

## The One Right No One Ever Has

Werner Hamacher

Translated by Julia Ng

### Translator's Abstract:

The right to have rights was never a right to be had. Hannah Arendt's famous formulation of the most elementary right of all, the right to participate in the definition of rights, is not a description of a given right that belongs to one or the other form of law, but an indictment of a deficit in the construction of legality on the basis of the right to withdraw legal protection from members of a community, and therefore to refuse rights. The one and only human right thus turns out to be ungrounded in anything but the idea of its being had: a "property right" that traces back to the legal, philosophical and linguistic definitions of "one's own" since antiquity. Only the gift of the incalculable and of that which cannot possibly be legitimated can ground the autarchic self-relation of having: ungrounded in the rationally organized nature of any given, possessing the right to membership in a political community turns out to be permission to freely transfer this possession to another, without expectation of a return.

### Translator's Keywords:

Arendt, the right to have rights, ontological possessivism, Augustine, human rights

1.

One of the decisive statements in the history of law and legal theory claims that right and rights are without substantial ground. As suggested by the subheading under which it appears in the chapter on "The Decline of the Nation-State and the End of the Rights of Man" from Hannah Arendt's *The Origins of Totalitarianism*, this claim constitutes one of "The Perplexities of the Rights of Man": indeed, "We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's own actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation."<sup>i</sup>

It bears reiterating at the outset that this elementary right, through which all other historical and virtual rights first acquire their legal status, is characterized by Arendt as the right "to belong to some kind of organized community" and, in the parentheses in the same sentence, as the right "to live in a framework where one is judged by one's own actions and opinions."<sup>iii</sup> It follows that the right to have rights also lies in the pre-judicial "right" to play a part in the *definition* of rights. An "organized community," according to Arendt's double definition, is always the community that judges its members according

to actions and utterances that they express in public with relevance to the community: the organized community is first a community of judgment and only therefore also a community of rights. This right, however, has been “lost” at least since the period between 1913 and 1933, when all of the European nation states “expatriated” large segments of their populations by means of so-called denaturalization laws, which is to say when they stripped them of their citizenship, robbed them of their membership in communities of language, action and rights, and exiled them from the so-called civilized world—*without* their having been judged by their actions and opinions and *without* a legal claim to exile anywhere else on earth. Enormous groups of stateless refugees and displaced persons were exiled without asylum or sanctuary. Not only were they exiled from the nation state and all its associated structures; with no legal title to membership in any territorially bounded society, they were also exiled from humanity. But the right to have rights was not “lost” due to historical accident, episodic opportunism or national infamy; it was “lost” through a fundamental deficit in the construction of legality as a whole. Every “organized community” constitutes itself as a community of rights only insofar as it reserves the right to withdraw the right of protection from its members and to refuse this right to those seeking entry into this community. Communities of rights define themselves as communities endowed with the right to refuse rights. For Arendt, it is not just the realization but the sheer possibility of legal guarantees that is dubious here. As she argues, “it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically—namely by majority decision—that for humanity as a whole it would be better to liquidate certain parts thereof.”<sup>iii</sup> The consequence of this fundamental juridical aporia (which leads to her discussion of the “perplexities” of the rights of man) is this: that the one and only human right, the right to membership in a political community, cannot be guaranteed even by human society as a whole. The right of all rights has no ground in the society of all societies. This right is not only lost; it also cannot be acquired again and, above all, never had the status of a given.

This dilemma, on which Arendt insists against the grain of all political idealisms and ideologies, is not only coeval with the legal praxis of societies with written constitutions, as her historical explanations and systematic arguments make clear; it is a structural dilemma that even the legal form of societies that are constituted by majority, such as democracy, is unable to resolve. This implies, however, that the right to have rights was never an inalienable right—and therefore not only cannot be “won again,” but also cannot have been “lost.” It also implies that the right to have rights remains unattainable so long as legal forms are based on forms of judgment that treat contradictory predicates as mutually exclusive. As a consequence, the right to have rights may *exist*, but no one *has* ever had it and no one *can* ever *have* it either. And if the elementary right to define rights and thus to be part of a community of those who produce these definitions cannot be a possession, then all the other rights that are based on this right can also not be *had*.

Arendt's argument thus arrives at its most extreme conclusion: that the right to refuse rights, which underlies not just the legal systems of modern nation states but in fact every legal system known to history, structurally hollows out law as a whole. Its grounding in nature, in the order of creation, in history, in reason, and ultimately in humanity understood as the essence of man, is illusory. Whoever *has* no right in a political community also *has* no place in an international or inter-state community, *has* no place in any human community whatsoever, *has* no place in an order of speaking and acting with others, and thus *has* no capacity for communal, deliberative language and socially relevant action, *has* neither world nor history nor language nor an existence that might be defined through language and qualified as one's *own*—in other words, he *has* nothing on the basis of which he might be determined by others and determine others in turn. His "unqualified, mere existence" is an existence without substance, for his substance exhausts itself in his existence, in the "abstract nakedness of being human," and "being human, deprived of expression within and action upon a common world," remains "without significance."

2.

In the course of the world-historical reduction that Arendt describes, the right to rights thus turns out to be the right to property rights. In turn, property rights turn out to be rights that are themselves "given" with this property, such that the right to have (rights) turns out to consist in the property called rights. Not only does right confer and secure property, but property confers and secures right: the concepts of right and property are coextensive. Only with the loss of property, the loss of belonging and possession and of what is owned and inalienable, does it become clear that rights not only are concepts of contingent relations, but designate those relations through which an entity is constituted as what it properly and therefore substantially is. Rights are considered as constitutive relations, and for this reason as relations in which a rights-holder relates to himself as to that which is held or had by him, as to the one in possession of himself, the owner of himself. Whereas self-relations are generally understood as relations between *relata* that already exist, the fundamental right to what is one's own is regarded as the immediate relation of everyone to himself which issues forth its own *relata*. Regarded as originary and irreducible, the *ur*-relation of owning is thus supposed to consist in a self-relation that is construed as having a hold on oneself, as being at one's own disposal, as indissolubly *having* a self and—in this sense alone—as *being* a self. Since this supposedly irreducible self-relation presented itself as a relation to a ground, cause, and principle, self-possession in the sense of self-sufficiency could be construed as the fundamental structure not just of the individual but also of individuals in "their" community and therefore as the fundamental structure of every community by the time of Aristotle's theory of political *autarkeia* (Pol. 1252b29, 1280b34). It is to this situation that Arendt responds when she recalls that minorities who had been deprived of their civil rights in the European states devoted their energies to their "reintegration into a national, into *their own* national community."<sup>iv</sup> Their lack of rights proved to be irreparable in the

moment when it became apparent that “they no longer *belong[ed]* to any community whatsoever”<sup>v</sup> and that “no country would ‘claim’ these people”—that is, claim them as their ‘own.’<sup>vi</sup> Once the relation that had been characterized as “belonging” to one’s “own” people, nation and legal community was severed, the self-relation that each individual from a minority maintained to himself as a legal subject collapsed, as did right itself inasmuch as it was the form taken by the nation’s and ultimately by humanity’s relations to themselves. Along with right the possibility of having a part in any community of self-determination and therefore of self-appropriation also collapsed. Since then, and “despite all appearances,” there has been no right to “belonging” or to “one’s own national community,” and therefore also no possession of oneself and no substantial form of the self-relation called “property” and “right.”

The tautology between the syntagms “to have rights” and “the right to have,” which Arendt’s phrase “the right to have rights” both captures and radically decomposes, can already be gleaned from a classical formulation that is traceable to Plato and was reinterpreted by the Romans as *suum cuique*—to each his own—in the definition of justice and right found in the opening sentence of the “Corpus Iuris Civilis” from the year 533. That sentence reads: *Iustitia est constans et perpetua voluntas ius suum cuique tribuens*—justice is the constant and perpetual will to apportion to each his own right (I.1; cf. I.3). His own, which is each time one’s property, is thereby defined as right, and right thereby defined as that which to each is appropriate and due since it belongs to him. Right is property because it amounts to the *suum* and thus to substance, the constant and inalienable essence of someone that is reserved for him alone. Correspondingly the “Corpus Iuris” gives the following definition: “What each people posits on its own as law is the law proper to its civil society”—*ius proprium ipsius civitatis* (I.2.1)—in which the *proprium* functions as an intensifier of *ius*. A physical thing—*res*—is incorporated into the property—the *dominium*—of an individual through seizure—*captatio*—even if this seizure takes place by way of a mere gaze or intention (II.1.12); but even law that cannot be touched and is incorporeal, such as the law of inheritance, of usufructus and of obligations, is a thing that falls under the category of property and can be seized or given away as that which is each time one’s very own (II.2). Right is in each and every sense a thing of *homo capax* because it is he who seizes his very self in his right. Similarly to the Latin, other languages from early on seem to also have retained the connection made between essence and one’s own in the form of the persisting existence of a thing in both the sense of the Greek *ousia* and the Latin *substantia*. As Jacob Grimm remarks in his “German Legal Antiquities [*Deutsche Rechtsaltertümer*]” on the word *Eigenthum* (“property”): “General names given to the concept of dominium are 1. *Gothic*: aigin (*ousia*), *Old High German*: eikan, *New High German*: eigen from aigan (echein, tenere, habere), from which also the Old High German êht is derived.” And furthermore: “9. Anglo-Saxon: âr (honor) for opes, substantia.”<sup>vii</sup> From this it is also clear that one’s own and property is a *dominium* and thus something that is ruled and seized, guarded and true, genuine and authentic, which is persistently held in the owner’s power of disposal under his *ius proprium*. Right is substantially property right; property is substance.

Following in this linguistic and philosophical tradition are the political and legal theories of seventeenth-century Europe, England and America that contributed to the first codifications of the rights of man. In the case of the Levellers and of Locke, these theories led to the liberal conviction that the right of all rights was the property right in one's own person and in one's own work. All subsequent political philosophies refer back to this basic idea, including that of Marx, who like Hegel conceived of work as the essence of man, and of the essence of work as the appropriation of nature and one's own self. Richard Overton explains in "An Arrow against all Tyrants" from 1646 the principle of nature and the rule of justice as follows: "To every Individuall in nature is given an individual property by nature, not to be invaded or usurped by any: for every one, as he is himselfe, so he has a selfe propriety, else could he not *be* himselfe; and on this no second may presume to deprive any of ... [n. 21]."viii Some forty years later, Locke articulates the same thoughts in "The Second Treatise on Government" in much the same wording: "every Man has a Property in his own Person. This no Body has any Right to but himself."ix In his grounding of right on self-proprietty, Overton is more emphatic than Locke that this right is fundamental because it is an ontologically founded right. For if everyone can *be* what he himself is if and only if he *has* a property in himself, then *being* oneself means *having* oneself and thus having the power of disposal over oneself as one's primary inalienable possession. "Self-proprietty" or "Property in his own Person" are legal titles because they are ontological titles. As such they occupy the rank of natural and rational principles that have given to every legal system its substantial ground. Whoever contradicts or defies this principle of the ontology of possession not only destroys every possibility of individuals and their societies, he destroys first and foremost himself, to the extent that he gives up his own person and does not speak or act as the one who *is* he himself. To *be* oneself and to *have* oneself are co-extensive. Whoever follows this principle moves in an auto-tautological circle between self, being, property, and right. For him, to have is to have (a) right; to be is to be (a) right. Whoever says *sum*—I am—claims a *suum*—his property. The sense of being is having, having (a) right, right.

As with all—and not only the juridical—fundamental ontologies, Overton's and Locke's ontology of possession cannot explain why it has to be explained, even though it claims to operate with indisputable facts of nature and reason. For if someone *is* naturally and rationally himself only if he *has* himself as possession by nature and by force of reason, then he must be naturally and rationally immune to another's usurpation of his own being and to his "own" intrusion into the being of another. Thus, it must only be because his "self-proprietty" does *not* protect him against injury and because nature and reason fail in the face of their *own* principle, the principle of nature and reason and its immediate legality, that there is a need for an explication, declaration and implementation of a right that compensates for the failings of nature and reason. However, right can only compensate for these weaknesses if it itself does not belong to nature or reason or is not a property of either of them. If, as Overton and Locke claim, the boundary between one's own being-oneself and the being-oneself of another were insuperable, then this boundary would not require constant redefinition by means of a law that has to be added *to* the law

of nature and reason, that as a supplemental law however cannot be subjected to the principle of possession that requires a corrective, but rather is independent of this principle and superior to it without having its *own* logic of ownership at its disposal.

The right of ontological possessivism is thus dependent on a wholly *other* right, one that is not the universal right of possession of one's own person, and that also does not serve as the mere mediation between one's own person and the person of another, but allows for their de-mediation, fusion and mutual injury as well, since in this *other* right the principle of property ceases to be in force. This *other* right can be neither a universal right nor an individual right in the sense of owning being; it must be a trans-universal and infra-individual right at the same time, on the basis of which no substantial, possessive being is consolidated and to which therefore no concept of right corresponds that measures itself against possessive being. This *other* right is not the right of an already given person in contrast with another, but is rather the "right" to a differentiation that allows for one or the other person to be accorded "his right" and his legal personality in the first place. It is consequently a "right" that does not have one or another owner, but is rather a "right" of *giving* or granting, of allowing or permitting what never is a primordial or original, only always a derived and im-proper property. What opens up societal relations capable of doing justice to the unprogrammable singularity of individuals and to the structurally and historically malleable relational events between them is not what is given by itself and for itself as one's own or as the other's, nor their middle, which produces a correct proportion between isolated givens only after the fact and which itself has to be given as *substantial*; what opens up these social relations can only be a distribution *between* the one and the other that follows no prescribed rules. Property, and above all the property in one's own person and one's work, cannot be a constant let alone a substantial determination of man so long as it is dependent upon a process of *giving* that itself does not fall under the principle of possession and its preservation.

A case in point: the late Roman "Codex Iuris" states that, according to the *ius gentium*, or common law, all men were born free in the beginning—*iure enim naturali ab initio omnes homines liberi nascebantur* (I.2.2). That is, all men were equally free and in this sense equal persons before the law. For Arendt, however, this statement on natural equality is a historically belated and erroneous postulate that obfuscates the conditions of the genesis of equality and of freedom and self-determination. She therefore states to the contrary that "we are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights."<sup>x</sup> Equality, and the qualities that derive from it, are not given by the one unifying power of nature, reason or God, nor are they given with the mere existence of an individual that belongs to a species according to some unspecifiable criterion. Rather, it is acquired through the commonality of decisions and can only be maintained by this commonality itself. The precariousness and aporetic character of this commonality—and of the equality and reciprocity affiliated with it—are amply demonstrated by the collapse in the twentieth century of both national,

and thus “natural,” societies and states that were reliant on conventions and arbitrary decisions.

In its attempt to fend off the inconsistency of natural law, Arendt’s formulation “to guarantee ourselves mutually equal rights” remains attached to the principles of civil rights that she nonetheless also rejects as inconsistent. In invoking the reciprocity of the guarantee of equality, the formulation makes equality into the precondition of the equality it is supposed to guarantee in the first place. Arendt’s unnoticed *petitio principii* is all the more consequential since it presupposes a reciprocity as given that she cannot presuppose due to her own insight that displaced persons, who are excluded from civil and human rights, are characterized by one “given” trait alone: by differences, by their singularity, and by what makes them incommensurable and unreciprocal. Immediately prior to the sentence where she presents equality as the result of a mutual guarantee, Arendt writes: “The whole sphere of the merely given, relegated to private life in civilized society, is a permanent threat to the public sphere, because the public sphere is as consistently based on the law of equality as the private sphere is based on the law of universal difference and differentiation. Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization.”<sup>xi</sup> If, however, equality is the result of organization, then this organization can only be the result of what is given prior to it, remains unequal and resists organization. “The merely given,” that is to say “mere existence” understood as that which is absolutely unequal to itself and to others, cannot by definition find a place within a legal organization that would be proper to it. Mere existence *is* what does not *have* itself.

Arendt’s characterizations of the “merely given,” “merely and mysteriously given,” “mere existence,” and “unqualified, mere existence,” which recur with ever increasing intensity, not only describe the situation in which those deprived of rights find themselves. They also characterize a pre-legal world that has nothing whatsoever to do with the suggestions of an original state of creation, but from which the entirety of the legal world together with its claims of substantiality, identity and property must have emerged. The organization of a political society cannot have originated in a rationally organized nature; it must have derived from a disparate and disorganized world of singular existences that are impossible to hold together by means of equality, reciprocity, or any commonality that takes a legal form. This sobering finding begs the question of how right and politics are possible: that is, how they are possible *without* their possibility being already inherent to the structure of the given; *without* their possibility being secured in the *existence* of disparate individuals, which is not stabilized by any *essence*; and *without* this possibility being endowed with a teleological or providential tendency towards its realization. The question that Arendt does not pose explicitly, but which appears all the more pressing in the disposition of her text, circumscribes the area in which an answer can *not* be found.

For what is “merely given” is what can *not* be seized, appropriated, integrated or incorporated, socialized or juridified, legalized or legitimated in any way. “Unqualified, mere existence” is resistant to right because it is not a possible object or possible agent of deliberations, decisions and judgments. It is based, so Arendt, solely on “the shape of our bodies and the talents of our minds,” and more precisely, on the “single, unique [and] unchangeable” in all of them.<sup>xii</sup> As the epitome of that which is incommensurable, incapable of equivalence, and at a remove from communication, this single given attests each time it is given to the *non*-givenness of a political community that is suited to it, to the *non*-givenness of the entire sphere of right, and first and foremost to the non-givenness of a fundamental right to possession. The conclusion to draw from this is not that there is no possibility for rights, but rather that there is no *substantial* possibility thereof, that is, no possibility for rights and above all for the right to rights that is guaranteed by a predetermined substance of man. It is neither the presumptively perpetual law of nature or reason, nor the historically acquired right of ranks and classes, that opens up the possibility to develop communities, rights, and possession, but only the absence of right exposed in the existence without predicates. In other words, rights can only be given and distributed where there were *none* before. Only the *non*-given human right to define right allows—now and in the future—for the giving of rights.

If rights constitute the domain of regulated reciprocity, the existence without predicates occurs without any rule in the field of the non-reciprocal. “We” guarantee “ourselves mutually equal rights,” Arendt writes, but as regards what she calls “mere existence,” she is forced to concede that it “can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love.”<sup>xiii</sup> The incalculable can only be met with the incalculable hazard, the contingent can only be met with the contingent—and this in turn without any pre-existing rule, standard, or norm. According to Arendt’s description, and in contrast to her political theory which is oriented towards the Aristotelian model of the *polis*, the initiative to formulate rights can thus only proceed from the “private sphere” of friendship, sympathy and love, and hence from pre-legal relations that are characterized not by lasting possession and participation in what is already given, but by the giving of a gift. “The incalculable grace of love,” Arendt recalls, “which says with Augustine, ‘*Volo ut sis*’ (I want you to be), without being able to give any particular reason for such supreme and unsurpassable affirmation.”<sup>xiv</sup> Friendship, sympathy and love, affirmations of the mere existence of an other—of a “you” that is being addressed here for the first time in her text—precede every self-affirmation and self-appropriation of one’s “own person” that every juridical-political ontology claims as the ground for community and right. This incalculable affirmation of the incalculable other precedes one’s “own person” by so much that it cannot find in this person itself or in its generalized ideal any ground—or any reason—by which the gift—the “grace,” favor and mercy—of this affirmation could possibly be legitimated. The groundless, irreducible, unregulatable and insuperable affirmation of the other in his incommensurable existence grants a given by giving it in the first place, and also offers, as a gift, the possibility of a possession, without however



securing this possibility by elevating it to the status of an essence. It thereby also opens up the possibility of right without necessitating it. To the extent that this affirmation affirms the other in his otherness, it opens up a space for a community, albeit a community solely between those who *have* no community. This, however, is neither a community of some already pre-given type, of a class, race, genus or other such generality, nor a zoological or ethnic community or a community that might be defined by some technical faculty, cognitive capacity or any other quality. In short, this is not a community of properties but a community of mere existence, of those without qualities, properties, or rights. The opening of this community allows for the formation of a community of possession and moreover of rights, but it does so without following the principles of possession and right or even being able to anticipate them. The affirmation of mere existence opens up a community to those without a community, but it does not give it to them as their *property*, as *belonging* to them or as their *own*, but rather, following the “unpredictable hazards of friendship and sympathy,” leaves it up to them to take it or leave it. Since this affirmation is itself contingent, it opens up a contingent community prior to every regulated, legal community and gives to it, without following any rules of nature or reason, a contingent ground, a ground without ground. Only this groundless ground can offer what Arendt calls the right to have rights.

It is giving without equivalence rather than appropriation or equalization that characterizes the movement by which social relations begin. Rather than *constituting* a community, this movement *disposes* towards it. But it *disposes* towards community only insofar as it absolutely *exposes* itself to that which is alien to the community and holds it along with itself in this *exposition*: it holds both in the sway of what has neither ground nor hold. This relation is neither intersubjective nor merely interdiscursive; it is intercontingent, an encounter between at least two contingent existences that can neither be brought about nor be guaranteed by some higher authority. Their relation is not a correlation between previously given relata, nor is it an autarchic self-relation; it is a relation that is maintained by at least two indefinite sides, a double relation to the irrelational. This relation is based neither on a commonality with respect to the power to dispose over property, nor on the commonality defined by the exchange of equivalent goods, but in the double irreciprocity of giving what has never been given before.

Giving is not a given. It does not proceed from something already given, be this an authority, thing or subject. Nor is it bound to the proviso that it be returned or replaced by an equivalent, nor is it characterized by the fact that it results in a given. By commenting on the primary extralegal affirmation with the condensed version of a sentence from Augustine, who defines love as the affirmation of the mere existence of another—“*volō ut sis* (I want you to be)”—Arendt describes an event that does not posit mere existence, but rather grants it in the first place and releases it *as* mere existence. Existence is not a given [*Gegebenes*]; it is always something *admitted* [*Zugegebenes*], permitted, allowed and granted by the inclination of others. Thanks to an act of giving, existence, like this act, is not a state but an event, and moreover an event not merely of *one* existence or of

the unity of an abstract universal existence, but that of an always singular event of always several individuals in a irreducibly singular as well as plural occurrence. The existence-affirmation of the *ut sis* is the beginning of this plural occurrence and persists as a movement of communication without whose continuation there would be no community. This affirmation is therefore a liberation *from* mere existence, which necessarily disappears in the isolated emergence of an indifferent phenomenon, and at the same time a permission *for* a singular pluralization that has no pre-determined end to come into existence. This affirmation is thus simultaneously the incipient and paradigmatic gesture of a liberation *from* right—from the right of “natural” violence and of rule-driven rationality as well as from the “law” of chance—and a freedom *for* the arrival of another right whose definitional openness liberates it from its obsession with the order of predicates and qualifications and paves the way to relations *other than* those of right. As a consequence, the *ut sis* is also the release [*Freigabe*] of property: property is liberated *from* one’s “own” person and from its extensions in corporations and “national” and international societies. The legal person and the law *in toto* are liberated *from* the obsession with being the possession of his possession, while possession is granted the freedom *to* be determined as something other than a possession that belongs to a particular someone. Possession is granted the liberty *to* have its ownership transferred such that its very concept exceeds ownership [*Über-Eignung*]; it is rendered free *to* be left in somebody’s hands beyond the expectation of a return [*Über-Lassung*], and is left open *to* be a gift given freely unto others. *Ut sis* is thus also the liberation *from* a freedom whose ground is limited to the possession of one’s own self, and the opening up *towards* a freedom that does not *have* but rather receives, refuses, or gives “its” ground away. For the one who only ever has what is already given, having is not an event; he *has* nothing yet, and he is only possessed by his possessions. Giving alone opens up to having, to also having a not-having, to a never-having-had and to a never-ever-having. Giving liberates having *from* and *towards* “itself,” and therefore opens up the possibility of any “self” whatsoever.

The double movement of liberation *from* and *to* is the movement of *ut sis* and therefore the movement of the only human right there is. It gives—without further qualification—being. If the possibility of being—of the other and of one’s “own” self—is opened up only by the “*sis*” of the “I want you to be,” then the meaning of being [*Sinn von Sein*] cannot lie in having, having (a) right, or right. The meaning of being can only occur in the giving of the opening towards *another* being and something other *than* being, and can therefore only occur as the opening towards *another* meaning and towards something other *than* meaning.

3.

This brief sketch has outlined some of the implications of Arendt’s reflections on the space without law or human rights that was opened up by the disaster wrought by the totalitarianisms of the twentieth century. But this disaster and its endogenous barbarism

have yet to recede into the past. Their dimensions have only just started to become apparent, and since the end of the world wars we have seen that their horrors grow ever more severe. Structural totalitarianisms are expanding, sometimes without a name, sometimes under other names and in the guise of doctrines other than those familiar to us from the first half of the twentieth century. But whether they present themselves as liberalisms or communisms, socialisms or democraticisms, ethnicisms, confessionalisms or, as the majority have done, simply as obtuse opportunisms, and in spite of the serious and consequential differences between them, all remain fixated on the one complex of possessivism and juridicism on whose basis they define the life and conduct of those who “belong” to them to varying degrees of stability, without having received a mandate to do so from their factual majorities. Whether regional and characterized by fastidious concretion, or global and obscured by the faux-generosity of formalism, their shared concern lies with the right to one’s own: one’s own “interests,” one’s own “maximization” and “optimization,” one’s own “religion,” one’s own “conviction,” one’s own “own,” one’s own “and so forth.” Each regime has its “own” law that is in fact dictated by the juridico-possessive complex, and which has led them into frontal or diffuse wars against each other, including unbloody-bloody financial wars over “interests” and “zones of influence,” and these have deprived millions of their “citizens” and “members” of their rights and lives in the last half of a century. Even where there has been some sort of formal reciprocal recognition of the “rights to existence,” these totalitarianisms have proven to be without right and to be a mere game for the possessive interests of the more powerful among them. Were they not so deadly, one might wish for someone to assure them, in all their rightlessness and worldlessness, that, like Augustine, he wishes them to merely *be*.

Yet armed with only inclination, friendship and sympathy, there is very little that might be achieved against a suicidal legal economy when there is no world, no public and no common (or more than *one* common) language to articulate *what* is happening, *why*, and to what *end*. Peace slogans would be no more efficacious than sentimentalisms that serve the status quo. Combat slogans would share the fate of boy scout expeditions, sporty, amusing within limits, and boundlessly inefficient. Appeals to rights, legal authorities and goodwill would only buttress a situation where all parties in question are insisting ever anew on “their” “own” rights. Yet the problem lies with those rights themselves, the classical human and civil rights, and with those who think they should champion them without having first examined *what* they are, and *whether* they are rights at all. Arendt unambiguously demonstrated that the one right to legitimate all other rights, the right to define rights, is inconsistent, and she pointed with a vigor surpassed only by Marx before her to the fact that human rights as defined thus far were grounded in a privileging of possession that eliminated itself on account of its paradoxes. Her statement that this sole human right is “lost” may have been misunderstood as an argument that no such right ever existed except in the domain of a shattered illusion, but she has unequivocally insisted on the *existence* of this one “right” against the more serious misunderstanding that this right enjoys the status of a naturally or divinely given

substance. (In Arendt's German translation of her work the formulation in question is more prudent: "*Daß es so etwas gibt wie ein Recht, Rechte zu haben*," which emphasizes the word "to give" as well as the non-judicial character of the "right to have rights": it is only "something like" [*so etwas wie*] a right.) Right is neither the essence nor the one essential possibility of "man," as can be seen from the fact that his "mere, unqualified existence" is not qualified by any right. This existence *has* no right; the existence of every individual *is* rather the pre-legal claim on others to affirm this very existence—to affirm it in its independence from all affirmation—in order to *give* it right without *subjecting* it to a right: to give right, without making the giving into a given or into a possession. Even this most feeble of claims would be void without an affirmation that would let its existence happen.

The point, then, is to make clear—through analysis and documentation in all areas "public" and "private" as well as everywhere around these artificial demarcations—what everyone knows and experiences but few articulate: that in absolutely *no* area of acting, making, thinking, speaking and behaving does there exist a right, legal claim, or legal recourse that leads to the realization and fulfillment of a given law. The point is to show that all existing legal institutions that were established and reproduced to enforce property claims are structurally illegitimate. This is precisely what Arendt does when she points out that the legal institutions responsible for safeguarding human rights had to collapse, and that only with the collapse of *guaranteed* human rights did the unguaranteed *existence* of the one human right come to be known.

Only by revealing the emptiness of right can the chance of *something like* the right to have rights come to light. This right is not a possession, and "right" is, as Arendt's German translation shows, not even its appropriate, "own" or proper name. This "right" *has* no name of its own unless one were given that indicated something other than a stable capacity, secure assets, or a property title. It also *has* no predetermined semantic content and no definite object—the "rights" of children, of the ill, of animals and plants, of the dead, of the earth and indeed of the overwhelming majority of all "objects" of rights have been controversial for as long as anyone can remember, and are indefinite "rights" open to determination. This "right" with an indefinite name and an indefinite domain of objects does not even *have* a definite subject, for a subject of this "right" can only be defined by a historical plurality ever open to further definitions. This "right" can thus do nothing other than perpetually *undefine* itself and *allow* itself to be *undefined*.

What does not *have* itself and is not the object of *having* can only be *given*. But it can only be given as that which is still ungiven, never presupposed, and not yet written into a statute or constitution. Something is *not* given, *no longer* given or *not yet* given as "right" *with* every giving of a right and above all in the giving of the one "right" there is: the "right" to give rights. The point is, therefore, to reveal in the giving of this one "right" its not-being-given, to dispose over this giving in such a way that it may be given to

others and *other* others who can continue to give it further; the point is to not turn the giving into a given, a possession or a privilege. The point is to give a not-having.

Human rights are neither an ideal nor an idol. They are not readily available, either as representation or as regulative norm, or as a universal rule for action. One cannot grasp them or possess them in order to properly apply and execute them. To the same extent that they are unavailable, their *existence* cannot be denied without already bearing witness to them. The sole human “right” exists only if there are those who care for it and take care of it, who transfer it over to others and thereby maintain it in the movement of giving. Unable to be a right in any conventional sense, the only human right there is is a *praxis*—perhaps the one and only *praxis*—that is first and foremost a linguistic *praxis* for everything that does not have a language, and which is always singular, different, *with* others and *without* the *with* that makes others into one’s *own* others. The one and only human right there is can only be given as something that nobody ever has.

\*\*\*

The text printed here was originally intended for a volume of essays whose authors were each tasked with analyzing one of the concepts that Hannah Arendt brings together in her formulation of the single human right that there is, “the right to have rights.” When this essay on “to have” was submitted, both editors confirmed in an email to the author in July 2015 that “it’s exactly what we were hoping for: argued in a scholarly way, accessible for a general intellectual audience, beautifully written, and at times punchy.” A year and a half later, this estimation had changed into its exact opposite under pressure from the publisher. In January 2017 the editors wrote: “In the end we find ourselves agreeing with Verso that the text does not fit the proposal of the book prospectus to write a book pitched to a general audience.” The reduction of a “general intellectual audience” to a “general audience,” together with all of the attending consequences, was evidently instigated or facilitated by a copy editor who marked up every other sentence of the essay with the stereotypical charge that it was “abstract,” “jargon-y,” or “academic.” She recommended in all earnestness that this essay be stylistically assimilated to the other chapters of the book; she confused the development of a thought with its repetition, suggested that statements that did not sit well with what she considered to be popular opinion be deleted as superfluous, and betrayed in the process that she either did not understand or did not approve of Arendt’s argument about human rights. However one might characterize the politics of a publisher that uses such arguments and techniques, be it anti-intellectual dirigisme or service to the myth of a “general audience,” it can only promote a debilitating practice of conformism, never a political *praxis*. Because the changes demanded by the publisher were unacceptable, and because my request for the text to be printed in the form accepted by the editors went unsupported even by the editors themselves, I withdrew my essay from publication in their volume.

I thank *Philosophy Today* for the asylum it has granted this essay.

---

<sup>i</sup> Hannah Arendt, *The Origins of Totalitarianism*, new ed., with added prefaces (New York: Harcourt Brace & Company, 1979), 296.

<sup>ii</sup> Ibid.

<sup>iii</sup> Ibid., 299.

<sup>iv</sup> Ibid., 292; my emphasis.

<sup>v</sup> Ibid., 295; my emphasis.

<sup>vi</sup> Ibid., 296.

<sup>vii</sup> Jacob Grimm, *Deutsche Rechtsaltertümer*, Bd 2 (491); Leipzig 1899, repr. Darmstadt 1974, I.

<sup>viii</sup> Cited from C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), 140; my emphasis. On the semantics of the concepts of “property” and “propriety,” Macpherson remarks that in the English of the seventeenth century they had the same extension and were “interchangeable” (143).

<sup>ix</sup> John Locke, *Two Treatises on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 287.

<sup>x</sup> Arendt, *The Origins of Totalitarianism*, 301.

<sup>xi</sup> Ibid.

<sup>xii</sup> Ibid.

<sup>xiii</sup> Ibid.

<sup>xiv</sup> Ibid. It would not be very fruitful to try to trace the history of this “*volo ut sis*” in the work of Hannah Arendt before and after the book on Totalitarianism. It is only important to note the tense relation between this and another characterization of love from late Antiquity, one that is used many times by Plotinus and that may have been passed on by

him or his student Proclus to Augustine. Plotinus' formulation, which is often posed as a question and seldom as a statement, defines the one, the good, the beautiful as that which gives what it does not have and is not (e.g. *Enneads* V 3, 15; VI 7, 15). Because the good is not regarded as a *causa sui*, it is very close in proximity to the Augustinian “*ut sis*” cited by Arendt, particularly when Arendt interprets the “*volo*” not as “to want” but as “to wish” and regards those who wish as existence without predicate. More recently, though after Arendt's text, this thought was taken up and elaborated in a very different manner by Heidegger (*Unterwegs zur Sprache* [Pfullingen: Neske, 1959], 192–94; *Zur Sache des Denkens* [Tübingen: Max Niemeyer, 1969], 1–25), Jankélévitch (*Philosophie première* [Paris: Presses universitaires de France, 1954], 187–93), Lacan (*Écrits* [Paris: Seuil, 1966], 618, 691), Blanchot (*L'attente, l'oubli* [Paris: Gallimard, 1962], 112; *La communauté inavouable* [Paris: Minuit, 1983], 71), Jean-Louis Chrétien (*La voix nue* [Paris: Minuit, 1990], 259–74), Derrida (*Donner le temps* [Paris: Galilée, 1991], *passim*).