

Elisabeth Gallas

The Struggle for a Universal Human Rights Regime

Hannah Arendt and Hermann Broch on
the Paradoxes of a Concept

Abstract

After the most fundamental assault on humanity and civilization that was realised in the annihilation of European Jewry by Nazi Germany, universalist concepts – an idea of mankind – seemed at stake. Still, in the aftermath of the Second World War the newly created United Nations were eager to set up a framework of international rights and duties with universal validity and proposed legal tools to restore peace and the recognition of human dignity worldwide. One of the most important articulations of these principles was the UN's Declaration of Human Rights in 1948.

Hannah Arendt's famous exploration of *The Perplexities of the Rights of Men* forming a core element of her magnum opus *Origins of Totalitarianism* (1951) was an essential comment to the debate of her time. While affirming the universalist notion of humanity and human rights she revealed the unsolved challenges of their enforcement in a world of nation states, highlighting the fragile character of international agreements and their limited reach when faced with sovereign rule. To overcome the limits of the notion of universal human rights as such, she claims a more specific human right: the right to belong, a basic right to citizenship as a way to secure recognition and participation of every human being in a shared world.

In my paper, I discuss Arendt's claims in relation to another important Jewish thinker of the time: Hermann Broch. He was equally preoccupied with the possibilities of enforcement of a global human rights regime and tried to come up with very concrete political propositions. Both intellectual's deliberations reveal general reconfigurations of thinking and judging after the Holocaust and highlight their importance within Arendt's and Broch's specific view on historical responsibility and justice.

In the first months of 1946, the Austrian writer Hermann Broch, who had to flee after the 'Anschluß' and made it to the United States in 1938, circulated a paper among his friends and colleagues entitled *Considerations on the Utopia of an International Bill of Rights and Responsibilities*.¹ Here, he drafted concrete propositions for the Human Rights Commission of the newly founded United Nations (UN) headed by Anne Eleanor Roosevelt, which was busy preparing the later ratified Universal Declaration of Human Rights.² Broch's paper also reached Hannah Arendt, who had just met and closely befriended him. In September that same year, she sent her first draft manuscript of a paper dealing with the same question to him, stating that his thoughts had partly inspired her to write down her own ideas on the topic. In their subsequent letters and publications, we learn how the discussion concerning the best

1 The original typescript is stored at Yale University Library; a German version entitled *Bemerkungen zur Utopie einer "International Bill of Rights and Responsibilities"* was published in: Paul Michael Lützeler (ed.), Hermann Broch, *Menschenrechte und Demokratie. Politische Schriften*, Frankfurt/Main 1978, 87-129.

2 See: Paul Michael Lützeler (ed.), Hermann Broch, *Visionary in Exile. The 2001 Yale Symposium*, 82-87.

way to affirm and adopt a universally recognised human rights regime was an existential matter to both thinkers in the aftermath of the war and the Holocaust.³ A pressing need to rethink and re-evaluate the premises of humanity or, as Broch put it, the necessity to humanise the world anew, to secure peace and mutual recognition, was a crucial motor for what was perceived at the time as a solution to these problems: a global enforcement of human rights. Jewish intellectuals, most prominently René Cassin, a French Jewish jurist and a leading figure in the drafting commission, were especially involved in discussing the complex problems of securing human rights as a means to overcoming the horrors of the Nazi regime in Europe and to prevent their repetition.⁴

Hannah Arendt is recognised for her substantial contribution to the debate on human rights from a perspective of legal philosophy. After the Jewish collective experience of a total deprivation of rights in Nazi Europe, the question of securing and stabilising rights, of re-establishing a legal realm for those who had been expelled from it, drove her thinking. Arendt was convinced that in order to create a more humane world, the sphere of law was a, if not *the*, profound key. What is less known is that her considerations were also an expression of the respective debate between her and Broch. An re-examination of their thoughts can help us understand the crucial importance of the discourse on human rights after 1945 within the broader Jewish struggle for global justice following catastrophe.

The two iconic events of the time that prepared the ground for Arendt's and Broch's deliberations were the Nuremberg Trials and the UN Declaration of Universal Human Rights. In Hannah Arendt's view, the trials were revolutionary in their recognition of an international responsibility for the conviction "of offences against the peace and the security of mankind".⁵ The newly established indictment of crimes against humanity as defined in the Charter of the International Military Tribunal for Arendt constituted an important step towards an international law which was hoped to transcend the principle of sovereign nation states and to promote the idea of a united humanity.⁶ This idea also guided the UN Declaration of Human Rights. Discussing the different legal concepts negotiated by international lawyers, both Arendt and Broch acknowledged their good will, but noted a conspicuous "lack of reality" within the concept of human rights.⁷ They recognised two fundamental problems within all efforts to create an international human rights legislation: on the one hand the problem of sovereignty and on the other the problem of applicability and effectiveness.

In answering these two questions, they started from mutual ground, but chose different ways to arrive at their results. Both clearly addressed the flaws of the newly es-

3 Paul Michael Lützeler (ed.), *Hannah Arendt – Hermann Broch Briefwechsel 1946–1951*, Frankfurt/Main 1996. In the letter of 9 September 1946, Arendt referred to Broch's article and its impact on her own deliberations, see: *ibid*, 14.

4 See: Atina Grossmann, *Who Guarantees Individual Rights? Jews and Human Rights Debates after World War II*, in: Norbert Frei/Annette Weinke (ed.), *Toward a New Moral World Order? Menschenrechtspolitik und Völkerrecht seit 1945*, Göttingen 2013, 42-52; Michael Galchinsky, *Jews and Human Rights. Dancing at three Weddings*, Lanham/Boulder 2008, see especially the Introduction.

5 UN General Assembly Resolution 95(I): *Affirmation of the Principles of International Law recognised by the Charter of the Nuremberg Trial*, 11 December 1946.

6 Hannah Arendt, *Es gibt nur ein einziges Menschenrecht*, in: *Die Wandlung* 4 (1949) 8, 754-770, here 768; English version published at the same time: Hannah Arendt, *The Rights of Man: What Are they?*, in: *Modern Review* 3 (1949) 1, 24-37. For an introduction into the discussion of Arendt and Broch about the Nuremberg principles, see: Manuel Fröhlich, *Crimes against Humanity, Humankind and the international Community. Reflections on Kant, Arendt and Broch*, in: *Development Dialogue* 55 (2011): *Dealing with Crimes against Humanity*, 33-45.

7 Arendt, *The Rights of Man*, 37.

established human rights agenda, mainly because it never overcame the status of mere proclamation. Its global acceptance was by no means secured, and there was no way to force a state to adhere to its principles. Therefore the human rights legislation also offered no solid possibility of sanctioning violations, and the way to petition cases of abuses and breaches of the law were highly disputed among the UN member states.

Hermann Broch, who had been preoccupied with human rights issues from the early 1940s when he was a founding member of the conservative *City of Man* circle of émigré intellectuals, which in light of the German threat fought against American isolationism and for global democracy,⁸ tried to come to terms with these problems by designing pragmatic political solutions that aimed at actual implementation. Hannah Arendt tried from an epistemological position to approach and formulate a critique on the concept of human rights as such. Both agreed that the UN declaration did not sufficiently solve the problem of enforcement arising from what Broch called the tension between a universally approved duty to humanity (“Humanitätspflicht”) and the recognition of particular national rights and sovereign decisions (“Souveränitätsanerkennung”).⁹ Adhering to the principle of sovereignty undermined any universal approach, Broch pointed out, because it meant submitting to politics of non-intervention. And to fully adhere to this principle seemed unacceptable after what had transpired in Nazi Europe. The question of sovereignty also preoccupied Arendt in her 1949 article on human rights, which was published in German and English. Here, she highlighted the fact that certain political realities, specifically the reality of the concentration and extermination camps, needed to be answered with actions disregarding sovereign rules: “concentration camps, [...] in which many millions are deprived of even the doubtful benefits of the law of their own country, could and should become the subject of action that would not have to respect the rights and rules of sovereignty”.¹⁰ She made unmistakably clear that the unrestricted recognition of sovereignty, the system upon which the community of nations was built, actually challenges the idea of a universal human rights regime because it severely limits its outreach. This aspect gained urgency again with the unfolding Cold War, which after a short period of internationalist visions in the 1940s culminated in the battle of the super powers and saw the sovereign principle on the rise rather than being contained.

The problem of sovereignty is associated with the second problem concerning the declaration put forward by both thinkers: the question of applicability and the potential to actually claim human rights. To highlight the contradictions, Arendt turned to the millions of stateless people whom the political upheavals of the early twentieth century had produced and whose future and status constituted a form of litmus test for the universal validity of human rights. She convincingly explored the ways in which the group of the stateless being deprived of their former rights had actually generated the necessity of a fundamental reformulation of human rights in the 1940s but benefited the least from them. Consequently, she offered in her article as well as in the eminent chapter *The Perplexities of the Rights of Man* of her 1951 opus magnum *Origins of Totalitarianism* a phenomenological approach to the notion of statelessness as one major challenge of modern political and legal thinking. Taking the emblematic experience of the stateless refugee as a starting point, Arendt poignantly described here the final consequence of the loss of citizenship:

8 See: Adi Gordon/Udi Greenberg, *The City of Man, European Émigrés, and the Genesis of Postwar Conservative Thought*, in: *Religions* 3 (2012), 681-698.

9 Broch, *Bemerkungen*, 89.

10 Arendt, *The Rights of Man*, 37.

“The moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them. [...] The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world.”¹¹

She underlined the fundamental contradiction inherent in the concept stemming from the fact that human rights can only be claimed and secured in realms of the state and are not accessible to those expelled from a political or legal entity. This was the aporetic constellation Arendt famously termed the perplexity of human rights: Drawing on the principles formulated first in the American and French revolutions of the eighteenth century, the reinstated concept by the UN only worked sufficiently for members of the nation state. In the modern legal system, it is citizenship that provides the possibility to act politically, to judge and articulate opinions – notions that Arendt classified as essential features of the human condition. It is against this background – which Arendt obviously experienced herself, being deprived of her German citizenship in 1937 and only attaining American citizenship in 1951 – that she understood statelessness as a negative emblem of the twentieth century and called for new perspectives in international law:

“The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion [achievements of the American and French revolutions] – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever.”¹²

This awareness led her to the famous conclusion that the *only* right human beings needed was the right to membership in a political entity, hence the right to citizenship. What the UN declaration failed to address, according to Arendt, was a demand for the “right to have rights”, to secure every human being the participation in a defined legal realm that provides equally to all members the access to rights:

“[I]n the welter of rights of the most heterogeneous nature and origin, we are only too likely to overlook and neglect the one right without which no other can materialize – the right to belong to a political community. This human right, like all other rights, can exist only through mutual agreement and guarantee. Transcending the rights of the citizen – being the right of men to citizenship – this right is the only one that can and can only be guaranteed by the comity of nations.”¹³

Arendt and Broch seemed well aware of the inherent contradiction in their critique of national sovereignty on the one hand and a call for secured membership to the state system guaranteed by the community of nations on the other. So they both struggled to discuss a way to bridge this contradiction. What was more, the specific demand for a “right to have rights” was clearly equally hard to enforce as the proclaimed universal human rights in general.

Arendt only tentatively insinuated the practical realisation she imagined. She was no international lawyer working for a UN Commission, so we have to take her intervention as an essential element of her intended re-evaluation of modern traditions of political thought as such. She was one of the vanguards describing the insufficiency of given terms and methods when aiming to grasp, let alone to explain or act against,

11 Hannah Arendt, *The Origins of Totalitarianism*, New York 1951, 288 and 293.

12 *Ibid.*, 293.

13 Arendt, *The Rights of Man*, 37.

the monstrous reality of the Holocaust.¹⁴ Arendt understood that the basic ideas of human civilisation were at stake. A common consensus that guided modern civilisation even in war times, an expectation of progress and future, even the entire apparatus of understanding and judging exploded when the mechanical “fabrication of corpses”, as she put it, became a reality. The breakdown of the social and ethnic contract made Arendt sceptical about the possibilities of a revitalisation of such concepts as modern human rights. What “human” actually refers to, and what could be meant by “rights” had to be discussed totally anew in a world where human beings had been made superfluous, and a world of systematically organised death had been installed on the basis of a “legal” system.

In her writings and discussions with Broch, we find references to one concept that seems sometimes overlooked but that was promoted by both thinkers to face the contradictions and challenges described: that is the concept of human dignity. Hermann Broch already claimed in 1946 that an international bill of rights may only come into practice, become reality, if a third principle – human dignity – were used to bridge the gap between universal and particular claims. He proposed that on the national level laws to protect human dignity, referring to the individual’s right to choose, think and act, should be enforced. These laws were meant to protect the recognition of equality and freedom of all citizens, and according to Broch should be implemented together with an *international* bill of responsibilities (in the form of a penal code). So he linked the catalogue of rights to a catalogue of duties to enforce the former. Moreover, Broch demanded that an international court of justice be installed to sanction violations of human rights. Broch not only designed measures to implement this law and drafted its paragraphs, he also called for a global initiative in education to guide people towards peaceful coexistence.¹⁵ This idea seems to be grounded in the general discussions about adequate re-education programmes for Germany which many intellectuals and political actors in the United States were deeply invested in at the time. His visionary and rather utopian goals in some way gained momentum, as evident in several European constitutional laws that recognise the sacrosanct character of human dignity as a basic organisational principle of society. Other elements of his demands needed another fifty years before they came into practice, and some never did. The international criminal court in particular, which brings lawsuits against violations of human rights by individuals as well as groups or states, was only established in the late 1990s and still has a very limited and selective scope.

Arendt looked at the problem from a different and more sceptical angle.¹⁶ In the *Origins*, we find selected references to the notion of human dignity. In her book, she explained the way totalitarian regimes had aimed at the transformation of human nature itself and had therefore destroyed “every trace of what we commonly call human dignity. For respect for human dignity implies the recognition of my fellow-men or our fellow-nations as subjects, as builders of worlds or cobuilders of a common world.”¹⁷ Broadly spoken, Arendt agreed with Broch that a reframing of the concept of human dignity might help to overcome the perplexities entailed in the

14 See for example: Hannah Arendt, *Social Science Techniques and the Study of Concentration Camps*, in: *Jewish Social Studies* 12 (1950) 1, 49-64.

15 Broch, *Bemerkungen*, 99-103; “Gesetz zum Schutz der Menschenwürde” and “International Bill of Responsibilities”: *ibid.*, 108-117.

16 For a comparison of perspectives, see: Michael Lützel, *Die Entropie des Menschen. Studien zum Werk Hermann Brochs*, Würzburg 2000, especially 191-195.

17 Arendt, *Origins of Totalitarianism*, 458.

human rights declaration. She offers a small but telling hint to that in the preface to the *Origins* when stating:

“Antisemitism [...], Imperialism [...], Totalitarianism one after the other, one more brutally than the other have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities.”¹⁸

Arendt does not explain how such a law should look or how she imagined these “newly defined territorial entities”, but the idea of implementing a particular law to respect human dignity as a foundation for the universal enforcement of human rights – just as Broch had it – appears here too.¹⁹ The re-evaluation is crucial because Arendt explores how traditional justifications of Human rights stemming from either a natural law perspective (human rights as something inherently, in the sense of naturally, belonging to the essence of a human being) that Broch remained convinced of, or a historical perspective (human rights as born from specific historical, social, cultural situations) to her became obsolete after the experience of the Holocaust, which brought to the surface how essential standards of human recognition and interaction cannot be assumed as given and granted.

“We can no longer afford to take that which was good in the past and simply call it our heritage, to discard the bad and simply think of it as a dead load which by itself time will bury in oblivion. The subterranean stream of Western history has finally come to the surface and usurped the dignity of our tradition. This is the reality in which we live. And this is why all efforts to escape from the grimness of the present into nostalgia for a still intact past, or into the anticipated oblivion of a better future, are vain.”²⁰

Arendt’s claim for a new reconstruction of human dignity entails important implications for human coexistence after the catastrophe altogether. In her proposition, humanity replaces nature and history as a rationale or normative status for human rights; the twentieth century calls for a mutual responsibility among humans that can be organised only in political entities and has to be grounded in an international system of rights.²¹

By pointing to the notion of human dignity as the basis for a universal recognition of humanity, Arendt shaped her political belief in plurality and reciprocity as fundamental human categories. This belief is captured in her statement that “men in the plural inhabit the earth”,²² as well as in her plea to accept and recognise plurality and difference as an inherent part of the human condition.²³ Moreover, Arendt showed that this in reverse means that every attack on any group of humans is an attack on plurality and therefore on the essence of humanity in general:

18 Ibid., Preface, ix.

19 An interesting discussion of the notion of “human dignity” by Arendt and its potential for bridging the gap between the particular and the universal is provided in: María Concepción Degado Parra, Modern Citizenship. A Dilemma for the Realization of Human Rights, in: Review of History and Political Science 2 (2014) 1, 51-73, here 59-67.

20 Arendt, *Origins of Totalitarianism*, Preface, ix.

21 Arendt, *Es gibt nur ein einziges Menschenrecht*, 767 f.

22 Arendt, *Origins of Totalitarianism*, 476.

23 Hannah Arendt, Introduction into Politics, in: Jerome Kohn (ed.), *The Promise of Politics*, New York 2009, 93-200. Instructive here: Seyla Benhabib, *Völkerrecht und menschliche Pluralität. Über Hannah Arendt und Raphael Lemkin im Angesicht des Totalitarismus*, in: Simon Dubnow Institute Yearbook 8 (2009), 365-394.

“If a people or a nation, or even just some specific human group, which offers a unique view of the world arising from its particular position in the world – a position that, however it came about, cannot readily be duplicated – is annihilated, it is not merely that a people or a nation or a given number of individuals perishes, but rather that a portion of our common world is destroyed, an aspect of the world that has revealed itself to us until now but can never reveal itself again. Annihilation is therefore not just tantamount to the end of the world; it also takes its annihilator with it.”²⁴

Translated into the sphere of human rights, this implies that the non-recognition of dignity and the existential right of the other to belong and to participate in a given community always amounts to a violation of one’s own dignity and rights. The right to participate – to Arendt – was not achieved in the Declaration of Human Rights, but would need a ratification of an international law granting every individual’s right to belong to a political entity. This entity is needed to guarantee him or her the respect of human dignity: the possibility to act, think, and articulate opinions, and to have a secured place in the world.

In conclusion, I want to highlight two aspects which seem crucial in a re-evaluation of Arendt’s and Broch’s deliberations on human rights from a present-day perspective. First, both approaches more or less explicitly refer to what Arendt described as “the break with tradition” and the loss of “categories of political thought and standards of moral judgement” which many intellectuals felt after what had unfolded in Europe under German rule.²⁵ This understanding forced them to find new ways of confronting the events, introducing terminology to describe it and to create a sustainable and peacekeeping legal order. The discussion about human rights – their simultaneous existential necessity and perplexities – in this realm of thinking has to be understood as a specific response to the Holocaust and its long-lasting effects on the idea of humanity, humankind, and civilisation. Normative legal principles that were enforced in the second half of the twentieth century seem at stake again in Europe today, their fragile character has been exposed, so to return to the initial discussions about their meaning might help to create awareness of their current significance.

Second, the famous claim for the right to have rights and Arendt’s demand for a right to citizenship are based on her pioneering thoughts about the meaning of statelessness and the limitations of international law in protecting extra-legal subjects. Her profound belief in the imperative need of legal belonging for the fundamental security of human existence in the modern world prevails. In this sense, I agree with the instructive use of Arendt’s approach propounded by political theorist Seyla Benhabib, who underlined that the recognition of the rights of the individual ‘other’ in the Arendtian sense constitutes the common ground for being human in a shared world. If the fundamental right of the other is not accepted due to difference and otherness, a common humanity as such is denied.²⁶

It is exactly this notion in Arendt’s thinking on human rights which makes her deliberations highly relevant for current debates on refugees, the applicability of

²⁴ Arendt, *Introduction into Politics*, 175.

²⁵ Hannah Arendt, *Understanding and Politics (The Difficulties of Understanding)*, in: Jerome Kohn (ed.), *Hannah Arendt, Essays in Understanding, 1930–1954, Formation, Exile, and Totalitarianism*, New York 1994, 306–327, here 310. For the broader context of this dilemma see: Enzo Traverso, *Auschwitz denken. Die Intellektuellen und die Shoah*, Hamburg 2000.

²⁶ See: Seyla Benhabib, *Kosmopolitismus ohne Illusionen. Menschenrechte in unruhigen Zeiten*, Frankfurt/Main 2016.

human rights, and the growing tendencies of nationalisation, increasing calls to national sovereignty, and exclusivist social constructions. The basic quest of participation, freedom, and equality is up for discussion again. Even though the protection of human dignity is constitutional in a majority of European nation states, the right to belong, to be integrated in a social context which Arendt understood as *the* basic human right, is often challenged. The right to articulate views, represent interests, and be politically active is by no means ensured to all people, even if they come under the protection of international law. Thinking along Arendtian lines reveals how the processes of deprivation and exclusion currently executed on different groups of people will have an enormous impact on the European social and political structure in the future, and will finally affect everyone. Just as she put it in the *Origins* with reference to Clemenceau: “by infringing on the rights of one you infringe on the rights of all”.²⁷

²⁷ Arendt, *Origins of Totalitarianism*, 106.

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