique that the fundamental concept of human rights must be rejected as well as Cohen's proposal for a new moral principle to rescue the idea of human rights. Menke stresses that Hannah Arendt saw in the Universal Declaration of Human Rights an outdated attempt to reformulate human rights. The Universal Declaration merely repeated traditional declarations without accounting for the profound crisis that had befallen the idea of human rights since those rights failed in the face of totalitarian politics of exclusion (Menke, 2007, p. 740).

Arendt's critique of human rights, he claims, challenged the fundamental assumptions of modern natural law or liberalism, leading to a new understanding of human rights

(Menke, 2007, p. 741). To address the human rights crisis, Arendt proposes a new anthropology and rights concept. He claims that modern natural law-based human rights contradict human dignity. Arendt is against a declaration of human rights that emphasize individual human beings, merely as a human being. Unlike natural law, human dignity necessitates a politico-linguistic anthropology rather than one based on natural human needs or interests (Menke, 2007, p. 754).

Ingram sees Arendt's paradox of having rights as a challenge to liberalism and concludes the classical republican democratic argument that the politics of human rights should be based on the practices of rights holders themselves, and that human rights is a principle inherent in modern politics and potentially transcends the boundaries of a particular political order or community (Ingram, 2008). Ingram argues that Arendt does not depoliticize human rights but attempts to resolve the Weber paradox. He argues that the politics of human rights are paradoxical because human rights seek to protect individuals from arbitrary power, but in order to do so they must themselves use power, creating a discrepancy between the bearer of this policy (the powerful) and its beneficiary (the powerless) (Ingram, 2008).

In research, it remains unclear which basic principles of liberalism are subjected to their own contradiction by the right to rights and how these paradoxes are then resolved through different interpretations. This master's thesis aims to fill this gap and systematically analyses how these interpretations challenge liberal democracy and its principles. Hereafter, the three assumptions of the liberal order are discussed in order to understand how Arendt, Benhabib and Rancière deviate from them.

Three Assumptions Underlying the Liberal Script

This chapter discusses the three assumptions of the liberal order, providing a starting point for analysing the theories of Arendt, Benhabib, and Rancière. In order to classify these three assumptions, the chapter will first discuss the different paradigms within modern political theory. Then, the ideas of individual self-determination, the distinction between private and public spheres, and the principle of equality in liberalism will be explained.

Core Principles of Liberalism

There are liberal, deliberative, republican, and postmodern paradigms within modern political theories, which differ primarily in their answer to the question of how political orders can be legitimized. The paradigm of liberalism is legitimized by the value of liberty or self-determination (Zürn & Gerschewski, 2021, p. 15). Shklar argues that "liberalism has only one overriding aim" - to secure the necessary political conditions for personal freedom (Shklar, 1989, p. 21). Steven Wall (2015, p. 42) describes individual liberty as the basic principle of liberalism, around which other values and principles are grouped, such as "liberty, rationality, individuality, progress, sociability, the general interest, and limited and accountable power" (Freedon, 2015, p. 58).

In political theory, liberal democracy is a political system that combines liberal ideology, which emphasizes individual rights and freedoms, with a representative democratic form of government, where citizens elect officials to represent them in decision-making processes. Liberalism assumes in principle that private freedom must be protected by public authority. Rights are seen as pre-given and limit both the liberty of others and legitimize the power of authorities (Zürn & Gerschewski, 2021, p. 15).

On the one hand, liberalism as a term can describe a form of governance, but on the other hand, as the Cluster of Excellence "SCRIPTS - Contestations of the Liberal Script" does, it can also describe on a macro level a social order defined by "ideas and institutional prescriptions about the organization of society based on the core principle of individual self-determination" (Börzel & Zürn, 2020, p. 2). They call this *liberal script*; however, I will stick to the more established term liberal order. Börzel and Zürn use liberal script to emphasize that liberalism is a social order that follows a certain basic pattern like a movie follows a script, and that liberalism is just one script that exists alongside others. This assumption that there are different ideas on which liberalism is based, however, is uncontroversial and provides the foundation for this thesis.

According to Zürn and Gerschewski (2021, p. 15), liberty is a political concept that is distinct from a proto-political "primitive freedom" and is defined as the absence of restraint and violence from others. The concept of liberty implies that there is a difference between private and public domains, and that every individual has the same moral worth. Political considerations, such as rights, are necessary for protecting liberty and transforming it into a political concept. As John Locke stated, "[t]he end of the law is not to abolish or restrain, but to preserve and enlarge freedom" (Locke, 1966, p. 57).

Liberalism rejected arbitrary power not only by monarchs and the church (Rosenblatt, 2018, p. 262), but also by "all regimes with equal trepidation" (Shklar, 1989, p. 28). Shklar notes that apart from the prohibition of "interference with the freedom of others," liberalism does not dictate any positive values that should influence people's personal lives in any way (Shklar, 1989, p. 21). Liberalism must limit itself to politics and proposals to allow people to live according to their own beliefs and preferences (Shklar, 1989, p. 31).

Fawcett argues that a common tenet of liberalism is the distrust of power, whether it be the power of "state, of wealth or of the social community." This idea is based on the insight that unchecked power can become dangerous, as well as on the modern understanding that a single authority cannot effectively govern complex societies (Fawcett, 2018, p. 2). Therefore, the authority that determines limitations on liberty to protect the liberty of others must be legitimized (Williams, 2008, p. 62).

Zürn and Gerschewski (2021, p. 15) identify two layers of values and assumptions underlying liberalism. The first layer is the idea of self-determination, as described above. The second level builds on the core values of liberalism and forms comprehensive theories that address the issues arising from the first level. This includes normative theories, institutional embodiments, and considerations of personhood. The second layer describes the multitude of different liberal concepts, such as neoliberalism and includes civil, political, and social rights, as well as the rule of law (Zürn & Gerschewski, 2021, p. 15). The thesis will focus on the first layer of liberalism to understand how the right to have rights is speaking to the very basic ideas of liberalism. In the following, the basic assumptions of liberalism, which revolve around the idea of self-determination, are discussed.

Self-Determination and Individual Liberty

The term "self-determination" as a legal principle describes a process by which a group of people create their own state or government (Encyclopaedia Britannica, 2023). The United Nations Charter (art. 1, para. 2; art. 55, para. 1) contains two definitions of the term *self-determination*: a state's right to self-determination, which includes the freedom to choose its political, economic, social, and cultural systems and second a people's right to freely form associations within a state.

That definition distinguishes itself from an understanding of self-determination in political and philosophical theory. Furthermore, normative political theory examines self-determination differently within various normative theoretical paradigms. The liberal perspective emphasizes negative freedom, which refers to the autonomy and rights of the individual from constraints by the state (*individual self-determination*) (Shafir, 1998), while republican citizenship prioritizes the collective and the common good (*collective self-determination*) (Soysal, 2022, p. 1).

Empirically, self-determination in the liberal order is viewed as a matter of actors' agency. Self-determination, then, refers to the ability of individuals and collectives to determine their own identities, organize their social and public affairs, and form meaningful communities. It involves the exercise of agency and decision-making power with respect to one's own life and the well-being of the collective (Soysal, 2022, p. 2).

Risse emphasizes that liberalism seeks a balance between individual and collective self-determination. Extremely prioritizing one over the other would not be within the liberal realm. "If individual freedom and self-determination always come first in any social setting, human coexistence is impossible. If collective self-determination always trumps individual freedom, it amounts to what de Tocqueville called the 'tyranny of the masses'" (Risse, 2022, p. 2). He concludes that if "individual freedom is constrained by the freedom of others, as the liberal script implies, such constraints can only be justified by a collective free will of a community in which the individual is embedded" (Risse, 2022, p. 3).

Kant, with his deontological theory, is an important philosophical founder of this liberal idea of individual self-determination. His categorical imperative describes a fundamental principle of morality that is valid regardless of one's goals or context of action. His second categorical imperative of autonomy (*CIa*) states, "[f]or, all rational beings stand under the law that each of them is to treat himself and all others never merely as means but always at the same time as ends in themselves" (Kant, 1997, p. 41).

Immanuel Kant emphasizes the importance of treating oneself and others as ends in themselves, rather than simply as means to achieve a certain end. Essentially, this means that all individuals should be respected and valued for their inherent worth, rather than just for what they can do for someone else. With that in mind, every individual is a "self-authenticating source of valid claims" as Rawls later formulates (Rawls, 1993, p. 32).

In his essay "Two Concepts of Liberty," Isaiah Berlin discusses the concept of individual freedom and distinguishes it between negative and positive freedom. According to Berlin, "Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act" (1969, p. 169). This is what Berlin defines as negative freedom, which refers to the absence of interference or hindrance from others. In contrast, positive freedom describes the desire for self-mastery and control over one's own desires and goals, which Berlin locates in the private sphere (Berlin, 1969, p. 179). Berlin demonstrates that the anthropological concept and the concept of freedom are closely tied. The understanding of human nature is dependent on the definition of freedom and can be manipulated, as Berlin warns (Berlin, 1969, p. 178).

Negative freedom is a political concept that refers to the absence of external influences. Positive freedom, on the other hand, is concerning the private realm since it refers to the ability to resist internal desires. However, Berlin emphasizes that one's own understanding and belief of social connections is essential in determining whether something is perceived as a restriction of one's own freedom by others. If I believe in the fateful nature of my economic poverty, it is not a restriction from other human beings, but rather one of my own abilities. If I believe that my poverty is, to put it simply, a result of the economic enrichment of others, then this concerns the political sphere and limits my negative liberty rights (Berlin, 1969, pp. 168-169).

Berlin emphasizes that the freedom of one depends on the unfreedom of another. My freedom to live depends on the unfreedom of another to kill me. From this, Berlin concludes that there must be control over people's freedoms to protect them. This, in turn, requires a boundary between the realms of private life and public authority (Berlin, 1969, p. 169). In liberal democracy, there is an ongoing disagreement about how much individual freedoms on the vertical (state-citizen) level should be restricted to protect those on the horizontal (citizen-citizen) level. However, negative freedom is a political concept that does not necessarily presuppose democracy, as control over limiting freedom does not require democratic legitimacy (Berlin, 1969, p. 170).

The historically conditioned detachment of individual self-determination from national structures and the expansion of the universalistic concept of individual agency within the liberal order has led to challenges and contradictions. Freeman (1999, p. 358) illustrates how the constitutional forms of Western liberal democracy adopted by many postcolonial states collapsed under the combined pressures of lack of economic development and

ethnic conflict. The Westphalian character of the UN world order sought to provide recognition, status, and influence on states but denied it to peoples without states. Soysal (2022, pp. 4-5) concludes how historically collective action was tied to the nation-state, but in the 1960s, with the rise of social movements and decolonization, the emphasis shifted to individual action.

In particular, neoliberalism has decoupled individual agency from national structures and emphasized individual rights, capabilities, and choices. Soysal explains how human rights instruments further expanded the universalist concept of individual agency. The detachment of individual action from the national collective results in challenges and contradictions. According to Soysal, one of these contradictions between individual and collective self-determination reveals itself as a political tension in relation to borders and migration policy (Soysal, 2022, pp. 3-4).

Self-Determination and the Private and Public Realm

According to Weintraub, the difference between *public* and *private* realm has been a central theme in Western thought since antiquity and a central starting point for moral and socio-political analysis (Weintraub, 1997, p. 1). Bobbio famously called it the "great dichotomy" of thought (Bobbio, 1989, p. 1). In liberalism, this dichotomy automatically follows from the right to individual self-determination. Since one's freedom depends on someone else not depriving that freedom, liberalism assumes that there is a public space that protects that private freedom.

Bobbio understands by a great dichotomy one that can divide the world all-inclusively into two spheres, and in which each element of this world can be assigned to a dual and complementary structure. This dichotomy, in turn, has the consequence that other criteria of distinction become secondary. Thus, Bobbio makes the example that in legal language the distinction between private and public law takes precedence over all other distinctions, it is used uniformly in different historical periods, and it is comprehensive. Thus, neo-Kantian legal philosophy considers the two concepts of private law and public law as two a priori categories of legal thought (Bobbio, 1989, pp. 1-2).

A concrete example is given by Koskenniemi (2011) who argues that imperialism, traditionally thought of as a political and state-based phenomenon, historically operated through private businesses. Global relationships of domination were often governed by

private-law rules such as the legal concepts of property and contract. These dynamics are frequently overlooked and therefore misunderstood in literature due to a separation between public and private international law.

Weintraub, therefore, stresses that “debates about how to cut up the social world between public and private are rarely innocent analytical exercises, since they often carry powerful normative implication” (Weintraub, 1997, p. 3). He proposes that the demarcation line is generally determined by two questions: firstly, what is hidden and what is open (*visibility*); and secondly, what is individual and what is collective (*collectively*) (Weintraub, 1997, p. 5).

To put it simply, there are three very different traditions of thinking the public and private spheres: the classical, liberal, and the opposing, feminist. In classical understanding, the "public" sphere is based on citizenship and active participation in collective decision-making through debate and collective action, whereas the liberal model sees the distinction between public and private primarily as a difference between state administration and the market economy. According to Weintraub (1997, p. 7), the liberal model is the most widespread and dominates everyday legal and political debates.

The liberal distinction between public and private is often defined as governmental or non-governmental and seeks to strike a balance between individuals, organizations, and state action through the adjudication of responsibilities. Within this logic, there are advocates for greater regulation by the state and a position that opposes such regulation due to the belief that social problems and conflicts are regulated by the "invisible hand" of the market (Weintraub, 1997, p. 9). The term "invisible hand" was coined by the philosopher and economist Adam Smith. Smith assumes in "The Wealth of Nations" that individuals, through their own self-interest, naturally seek to use their capital to support domestic industries to produce goods and services. The individual thus rather unconsciously contributes to the common good, which Smith describes as the "invisible hand" (Smith, 1976, pp. 593-594). Although Smith mentions this term in passing, it becomes emblematic of liberal economic systems that protect the freedoms of the individual in order to indirectly benefit the community.

As can be read in Weintraub, the concept of the "public sphere" can be traced back historically to two events that decisively shaped the notion of citizenship and sovereignty: first, the self-governing polis and, second, the Roman Empire. The self-governing polis

refers to the ancient Greek city-state in which citizens were active participants in the affairs of their community. Active citizenship is central here, with individuals assigned certain rights and duties within the political community. The polis, however, was reserved for a minority; women and slaves, for example, were excluded from it. The Roman Empire, on the other hand, stood for a public sphere with centralized authority at its core. The Roman Empire emphasized the concept of sovereignty, where power was concentrated in the hands of a central authority, namely the Roman Emperor (Weintraub, 1997, p. 11). Even if these two fundamentally different concepts of the public sphere coincided in the course of their historical development after their rediscovery in modern Europe, Arendt and Rancière in particular make clear how important it is to differentiate between the various concepts of the public sphere, as will be shown.

Self-Determination Through Equality

Equality is a key principle in liberal theory, but its substance is the subject of ongoing debate among liberal thinkers. To begin with, equality is not synonymous with "identity or sameness" (Heywood, 2015). Rather, it refers to a range of different types of equality, including foundational equality (we are all born equal), formal equality (equal political and legal rights), substantive equality of opportunity (equal chances), and equality of outcome (equal distribution).

What Arneson describes as "equality of rank, power, and status among members of society and that in these ways members of society should relate as equals" is commonly called the *foundational equality* (Arneson, 2015, p. 213). *Formal equality* includes political equality (the right to an equal vote) and legal equality (equality before the law) (Heywood, 2015; Arneson, 2015, p. 213).

Equality of opportunity is a lack of discrimination whereas *substantive equality of opportunity* goes a step further and refers to the idea that everyone should have the chance to become qualified for a positions (*weak form*) or that individuals with the same talent and ambition should have an equal chance of competitive success regardless of social class, gender, sexual orientation, ethnicity, or other factors (*strong form*) (Arneson, 2015, p. 214). Heywood thus distinguishes between two types of inequalities. *Non-legitimate inequality* is caused by unequal social treatment, whereas *legitimate inequality* is caused by unequal distribution of merit, talent, and willingness to work (Heywood, 2015). John Rawls' *difference principle* reflects the differentiation between illegitimate and legitimate

inequality by stating that inequalities are acceptable only if they are rectified to the greatest benefit of the most disadvantaged (Rawls, 1971, p. 302).

Equality of outcomes describes the "equal distribution of rewards" (Heywood, 2015). It can mean, on the one hand, that all people have adequate material means and developed capabilities to be able to use their freedoms, or that measures are taken, and institutions and practices put in place to help those who would otherwise have poorer prospects for prosperity (or other social goods) than others. Thus, it prioritizes either equality of conditions or equality of opportunity for well-being ("egalitarian or prioritarian beneficence norm") (Arneson, 2015, p. 214).

John Rawls is one of the most influential liberal thinkers on issues of freedom and equality who opposes the prevalent utilitarian moral theory in the Anglo-American world. Equality, as Rawls shows, is both the moral justification and formative for a political order, particularly liberal democracies. In his seminal "Theory of Justice," he argues that "justice is the first virtue of social institutions, as truth is of systems of thought" (Rawls, 1971, p. 3).

With the theoretical categories of equality defined above, one could argue that Rawls gives priority to formal equality over equality of opportunity. That is because he is arguing for the prioritization of the principle of equal opportunity before the difference principle. In his thought experiment in the desert, where the discussants do not know what advantages or disadvantages, they will face in the real world, the right to freedom is given priority. Rawls justifies this by arguing that freedom, as an abstract right, is not a scarce good unlike material goods and thus is granted to everyone. It should be noted that Rawls, without naming it, assumes that equal freedom is a form of freedom that is both a negative freedom and includes only political and civil rights. He thus excludes that economic, cultural, or social preconditions are necessary for freedom, be it that there is enough food or education as a precondition for freedom. Thus, according to Bowie, Rawls distinguishes between the equal right to liberty and the equal worth to liberty, whereby Rawls considers the equal right to liberty to be "morally more fundamental than the principle for dealing with inequalities in the distribution of economic goods and positions of influence [the equal worth to liberty]" (Bowie, 1980, p. 115). Freedom in Rawlsian understanding is a right, which is given to establish a liberal social order, but it is not clear what this right actually contains. Arendt and Rancière will return to this basic problem of liberalism in their reflections on human rights.

Heywood points out that different conceptions of equality are sometimes incompatible, and that equality of opportunity justifies unequal social outcomes (Heywood, 2015). This tension is often weighed in favour of equality of opportunity within the prevailing (neo)liberal order, with the argument of incentivizing performance.

Starting from these basic assumptions of liberalism defined in this chapter, I show in the next chapter to what extent Arendt, Benhabib and Rancière deviate from them, but not because they reject equality, self-determination, and freedom, but because they ask themselves how these promises of liberalism can really be fulfilled.

Comparative Analysis

Hannah Arendt: The Right to Have Rights through Political Agency

Arendt is a much-respected contemporary witness of the catastrophes of the 20th century. In "We Refugees" (1943) she describes based on her own experience how the definition of a refugee has changed, no longer based solely on their actions, but on their identity. In "The Decline of the Nation-State and the End of the Rights of Man," she describes the disastrous consequences of the peace treaties of 1919 and 1920, which created national minorities and stateless individuals left to their own fate. However, if we only see Hannah Arendt as an author who describes the phenomenon of minorities, refugees, and stateless individuals within the historical context of the nation-state, we miss the point. She is also describing a political theory in which she is deconstructing law, the nation-state, and human rights. With her critique, she looks not only to the past, but above all to the future of democratic communities.

Gosepath argues that Arendt's contemplation on the moral claims to rights in the presence of totalitarian rule in 20th century Europe ultimately suggests that she believed only the state but not the mind (*Verstand*) could be trusted to safeguard human rights (Gosepath, 2007, p. 280). Therefore, it demands a positivization of human rights, which, however, has the drawback of no longer being universal, but only particular, i.e., only applicable within the territorial protection area of a state. This state, however, proved to be the greatest enemy of human rights in the face of National Socialism, which questioned human's moral certainties. Therefore, the right to have rights cannot be a pre-positivist right in Arendt's logic but is created through collective action in the public political sphere. The human being is thus a producer and bearer of rights themselves, so Arendt does

not pursue a world-encompassing institution as a protector of human rights, but relies on strong civil societies (Gosepath, 2007, pp. 282-283).

With her idea of the right to have rights Arendt challenges the assumption that all individuals have inherent rights by nature, by exposing the exclusionary nature of the Westphalian sovereign state order. This exclusionary nature reveals itself by denying the right to have rights to individuals who are not considered to be members of the political community, such as stateless persons, refugees or those who are not regarded as legal persons. Yet it is the legal framework of the liberal order itself that causes the state of lawlessness in which stateless persons find themselves.

No Freedom Without Equality

Arendt's political ideal emphasizes interpersonal connection, mutual recognition, conflict, and cooperation. Politics is based on *isonomia*, which means that all individuals have the same claim to political participation and that people build a shared public-political space and attain equality via practice rather than rules or structures (Ingram, 2008, p. 410). Étienne Balibar (1994, p. 212) therefore understands Arendt's right to have rights as "the right to politics." Arendt believes political action as a "new political principle" could provide human dignity with a "new guarantee" (Arendt, 1973, p. ix) and that human rights are only meaningful and existent if the action continues (Arendt, 1968, p. 152). "Thus, Arendt's doubts about human rights are based neither on a fetishization of national citizenship nor on the lack of a power or law to enforce rights. Rather, they stem from what she regarded as limits to practices of mutual recognition" (Ingram, 2008, p. 410).

Equality in liberal thought is based on the dichotomous thinking of means and ends. That is, treating participants' conditions in an (in)equal manner creates a fair competition. Equality as a liberal principle is transcended in Arendt's thinking with intertextual reference to Walter Benjamin. With her idea of *isonomia* Arendt practically demonstrates what Derrida and Benjamin attempted to show in their metaphysical thinking.

In "Critique of Violence" Walter Benjamin explains how the violent end of a legal order is followed by a violent beginning of another. Arendt distinguishes therefore between freedom and liberation. The modern concept of revolution is tied to the idea of a new beginning and the emergence of freedom. However, freedom and liberation are not the same thing, as Arendt points out. She assumes that the basis of freedom has always been

uncertain because it has been misunderstood that freedom is a political concept. She explicitly understands freedom not as a negative freedom, not as “the more or less free range of non-political activities which a given body politic will permit and guarantee to those who constitute it” (Arendt, 1990, p. 30).

Benjamin argues that the law's dialectical up and down, where means and ends are the principle, must be broken. He believes legal orders perpetuate the privileges of the powerful or create them anew. The boundaries they set are always unjust and ambivalent, as they follow the interests or power of those who set them. Arendt's idea of *isonomia* aims to overcome this means-ends thinking, but she remains bound to the legal order. Benjamin, on the other hand, sees justice and inequality as an eschatological redemption that heralds a messianic age beyond all legal order. Arendt, however, deconstructs the law, in accordance with Derrida's respond to Benjamin's "Toward the Critique of Violence," by describing the possibility of the impossibility of justice, which is only (in)experienceable within the law. The enduring contradiction legitimizes the law as a paradoxical manifestation of this impossibility (Gehring, 1997, p. 244).

Even though the formulation "the right to have rights" may initially seem like a mere demand for foundational and formal equality, its political theory goes far beyond that. For Arendt, creating a space free from domination means justice, not the principle of equality. The term *isonomia* comes from ancient Greek and means "equality of political rights". In her political theory, Hannah Arendt, following Benjamin, describes precisely that rule-free principle in which law-making and law-maintaining power have the same source: God (Benjamin) and active citizens (Arendt). In contrast to democracy (rule of the majority), she understands this as a state of political freedom in which there was no difference between rulers and ruled. Thus, the right to have rights does not merely describe the extension of formal equality, but behind it lies a complete rethinking of justice and political order.

The idea of an active citizen is exemplified in its idea of resistance. Étienne Balibar (1994, p. 212) interprets Arendt's right to have rights as “the right to politics”. According to him, Arendt questions the conventional notion of authority and obedience within citizenship. She introduces the idea of antinomy and emphasizes that disobedience is not synonymous with obedience, but rather essential for the legitimacy of institutions. Civil disobedience, in her view, is a collective act aimed at restoring the conditions of "free consent" to the law. Even though civil disobedience ultimately strengthens the law, it carries risks,

including misjudgements and the potential destruction of the very institutions it seeks to preserve, criticizes Balibar (2007, p. 736).

Arendt illustrates her aversion to the means-end paradox with the example of war. When peace becomes the end of war, she fears, any means is justified. In doing so, Arendt does not argue against war as such but points out that ends can be in strong conflict with ends and there is no deciding criterion as to when a means is illegitimate because, after all, it is justified by the achievement of the end (Arendt, 2003, pp. 198-199). "Arendt, in contrast, seeks to locate the meaning of politics (freedom) in its means, i.e., free political action" (Ingram, 2008, n. 17).

Equality, in Arendt's view, needs to be understood as a fundamental aspect of freedom. Arendt contends that the concept of freedom in politics was first seen in the Greek *polis*, where citizens lived together under conditions of no-rule, expressed by the word *isonomy* as opposed to *democracy*, rule by the *demos*. "Hence, equality, which we, following Tocqueville's insights, frequently see as a danger to freedom, was originally almost identical with it" (Arendt, 1990, p. 30). It is thus questionable whether Arendt can be classified as a republican theorist because she strongly warns against the totalitarian tyranny of the masses. "This new situation, in which "humanity" has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible" (Arendt, 1973, p. 298).

However, Arendt further specifies the relationship between freedom and equality. According to her, equality and freedom are directly intertwined. Arendt illustrates this by referencing Herodotus' equation of freedom and non-domination, which states that a ruler who rules over others is themselves unfree, he deprives himself from his own freedom. Only among their equals are people truly free.

The ancient polis, so Arendt, was not an expression of the equal nature of human beings, given since political space was reserved for those who owned property and slaves, but rather an institution to bring about equality. This also explains Arendt's scepticism towards the belief in natural rights, which assume that everyone is equal. In her idea equality must be fought for through political organization.

Condemned to Private Life

In Arendt's political theory, the distinction between private and public space is a central moment that challenges the liberal understanding of this dichotomy. Arendt emphasizes that it is not the individual who lives out their freedoms privately, and the public space that is legitimized to enable these freedoms in one (political) or another (economic) way. Arendt argues that public and political life are inherently different and that public space as the political sphere is essential for human existence in the Aristotelian sense.

In contrast, private life is characterized by mere existence and does not possess the political status and legal personality that determine the actions of individuals in the public sphere. The stateless person no longer belongs to any political community or human society. Being relegated to the private sphere means, according to Arendt, that they are forcibly deprived of their connection to the world, reduced to bare existence, and thus thrown back into the "state of nature".

With reference to the *polis* (different from the *demos*), Arendt describes the political space as the condition for freedom and equality. These values are first generated in the public sphere and turn into the opposite if the stateless person is relegated to private life. "Equality existed only in this specifically political realm, where men met one another as citizens and not as private persons" (Arendt, 1990, p. 31).

The stateless person represents the horror of mankind after the relapse into the barbarism of the 20th century. This distinction between private and public realm highlights the plight of those who have lost their place in the community and are relegated to the sphere of private life, where they become lawless and marginalized. "Man, 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" (Arendt, 1973, p. 297) Arendt argues that even if they enjoy certain freedoms, such as bodily integrity or freedom of expression, these do not fundamentally alter their situation of lawlessness but their essence of being human gets lost with being deprived of the right to have right (Arendt, 1973, pp. 296, 301).

According to Arendt, political life is the realm of common political action and public space. It differs in its view from a liberal perspective in that it views public space not as a marketplace or sovereign realm, but as a place of becoming human, where human beings can perform their political nature. However, for Arendt, political life is not about individual agency, but also about creating institutions that bring equality, power,

authority, and freedom to the public sphere through the recognition of the political nature of the other. These institutions, such as isonomia, promote reciprocity and grant rights to individuals, reshaping public space and creating a "second nature" (Balibar, 2007, p. 734).

Balibar is highlighting the antinomic character of Arendt's distinction of private and public life. He describes how the institutions that create rights and allow individuals to become human subjects through reciprocal rights granting can also destroy those rights and threaten the essence of humanity. Balibar argues that Arendt rejects the idea that social and political institutions bring equality and freedom to a natural state. Instead, she argues that institutions introduce equality, power, authority, and freedom in the public sphere where they previously did not exist (Balibar, 2007, p. 734).

According to Balibar, Arendt introduces yet another antinomy into the construction of the political, namely via the construction of the citizen. She argues that disobedience to the law is not equivalent to obedience but rather that without the possibility of disobedience, there can be no legitimate institution of obedience. Balibar is also showing the limits of Arendt's idea and argues that it is unrealistic to assume that a society or state recognizing civil disobedience as a fundamental right would be immune to the danger of totalitarian transformation (Balibar, 2007, p. 737).

One could call Arendt's distinction between the private and the public trivial and accuse her of merely performing linguistic manoeuvres. But her reinterpretation of the private and the public is of great importance in Arendt's political theory. The liberal idea that the public state protects the private freedoms of the individual contradicts Arendt's idea of participatory community. The events of the 20th century robbed her of the illusion that a sovereign state could really deliver on the promise of freedom and equality. Näsström explains that during the American and French revolutions, people rejected a divine justification for the form of government. God as the guarantor of law was replaced by humanity itself as "its own source of authority in political affairs" (Näsström, 2014, p. 556). This loss of external authority is both liberating and responsible for rights holders, creating a sense of "absolute freedom" and a sense of "absolute responsibility" (Näsström, 2014, p. 546). Näsström understands this burden of responsibility as the driving principle behind the right to have rights in modern democracy; it is conceived by Arendt as a burden that can only be borne by equal members of a democratic community (Näsström, 2014, p. 560).

In any case, it could be shown that it is a fallacy to believe that Arendt rejects the state or human rights; rather, she embarks on a search for another form of political order that opposes the paradoxical character of human rights.

Self-Determination as Emancipation

“THE DECLARATION of the Rights of Man at the end of the eighteenth century was a turning point in history. It meant nothing more nor less than that from then on Man, and not God's command or the customs of history, should be the source of Law” (Arendt, 1973, p. 290).

According to Hannah Arendt, the Declaration of the Rights of Man marked a significant historical turning point. Arendt argues that the French Declaration signified a shift away from the belief that rights derive from divine decree or historical customs, placing human beings as the ultimate source of law. However, it is crucial to examine who now assumes this role as the source of law. The Declaration is however not referring to the capacity of humans to create and establish laws themselves but arguing with their intrinsic value of human nature. Thus, the emphasis lies not on the demise of God and not on the emancipation of individuals but on their inherent and inalienable natural worth.

This concept of natural rights invokes Weber's paradox that falls into the traps of the paradoxes of means and ends. Ingram refers to Weber's understanding of politics to highlight the paradoxical nature of the politics of human rights. Weber defines politics using power and violence to carry out one's will. The paradox of human rights as Ingram (2008) shows is that they seek to protect individuals from arbitrary power but must use power themselves to do so. This would create a discrepancy between the agent of this politics (the powerful) and its beneficiary (the powerless). Human rights are thus something that the powerful do for the powerless, using their own power to protect them.

With the just-explained Arendtian concept of equality and freedom as the result of political order, one can already anticipate the fatal pitfalls into which this argumentation of natural rights falls. Interpreting human rights in the Weberian way creates inequality and lack of freedom, even though their purpose may seem noble and legitimate. If we assume that one can only be free among one's equals, then these gifts of the powerful can overcome neither inequality nor unfreedom as long as this hierarchy of power is not overcome.

Arendt argues that human rights have become increasingly important as they have replaced the once indisputable divine rights. Either people had rights because they were innate, or they served as a means of protecting the individual from the sovereignty of the state or the potential arbitrariness of the new social order. Arendt (1973, p. 291) describes how human rights were now considered inalienable and could no longer be derived from an external authority. "Man" was both the means and the ends of human rights, and individuals now possess sovereignty in matters of law. As Rawls would put it, man became a "self-authenticating source of valid claims." However, Arendt notes that the idea of an "abstract" human being, independent of a social order, did not truly exist. Instead, the realization and protection of human rights have become closely tied to the concept of popular sovereignty, particularly of one's own people. Because of this discursive and power shift, the emphasis has shifted from individual self-determination to the collective self-determination of the people as the guardians of human rights.

Arendt's "Decline of Nation-State" illuminates a troubling aspect of the discourse on human rights. She points to the failure of those in power between the two world wars to respond to the plight of human beings. Arendt explains that this was not due to their ill will, but simply to the indeterminacy and abstractness of human rights.

In the 19th century, the invocation of human rights was largely superficial, serving to defend individuals against state power or alleviate social insecurities resulting from industrialization. Arendt contends that human rights became a buzzword adopted by advocates for the underprivileged, offering an additional or exceptional right to those lacking better alternatives (Arendt, 1973, p. 293). However, the enforcement of these supposedly inalienable human rights proved impracticable, even within countries whose constitutions were founded upon them, when individuals emerged who were no longer citizens of a sovereign state. This confusion between civil rights and human rights remains unresolved by the Universal Declaration of Human Rights, as Arendt remarks, "Although everyone seems to agree that the plight of these people consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights" (Arendt, 1973, p. 293).

This logical inconsistency arises from the assumption that human rights are inseparable from citizenship. It raises the question of what rights can be demanded by stateless persons and national minorities who possess little or no legal status within nation-states. According to Arendt's portrayal, these individuals face a state that not only fails to

“oppress” them but also does not seek to provide adequate legal protections. If human rights are construed as citizen's rights, it becomes uncertain which rights can be claimed by those without a recognized citizenship. In this account, it seems that those who have no rights cannot lose them. However, if we conceive of human rights as inalienable, independent of the state against which they should be demanded, individuals possess rights that cannot be enforced against any specific entity or authority.

This dilemma highlights the complexity of human rights and the challenges involved in their practical application. Arendt's point is not to reveal the illogical nature of human rights discourse. Rather, she aims to demonstrate the tension for freedom and equality of people when human rights are treated as either a means to politics or seen as naturally pre-given. According to Arendt, the tensions arising from a misunderstood (negative) freedom, which is perceived through the idea of human rights as a natural and defensive right against the state, are a cause for the strengthening of 20th century totalitarianism, which becomes a principle not only for the elite but also for a large part of society.

Arendt's concept of self-determination can be read with Nietzsche's critique of morality and his call for a re-evaluation of values in his influential essay "Beyond Good and Evil". Nietzsche sees the unveiling of the resentment and life-denying nature of Christian morality as an opportunity for a profound revaluation of all values, to better align them with fundamental human psychological drives. Arendt and Nietzsche initially agree that moral values are not inherently fixed and objective, but rather a product of society. This highlights the significance of the French Declaration of the Rights of Man in 1789, as it essentially overturned all moral values that had previously determined the entire political order.

By questioning the notion of morality as fiction, Nietzsche calls on us to question the moral framework that shapes our lives. Arendt extends this critique to the prevailing social order and its adherence to the ideological worldview and moral standards of the bourgeoisie. She acknowledges the legitimate disgust and dissatisfaction felt by individuals in a society characterized by artificial safety, culture, and life between the two World Wars.

Arendt (1973, pp. 326-328) describes how this disgust, influenced by Nietzsche and other thinkers, evolves into fantasies of world destruction in the "front generation" of her time. This generation of elites and masses is seized by an intense desire for the complete

destruction of the perceived false world. Their pursuit of chaos and ruin represents a rejection of previous attempts at value transformation or political reorganization. Arendt's analysis underscores the deep longing for self-determination that can arise as a reaction to a suffocating social order, but also describes how this collective and individual self-determination ends in totalitarian power frenzy. Nietzsche's call to question social values in order to make them more useful to people's needs becomes in Arendt, in contrast to the "front generation", the political desire for a domination-free space in which preserving and creating political forces have the same source: an active political community that at best subjugates itself.

When equality and freedom are interconnected and result from a political order in which rights holders and bearers are identical, self-determination is not a matter of individual versus collective self-determination. Therefore, the coincidence of these values also has implications for the individual, which Arendt explains through the idea of *persona*. This mask, which concealed the face of the actor in ancient theatre, made his own voice even more powerful. In Arendt's understanding, *persona* is the legal person who plays a certain role as a citizen, enabling them to claim political relevance by embodying their duality as both duty-bearer and right-bearer (Arendt, 1990, p. 107). However, here the individual is not a medium of the masses, but in their role as a citizen, they become a protector of freedom and equality.

Seyla Benhabib: Discourse Ethics of the Right to Have Rights

Liberalism promotes the idea of universal human rights, specifically individual liberty, and equality among rights-holders. However, Benhabib questions the universality of human rights to make the discourse more equitable and to consider the fact that not every human being is considered part of the liberal state order, and that certain groups have been historically excluded (such as women, men without property, and enslaved people). Benhabib critiques this form of universalism because it disregards the importance of specific identities and perspectives. She also sees it as the origin of social inequality, claims to power, and conflicts. However, she does not reject universalism entirely; instead, she advocates recognizing the coexistence of universal moral principles with the value of identities and the need for democratic dialogue and negotiation between different perspectives. Benhabib proposes an inclusive, cosmopolitan universalism that respects differences and encourages dialogical engagement between diverse communities.

Self-Determination through Communicative Freedom

Benhabib takes Kant as a starting point for her search for possible justifications for the universality of human rights. Kant's discussion of cosmopolitan law raises the question about the justification of the universality of human rights. According to Benhabib, this is mainly because Kant held the view that all individuals are entitled to hold rights based solely on their humanity. This vision of cosmopolitanism provides the basis for a new world legal order because it emphasizes the unity and diversity of human rights and envisions a world with porous borders that transcend the boundaries of the nation-state system (Benhabib, 2004, pp. 5-8).

Already in "The Rights of Others", Benhabib explores the discursivity of the concept the right to have rights. She notes that the concept of the right to have rights contains two meanings of a right. The first use is a moral imperative to recognize membership in a human group, while the second use refers to civil and political rights within a legal community (Benhabib, 2004, pp. 56-58). In "Dignity in Adversity" from 2011, Benhabib interprets the *right to have rights* as universal moral principles that safeguard and promote the practice of communicative freedom. These rights safeguard individuals' capacity to engage in dialogue, express their views, and make decisions based on reasons they accept as valid. This is what Benhabib calls the discourse-theoretic justification of the principle of rights.

Therefore, Benhabib's understanding of the right to have rights is not so much about the enforceability of rights as it is about justifying human rights. This justification serves as the basis for deriving a practice of human rights. "Justificatory universalism' is at the heart of reason as a reason-giving enterprise and so is the recognition of the other as a being capable of communicative freedom and of the right to have rights" (Benhabib, 2011, p. 71).

As Ingram (2008) has already shown, Benhabib understands the right to have rights as a political right and expands Arendt's notion of the right to have rights to include the cosmopolitan claim of every human being to be recognized and protected as a legal entity by the global community (Benhabib, 2011, p. 9). She argues that the nation-state is both too small to deal with certain global problems and too large to meet the demands of identity-based movements. She claims that territoriality is obsolete in today's complex world. This perspective underscores the need for self-determination beyond the borders

of the nation-state and the recognition of individual rights in a global context (Benhabib, 2004, p.4).

However, Benhabib is aware of the problems of universalism in its imperial dimension, as well as the danger of patronizing people and depriving them of their political agency. She sees a cosmopolitan norm as a chance to organize especially oppressed groups democratically beyond state borders (Benhabib, 2011, p. 149).

Benhabib distinguishes between four types of universalism: essentialist universalism, justificatory universalism, moral universalism, and legal universalism. *Essentialist universalism* assumes a basic human nature or essence, while *justificatory universalism* argues for the normative and universal capacity of reasoning. *Moral universalism* asserts that all human beings are entitled to equal moral respect. *Legal universalism*, which Benhabib sees as crucial, asserts that all people have certain basic human rights that should be protected (Benhabib, 2011, pp. 62-64).

Benhabib argues that any legal and political justification of human rights (*legal universalism*), is based on justificatory universalism. Justificatory universalism, in turn, cannot do without recognizing the communicative freedom of others, which means granting them the right to accept only those rules of action of which they are convinced by reasons. This idea is rooted in moral universalism, which emphasizes equal respect for others as beings with communicative freedom. However, the moral universalism that Benhabib has in mind does not prescribe a specific list of human rights beyond the protection of communicative freedom (Benhabib, 2011, p. 64).

Benhabib is making an important point here, which not only justifies the legal universalism of human rights, but also addresses tension between republicanism and liberalism in political theory. In a liberal constitutional democracy, the republican idea of self-government of the demos is combined with the liberal pre-given conviction of strong human rights. Benhabib acknowledges not aiming to create an incontrovertible theory of human rights, but she argues that communicative freedom is a crucial precondition for any meaningful account of human rights and extends this concept to develop an understanding of human agency. This is similar to Habermas's theory of co-originality. Habermas (1992), as a representative of deliberative theories, overcomes the opposition of liberalism and the republican ideal with his theory of co-originality, showing that neither side needs to be prioritized, and that private and public self-determination

mutually produce each other. However, she goes further by showing that the universalism of human rights is only possible through the individual's capacity for action (Benhabib, 2011, p. 64).

On the Problem with the Circular Reasoning of Equality

Benhabib derives principles of rights from Kant for her project of a discourse-theoretic justification. She argues that legal principles such as generality, formal reciprocity, and equality apply to these principles. However, unlike Kant, Benhabib does not inquire about universal laws that we can will without self-contradiction. Instead, she examines the validity of norms and institutions that would be acceptable to those affected (Benhabib, 2011, pp. 64-65). Because only this form of standard setting is truly equal, which also grants equal rights to all perspectives. The question arises of how this can be achieved.

Benhabib describes two perspectives for considering the rights of others: the "generalized other" and the "concrete other." The perspective of the "generalized other" requires a concrete anthropological foundation from which rights and obligations can be derived - namely those that we would demand for ourselves. In Benhabib's view, these generalized others can provide a framework for discourse by referencing commonalities and deriving norms of formal equality and reciprocity.

The perspective of the "concrete other" differs from the first, as it focuses on the individual as a unique being with specific emotions, considering societal-historical and individual contexts, including individual and collective identities and self-determination. It emphasizes difference rather than commonalities by starting from the individuality of the other. Benhabib thus calls for both perspectives to be taken complementarily, that of normative equality and that of complementary reciprocity, to consider not only the humanity of the other, but also their individuality (Benhabib, 2011, p. 69).

Benhabib's theory innovatively avoids certain pitfalls of the perplexities of human rights. Instead of basing human rights on metaphysical ideas of natural rights or possessive individualism, Benhabib sidesteps the problem that Arendt already recognized: how and against whom can one enforce natural rights; rights that are naturally pre-given even when they do not exist? Benhabib understands human rights as both a legal entity and discursive one that does not need to reflect the legal and lived reality. Benhabib reminds us of the power of human rights discourses in shaping our understanding of justice.

With her theory of "another universalism" Benhabib proposes an intermediary theory between natural law and positivism for defining human rights. Unlike positivists, who argue that legal systems create their own laws, Benhabib's "other universalism" recognizes the tension between the universal nature of human rights and their expression in specific legal and cultural contexts. To address this tension, Benhabib proposes the concept of "interactive universalism" or "democratic iterations." This approach involves actively engaging in ongoing discussions and reinterpreting human rights in specific social and political contexts. By participating in these dialogues, human rights can challenge the legitimacy of legislation and bridge the gap between natural law theory and positivist legal theory.

The question arises as to what equality means for Benhabib. On one hand, she aims to create legal discourses that do not speak of the Euro-centric universality (unlike Hegel to which she refers). Thus, she questions the universality of rights themselves and limits this universality to certain frameworks that make a substantive discourse on rights possible, such as that of equality. Therefore, she suggests that it is important to include those who are affected by the discourse.

On the other hand, we could raise the critical question with Gayatri Spivak on who can actually speak in this discourse. Benhabib argues that all human beings who are capable of speaking a natural or symbolic language also possess communicative freedom. If human rights are only universal when all perspectives are represented, then Benhabib's universalism is more of an end and, at best, not a means to obscures the actual power relations.

"Speaking" in Spivak's understanding is not only about cognitive abilities to speak but to be heard. Speaking is in this context about the freedom and power to do so in order to establish rights. This creates a circular reasoning (we need human rights to demand for human rights). And it seems to be insufficient to break the circular argument only by shifting human rights to a discursive level. We face a problem when subalterns are unable to voice their opinions. Without their voices being heard, they cannot be included in the discourse. This would either result in a discourse of the powerful or, more optimistically, we assume that there exist ways that assure that subaltern voices can be heard. If so, as Ingram (2008, p. 405) points out, Benhabib manifests Weber's paradox in which human rights are not negotiated equally, but rather the powerful grant human rights to those in need as if giving away old clothes to those who need them (Rancière, 2004, p. 307). The

audibility of subaltern voices challenge Benhabib's notion of creating a culturally sensitive, anti-imperialist, inclusive and equal discourse.

Benhabib rejects her critics' notion that the Other is based on an anthropological conception. Instead, she emphasizes the discursivity of human experience as the basis for understanding the Other. According to Benhabib, this understanding is fluid and fragile and represents a practical possibility that does not necessarily translate into a political reality (Benhabib, 2011, p. 69). I contend that even if the generalized other is subject to discursive fluctuations, Benhabib is not describing the discourse itself, but a meta-discourse that deals with an idea of the human being that is assumed to have similarities, differences and the ability to speak and negotiate even when she highlights that universalism as she sees it is “an aspiration, a moral goal to strive for; it is not a fact, a description of the way the world is.” Hence, she possesses a meta-anthropological comprehension of the discourse participants.

And so Benhabib (2011, p. 71) is subject to a circular conclusion, which she herself understands quite positively as a hermeneutic circle. She tries to avoid imposing power structures on the discursive space, but at the same time establishes universal rules of discourse that promote equality, reciprocity, symmetry, etc. as prerequisites for discourse and thus enables the discourse. After all, this circular reasoning is difficult to resolve and defines the horizon of meaning (*Sinnhorizont*) of a justificatory universalism.

Osborn criticizes Benhabib's non-essentialism, warning that the rights of Others could collapse "whenever we detect that 'discourse' is no longer a realistic possibility." He sees the only way out of Benhabib's dilemma as conceding a philosophically or religiously underpinned personhood, since otherwise “the quest for universal values by way of ‘democratic iterations’ alone turns out to be the moral and epistemological equivalent of peeling onions” (Osborn, 2010, p. 123).

Public Space Beyond Borders

Benhabib aims to free human rights from the dilemma inherent in the opposition between republican and liberal understandings of democracy. The liberal position considers human rights a prerequisite for a democratic order, while the republican position asserts that the demos must produce them. According to Benhabib's discourse model, actionability is not only possible through the existence or fulfilment of human rights;

rather, recognition of the rights of others is essential for challenging or accepting our claims to rights. In this model, recognizing the right of others to have rights is essential for moral justification (Benhabib, 2011, p. 70).

Therefore, Benhabib's conception of the right to rights emphasizes the importance of public autonomy, where individuals collectively decide and shape human rights through democratic deliberation and engagement. The public sphere is a space of democratic self-governance, where individuals can exercise their autonomy and make communally grounded decisions. These decisions are considered grounded when they incorporate the perspectives of both the generalizing other and the concrete other.

The concept of universalism, as aspired to by Benhabib, is understood as a moral ideal rather than a static description of reality. Her idea of a human rights discourse involves this ideal of “political struggles, social movements, and learning processes within and across classes, genders, nations, ethnic groups, and religious faiths” (Benhabib, 2011, p. 64). Publicity is thus a struggle for power and recognition of the perspective of others.

But what does such a public realm look like, if, as Benhabib demands, it should be a site of self-determination both within and beyond the nation-state? Benhabib criticizes Arendt for using the nation-state as the existing framework for discussing the right to have rights and her missed opportunity to examine alternatives that do not adhere to the nation-state model. Benhabib sees the modern nation-state not as a rigid structure but as an entity that produces an ongoing process of transformation and collective identity formation through democratic iterations. This transformation of democracies, Benhabib argues, prompts ongoing debate and experimentation about collective identities. These processes are inherent to multicultural and multinational democracies and are in a balancing act between human rights and national sovereignty (Benhabib, 2004, pp. 64-65). For Benhabib, human rights are a site of collective identity formation due to their transformative universality, which obliterates and re-emerges national borders.

Benhabib interprets Arendt to be against a world state or world organization because it would undermine the right to democratic self-determination. Instead, she would argue for the establishment of a republican polity, which, by being incorporated into a political community, would simultaneously come with its own conditions of exclusion. As Ingram has already shown, Benhabib misunderstands Arendt at this crucial point, since Arendt's experience of totalitarianism (which, after all, was supported by the masses) makes her

sceptical of the fact that humanity can act as a guardian over the humanity of all human beings: "global government would not protect a right to have rights because it would not prevent part of humanity from violating the rights of the rest" (Ingram, 2008, p. 409).

Benhabib points to the successes of international law and international institutions in addressing some of the human rights dilemmas, such as protecting refugees and decriminalizing migration. Benhabib thus sets the goal of separating the right to have rights from national citizenship and recognizing the universal personhood of all people (Benhabib, 2004, p. 65-68). In doing so, however, she encounters a justification constraint regarding the universality of human rights. This motivates her metaphysical inquiry about the universality of human rights, which is fed by the experience of imperialist interventions by great powers committed in the name of human rights.

But Benhabib herself, as becomes clear at one point in particular, sees the nation state as providing more suitable access to the public sphere and thus to public decision-making. She describes the challenges that liberal democracies face in reconciling differing notions of equality and in managing the tensions between the ideals of world government and nation-state systems. In it, she pleads for global guidelines and standards that are open to local interpretation. She argues, citing Nancy Fraser, that democratic societies have characteristics such as a public space for expression and exchange, that in contrast to the global context, democratic societies possess the capabilities to create a common framework of governance that establishes clear lines of accountability, and the possibility of transient points of democratic convergence to reconcile differing notions of equality (Benhabib, 2004, p. 109).

Benhabib aligns herself with liberal thought in her understanding of public and private spaces. Similarly, to Rawls, she does believe that individuals have a self-authenticating source of valid claims that establish both the concrete form of the Other and universal legal claims that are negotiated in the public sphere. Unlike Arendt, she does not deconstruct the private space. "For Benhabib, cosmopolitan rights should be seen as attaching first and foremost to the individual and as flowing from the personal autonomy and freedom of every human being as a human being, rather than from the collective goods of states, cultural groups, or other social units" (Osborn, 2010, p. 122). Although Benhabib likes to use her discourse on human rights to transcend national borders, in practice she remains rooted within the national boundaries. The question that arises is how effective Benhabib can be in resolving the "constitutive dilemma for liberal

democracies": they no longer adequately describe or inscribe political identities (Osborn, 2010, p. 118). Benhabib's idea of an international public sphere is in danger of being reduced to a free market, where the rights of free movement are only granted to goods and in which the Other is misused to obtain claims of power through universal values.

Jacques Rancière: On the Right to Dissensus

Rancière believes that political philosophy is always a response that comes too late to an already-existing form of politics. Democracy is already in place and functioning before its theoretical underpinnings or "arkhê" are fully understood. Therefore, the delay of philosophy is a flaw of democracy (Rancière, 1999, p. 62). Rancière describes an epistemological dilemma: we are already embedded in a political order before we can even reflect on it. Conversely, Rancière understands it as the task of political theory to steer politics and political order in the right direction which leads to a productive dialogue between politics and political philosophy.

Rancière believes that political philosophy and politics are intertwined in a complex relationship of rivalry, mimicry, and interpretation. This dialogue takes the form of disagreements and misunderstandings that can lead to productive outcomes and a renewed understanding of emancipatory politics. Political philosophy seeks to resolve paradoxes in order to establish agency and eliminate injustice, exclusion, and oppression. Describing and intervening in politics through political theory is then re-appropriated by political actors. Political theories, in turn, attempt to appropriate and reinterpret these concepts, this endless dialog is leading to the overcoming of a difference between philosophy and politics and describes the dynamics of political thought and political action (Bosteels, 2010, pp. 81-82).

Rancière's critique of Hannah Arendt and human rights is not intended to provide a normative or practical guideline. Instead, his aim is to create spaces for political action by an immanent critique of political theory. However, these spaces for action are intentionally fragile and process oriented. Rancière's way of thinking is a response to the National Socialism and totalitarianism of the 20th century. It involves enduring the unforeseeable while considering differences.

On the Non-Existence of Equality and Liberty

"*Equality* is a key term that helps distinguish Rancière's thinking from liberalism precisely because both approaches to politics make equality central and essential," Chambers summarizes lessons from Rancière, and he further elaborates, "Equality is the condition of possibility for liberalism, but liberals cannot establish it". This issue that Chambers raises here already anticipates the dilemma of the right to have rights. In a liberal order, the concept of natural rights is necessary, but it is unclear who is capable of protecting these innate rights. "In liberal theory, equality is a philosophical ground *for* politics, but politics is not really *about* equality". Rancière rejects the idea that equality would be the foundation or end of politics. According to Rancière politics do not occur because of equality, and it "cannot and does not seek to achieve equality". Moreover, equality is not a state that can be determined or measured in any way (Chambers, 2012, pp. 25-29).

Rancière critiques disruptive equality primarily through his critique of the Platonic understanding of politics, which he refers to as archipolitics. Plato's republic seeks a true structure that restores a natural order, materialized in a republic that embodies justice and is free from all contradiction. The idealized form of the state described by Plato is one where each individual finds their prescribed tasks without disobedience, achieving the state of justice through the creation of legitimate inequality. Rancière considers this idea of society unrealistic and explicitly warns against such fanaticism in light of National Socialism (Rancière, 2004, p. 309). He therefore criticizes modern republicanism for continuing the legacy of Plato's archipolitics.

"A verification of equality is an operation which grabs hold of the knot that ties equality to inequality" (Rancière, 2009, p. 280). Rancière emphasizes detecting inequality as a means of political theory, rather than creating equality. It is questionable whether Plato's Republic symbolizes what true equality should look like. Rancière's understanding of equality is not a state, but a process. He develops a political order that does not resemble any natural order, but rather creates an order where equality is not misunderstood as the freedom of everyone to speak on behalf of the people, Bosteels describes Rancière's ideas (Bosteels, 2010, pp. 83-86). "Politics is the sphere of activity of a community that can only ever be contentious, the relationship between parts that are only parties and credentials or entitlements whose sum never equals the whole" (Rancière, 1999, p. 14). Instead of a fixed nature, Rancière's understanding of politics describes a division and

contestation of power, emphasizing tensions and rivalries between philosophy and politics.

The concept of equality is frequently defined as equality of an individual in relation to others. However, Rancière offers a different perspective on equality that cannot be solely understood in terms of individuality. For him, the question of the subject of human rights is crucial, hence the title of his essay, "Who Is the Subject of the Rights of Man?" In order to grasp the significance of the subject of human rights within Rancière's framework, it is crucial to comprehend his conception of political subjects or parts of a community. For Rancière, politics is "not a matter of ties between individuals or of relationships between individuals and the community," but a counting of community parts (Rancière, 1999, p. 6). Individuals do not appear in politics in their singularity, but as those who govern and those who are governed. Rancière disagrees with the idea that the combination of these parts produces the common good. For him, this is always a "false count, a double count, or a miscount" (Rancière, 1999, p. 6). It is a false promise that the *demos* is free and equal because they might be so compared to themselves, but not compared to those who govern (Rancière, 1999, pp. 8-9). He determines that "freedom of the demos is not a determinable property but a pure invention" (Rancière, 1999, p. 6).

In Rancière's idea, equality does not mean the aspiration to a homogenous mass, as Carl Schmitt's idea of democracy suggests, but equality refers to question of access to self-determination and the preservation of differences. At first glance, this may seem very much like a liberal understanding of equality and self-determination. What is decisive, however (and in this respect he differs significantly from liberalism), is whom Rancière has in mind by this equality. And it is not those who are already participating, but the uncounted of democracy who have no share in the political. The uninvolved or subaltern voices are thus at the centre of Rancière's concept of politics. He is not concerned with eliminating inequality among equals. Rancière preserves this difference, in the spirit of Adorno, who dreams of a democratic society in which one can "be different without fear."

That Rancière's concept of equality is disruptive and therefore thought of quite differently from liberalism is well illustrated by Rancière's critique of the Aristotelian conception of politics. Aristotle's concept of politics does go further than Plato's, considering the inherent political nature of human beings and recognizing the existence of conflict and inequality within the city-state. However, Rancière criticizes that these lines of conflict

are obscured the moment a stable constitutional regime is established. Rancière refers to this understanding of politics as parapolitics. Parapolitics appears as a translation of all politics into a matter of "power and command," Bosteels (2010, p. 87) summarizes.

Aristotle anticipates the modern conception of politics as the question of power and its legitimacy. Parapolitics shifts the focus from the effect of equality to the inegalitarian logic of social bodies and directs it toward institutions (Rancière, 1999, p. 73). Rancière describes this process as a "recouvrement," which is a recovery from politics that also serves as a surreptitious cover-up (Rancière, 1999, p. 72). If the accusation of unequal access to power is used as an argument to legitimize the focalization of power, this institutionalization of power lacks any legitimacy. He criticizes the act of attempting to legitimize sovereign power since it automatically excludes people from power.

According to Rancière (Rancière, 1999, p. 76), Hobbes Leviathan as modern parapolitics is a response to the potential threat of ancient parapolitics in that it seeks to answer the fundamental question of the origin of power and whether or not it is legitimate. At its core, parapolitics is always about the opposition between legitimizing an unequal power relationship between the individual and the sovereign (Rancière, 1999, pp. 77-78). What Rancière criticizes about parapolitics, however, is this obscuring of the lines of conflict, the concealment of the paradox of the disappearance of the uninvolved. According to Rancière, this uninvolved is the essence of actual politics. "The problematization of the 'origins' of power and the terms in which it is framed the social contract, alienation, and sovereignty - declare first that there is no part of those who have no part" (Rancière, 1999, p. 77). Parapolitics lacks a collective act that overcomes the theoretical gap between the individual and the sovereign.

International or national institutions that aim to establish the right to have rights could be seen as Aristotelian or Hobbesian parapolitics that conceal the gap between the individual and the sovereign unless it is exposed by a collective act. "They [human rights] appeared more and more as the rights of the victims, the rights of those who were unable to enact any rights or even any claim in their name, so that eventually their rights had to be upheld by others, at the cost of shattering the edifice of International Rights, in the name of a new right to "humanitarian interference"—which ultimately boiled down to the right to invasion" (Rancière, 2004, p. 298). This exemplifies Rancière critique of human rights as reinforcement of existing hierarchies. He imagines a politics that overcomes the exclusion

of marginalized subjects. This is what Rancière ultimately means by radical equality, which challenges and redistributes political power structures. In Rancière's vision, equality is a force that challenge and disrupt political power, calling for collective action instead of legitimizing it. "Politics occurs because, or when, the natural order of the shepherd kings, the warlords, or property owners is interrupted by a freedom that crops up and makes real the ultimate equality on which any social order rests" (Rancière, 1992, p. 16).

Critique of the Depoliticization of Private Life

In Rancière's understanding, human rights as natural rights do not protect individuals from the state, but rather depoliticize them to a natural state. This enables the state to deal with mere lives instead of subjects and to freely dispose of the state of exception. Consequentially human rights as natural rights oppose the idea of self-determination. The political subject status, which is necessary for acting on one's own authority, is exchanged for a depoliticized state of nature that is automatically put into effect at birth. Therefore, Rancière sees Arendt's concept of the right to have rights as a critique of human rights as such and democracy itself. In democracy human rights were created for individuals who are considered to be rightless, relegated to the private sphere, and excluded from politics to the realm of necessity (Rancière, 2004, p. 298).

Rancière extends Arendt's proposition that no one even wants to *oppress* the rightless by assuming the existence of a "state beyond oppression," which Arendt calls "the dark background of mere givenness" (Rancière, 2004, p. 299). Rancière describes the condition of the rightless, who have been depoliticized and reduced to pure anthropological sacredness. This state, in which no one experiences oppression, aligns with Plato's concept of an ideal state where individuals seamlessly assume their roles without resistance. Therefore, Rancière does not criticize the incomplete application of human rights to stateless individuals, but rather derives his general criticism of human rights that do not exist in the realm of politics, as they are based on an anthropological and naturalistic argumentation.

To support his argument, he analyses the two forms of freedom that Arendt speaks of: social and political freedom. Arendt criticizes the confusion between these two freedoms (Rancière, 2004, p. 298). He refers to Agamben's "Homo Sacer", in which Agamben distinguishes (in reference to Foucault) between *zoe* (bare physiological life) and *bios*

(form of life) and *bio politikos* (the life of great actions and noble words). Rancière argues that reducing human life to *zoe* empowers the sovereign not only with the right to kill but also with the right to biopolitical control over their lives (Rancière, 2004, pp. 299-300). Rancière criticizes the equation of sovereign power and biopower, where the Rights of Man become absolute state power. The Rights of Man consider natural life as the source of rights, which is why the biological process of birth becomes the basis of sovereignty. However, the appearance of refugees in the twentieth century disrupted the connection between birth and nationality, revealing the underlying "nakedness of bare life" that is the basis of the Rights of Man (Rancière, 2004, p. 300).

Rancière disagrees Arendt's idea that bare life takes place in a sphere without oppression. He argues that this imagination would only serve Arendt's idea about the existence of a private space that is removed from the political. "The conceptualization of a 'state beyond oppression' is much more a consequence of Arendt's rigid opposition between the realm of the political and the realm of private life" (Rancière, 2004, p. 299). That there is no oppression of bare life is contradicted by Rancière with all rhetorical means. He argues that the moment human is stripped of their political essence and reduced to their mere biological life, this biological life is used to maintain absolute power over life. Rancière's exercises his critique of human rights against the backdrop of the Holocaust and the Nazi euthanasia laws. Human rights "make natural life appear as the source and the bearer of rights", they reduce people to their bare biological existence (Rancière, 2004, p. 300). Rancière argues with Agamben that the Holocaust reveals the hidden truth of the Rights of Man: the status of bare, "undifferentiated life, which is the correlate of biopower." Concentration camps, according to Agamben, represent the "nomos of modernity" (Rancière, 2004, p. 301). Rancière interprets this "nomos of modernity" as the reason why Arendt is so concerned with banishing private, apolitical life from the realm of politics, and therefore emphasizes the principle of political action that constitutes the true political space and sweeps aside the "ambiguous actors" (Rancière, 2004, p. 302). But these ambiguous actors embody both *zoe* as the mere physiological life and *bios* as the political form of life, in Rancière's sense.

But Arendt's desire for a pure politics contains an ontological trap, suggests Rancière, as it creates exactly what she warns against. The distinction between the individual and the state gives the state the power to control the individual and equates the state with the power to decide on the state of exception. He refers here to Carl Schmitt, who in his essay

"Political Theology" defines sovereignty as the power that decides on the state of exception (Schmitt, 2005, p. 11). This exceptionality of sovereign power abolishes the indistinguishability between *zoe* and *bios*, that is, between natural and human life. "Politics thus is equated with power, a power that is increasingly taken as an overwhelming historical-ontological destiny from which only a God is likely to save us" (Rancière, 2004, p. 302). In other words, Arendt's call for political action becomes trapped in a polarized relationship between bare life and the state of exception; her ontology of power creates an epistemological dead end. Arendt's line of argument, Rancière criticises, proves effective for "depoliticising questions of power and oppression and setting them in a sphere of exceptionality that is no longer political" (Rancière, 2004, p. 299).

If Rancière rejects the dichotomy of political and private spheres, the question arises as to how he defines the political sphere. In contrast to Arendt, Rancière argues that politics does not separate one particular sphere of political life from other spheres. Thus, he does not see the private and public spheres as a dichotomy that orders the world and our thinking. Rancière understands politics as a totality of community that separates itself from itself. This separation arises from the unequal distribution of power and the oppression of certain groups. However, politics simultaneously brings these divisions, contradictions and struggles within society to light. It constitutes power and challenges it at the same time. Politics is by no means a dichotomous sphere, as the liberal order assumes.

Rancière distils Arendt's critique to the assumption that there is no subject for human rights. He argues that, in her reading, human rights are either empty or tautological. If human rights do not apply to those who lack rights (stateless), then they are empty and therefore meaningless. Conversely, if they only apply to those who already have rights (citizens), they become tautological and therefore useless. Rancière, however, offers a different perspective: human rights are "the rights of those who do not have the rights that they have and have the rights that they do not" (Rancière, 2004, p. 302). Rancière commits much more than a mere quibble here. With this simple reversal of the subject of rights, Rancière aims to place those who do not participate at the centre of his political theory. He does not make biological life the rights-holder of human rights, but the *demos*, i.e., those who are excluded from the political community. The *demos* is already a political entity here, even if it separates politics from itself.

Self-Determination as a Process of Differentiating the Undifferentiated Demos

Rancière's critique of metapolitics is an attempt to restore the concept of politics. He criticizes Marx's confusion of politics with (what he calls) *police*. Therefore, he asks where political moments are possible and how to recognize police as a form of command. Metapolitics, which is Rancière's third archetype of politics, unfolds on the basis of Marx's social critique. Both Plato, as a representative of archipolitics, and Marx, as a representative of metapolitics, reject the current state of politics and seek to create a new social order. However, Plato claims to know the truth, while Marx points out the falsity of the present order. Marx claims that, on the one hand, there is no truth outside of politics, but that, on the other hand, truth is obscured by politics. Metapolitics provides a critical analysis of politics and political philosophy that acts as an emancipatory force, lifting the veil of politics (Rancière, 1999, p. 82). For this reason, Rancière summarizes politics as "the lie about a reality that is called society" (Rancière, 1999, p. 83).

It can be seen, then, that Rancière, like Arendt, seeks to purify the political sphere. The question then arises whether Rancière's distinction between politics and police does not also lead into a tautological trap, as the latter accuses Arendt of doing. But the attempt to beat Rancière at his own game is futile. To be sure, he attempts to conceive of politics as a realm of autonomy and dissent and to contrast it with the police, which, unlike politics, functions according to the principle of command and obedience. But unlike Arendt and the liberal order, he does not contrast politics with a private life. Instead, he politicizes the being (beyond a biological existence) of those who have no role within politics, who do not have the right to have rights.

In Rancière's logic, one could argue that political action is neither caught in a polarized relationship between bare life and the state of exception, nor in a relationship between obedience and resistance. If political action were directed solely against a state, then this statement would be quite true. However, this is not what Rancière argues for. For according to his conception, political action is only possible between subjects. The bearer of human rights is therefore neither abstract nor biological. Political predicates are not fixed attributes of particular subjects, but open to interpretation and dispute. This allows for a discussion of what these predicates really mean and to whom they apply in different circumstances. The essence of political action, then, is the ability to question the meanings

of freedom and equality (Rancière, 2004, p. 303). With his political theory, Rancière is therefore essentially engaging in politics.

For Rancière, the distinction between private and political life is not a priori given and marks the core of politics. He illustrates his argument with Olympe de Gouges, a revolutionary during the French Revolution. She argued that if women had the right to be executed, they also had the right to participate in the assembly. When women are killed for political reasons, their lives have political value, regardless of the fact that they were disenfranchised and barred from voting or holding office. Rancière criticizes Arendt for excluding this core question of politics by already sorting out the question of private and public space beforehand (Rancière, 2004, pp. 303-304). However, Rancière also argues that the distinction between public and private reinforces existing hierarchies and leads to certain subjects being excluded from the public sphere.

Political subjectivity, therefore, describes the disruption of existing power distributions. According to Panagia (2010, p. 95-96), Rancière's dissent is a political action that also disrupts the dominant configuration between perception and meaning on an aesthetic level. These disruptive parts not only begin to exist on the political stage but are also perceived or re-perceived. Thus, subjectification into a political subject changes the conditions of perception for a "political community and its dissent".

Rancière demonstrates this practically by showing how women were able to demonstrate their lack of rights during the French Revolution. They did so by showing that the Declaration of Rights did not apply to them while simultaneously showing through their public actions that they had the same rights as men, even if the Constitution did not recognize them. In bringing oneself forward as a political subject, a dissent arises, a situation in which two opposing worlds coexist in one and the same world. A political subject is someone who is capable of creating such situations of dissensus. Therefore, for Rancière, the difference between a "man" and a "citizen" does not signify that rights are without meaning, but rather provides a way of developing political subjectivity (Rancière, 2004, p. 304).

However, one might object in surprise: Doesn't the Universal Declaration of Human Rights fulfil this purpose precisely? Doesn't it serve as evidence that individuals possess political agency regardless of their legal standing? Rancière might disagree with this: political agency, as well as freedom and equality, are not pre-political qualities that are

naturally given. If this is claimed, then it deprives people who de facto lack agency of these qualities. However, there is still something paradoxical about human rights, namely that on the one hand, it serves as a reference point for those who subjectify themselves politically, and on the other hand, it serves as a prerequisite for the establishment of a liberal order that is not able to actually guarantee these values, thereby creating power hierarchies in a logical circular argument.

Rancière opposes the traditional liberal idea that liberty, equality, and human rights are the very basis of democracy but shows that to make human rights meaningful are only brought up by the demos. Thus, he asks about the subject of these rights and concludes that the Rights of Man are the rights of the demos (Rancière, 2004, p. 305). To fully comprehend why this solution is the answer to Arendt's circularity problem, one must remember how Rancière defines demos. Demos as argued before does not refer to the power of the poor or the unqualified to govern, but rather, it should encompass those who are excluded from the political community, the uncounted. "The Rights of Man are the rights of the demos, conceived as the generic name of the political subjects who enact—in specific scenes of dissensus—the paradoxical qualification of this supplement" (Rancière, 2004, p. 305). Rancière accuses Arendt to deny the reality of struggles outside the frame of a national constitutional state. Human rights become only useful when dissensus can be brought to stage and when the Rights of Man are not tied to any specific individual, but rather to the political subjects who engage in dissensus to qualify these rights. Rancière does not use that term, but this is ultimately what could be called self-determination or liberty. Self-determination is therefore not something that can be decreed by law, not even in the form of human rights, but is a process of differentiating the undifferentiated demos.

Rancière strongly warns against painting over or even attempting to overcome the idea of exclusions in the revolutionary zeal for a supposed taming of the untameable Other. Freedom and equality happen in highlighting the discrepancy, in counting the uncounted because absolute evil would start "with the attempt to tame the Untameable, to deny the situation of the hostage, to dismiss our dependency on the power of the Inhuman, in order to build a world that we could master entirely" (Rancière, 2004, p. 308). Ultimately, Rancière warns, the Nazi regime aspired to the idea of absolute freedom by attempting to exterminate those who bear witness to their situation of being held hostage and represent

the "law of Otherness" or the "law of an invisible and unnameable God" (Rancière, 2004, p. 308).

Rancière seeks a new perspective on politics and ethics, asking how we can rethink politics in a way that avoids exceptionalism and instead embraces dissensus. While some see ethics as enabling a community by supporting political spaces and rights, Rancière criticizes ethics for blurring legal distinctions and scrambling political spaces for dissensus. In the endless conflict between good and evil, he argues, ethics establishes the state of exception, which is not the fulfilment of a political being but rather the consequence of the erasure of political space through consensual politics and humanitarian intervention (Rancière, 2004, pp. 308-309).

Human rights are only meaningful when enacted by the political subject, through those who are not part of the system and can stage a dissensus. Ethics or "rights of the other" that impose humanitarian intervention by ruling the state of exception undermine the democratic potential of political subjectivation. However, such political subjectivation is also not possible without human rights and the term right to have rights capture's Rancière's idea of a political space. The demand for having rights thus describes the subjunctivization of those who have no part in politics. Rancière's right to have rights is not the right of victims, but the right of those who were unable to assert rights on their behalf. It is not the right to humanitarian interference and not the right to invasion. Rancière's right to have rights is *the right to dissensus*. It is a right to queer power relations.

Findings and Discussion

Liberal democracy assumes that every individual has innate human rights, is free and equal, and that the state legitimizes its power to protect the private lives of its citizens. Liberalism and human rights shape the self-understanding of modernity. However, the appearance of national minorities and stateless people in the 20th century expose the perplexities of human rights, namely that those who are excluded from the political community and are in need of human rights are unable to assert their inherent rights. With the advent of the Universal Declaration of Human Rights after the 2nd World War those problems as shown by Arendt seem to have been solved. All people possess human rights, regardless of their nationality or legal status just by being member of the human family.

Yet the fundamental question raised by Arendt of how humanity should ensure the protection of human rights continues to be the subject of heated debate. In its practice, the answer in the 21st century is all too often: human rights are protected by the state, and when the state fails, by humanitarian intervention. Yet this line of reasoning is condemned as a "right to invade" in the eyes of its critics, such as Jacques Rancière (Rancière, 2004, p. 298), and in practice establishes a moral power imbalance between the West and its former colonies. Human rights thus enter a crisis of justification that threatens to massively undermine its unquestionable authority, which its creators had in mind.

I have argued that the right to have rights critiques liberalism's assumptions from within and therefore adopts liberalism's criteria such as freedom and equality to measure it against its own standards. And I have shown how the Arendtian concept of the right to have rights not only produces a crisis of legitimacy for the liberal order, but also offers possibilities for a reinterpretation of human rights through thinkers such as Benhabib and Rancière.

Hannah Arendt's project of critiquing human rights, however, is not about convicting human rights of their contradictions and undermining them, but about nation-state democracies and the concern that the global states community cannot effectively protect these human rights. Often described as anti-liberal, Arendt takes the liberal project of human rights very seriously. Birmingham describes Arendt's critique of democracy as follows: "Arendt had tremendous misgivings about modern democracy, not because she was anti-democratic per se but because she saw that democracy in its modern formulation has not broken with sovereignty and at the same time aligns itself with nationalism. This spells disaster for human rights" (Birmingham, 2006, p. 138).

Arendt demonstrates that human rights are not an anthropological constant, but only become politically enforceable through agreements that recognize humans as political beings. Her own and others experience of being stateless makes it quite obvious for her that simply being member of the human family is not enough to enforce one's rights. And Arendt also believes that a democratic nation-state, which governs by majority vote, makes this promise unrealistically. Totalitarianism is especially known for its ability to mobilize the masses. These masses are no guarantee that they will not democratically decide to exclude a group of people from their community and deprive them of their legal status.

Arendt emphasizes the importance of political action and the right to belong to a political community. She argues that human rights are not innate but arise through agreements between individuals. Arendt's notion of equality is based on the practice of political participation and the creation of a shared public-political space. Thereby she emphasizes the interrelatedness of equality and freedom. One can be free only among one's equals.

Equality for Arendt is the right to belong to a political community and to be seen as a political subject. However, I could argue that for Arendt the right to have rights is not merely the extension of formal equality, but a critique of justice and political order. Arendt's ideas challenge the liberal conception of democracy by showing that freedom and equality are not the means or ends of democracy but that these values can only be truly protected if they overcome the means-ends thinking. Arendt's idea of *isonomia* overcomes this means-ends thinking and creates a state of political freedom in which there is no difference between rulers and ruled.

In her theory, Arendt thus consciously creates a spatial order different from the liberal order. She displaces the bare and private life from the political. Humans appear only as a political being, in the moment of mutual recognition. In doing so, however, she commits a mistake, as Rancière points out. Rancière argues that Arendt's emphasis on banishing private, apolitical life from the realm of politics creates an ontological trap. By aiming for a pure politics that separates the individual from the state, Arendt inadvertently grants the state the power to control individuals. This distinction between the individual and the state allows the state to exercise sovereign power over both forms of lives: the natural and political human life. Rancière criticizes Arendt's argument for depoliticizing issues of power and oppression by placing them in a sphere of exceptionality that is no longer considered political. He suggests that her ontology of power leads to an epistemological impasse that limits the understanding and transformative potential of politics. This separation of the individual and the state, which is inherent in the idea of the international human rights system, thus denies true transformative processes. The decision about power and powerlessness has already been made and is relegated to a pre-political space.

Benhabib is particularly concerned with the issue of equality, how the human rights system can be thought of as a participatory project in which everyone participates equally in shaping it, and people actually give themselves the laws that affect them. For Benhabib, the right to have rights is a discursive right based on universalist basic assumptions about communicative freedoms, which is antecedent to legal arrangements and thus gives

people the possibility to participate. Rancière's notion of the political consecrates the possibility of Benhabib's idea in that, for him, political theory, after all, always trails politics. It responds to what it finds in the world. In this sense, Benhabib's discourse ethics can only reflect what it already finds. People are not the authors of their rights here, but at most legitimize them afterwards. In this respect, it is questionable whether Benhabib is really concerned here with an emancipatory project or with a universalist justification that legitimizes the establishment of international human rights institutions.

Benhabib's main concern, therefore, is to provide an ethical basis for international human rights institutions. Benhabib interprets Arendt's philosophy to mean that the problem of stateless people shows that state systems are unable to guarantee human rights for all people. Benhabib pursues the political project of separating the right to have rights from national citizenship and recognizing the universal personhood of all people. These institutions aim to grant human rights to those who do not possess them. Therefore, Benhabib's project needs a universal justification, which is not an end in itself.

Benhabib is facing a problem with her project: how to reconcile all the requirements of human rights with each other. On the one hand, human rights possess authority and are only international applicable as they are seen as universal, but on the other hand that universal application of pre-political rights would also impose power and restrict the self-determination of people. Therefore, Benhabib asks that human rights must be generated by those affected by them. However, this would mean that human rights are no longer universal.

In her discursive theoretical approach to human rights, Benhabib tries to overcome this conflict line of universality human rights and respect of self-determination. She understands equality as an anthropological assumption of the general other, who is characterized by the same ability to take part of an ethical discourse of human rights. On the other hand, she considers the specific Other who remains different because he or she is unique and does not resemble others. With her theory, she attempts to answer the particular question of how we can all be equal when we are so different.

What makes her approach problematic is that she makes essentialist anthropological assumptions that apply universally while denying this. She shifts the discourse of human rights, which should actually be conducted politically by also considering concrete historical circumstances, such as colonialism, into a discourse-ethical space, thereby

obscuring the lines of inequality, as Rancière would accuse her of doing. In doing so, Benhabib, on the one hand, puts herself in danger of leaving the discourse of human rights empty of content in order to remain true to her paradigm of anti-essentialism or, on the other hand, makes pre-discursive assumptions that obscure hierarchies of power.

Jacques Rancière critiques traditional notions of politics and equality. He challenges the notion that politics is driven by the pursuit of equality, arguing instead that politics disrupts and challenges existing power structures. Rancière focuses on the voices and participation of those normally excluded from politics, emphasizing the importance of the subaltern and uninvolved. He criticizes international and national institutions that aim to establish the right to have rights, as they obscure the gap between the individual and the sovereign. Rancière's concept of radical equality calls for collective action to challenge and redistribute political power.

Benhabib's project of an international human rights institution and a discourse-ethical approach to human rights do not seem to be reconcilable with each other in their practical application, since this theoretical keeping open of the possibility of a universal Other and concrete Other, which can produce itself via communicative freedom and can inscribe itself in the discourse, collapses at the moment as soon as this discourse is positivised, inscribes itself in laws that no longer allow this ambiguity. This is why Benhabib ultimately falls back on the nation-state, which supposedly knows what its citizens want. On the one hand, this does not satisfy the previously postulated desire for self-determination of groups across state borders. On the other hand, it confuses freedom in the Rancierian sense as the freedom to speak on behalf of others. A discursive negotiation cannot succeed if at the same time an attempt is made to cement the division that is inherent in politics, namely the division of oneself by the exclusion of the parts that do not participate.

Rancière believes that the failure of equality and freedom in liberal democracy is due to the assumption that they are already established prerequisites of liberalism, without further effort to establish them. The function of an assumption of freedom and equality is rather to legitimate the sovereign power. Furthermore, he questions that when the concept of natural rights is necessary in a liberal order, then it is unclear who is capable of protecting these innate rights.

Rancière considers this idea of total equality unrealistic and even warns against its realization in light of National Socialism. Justice, however, plays an important role in his political theory, but as a process and on the basis of a more differentiated understanding of equality, which tries to address the problem that a democratic will is far from being just, especially for those in the minority. He calls democratic decisions that are enforced in the name of the people as the police and the opposite of politics, which arises precisely from the visibility of dissent, at the moment when the disenfranchised claim their legitimate place in society. This is not bound to institutional processes.

Benhabib's theory falls short when it comes to Max Weber's paradox of politics. According to her, power hierarchies lead to unequal rule and ultimately to the loss or violation of human rights. However, it attempts to enforce the claim of the weaker to these rights through power hierarchies. Rancière, on the other hand, offers a different perspective. He argues that politics should not be seen as a gift from the powerful to the weak. Rather, he criticizes attempts to blur inequalities through a discourse that emphasizes the absolute universality of human rights. Rancière seeks to place the voices of the subaltern at the centre of his understanding of politics, rather than merely including them in a majority discourse. He is concerned about the obscuring of inequalities by institutions and seeks to preserve inequality in politics. Rancière sees the problem of inequality as a constant challenge to power relations, where making the excluded visible disrupts and changes political power relations. For Rancière inequality becomes the centre and perpetuum mobile of politics.

Arendt tries to capture the powerless situation of stateless individuals by arguing that they would be relegated to the private sphere, deprived of their connection to the world, lawless and marginalized. She distinguishes between public and political life but not in the sense of liberal theory. She does not see the task of the state to protect private life, but she sees being human is ultimately linked to be part of a community and to take part in a political space. Political life brings equality, power, authority, and freedom to the public sphere that has not existed before.

Where Benhabib follows a rather liberal understanding of the dichotomy of private and public sphere, Rancière is challenging both Arendt's and the liberal conception of it. Arendt's distinction between private and public spheres, visibly runs counter to his disruptive notion of inequality. Rancière criticizes Arendt for depoliticizing mere life. She speaks of stateless people having no part in the political because the state does not

even try to oppress them. Rancière sees a certain polemic in this since stateless people are indeed disenfranchised and thus oppressed. For him, human rights have a political moment here, namely, in that moment in which marginalized groups demand their rights, which they (do not) possess. By considering this exercise of power over stateless persons as a pre-political space, Arendt, in the sense of Rancière, misses the actual political moment, namely when these marginalized groups claim their place.

With her reference to the stateless, Arendt wants to reawaken the political potential of the French Revolution. The attempt to establish human rights by referring to mere humanity does not work, as can be seen from the stateless. Arendt, on the other hand, wants to show that human rights are not based on an anthropological assumption, but emphasize the contractual character of human rights. Rancière shows that human rights cannot be an agreement among equals within a liberal self-understanding. It manifests not only Weber's paradox, a donation of the rich to the poor, but also sovereign power. Liberalism assumes that man is already equal and free, but then human rights become useless because they merely describe what is supposedly already there. If, on the other hand, human rights are seen as the demarcation line which divides the community from itself, it does not manifest the absolute sovereignty of a state but makes clear that one can only be free among one's equals.

Human rights can only be politicized in Rancière's sense if they are not regarded as pre-political and their rights bearers are not reduced to their biological life but are perceived as political subjects. Only in this way can human rights have a disruptive effect. In Rancière's understanding, changing power relations goes hand in hand with changing the perception of the subjects of rights. If human rights are either naturalized or seen as an agreement, this aesthetic experience of disrupted power remains hidden.

Conclusion

Liberal democracy and the concept of human rights are central to modernity and assume that every individual has inherent human rights, freedom, and equality. It is this innate freedom that the liberal state seeks to secure for its citizens. However, national minorities and stateless persons in the 20th century highlighted the contradictions and tautologies of human rights, as those excluded from the political community were unable to assert their rights. Arendt concluded that being thrown back on mere humanity did not mean protection of human rights.

The post-World War II Universal Declaration of Human Rights aimed to address these problems by recognizing the rights of all people, regardless of their nationality or legal status. But the question of how to effectively protect human rights remains controversial. With the state and humanitarian intervention being the common answers, it is clear that human rights are to be obtained from the outside and through power. This describes Weber's paradox that it takes power to protect citizens from power.

Hannah Arendt's critique of human rights does not aim to undermine them, but to show the limits of nation-state democracies in protecting them. Therefore, she emphasizes the importance of political action and of belonging to a political community for the realization of human rights. She seeks to overcome the state sovereignty of liberal democratic nation-states and call for community action. Arendt fundamentally challenges liberalism's great dichotomy of public and private here.

Arendt's distinction between public and private life is indeed significant in highlighting the precarity of the excluded, who are denied part of their humanity, namely their political being. However, Rancière criticizes Arendt for depoliticizing marginalized individuals and stresses the importance of recognizing their political agency. He argues that human rights can only be truly politicized if the bearers of rights are seen as political subjects and not reduced to their biological existence. In this way, the state sovereign is ultimately again staged as the protector of human rights and thus undermines Arendt's actual thrust.

I have been able to show that the right to have rights simultaneously critiques liberal assumptions and offers the possibilities for reinterpretation of human rights by thinkers such as Benhabib and Rancière. Benhabib's efforts to solve Arendt's problem analysis focuses on the ethical basis for international human rights institutions and the participation of individuals in shaping human rights law. Benhabib's approach, however, faces the challenge of reconciling the universality of human rights with self-determination. Her discourse-ethical considerations fail to do what liberalism also fails to do: By assuming communicative freedom as a precondition for discourse, it presupposes freedom and equality, but cannot establish them, as Rancière would criticize.

Jacques Rancière critiques traditional notions of politics and equality. He argues that politics (in difference with police) breaks down existing power structures and focuses on the voices of the marginalized. In this, he clearly contradicts Benhabib and challenges the assumption that equality is already established in liberal democracy, instead emphasizing

the need for continuous collective action to challenge and redistribute political power. Rancière's emphasis on visibility and disruption of inequalities contrasts with Benhabib's approach, which obscures power dynamics with her assumption that noticing subaltern voices in discourse is always possible.

Arendt's disagrees with the assumption that human rights can be founded solely on the basis of human nature and emphasizes the contractual nature of human rights. On the other hand, Rancière argues that human rights can never be an agreement among equals. If liberalism assumes that individuals are already equal and free, Rancière argues, then human rights become superfluous because they merely describe what is already taken for granted. However, if one considers human rights as the boundary that distinguishes the community from itself, it becomes apparent that true freedom can only be experienced among equals and is not dictated by the absolute sovereignty of a state.

Arendt's distinction between public and private life is criticized by Rancière, who sees the exercise of power by marginalized groups as a political moment. To shift this moment of political subjectivation into the realm of the private depoliticizes human rights. Rancière shows how human rights are not innate or contractual, but disruptive at the moment when their rights holders can enact themselves as political subjects.

Arendt's, Benhabib's and Rancière's discourses on the right to have rights illustrate the complexity and tensions within liberalism, which assumes the existence of human rights, freedom, and political equality, but cannot realise them. While Benhabib does not answer the questions raised by Arendt about a political space that can actually guarantee human rights, Benhabib's attempt at a discourse-ethical justification of human rights that assumes the universality of human rights shows that political participation goes beyond the discursive attribution of marginalised voices. Rancière's political theories cannot be institutionalised. This is by no means a weakness of his theory but its quintessence. Human rights are not something that the powerful grant the weak. The claim of the right to have rights marks a moment of political subjectification for a previously undifferentiated demos. At this point, justice can be distinguished from injustice and hierarchies of power can be broken.

Rancière highlights that the National Socialists' atrocities demonstrate how the pursuit of predictability and absolute certainty undermines the principles of freedom and self-determination. Rancière suggests that the responsibility of upholding freedom lies with a

political community that embraces diversity and acknowledges the existence of otherness, rather than striving for homogeneity and absolutist ideals. Human rights can play an important role in this, not by being taken for granted, but as a way of finding the knot that separates the equal from the unequal and thus the separation of the political community from itself.

References

- Adorno, T. W. (2005). *Minima Moralia: Reflections on a Damaged Life*. Verso.
- Agamben, G. (1998). *Sovereign Power and Bare Life*. Stanford University Press.
- Arendt, H. (1943). We Refugees. *Menorah Journal*, 31(1), 69–77.
- Arendt, H. (1968). What Is Freedom? In *Between Past and Future: Eight Exercises in Political Thought* (pp. 143–172). Penguin.
- Arendt, H. (1973). *The Origins of Totalitarianism*. Harcourt Brace Jovanovich.
- Arendt, H. (1990). *On Revolution* (Reprint). Penguin.
- Arendt, H. (2003). *Responsibility and Judgement* (J. Kohn, Ed.). Schocken.
- Arneson, R. (2015). Liberalism and Equality. In S. Wall (Ed.), *The Cambridge Companion to Liberalism* (pp. 212–236). Cambridge University Press. <https://doi.org/10.1017/CBO9781139942478.013>
- Balibar, É. (1994). *Masses, Classes, Ideas: Studies on Politics and Philosophy Before and After Marx*. Routledge.
- Balibar, É. (2007). (De)Constructing the Human as Human Institution: A Reflection on the Coherence of Hannah Arendt’s Practical Philosophy. *Social Research*. <https://www.jstor.org/stable/40972122>
- Benhabib, S. (2004). *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511790799>
- Benhabib, S. (2011). *Dignity in Adversity: Human Rights in Troubled Times*. Polity Press.
- Benjamin, W. (2021). *Toward the Critique of Violence: A Critical Edition*. Stanford University Press.
- Berlin, I. (2002). Two Concepts of Liberty. In H. Hardy (Ed.), *Liberty* (2nd ed., pp. 166–217). Oxford University Press. <https://doi.org/10.1093/019924989X.003.0004>
- Birmingham, P. (2006). *Hannah Arendt & Human Rights: The Predicament of Common Responsibility*. Indiana University Press.
- Bobbio, N. (1989). *Democracy and Dictatorship: The Nature and Limits of State Power*. Polity.
- Börzel, T., & Zürn, M. (Eds.). (2020). *Summary of the Research Programme*. Cluster of Excellence “Contestations of the Liberal Script (SCRIPTS)”, Freie Universität Berlin. https://www.scripts-berlin.eu/medien/docs/SCRIPTS_Summary_2022.pdf

- Bosteels, B. (2010). Archipolitics, Parapolitics, Metapolitics. In J.-P. Deranty (Ed.), *Jacques Rancière: Key Concepts* (pp. 80–92). Acumen.
- Bowie, N. (1980). Equal Basic Liberty for All. In H. G. Blocker & E. H. Smith (Eds.), *John Rawls' Theory of Social Justice: An Introduction*. Ohio University Press.
- Britannica, T. Editors of Encyclopaedia. (2023). Self-determination. In *Encyclopaedia Britannica*. <https://www.britannica.com/topic/self-determination>
- Canovan, M. (1992). *Hannah Arendt: A Reinterpretation of Her Political Thought*. Cambridge University Press.
- Chambers, S. A. (2014). *The Lessons of Rancière*. Oxford University Press.
- Derrida, J. (1992). Force of Law: The 'Mystical Foundation of Authority'. In D. Cornell, M. Rosenfeld, & D. Carlson (Eds.), *Deconstruction and the Possibility of Justice*. Routledge.
- Douzinas, C. (2013). The Paradoxes of Human Rights. *Constellations*, 20(1), 51–67. <https://doi.org/10.1111/cons.12021>
- Fawcett, E. (2018). *Liberalism: The Life of an Idea* (2nd ed.). Princeton University Press.
- Freeden, M. (2015). *A House of Many Mansions*. Oxford University Press. <https://doi.org/10.1093/actrade/9780199670437.003.0001>
- Freeman, M. (1999). The Right to Self-Determination in International Politics: Six Theories in Search of a Policy. *Review of International Studies*, 25(3), 355–370. <https://doi.org/10.1017/S0260210599003551>
- Gehring, P. (1997). Gesetzeskraft und mystischer Grund. Die Dekonstruktion nähert sich dem Recht. In H.-D. Gondek & B. Waldenfels (Eds.), *Einsätze des Denkens: Zur Philosophie von Jacques Derrida* (pp. 226–255). Suhrkamp.
- Geuss, R. (2002). Liberalism and its Discontents. *Political Theory*, 30(3), 320–338. <https://doi.org/10.1177/0090591702030003003>
- Gosepath, S. (2007). Hannah Arendts Kritik der Menschenrechte und ihr 'Recht, Rechte zu haben'. In Heinrich Böll Stiftung (Ed.), *Hannah Arendt: Verborgene Tradition—Unzeitgemäße Aktualität?* (pp. 279–288). Akademie Verlag.
- Habermas, J. (1998). *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Suhrkamp.
- Heywood, A. (2015). *Key Concepts in Politics and International Relations* (2nd ed.). Palgrave MacMillan.
- Hunt, A. (2012). Rightlessness: The Perplexities of Human Rights. *CR: The New Centennial Review*, 11(2), 115–142. <https://doi.org/10.1353/ncr.2012.0001>

- Ingram, J. D. (2008). What Is a “Right to Have Rights”? Three Images of the Politics of Human Rights. *American Political Science Review*, 102(4), 401–416. Cambridge Core. <https://doi.org/10.1017/S0003055408080386>
- Kant, I. (1997). *Immanuel Kant Critique of Practical Reason*: (M. J. Gregor & A. Reath, Eds.). Cambridge University Press. <https://doi.org/10.1017/CBO9780511809576>
- Koskenniemi, M. (2011). Empire and International Law: The Real Spanish Contribution. *University of Toronto Law Journal*, 61(1), 1–36. <https://doi.org/10.3138/utlj.61.1.001>
- Lacroix, J., & Pranchère, J.-Y. (2018). *Human Rights on Trial: A Genealogy of the Critique of Human Rights*. Cambridge University Press.
- List, C., & Valentini, L. (2016). The Methodology of Political Theory. In H. Cappelen, T. S. Gendler, & J. Hawthorne (Eds.), *The Oxford Handbook of Philosophical Methodology* (pp. 525–553). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199668779.013.10>
- Locke, J. (1966). *The Second Treatise of Government and A Letter Concerning Toleration* (J. W. Gough, Ed.). Blackwell.
- Menke, C. (2007). The ‘Aporias of Human Rights’ and the ‘One Human Right’: Regarding the Coherence of Hannah Arendt’s Argument. *Social Research*, 74(3), 739–762.
- Näsström, S. (2014). The Right to Have Rights: Democratic, Not Political. *Political Theory*, 42(5), 543–568. <https://doi.org/10.1177/0090591714538427>
- Nietzsche, F. W. (1998). *Beyond Good and Evil: Prelude to a Philosophy of the Future* (M. Faber, Trans.). Oxford University Press.
- Osborn, R. E. (2010). Seyla Benhabib, Wendell Berry, and the Question of Migrant and Refugee Rights. *Humanitas*, 23(1), 118–138.
- Panagia, D. (2010). ‘Portage du Sensible’: The Distribution of the Sensible. In J.-P. Deranty (Ed.), *Jacques Rancière: Key concepts* (pp. 95–103). Acumen.
- Rancière, J. (1999). *Disagreement: Politics and Philosophy*. Univ Of Minnesota Press.
- Rancière, J. (2004). Who Is the Subject of the Rights of Man? *South Atlantic Quarterly*, 103(2–3), 297–310. <https://doi.org/10.1215/00382876-103-2-3-297>
- Rancière, J. (2009). The Method of Equality: An Answer to Some Questions. In *Jacques Rancière* (pp. 273–288). Duke University Press. <https://doi.org/10.1353/book.65109>
- Rawls, J. (1993). *Political Liberalism*. Columbia University Press.

- Risse, T. (2022). *Collective and Individual Self-Determination*. Cluster of Excellence “Contestations of the Liberal Script (SCRIPTS)”, Freie Universität Berlin. https://www.scripts-berlin.eu/publications/arguments/Self-Determination/Self-Determination_Risse/SCRIPTS_Arguments_04_WEB-2KORR.pdf
- Rosenblatt, H. (2018). *The Lost History of Liberalism: From Ancient Rome to the Twenty-First Century*. Princeton University Press.
- Schmitt, C. (2005). *Political Theology: Four Chapters on the Concept of Sovereignty*. University of Chicago Press.
- Shafir, G. (Ed.). (1998). *The Citizenship Debates: A Reader*. University of Minnesota Press.
- Shklar, J. N. (1989). The Liberalism of Fear. In N. L. Rosenblum (Ed.), *Liberalism and the Moral Life* (pp. 21–38). Harvard University Press. <https://doi.org/10.4159/harvard.9780674864443.c2>
- Smith, A. (1976). *An Inquiry into the Nature and Causes of the Wealth of Nations*. University of Chicago Press.
- Soysal, Y. N. S. (2022). *What is the Relation between Collective and Individual Self-Determination in the Liberal Script?* Cluster of Excellence “Contestations of the Liberal Script (SCRIPTS)”, Freie Universität Berlin. https://www.scripts-berlin.eu/publications/arguments/Self-Determination/Self-Determination_Soysal/SCRIPTS_Arguments_Soysal.pdf
- Spivak, G. C. (2010). *Can The Subaltern Speak? Reflections on the History of an Idea* (R. C. Morris, Ed.). Columbia University Press.
- Squires, J. (2018). Public and Private. In R. Bellamy & A. Mason (Eds.), *Political concepts*. Manchester University Press. <https://doi.org/10.7765/9781526137562.00015>
- Titlestad, P. (2010). Liberalism. *English Academy Review*, 27(2), 94–100. <https://doi.org/10.1080/10131752.2010.514989>
- Tomasi, J. (2001). *Liberalism Beyond Justice: Citizens, Society, and the Boundaries of Political Theory*. Princeton University Press.
- Wall, S. (Ed.). (2015). *The Cambridge Companion to Liberalism*. Cambridge University Press.
- Weber, M. (1997). *The Theory of Social and Economic Organization* (A. M. Henderson & T. Parsons, Eds.). The Free Press.

- Weintraub, J. (1997). The Theory and Politics of the Public/Private Distinction. In K. Kumar (Ed.), *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (pp. 1–42). University of Chicago Press.
- Williams, B. (2008). *In the Beginning was the Deed: Realism and Moralism in Political Argument* (G. Hawthorn, Ed.; 3rd ed.). Princeton University Press.
- Zürn, M., & Gerschewski, J. (2021). *Sketching the Liberal Script. A Target of Contestations*. Cluster of Excellence “Contestations of the Liberal Script (SCRIPTS)”, Freie Universität Berlin. https://www.scripts-berlin.eu/publications/working-paper-series/Working-Paper-No_-10-2021/SCRIPTS_Working_Paper_10_WEB.pdf