

Enacting the Right to Have Rights: Jacques Rancière's critique of Hannah Arendt

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Abstract: In her influential discussion of the plight of stateless people, Hannah Arendt invokes the 'right to have rights' as the one true human right. In doing so she establishes an aporia. If statelessness corresponds not only to a situation of rightlessness but also to a life deprived of public appearance, how could those excluded from politics possibly claim the right to have rights? In this article I examine Jacques Rancière's response to Arendt's aporetic account of human rights, situating this in relation to his wider criticism of Arendt's conception of the political. According to Rancière, Arendt depoliticizes human rights in identifying the human with mere life (*zoë*) and the citizen with the good life (*bios politikos*). For, in doing so, she takes the distinction between *zoë* and the *bios politikos* to be ontologically given whereas politics is typically about contesting how that distinction is drawn. For Rancière 'the human' in human rights does not refer to a life deprived of politics. Rather, the human is a litigious name that politicizes the distinction between those who are qualified to participate in politics and those who are not. In contrast to Arendt, Rancière's approach enables us to recognize contests over human rights, such as that of the *sans papiers*, as part and parcel of social struggles that are the core of political life.

Key words: Arendt, bare life, *bios politikos*, citizenship, human rights, *sans papiers* stateless persons, Rancière, right to have rights, undocumented migrants, *zoë*.

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Abbreviated running head: Rancière's critique of Arendt

Enacting the Right to Have Rights: Jacques Rancière's critique of Hannah Arendt

In a moving and much-cited passage of *The Origins of Totalitarianism*, Hannah Arendt observes that the 'rights of man' proved to be illusory when, in the inter-war period, European states were forced to deal with refugees who had been deprived of their citizenship *en masse*. The idea of human rights, which 'assumed the existence of a human being as such', came apart precisely when the world was confronted by 'people who had lost all other qualities and specific relationships except that they were still human' (Arendt 1958, 299). Arendt argues that the plight of stateless people revealed the modern conception of human dignity to be a mere abstraction. In fact, to live as a human outside of political community amounted to a deprived form of existence in which individuals were thrown back on the givenness of their natural condition. In this exceptional situation in which stateless people had nothing left to appeal to but their rights as human beings, they were barely recognizable as human. As a consequence of this experience, Arendt says, we became aware of a primordial human right, a right more fundamental than the rights of justice and freedom: the right to belong to a political community, the right to politics itself.¹

Arendt's analysis of the perplexities of the rights of man is compelling and has provoked a wide debate in contemporary political theory.² However, the problematic she establishes has been rigorously criticized by Jacques Rancière. He argues that Arendt depoliticizes human rights in identifying the human with mere life and the citizen with the good life. Outwith the polity the subject of human rights is, by definition, without politics. Deprived of the rights of citizenship, she has no means of redress, no basis on which she might claim the 'right to have rights.' For Rancière, however, the aporia of human rights that Arendt diagnoses is more a product of the ontological presuppositions on which her analysis relies than it is a defining aspect of the experience of statelessness. Against Aristotle (and Arendt's appropriation of him), Rancière insists that it is a political mistake to deduce a conception of what it means to lead a fully human life from an understanding of the human as a speaking animal. For what counts as (human) speech articulating an injustice and what counts as (animal) voice expressing pain is a political question from the outset.

¹ Thanks to Samuel Chambers, Bonnie Honig, Hans Lindahl, James Ingram, Davide Panagia and the two anonymous referees for commenting on an earlier version of this paper. I am especially grateful to Jean-Philippe Deranty for introducing me to Rancière over dinner at an Italian restaurant on Lygon Street, Melbourne in October 2005. The interpretation of both Arendt and Rancière offered here is particularly indebted to his outstanding scholarship.

² Lyotard 1993; Bernstein 1996; Cohen 1996; Isaac 1996; Michelman 1996; Agamben 1998; Brunkhorst 2000; Isaac 2002; Benhabib 2004; Cotter 2005; Birmingham 2006; Balibar 2007; Menke 2007; Ingram 2008; Kraus 2008; Parekh 2008.

This leads Rancière to reject Arendt's conception of the political as world-disclosing public action through which individuals reveal their humanness (as singularity) in the presence of equals. Instead, he conceives the political in terms of the staging of a dissensus in which those who are deemed to lack speech make themselves heard as political animals. Consequently, for Rancière, the human in human rights does not necessarily correspond to a form of life, bare or otherwise. Rather, the human is a litigious name that can be invoked to assert a fundamental equality. Arendt understands (ordinary) rights as a precondition for politics since they institutionalise an artificial equality that is constitutive of the public sphere. This is why the right to have rights amounts to the right to politics. For Rancière, in contrast, politics is fundamentally about contesting political exclusion by *enacting* equality. Thus, whereas Arendt views 'the human' in human rights ontologically as a life deprived of politics, Rancière views 'the human' polemically as the dismissal of any difference between those who are qualified to participate in politics and those who are not.

In the first section of the paper, I explain how Aristotle's understanding of the relation between the human and the political informs Arendt's discussion of the aporia of human rights. In the second section I examine Rancière's criticism that Arendt depoliticises human rights due to her Aristotelian presuppositions. While Arendt explicitly invokes Aristotle to characterize the deprivation of stateless people of both speech and polity, I show that her appropriation of Aristotle is by no means as straightforward as Rancière suggests. Nonetheless the opposition Arendt sets up between world-poor refugees and world-forming citizens reproduces the same difficulties that beset more familiar Aristotelian approaches. For, although she eschews any notion of human nature, Arendt nonetheless presumes a particular conception of human flourishing that is associated with the existential achievement of public appearance. In the final and concluding sections of the paper I explain how Rancière reconceptualises the relation between the human and the political in order to understand the politics of human rights in strategic rather than existential terms. I argue that Rancière provides a more adequate basis for understanding the politics of human rights (such as that of the *sans papiers*) than is afforded by Arendt's conception of the political. From an Arendtian perspective, the struggle to claim the right to have rights must be understood as a struggle for liberation. Such a struggle aims to win civil rights as the condition of possibility for an authentic politics oriented to the actualization of freedom. However, it could not in itself amount to political action proper. In contrast, Rancière enables us to see contests over human rights as part and parcel of social struggles that are the core of political life since they entail the enactment of equality within conditions of inequality.

The Rights of Political Animals

Aristotle famously characterizes humans as animals possessing speech. Like all animals, humans have voice (*phonē*), which enables us to express pain or pleasure and to communicate these feelings with each other. Humans are different from other animals, however, in also possessing language (*logos*), which enables us to distinguish between what is useful and what is harmful, between the just and the unjust. It is by virtue of being speaking animals, then, that human beings are also political animals. By this Aristotle means that we are animals whose natural impulse is to live in political community and whose ends can be fully realized only within the shared enterprise of the polity. In the first instance, a human community enables cooperation to better meet the needs of its members for food, shelter and so on. In this way it sustains mere life (*zoē*). But, for Aristotle, human communities are properly political only to the extent that they enable their members to live a good life by participating in public affairs for the benefit of the whole (*bios politikos*). Aristotle thereby articulates an account of the relation between the human and the political that resonates in contemporary political theory. The distinction between voice and language establishes what it is to be human in terms of a shared capacity that is *given*. By virtue of this definition of the human as speaking animal, however, what it means to be human is further characterized as a *potential* which can be more or less fully realized. This is cashed out in terms of the second distinction between mere life and the good life. As Aristotle puts it, ‘Man, when perfected, is the best of all animals; but if he be isolated from law and justice he is the worst of all’ (Aristotle, *Politics* 1.2). While our nature as speaking animals is given, our nature as political animals is a potential that can only be realized in a properly constituted political community (see Arendt 1998, 22-28).

Arendt draws on this Aristotelian understanding of the relation between the human and the political to describe the perplexities of the rights of man. According to Arendt (1958, 296) the world became aware of a right to have rights when it was confronted in the interwar period by a new category of human beings who had been deprived *en masse* of their citizenship and were forced to live outside all legal structures. The predicament of stateless people was not simply that their human rights had been violated. Rather, they found themselves in a situation of rightlessness. According to the natural law tradition, we are supposed to possess universal human rights by virtue of our common human nature and irrespective of our membership in particular political communities. The legitimacy of the state rests on the extent to which it recognizes these universal moral rights and secures their enjoyment within a determinate political community. Yet the predicament of stateless people

seemed to show the opposite. It was only by virtue of their citizenship that individuals could be said to have any rights at all. In the modern world, to be forced out of political community was effectively to be expelled from humanity. Those deprived of their home and legal status in one state found themselves in concentration camps in the states to which they fled, including states that sought their legitimacy in a commitment to the rights of man.

Arendt describes the experience of rightlessness in terms of the loss of a place in the world in which one's opinions might be significant and one's actions effective (Arendt 1958, 296). This twofold deprivation corresponds to the two features in terms of which Aristotle distinguishes human nature. Firstly, as political animals, human beings found themselves in a situation in which they had lost 'all human relationship' (Arendt 1958, 297). The loss of home suffered by the rightless entailed the 'loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world' (Arendt 1958, 293). While there is a long history of forced migrations of human beings, what was unprecedented about the situation of stateless people was that there was nowhere they could go to in order to establish a new home. No other country would have them. This was a 'problem of political organization' stemming from the international system of states and the severe restrictions that sovereign states placed on migration (Arendt 1958, 294). In this context, to be deprived of citizenship by one nation-state is 'identical with expulsion from humanity altogether' (Arendt 1958, 297).

Secondly, as speaking animals, human beings found themselves in a situation in which they had lost the 'relevance of speech' (Arendt 1958, 297). This occurred firstly in being deprived of legal protection within one's own state. For Arendt, loss of legal personhood coincides with the loss of the relevance of speech since she understands personhood in its Roman sense as 'persona': an artificial mask assigned to each member of the polity that establishes equality and enables one's 'voice to sound through' and without which one is a 'politically irrelevant being' (Arendt 1990, 106, 107). Furthermore, since international treaties afford legal protection only to citizens of other signatory states, to lose one's legal status within one's own country is effectively to be deprived of legal status in any other country. As Arendt points out, stateless people were even worse off than people detained as enemy aliens during the war since the latter were entitled to certain protections by virtue of international agreements. Consequently, to lose one's legal personhood is to find oneself 'out of legality altogether' (Arendt 1958, 294).

Arendt's analysis of the perplexities of the rights of man therefore relies on the Aristotelian presupposition that it is only within political community that human beings can

realize a fully human life by distinguishing themselves through public action. This provides the background to her critique of the modern conception of the human that she associates with the discourse of human rights, according to which the dignity of man is rooted in a human nature that is supposed to exist independently of history. Arendt rejects any notion of human nature understood as an ahistorical essence of the human. As she often repeats, there is no such thing as Man in the singular; there are only men in the plural, particular and distinct individuals located within time and place. To the extent that Man in the singular corresponds to any experience it would be to mere life, a life deprived of public appearance. As Arendt puts it:

The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general – without a profession, without citizenship, without an opinion, without a deed which to identify and specify himself – and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance. (Arendt 1958, 302).

In being deprived of political community, stateless people are returned to a state of nature in which they are thrown back on their mere givenness, their absolute difference. This state of nature is characterized by sheer difference, inequality and domination.

According to Arendt, it is only by virtue of political organization that an artificial equality is established through mutual recognition of legal personhood (Arendt 1958, 301). Moreover, this artificial equality (together with distinction) constitutes ‘the basic condition of both action and speech’ (Arendt 1998, 175). As Balibar (2007, 734) puts it, political institutions ‘produce a “second nature”, which is probably preceded by no actual nature but only a virtual indeterminate possibility.’³ Arendt’s analysis of the perplexities of the rights of man thus presupposes the conception of the political that she articulates more fully in *The Human Condition*. Here she argues that the dignity of politics depends on the constitution of a space of appearances in which individuals can realize their humanity through public action and speech. She writes approvingly of the Athenian view of politics as agonistic, involving a struggle to achieve excellence by participating in a public contest among equals (*bios politikos*). The Greek concept of *praxis* provides an insight into a basic mode of being in the world through which human beings overcome the futility of mere biological existence (*zoē*) and the meaninglessness of instrumental rationality. Through a struggle for public

³ Arendt thus eschews the concept of human nature to the extent that she associates this with natural determination. Yet (as will be shown in the following section), contrary to Serena Parekh (2008), she remains an ‘essentialist’ to the extent that she singles out one aspect of the human condition (plurality) and the corresponding activity of *praxis* as essential for actualizing freedom and hence for realizing a fully human life.

recognition, individuals both distinguish themselves in their singularity and disclose a shared social reality (see Ingram 2006; Deranty & Renault, 2009).

For Arendt politics properly concerns the constitution and preservation of a space of appearances in which individuals can act and speak. For, as she puts it, ‘A life without speech and without action...is literally dead to the world; it has ceased to be a human life because it is not longer lived among men’ (Arendt 1998, 176). This condition of being ‘dead to the world’ is precisely the predicament in which stateless people find themselves. Moreover, this deprivation was the first step in the total domination of the person that preceded her annihilation in the death camps of Nazi Germany (Arendt 1958, 451). With her metaphor of political community as a space of appearance Arendt provides a counter vision to the horror of the death camps, which she describes as holes of oblivion (see Dietz 2000). The concept of the political, on this account, refers to the mode of acting in concert through which this space of appearances is brought into existence and the commonness of the social world is disclosed. While the political depends on institutions for its preservation, the space of appearances is primordially dependent on political action: it is there wherever men and women come together to act and speak in public but it begins to disappear with each individual’s withdrawal from the public realm (Arendt 1998, 199).

As Etienne Balibar (2007) discusses, Arendt’s critique of human rights is aporetic because she combines an extreme form of institutionalism with a philosophy of praxis. Arendt draws on Burke to critique the idea of human rights as grounded in an abstract conception of the human. For Arendt, there is no such thing as an unchanging human nature, a universal essence that commands moral respect. By nature human beings are fundamentally different and unequal and we can only respond to this difference with an attitude of love or gratitude. In Arendt’s view, we become equal only as members of a political community and it is only by virtue of this artificial equality that respect for persons, regardless of who they are, can be expected. Yet Arendt also radicalizes Burke’s critique of human rights. For Burke, it is only by virtue of participating within historical institutions that we can be said to have any rights at all. Arendt argues further that it is only by virtue of historical institutions that we are human. As Balibar puts it:

Arendt’s idea is not that only institutions create rights, whereas, apart from institutions, humans do not have specific rights, only natural qualities. Her idea is that, apart from the institution of community...*there simply are no humans*...Her idea of rights is indistinguishable from the construction of the human, which is the immanent result of the historical invention of (political) institutions. Humans simply *are* their rights. (Balibar 2007, 733 – emphasis in original)

But Arendt also invokes the right to have rights as a primordial human right: the right never to be excluded from political community. This leads to a puzzle: if human rights can be said to exist only insofar as they are the product of political association, what is the ground of the right to have rights? If to be deprived of citizenship is to be rightless, on what basis might a rightless person claim a right to have rights?

As Frank Michelman (1996) discusses, Arendt's analysis rules out understanding the right to have rights as a pre-political moral right to a set of legal rights. Rather, the right to have rights is best understood as proto-political. It refers to a fundamental presupposition without which politics is not possible and the violation of which evinces an anti-political politics. Indeed, Arendt defines the newly recognized crime against humanity as the violation of precisely this right. Rather than morality or law, then, it seems that the right to have rights can only be grounded in praxis. In contrast to the ideology of nation-states and social contract theory, the source of the legitimacy of institutions is not to be found in the extent to which they institute human rights. Rather, the consent from which political institutions draw their legitimacy depends on the anarchic principle of *isonomia*, which means 'not to be subject to the necessity of life or the command of another and not to be in command oneself' (Arendt 1998, 23; see also Arendt 1990, 30-32). As Balibar (2007, 725) elaborates, Arendt's thematization of the relation between equality and politics in terms of 'isonomy' is in tension with her institutionalist perspective. Arendt does not follow Aristotle in conceiving of the citizen as one who partakes in ruling and being ruled, who knows both how to give orders and to take orders from others. Rather, the notion of isonomy comes from the myth of a Persian prince (recounted by Herodotus) who defines it as a 'political regime whose principle is neither to command or obey, neither to take or give orders' (Balibar 2007, 725 – see note 22 in Arendt 1998, 32). Isonomy, by definition, is an-archic: it lacks a principle of authority. In this way, Balibar argues, Arendt introduces an antinomy within her conception of the political. Isonomy is enacted through civil disobedience, which recreates the condition of free consent from which the law derives its legitimacy (Balibar 2007). If the right to have rights can be said to have a ground at all it is in praxis and the space of appearances that emerges contingently when men in the plural get together to act in concert. This space of appearances is, fundamentally, prior to the establishment of institutions.

On the one hand, Arendt insists that the human being as such does not exist independently of political institutions: we only become human by virtue of the legal status of personhood. On the other hand, however, the legitimacy of law relies on the human potential for speech and action that is prior to political institutions. This aporia emerges within Monika

Krause's (2008) analysis of the situation of undocumented migrants in Western Europe. Following Arendt, Krause argues that undocumented migrants (*sans papiers*) are both victims of total domination and privileged political actors. Deprived of legal and political status they are vulnerable in all aspects of their lives and denied the 'fundamental human capacity to act' (Krause 2008, 335). Despite being victims of total domination, however, Krause (2008, 341) argues that the migrant also has the potential to be a political actor 'whose public appearance can be explosive and liberating' because he 'embodies the contradictions of the arrangements that exclude him.' In Krause's view, such political action is exemplified by the movement of the *sans papiers* in France who can be understood as conscious pariahs who 'translate their status in political terms'. In occupying public space and drawing attention to their presence within their host societies, the *sans papiers* can be understood to claim the right to have rights. Krause interprets their struggle in Arendtian terms as the constitution of a shared world through acting in concert. 'By leaving the clandestinity forced upon them and entering the public domain, they have, as individuals, regained a feeling of existence' (Krause 2008, 343).

Krause's analysis is insightful at the empirical level. However, it is question-begging at the theoretical level precisely because it relies on an Arendtian perspective, which cannot account for how the right to have rights might be claimed by the rightless. If the *sans papiers* really are victims of total domination how can they overcome this situation to become privileged political actors? How is this passage possible? In Rancière's (2004, 306) view, this act of translation is a conceptual impossibility within the problematic that Arendt establishes. However, the dichotomy according to which the *sans papiers* would either be reduced to mere life or else realise their humanity through acting in concert does not correspond to reality. Rather it results from the vicious circle within which Arendt's conception of the political is caught.

The Vicious Circularity of Arendtian Politics

According to Rancière, Arendt constructs an ontological trap by insisting that human rights must attach either to the human as such (construed as mere life) or to the citizen (construed in terms of the *bios politikos*). For, if human rights are reducible to the rights of citizenship, they are redundant: they are the rights of those who already have rights. On the other hand, if they attach to the human as such, independent of her membership in a political community, they amount to nothing: they are the 'mere derision of right', the 'rights of those who have no rights', the 'paradoxical rights of the private, poor, unpoliticized individual' (Rancière 2004, 298). Rancière acknowledges the contemporary resonance of Arendt's critique. However, he

points to the politically pernicious upshot of conceptualizing human rights in this way. For, as he puts it, ‘the Rights of Man do not become void by becoming the rights of those who cannot actualize them’ (Rancière 2004, 307). Instead, they become the rights of others, the humanitarian right to intervene on behalf of abject humans. As such, Arendt’s ontological trap leads, at best, to a depoliticized account of human rights and, at worst, to the justification of an anti-political humanitarian politics.

Arendt’s depoliticization of human rights is a consequence of what Rancière (2001, para 3) calls the ‘vicious circle’ of her concept of politics, according to which a way of life proper to politics is deduced from the conception of the human as a speaking animal. Such a deduction is impossible, Rancière (2003a) argues, because the apparently ‘common capacity’ of speech that distinguishes human beings is ‘split up from the very beginning.’ This is evident when, having defined humans as speaking animals, Aristotle goes on to distinguish between those human citizens who possess language and those less-than-human slaves who, while capable of understanding the language of their masters, do not possess language. What it means to be a speaking animal and who is recognized as such is therefore contestable from the outset. While the capacity for speech might be naturally given, recognition of this capacity is socially contingent. For in order to recognize the sign of the logos that separates human from non-human animals, another sign is required (Rancière 2001, para 23). In other words, possession of language is a necessary condition for distinguishing, in the first place, between those who possess language and those who do not. The split that Rancière discerns in the apparently ‘common capacity’ of speech thus opens up between speech and the account that is made of speech: ‘the account by which a sonorous emission is understood as speech, capable of enunciating what is just, whereas some other emission is merely perceived as a noise signalling pleasure or pain, consent or revolt’ (Rancière 1999, 23). Rancière points out that political exclusion typically entails non-recognition of particular categories of people as subjects qualified to speak, the inability to understand the claims of social subordinates as speech. Conversely, politics typically involves a struggle by subaltern groups to be seen and heard as speaking subjects within a social order that denies that they are qualified to participate in politics.

Because ‘this “common” sensory quality’ of speaking ‘is already the scene of a dissensus’, Rancière (2003a) argues that it is impossible to deduce a way of life proper to politics from a conception of the human as a speaking animal. In claiming to do so, Arendt’s definition of politics constitutes a vicious circle. For she posits the distinction between language and voice as the underlying principle from which to generate her conception of the

political when this distinction is, in fact, the fundamental object of politics. In conceiving the political in terms of the disclosure of a common world through the striving for distinction by speaking animals, Arendt understands politics as the activity through which individuals realise what it is to be human. A vicious circle emerges because, as Rancière (2003) puts it, Arendt thereby identifies politics with the form of life of those who are already destined for it, i.e. public man (who usually turns out to be property-owning males) who is taken to be world-constituting. Conversely, the way of life of those subject to economic necessity (workers, women, etc.) is by definition un-political; it is a deprived form of existence since they are world-poor. Those who are not liberated from the struggle to sustain life appear as a threat to the public sphere since they would appropriate the realm of freedom to satisfy their natural needs, reducing politics to collective housekeeping.

In some respects, Arendt's appropriation of Aristotle is subtler than Rancière acknowledges. For instance, her critique of human rights seems to turn precisely on an awareness of the social contingency of being recognised as human. Indeed, she observes that the 'right to have rights' would previously have been 'thought of as a general characteristic of the human condition which no tyrant could take away' because the loss of this right corresponds to the two features in terms of which Aristotle distinguishes the human (Arendt 1958, 297). Arendt, then, does not deduce her conception of the political from a political anthropology of the human as a speaking animal in any straightforward way. Indeed, in a passage of *The Human Condition*, she seems to reverse Aristotle's formula, deducing the impulse to speak from our nature as political animals. 'If men were not distinct', she argues 'they would need neither speech nor action to make themselves understood. Signs and sounds to communicate immediate, identical needs would be enough' (Arendt 1998, 175-176). Arendt would no doubt concur with Rancière's (2001, para 4) declaration that 'politics cannot be declared on the basis of any pre-existing subject' on at least two grounds. First, following Nietzsche, Arendt relies on an expressivist conception of the subject, according to which the identity of an agent does not precede its actions but rather is disclosed in its act. In other words, the subject (whether singular or plural) is an emergent rather than an antecedent property of action. Second, for Arendt (1994, 408, 440), human nature is politically relevant only insofar as it is known historically. Human beings do not have an essence in the sense that other things do since 'their "nature" cannot be separated from the conditions of their lives and the way in which they appear to one another' (Hinchmann & Hinchmann 1984, 184). As Arendt (1958, 455) writes, man's "nature" is only "human" insofar as it 'opens up to man the possibility of becoming something highly unnatural, that is, a man.'

While Arendt debunks the idea of human nature, however, she nonetheless insists that there are certain universal conditions that shape human experience (see Hinchmann & Hinchmann 1984). In doing so, she establishes ontological grounds for her distinction between political and non-political modes of activity. In particular, while the activity of labour corresponds to condition of *life* and the need to sustain and reproduce it, the activity of politics corresponds to the condition of *plurality* and the impulse to distinguish our selves. This enables Arendt to distinguish between political, unpolitical and anti-political forms of struggle. In political struggle individuals strive to distinguish their selves and thereby realise their humanity in a public sphere constituted by a community of equal and distinct persons (see Deranty & Renault 2009, 44f.). But to participate in this higher form of struggle one must first be liberated from necessity, from the struggle to sustain and reproduce mere life in the obscurity of the private sphere. In grounding these two forms of struggle on the ontological conditions of life and plurality, Arendt is able to insist that they must be kept separate. With this move, the political becomes an evaluative concept, so that Arendt can characterize the mixing of these two kinds of struggle as anti-political. When the concerns arising from the ontological condition of life and the struggle to sustain it enter into the struggle though which human plurality is disclosed, it degenerates into an anti-political struggle between those who are poor (not just in wealth but in world) and those world-forming citizens who share the proper attitude of care for the polis (Arendt 1990: 60f.). The political is eclipsed by the social; plurality is flattened out by the preoccupation with the public gratification of identical needs and wants; collective life is threatened with futility and meaninglessness (see Schaap 2010).⁴

It is by virtue of its ontological grounding, then, that Arendt's conception of the political constitutes a vicious circle, according to Rancière. It is circular since to participate in politics one first must be recognized as a speaking animal, someone who is liberated from the necessities of life so that one's action is no longer determined by nature. However, in order to be recognized as a speaking being one must be a participant in politics, acting and speaking within a community of equals. This circularity is vicious since it tends to naturalize a social division between those who are qualified for political life and those who are not, those who have time for politics and those who do not (see Rancière 2003b). For instance, it seems to destine women and workers for a life of mere existence by relegating almost all of their activity to the private sphere of the household or economy. While everyone has the capacity for action and speech, not everybody makes something of this capacity. Moreover, when they

⁴ As we will see, far from constituting a threat to the political, for Rancière, this social struggle is the core of politics.

do act politically, those preoccupied with sustaining life are likely to act in the wrong way, approaching politics with the mentality of labour or work.

Consequently, Arendt's pure conception of politics serves to reify the distinctions between the political and the social, public and private, freedom and necessity that political action typically contests (see also Pitkin 1981; Clarke 1993). For she presupposes the 'partition' between political and non-political modes of being that is precisely what is always at stake in politics. As Rancière puts it:

...the deduction of politics from a specific world of equals or free people, as opposed to another world lived out of necessity, takes as its ground precisely the object of its litigation. It thus renders compulsory a blindness to those who 'do not see' and have no place from which to be seen. (Rancière 2001, para 26)

Rancière detects this blindness in Arendt's discussion of both the poor and the stateless. In her controversial discussion of the social question in *On Revolution*, Arendt approvingly refers to John Adam's insight that the wrong suffered by the poor is primarily their political deprivation (social invisibility) rather than their economic deprivation (unmet need). In this context, she remarks:

Obviously, it was the absence of misery which enabled John Adams to discover the political predicament of the poor, but his insight into the crippling consequences of obscurity, in contrast to the more obvious ruin which want brought to human life, could hardly be shared by the poor themselves... (Arendt 1990, 69)

Pointing out that the struggles of the poor have always concerned their mode of visibility, Rancière (2001, para 26) suggests that Arendt's dismissal of the ability of the poor to recognize their own political predicament is the direct consequence of the vicious circularity of her conception of politics. In Arendt's view, the poor can only be dimly aware of the joy of politics of they have deprived; only those who are already qualified for politics can appreciate what the poor are missing out on. Yet it is precisely this lack of understanding that disqualifies the poor from political life in the first place.⁵

Rancière ventures a similar observation about Arendt's inability to recognize the political agency of stateless people. According to Arendt (1958, 293), the plight of stateless people is 'not that they are not equal before the law, but that no law exists for them; not that they are oppressed, but that nobody wants to oppress them.' Rancière (2004, 299) takes issue with the 'plainly contemptuous tone' of Arendt's statement, which suggests that these people were 'not even worthy of being oppressed.'⁶ Rancière's objection to Arendt's 'tone' in this

⁵ Any 'counter-publics' that the poor might constitute would not count as properly political on Arendt's analysis since they would be concerned with liberation rather than freedom. As such, the form of togetherness that could be realized there would be based on fraternity rather than the properly political relation of friendship.

⁶ Indeed, Arendt suggests that even those slaves in Ancient times who Aristotle did not count as human were in, in fact, in a relatively better situation than stateless people since they had not become entirely superfluous. For 'even slaves still belonged to some sort of human community; their labour was needed, used, and exploited, and

passage bears a striking similarity to criticisms raised against Arendt's report of the Eichmann trial during her own life time. Like these earlier critics, Rancière, together with Deranty and Renault (2009, 44), misconstrues Arendt's tone, which is one of bitter irony rather than contempt.⁷ Nevertheless, Rancière is astute in his observation that Arendt's characterization of statelessness as an exceptional situation in which individuals find themselves 'beyond oppression' amounts to a state 'beyond any account in terms of conflict and repression, or law and violence' (Rancière 2004, 299). The vicious circle of Arendt's concept of politics re-emerges here. For the ontological grounding of the distinction between *zoë* and the *bios politikos* within Arendt's analysis of human rights (exemplified in the opposition between the world-poor refugee and the world-forming citizen) undercuts the possibility of thematizing the struggle by stateless people for their human rights (such as that of the *sans papiers*) as political. If statelessness corresponds not only to a situation of rightlessness but also to a life deprived of public appearance, how could those excluded from politics publicly claim the right to have rights, the right to politics?

Enacting the right to have rights

In 'On the Jewish Question', Karl Marx (1977) contrasts the social reality of the human in civil society as egoistic property-holder to the political illusion of the citizen as free and equal member of the state. As citizen of the state, man is 'an imaginary participant in an imaginary sovereignty, he is robbed of his real life and filled with an unreal universality' (Marx 1977, 46). In contrast, it is 'man as bourgeois who is called the real and true man' (Marx 1977, 54). Consequently, the rights of man turn out to be 'nothing but the rights of the member of civil society, i.e. egoistic man, man separated from other men and the community' (Marx 1977, 52). In terms of what Rancière (1999, 83) calls the 'metapolitical' perspective of Marxism, 'politics is the lie about the reality that is called society.'⁸ The ideal of the citizen as free and

this kept them within the pale of humanity. To be a slave was after all to have a distinctive character, a place in society – more than the abstract nakedness of being human, nothing but human' (Arendt 1958, 297). Beltran (2009, 603-604) makes a similar point to the status of undocumented migrant labourers in the USA.

⁷ Arendt's reply to Rancière on this point would likely be much the same as she gave when this criticism was put to her by Günter Gaus in an interview for German television: 'That the tone of voice is predominantly ironic is completely true. The tone of voice in this case is really the person. When people reproach me with accusing the Jewish people, that is a malignant lie and propaganda and nothing else. The tone of voice, however, is an objection against me personally. And I cannot do anything about that' (Arendt 1994).

⁸ Rancière distinguishes between three forms of political philosophy, which are neatly summarized by Luka Arsenjuk (2007): 'archi-politics (Plato; the attempt to tie politics to a communitarian rule, i.e. to subsume politics under the logic of a strict and closed distribution of parts, a social space which is homogeneously structured and thus leaves no space for politics to emerge); para-politics (Aristotle; the attempt to reduce political antagonism to mere competition, negotiation, exercise of an agonistic procedure, i.e. to draw "the part of those who have no part," which is the subject of politics, into the police order as just one of the many parts); and

equal member of the political association is shown to be ideological, an illusory political equality that masks the reality of social inequality. Rancière points out that what he calls Arendt's 'archipolitical' critique of human rights inverts Marx's metapolitical critique.⁹ For Arendt, it is not the citizen but the human as such that is illusory, a mere abstraction. For it is only by virtue of participating in politics that a shared reality is constituted. When deprived of the space of appearances, confined to mere social existence, one loses a sense of the reality both of one's own existence and of the common world. Because she presumes that rights must 'belong to definite or permanent subjects' Arendt is led to affirm that the only 'real' rights are those enjoyed by the citizen and guaranteed by the state and to deny 'the reality of struggles led outside the frame of the national constitutional state' (Rancière 2004, 306).

What unites Marx's and Arendt's reciprocal critique of human rights is their shared assumption that the political must 'have one and only one principle' (Rancière 2006, 301). Consequently, they each seek to resolve the duality of man and citizen by opposing illusion and reality, the abstraction of man to the reality of the citizen and vice versa. On the one hand, for Marx, the true subject of rights is bourgeois man while the rights of citizenship only serve to mask the reality of social domination. On the other hand, for Arendt, the true subject of rights is the citizen while the discourse of human rights obfuscates the fact that it is only by virtue of our membership in a political community that we have any rights at all. For Rancière, in contrast, the subject of the rights of man does not coincide with any determinate subject. Rather, political subjects are 'always defined by an interval between identities, whether these identities are determined by social relations or juridical categories' (Rancière 2006, 301). The subject that claims its human rights emerges in the interval between the identities of citizen and human, which are afforded by a socio-legal order.

Rancière describes this process of 'subjectivization' through which the subject of human rights emerges in an ingenious formulation. Following Arendt's analysis, the Rights of Man must belong either to 'those who have no rights' (the human as such) or to 'those who have rights' (citizens). Instead, Rancière (2004, 302) suggests 'the Rights of Man are the

meta-politics (Marx; the understanding of political antagonism as a displaced manifestation of "true" antagonism, which is socio-economic, i.e. politics that can only happen with the promise of its self-abolishment, the destruction of the political theatre that is necessary for the direct administration of the socio-economic sphere).⁹

⁹ Given Arendt's appropriation of Aristotle and her hostility to Plato, Rancière's characterization of Arendt's position as archi-political is surprising. Why doesn't he see her political philosophy as 'para-political'? I think Rancière sees Arendt as archipolitical due to her 'pure' conception of the political and her insistence on grounding the distinction between the social and the political in an ontological distinction rather than recognizing this distinction as inherently political. Consequently, for Arendt as for Plato, what threatens the political is the mixing of functions of which the social is emblematic (making public what ought to be a private concern). It is with this move that Arendt's political philosophy becomes complicit with the logic of police.

rights of those who have not the rights that they have and have the rights they have not.’ On this account the subject of human rights emerges through political action and speech that seeks to verify the existence of those rights that are inscribed within the self-understanding of the political community. In doing so, political subjects demonstrate the *reality* of both their *equality* as speaking animals and of their *inequality* within the social order.

From a ‘Rancièrian perspective’, then, the struggle of the *sans papiers* is properly understood in terms of this process of subjectivization. On the one hand, the *sans papiers* demonstrate that they have not the rights that they have. They do not enjoy the rights that they are supposed to have according to the various human rights treaties to which France is a signatory. By publicizing their political exclusion, the *sans papiers* draw attention to their plight and the ways in which they are denied the same universal human rights from which the French state claims to derive its legitimacy. On the other hand, they demonstrate that they have the rights that they have not. They demonstrate their equality as speaking beings despite being deprived of legal personhood. The *sans papiers* enact the right to have rights when they speak *as if* they had the same rights as the French nationals they address. They occupy a church to draw attention to their economic participation within French society rather than remaining unseen and unheard on threat of deportation. Instead of hiding from the police they turn up to police head quarters and say ‘we are the *sans papiers* of Saint-Bernard and we have business in this building’ (Madjiguène Cissé cited in Krause 2008, 343).

Although Rancière’s conception of *praxis* resembles that of Arendt in significant respects, it differs fundamentally in terms of its underlying presuppositions about the relation between the human and the political and of equality as a condition of possibility for politics. As we seen, Arendt’s aporetic analysis of human rights makes it difficult to account for how stateless people might claim the right to have rights. For Arendt, politics is possible only within a public sphere in which individuals already recognize each other as equal and distinct and this is precisely what stateless people are deprived of. The equality that is a condition of possibility for politics is the achievement of organization, whether institutionalized in the rights of citizens or spontaneously recognized within revolutionary councils. Where conditions of inequality prevail there can only be a struggle for liberation (in which action is subordinated to the purpose of freeing oneself from domination) rather than an authentic politics (in which action is an end in itself) (Arendt 1990, 29).

Rancière, in contrast, does not understand the political in terms of the disclosure of a common world from a struggle for distinction among co-equals. Reciprocal recognition of equality is not a precondition for politics as in Arendt (nor is it an end to be pursued through

politics). Rather, equality is the axiom of politics: what gives rise to politics is the assumption of an equality of anyone with everyone. Consequently, politics paradigmatically entails the enactment of equality in a situation of inequality. The political is constituted when those who are not qualified to participate in politics presume to act and speak *as if* they are. The political is, as Rancière (1992, 59) puts it, the ‘field for the encounter between [politics] and [police] in the handling of a wrong’. *Police* is concerned with the distribution of the sensible; it is the account that is made of speech within a social order. As such, it involves a parcelling out of the terms of political discourse, the distribution of the roles and speaking positions in terms of which one can participate in public discourse (Rancière 2001: 20). *Politics*, contrast, always disrupts police by ‘supplementing it with a part of the no-part identified with the community as a whole’ (Rancière 2001: 21). If police is concerned with the regulation of populations by assigning subjects to their proper place within the social order, politics always involves the subjectivization of an agent who makes a claim to participate in an order in which it has no part.

The wrong that is staged in the encounter between politics and police is thus the original distinction between speech and the account of that is made of speech that founds the social order. As such, the political does not refer to the disclosure of commonality from a plurality acting in concert. Rather the political refers to the manifestation of commonality through the staging of a dissensus. Politics happens when a subject emerges through the meeting of the logic of police and the logic of equality. A politics of human rights does not happen, for instance, when a determinate collectivity of humans make a claim to be included as citizens of particular democratic state. Rather, it comes about when a nation of citizens cause the *sans papiers* to exist as an entity (cf. Rancière 1999, 11). As Monika Krause observes, the *sans papiers*’ claim is not couched in terms of an identity that exists independently of the wrong that they seek to bring to recognition:

...they define themselves not by having fled as ‘refugees’, not by having come in as ‘immigrants,’ not even by moving as ‘migrants’ but by the mere fact that they are in France without the required documents for residence and work...Less perhaps than any other group, can they be incorporated via a model of identity politics. Their status is purely imposed by the state. They ask not for recognition of their status, but for the end of their identity. (Krause 2008, 342)

In Rancière’s terms, the entity of the *sans papiers* is the part that has no part within the political community. They *have no part* since, lacking documents, they have no right to reside within the country; they *are a part* since their designation as undocumented migrants establishes the terms according to which they are subject to regulation as a population within the state. But more than this, the part that has no part is the political actor *par excellence* since

it is through its struggle for appearance that it emerges as an entity that cannot be accommodated within the prevailing social order and yet demands to be. As such it fundamentally challenges the terms of political association. Through enacting their human rights, the *sans papiers* ‘who have no right to be counted as speaking beings make themselves of some account’ (Rancière 1999, 27).

While Rancière rejects the Aristotelian move of deducing a way of life proper to politics from a conception of the human as a speaking animal, then, he nonetheless develops his conception of politics from an understanding of the human as a creature who speaks. More precisely he claims that ‘humans are political animals because they are literary animals: not only in the Aristotelian sense of using language in order to discuss questions of justice, but also because we are confounded by the excess of words in relation to things’ (Rancière 2000, 115). What distinguishes Rancière’s conception of humans as literary animals from that of the human as speaking animal is his underlying critique of anthropocentrism (Chambers 2005, para 32f.). As literary animals we are political not because we possess language but because there is always an excess of words. Due to this excess of words it is possible to contest the distinction between speech and the account that is made of speech on which every social order rests. As Rancière (1999, 37) puts it, ‘the modern political animal is first a literary animal, caught in the circuit of a literariness that undoes the relationships between the order of words and the order of bodies that determine the place of each.’

As literary animals, humans are ‘capable of embracing a distance between words and things which is not a trickery, but humanity; a being capable of embracing the unreality of representation’ (Rancière 2007, 51).¹⁰ This unreality of representation is a condition of possibility for politics. Rancière’s point here, I think, is to contrast the rationality of political action to that of political philosophy. Whereas both Arendt and Marx, presuppose that the rights of man must correspond to a determinate subject, human beings engaged in political action (such as the *sans papiers*) rely on the excess of words in order to contest the terms of belonging within a particular social order. It is precisely the distance between the litigious names of the human and the citizen and that of the populations to whom they are supposed to correspond that enable a politics of human rights. It is for this reason that Rancière (2004, 305) agrees with Arendt that there ‘is no man of the Rights of Man’. Yet whereas Arendt still requires some notion of the human as speaking animal from which to derive her conception of the political, Rancière can conclude that ‘there is no need for such a man’ (Rancière 2004,

¹⁰ This interpretation is true to the spirit though not to the letter of Rancière’s text in which he refers not to humans but democratic man and not as a literary animal but a poetic being.

305). For the human of human rights need only exist as a representation or name, according to which it ‘has a positive content that is the dismissal of any difference between those who “live” in such or such sphere of existence, between those who are or are not qualified for political life’ (Rancière 2004, 304).

Is Rancière a closet Arendtian?

For sympathetic readers of Hannah Arendt in the English-speaking world, the Arendt that Jacques Rancière criticizes sometimes seems unfamiliar. For instance, it is startling to hear the same Arendt (1994) who rejected all forms of Platonism because she wanted to look at politics ‘with eyes unclouded by philosophy’ described as advocating an ‘archi-political’ philosophical position, which is exemplified in Rancière’s schema by none other than Plato. This unfamiliar image that Rancière presents of Arendt is due, in part, perhaps to the different contexts within which Arendt has been received in North America and France. Much of Rancière’s criticism rehearses a familiar critique of her distinction between the social and the political that was advanced by American scholars such as Hanna Pitkin (1981) and Sheldon Wolin (1990). Yet Arendt’s thought has nonetheless always been viewed by most of her critics as an important resource for radical democratic thought (see Hauptmann 2004).¹¹ Following hints given in Rancière’s own texts, the context in which Arendt has been received in France appears to have been somewhat different. In particular, Arendt was appropriated by thinkers associated with the ‘new French thought’ of the 1980s, such as Alain Renaut and Luc Ferry, with whom Rancière takes issue (see Lilla 1994; Kritzman 1997; Lacroix forthcoming).¹² It is no doubt due, in part, to their appropriation of Arendt for a state-centric consensus politics that Rancière singles out Arendt for criticism.¹³

Might it be the case then, that Rancière is actually much closer to Arendt than he cares to admit? Political theorists such as Bonnie Honig (1995) have appropriated Arendt to

¹¹ For instance, although Bonnie Honig interprets Hannah Arendt as what she calls a ‘virtù theorist’ (who celebrates agonistic politics), she recognizes that Arendt might equally be read, as Rancière does, as a ‘virtue theorist’ (who displaces politics). Yet she insists it is possible to recuperate Arendt for a radically democratic politics because her ‘politics beckons beyond itself to practices of disruption, augmentation and refounding that surpass the ones she theorizes and circumscribes’ (Honig 1993, 204).

¹² Reflecting on the French context in an interview with Davide Panagia (2000, 119), Rancière writes: ‘the 1980s did announce themselves as a “return to the political” but this return to the political and, more emphatically, to “political philosophy” quickly became equated with a return to order per se... The return to “political philosophy” in the prose of Ferry, Renaut, and other proponents of what is referred to, on your side of the Atlantic, as “New French Thought” simply identified the political with the state, thereby placing the tradition of political philosophy in the service of the platitudes of a politics of consensus; this occurring all the while under the rubric of wanting to restore and protect the political against the encroachments of the social.’

¹³ Note, though, that the French reception of Arendt is slightly more complicated than this since Etienne Balibar, whose approach is close to that of Rancière (i.e. within the tradition of Marxism/radical democracy), does recognize Arendt as an important influence in developing his idea of equaliberty.

develop an ‘agonistic’ conception of democratic politics, which seems to closely resemble Rancière’s idea of politics.¹⁴ Christina Beltrán draws on such a reading of Arendt to analyse the political character of protests by immigrant workers in the USA in 2006. Beltrán (2009, 598) brackets Arendt’s conception of the right to have rights and her problematic distinction between the social and the political, while emphasizing the ‘transgressive elements of “public joy” and the “passion for distinction”’ to conceptualize how the immigrants protests ‘challenged the dehumanizing effects of anonymity and illegality.’ Beltrán (2009, 604) suggests that this Arendtian conception of political agonism is consistent with Rancière’s concept of dissensus. Indeed, referring to Arendt’s discussion of John Adams cited above, she argues that the ‘desire for distinction...lies at the heart of the immigrant rights marches’ through which they enacted a ‘visibility they lacked prior to the event’ (Beltrán 2009, 604, 605). Somewhat tellingly and despite her intention to bracket Arendt’s ontological categories, however, these return in Beltrán’s (2009, 611) analysis when she chides the immigrant protestors for ‘emphasizing labour as a way to gain political standing’. In doing so, she argues, the protestors risk re-inscribing the terms of political discourse that position undocumented migrants as ‘subjects of necessity rather than natality’ (Beltrán 2009, 612). As she puts it:

In making labour visible, immigrants and their allies seek to invest it with political significance. Yet such visibility runs the risk of simultaneously mobilizing the more problematic accounts of labour, those that emphasize necessity over freedom. (Beltrán 2009, 614)

Here Beltrán finds herself in the same untenable position that Rancière criticizes Arendt for in her treatment of the poor. For it is hardly the protestors themselves who can be criticized for mobilizing a discourse that represents them as disposable, deportable and replaceable because they labour out of necessity. Arendt’s own categories are responsible for that since they depoliticize what Marx would call alienated labour. Indeed, one presumes that the point of the demonstrators was precisely to reject the separation of the economic and the political as ideological, insisting on their self-determination *as* labourers.

James Ingram (2008, 412) goes so far as to argue that Rancière’s approach is best understood as an ‘emendation and extension of [Arendt’s] framework’. Emphasising the constitutive dimension of Arendtian action that leads Krause to describe undocumented migrants as privileged political actors and Beltrán to describe immigrant action as laying

¹⁴ I have sympathetically appropriated Arendt along these lines in my own work on political reconciliation (see Schaap 2005).

claim to the public realm, Ingram describes Arendt as a ‘thinker of the creation of rights’ (Ingram 2008, 413). What Rancière and Arendt share on this account is an understanding of human rights politics as based in praxis. However, he suggests, Rancière’s emphasis on challenging social exclusion enables us to go beyond Arendt to understand the politics of human rights as ‘a creative, democratic politics of contestation, challenging particular exclusions and inequalities in the name of the open-ended principle of equal freedom, which acquires its particular contours only through this contestation’ (Ingram 2008, 413)

With Jean-Philippe Deranty and Emmanuel Renault (2009, 46), however, I want to resist this assimilation of Rancière to an ‘Arendtian democratic conception of politics’ (Ingram 2008, 419). In my view, the disagreement that Rancière seeks to establish between himself and Arendt is real and profound. This is for at least two inter-related reasons that I have been tracing throughout this article. First, Arendt’s conception of politics is essentialist insofar as she identifies an authentic politics with the realization of a particular human potential. While she does not identify an essence of the human, she certainly does insist on an essence of the political, which she associates with a distinctively human form of activity that can be more or less actualized and which invests human existence with a sense of the real. Rancière, in contrast, understands politics not in essentialist terms but as a process. In this he is actually closer to Schmitt than Arendt: politics does not correspond to a sphere, realm or potential but rather to the dynamics of politicization. Moreover, politics always ultimately calls into question the distinction between what is essentially political and what is not. In the end, it is not possible to ‘correct’ Arendt by reading her notion of the political in process terms because it is predicated on the ontological condition of plurality (as distinguished from the life-process) and is concerned with the actualization of freedom (as opposed to liberation from necessity). Arendt’s conception of the political stands or falls on how tenable this ontology is.

Second, and following from this, for Rancière equality is ‘an imperative, a contested claim of politics itself, indeed perhaps the main object of politics, not just an implicit necessary condition of it’ (Deranty and Renault 2009, 51). Consequently, for him, ‘humanity’ does not correspond to a certain quality of openness to others nor to the actualization of a world-forming potential. Rather, as a term of political discourse, the idea of the ‘human’ instantiates the axiom of equality: it refers simply to the presumption of an equality of anyone with everyone. On this account, as Deranty and Renault (2009, 52) point out, the politics of human rights presupposes as *abolitionist* conception of equality. Equality itself has no

substantive content but only makes sense in the particular context of social inequality that it challenges.

Although Arendt and Rancière are both praxis philosophers concerned with the conditions of possibility for the disclosure of new social worlds, the affinity between them stops there. The difference between them becomes clear when we consider the political significance of the movement of the *sans papiers* from the perspective of each. From an Arendtian perspective, the struggle of the *sans papiers* for the right to have rights can only be understood as a struggle for liberation that would establish the conditions of possibility for the actualization of freedom. In itself, their struggle lacks the world-disclosing aspect that inheres in political action because it is primarily instrumental and abolitionist: it is concerned with winning the civil rights necessary for them to participate in politics. Rancière, in contrast, enables us to recognize the struggle of the *sans papiers* as exemplary political action precisely because they make something of the right to have rights. This perspective thus brings into view the performative dimension of the *sans papiers'* action that eludes a consistent Arendtian analysis. By acting *as if* they have the rights that they lack, the *sans papiers* actualize their political equality. It is this dimension of their action that is world-disclosing. For it puts two worlds into one: the world in which 'no-one is illegal' into the world in which there are *sans papiers*.

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