

## WHEN TIME BREAKS: THE HIATUS OF REFUGEE STATUS

Johan van der Walt \*

### INTRODUCTION

“In the first place, we don’t like to be called ‘refugees.’ We ourselves call one another ‘newcomers’ or ‘immigrants.’” Already here, in the first sentence of Arendt’s essay “We Refugees,” does the hiatus of refugee status become manifest. A divide already opens up between different habits of reference. Refugees refer to themselves in one way, non-refugees refer to them in another, and so does the projected or desired possibility of one world in which both refugees and non-refugees might find accommodation, split into two very different realities. Consciousness of the split is of course solely that of the refugees, at first. Initially, the hiatus is theirs only. Others – non-refugees – remain soundly oblivious to this fundamental split until such time as it brutally breaks into their world too, for instance, when the corpse of a four-year old child washes up on a beach, and washes up on every doorstep in a succession of media waves. And then the hiatus is suddenly everywhere and no one remains exempted.

As the last sentence of Arendt’s essay contends forcefully, the split begins with the refugee status of some, but it ends with the bigger split of a world that begins to falter and fall apart: “The comity of European peoples went to pieces when, and because, it allowed its weakest member to be excluded and persecuted.” The comity of European peoples show all signs of going to pieces again today. When the comity of peoples goes to pieces, it is not only common space that cracks up, but also common time, the common time that warrants common space according to Kant’s *Schematismuslehre*. It is ultimately this breaking of time – the hiatus of time – that Arendt thematises elsewhere with reference to “the desolate aimless wanderings of Israeli tribes in the wilderness and the dangers which befell Aeneas before he reached the Italian shore.” “[T]his hiatus,” she continues, obviously creeps into all time speculations which deviate from the currently accepted notion of time as a continuous flow.”<sup>1</sup>

The aim of this paper is to engage with the hiatus status of refugees that becomes manifest in Arendt’s essay “We Refugees.” It will elaborate this hiatus status as it becomes manifest in the political, legal, social and personal situation of refugees that are (1) torn from the worlds within and around which they have constructed stable patterns of existence through a process of foundational familiarisation, (2) thrown onto faraway shorelines, and/or compelled to cross regional borders that they never contemplated to cross, and 3) compelled to overcome their own resistance to relocation and re-familiarisation with their new circumstances, as well as the resistance of others (local citizens and other established

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\* Professor of Philosophy of Law, University of Luxembourg. This is a working draft of a paper I presented on 16 March in Berlin at *Zentrum für Literatur- und Kulturforschung*, 15 March 2018, at the conference on Hannah Arendt’s essay “We Refugees” organised by Sigrid Weigel and Homi Bhabha. I would like to thank all the participants for exceptionally rich and instructive papers and discussions. I have already commenced to continue the discussion in this revised version of my paper by responding to some of the other papers or citing them (see footnotes 19, 26, 41, 59, 77). This is nevertheless still work in progress and more is to be and will be done in this regard.

<sup>1</sup> Arendt, *On Revolution*, New York: Penguin Books, 1990, 205.

residents) who fear this re-familiarisation and consider it a de-familiarising threat to their own sense of familiar belonging.

The hiatus that becomes manifest in the course of this uprooting event and the process of double de-familiarisation concerns the way in which a form of life gets terminated and gives way to an interim phase of formless life until such time as re-entry into a new form of life ensues. This re-entry invariably requires a re-commencement from scratch that must overcome the twofold resistance to re-familiarisation mentioned above, the resistance to re-entry of the one who must re-enter, and the resistance of others who perceive this re-entry as a threat. In other words, once a form of life gives way to formless life, the re-commencement of formed life becomes a double ordeal, the dimensions of which are close too insurmountable. This, then, is the hiatus of refugee status with which this paper will be concerned. The paper will also show, however, how this hiatus status of refugees comes to contaminate the formed life and well-arranged spatial and temporal coordinates of regular citizenship and lawful residence. It will show, in other words, how the lawful comity of peoples also breaks down when it fails to accommodate the refugee; when it fails to facilitate the re-entry into formed life and well-ordered spatial and temporal coordinates of those who have fallen into cracks of existence that are devoid of time and space.

Here, then, is where this paper will endeavour to pause: at an event that 1) tears away all conditions of familiarity and familiarisation, that is, tears away everything that gives form to life and 2), catapults what remains – the bigger or smaller rests of “familiar” hominoid form, be it alive or no longer so – into an unformed and unfamiliar zone of existence where the resistance to re-familiarisation and the resistance to form is the only common characteristic that still resembles form and familiarity. This is where this paper will endeavour to pause in the way one pushes the pause button on a DVD reader and/or another digital reading device. The function of these devices is to produce semblances of flows and transitions – motion pictures, in other words – through purposefully selected registers of speed. In performing this task, digital reading machines ultimately aim at nothing but the obfuscation of the hiatus between every frame in a sequence of frames, to use the now outdated metaphor of a pre-digital age. The gaps between the frames may be narrow, but they are irreducible. They secure and safeguard a different zone of existence that the reading machine cannot register, but also not eradicate. The machine ultimately only produces the semblance of erasure and smooth transition.<sup>2</sup>

The endeavour to pause the machine will nevertheless just remain an endeavour. It is bound to fail. It is bound to fail because the human mind is itself an unstoppable “motion picture projector.” At stake in this paper will nevertheless be an “against all odds attempt” to pause

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<sup>2</sup> Consider in this regard the video installation *24 Hour Psycho* by Douglas Gordon, <https://www.youtube.com/watch?v=a31q2ZQcETw>. Gordon took Alfred Hitchcock’s film *Psycho* and stretched its duration to 24 hours, thus slowing down the passage of frames through the projector from the regular 24 to just 2. See Nathan Lee, “The Week Ahead” June 11 – June 17, Film, *NY Times*, 11 June 2006 (<https://query.nytimes.com/gst/fullpage.html?res=9F02E1D81431F932A25755C0A9609C8B63>). Gordon himself described this process as “a slow pulling apart”: “The viewer is catapulted back into the past by his recollection of the original, and at the same time he is drawn into the future by his expectations of an already familiar narrative ... A slowly changing present forces itself in between.” See Russell Ferguson “Trust me” in *Douglas Gordon*, Cambridge: Massachusetts, MIT Press 16. I am indebted to Wikipedia for the reference to Nathan Lee. See [https://en.wikipedia.org/wiki/24\\_Hour\\_Psycho](https://en.wikipedia.org/wiki/24_Hour_Psycho).

this projector in order to register the moment that times breaks, the moment that futures and pasts no longer hold together, the moment when an instance of sheer existence – sheer “non-transitional” existence – manifests itself as torn out of time, torn from time, expropriated in the most fundamental sense of the word when expropriation concerns the expropriation of all pasts and futures. Existence without time and out of time. In other words: *timeless* existence.

We shall see below that Arendt once also contemplated this moment with reference to Franz Kafka in a way that resonates clearly with the passage from *On Revolution* quoted above, only to give it up again with little delay. In the final analysis, she remained predominantly given to forms of life, and the political formation of these forms. Her famous critique of the French revolution may well have been a rhetorical sublimation of a deep fear of formless life, fear of formless life that is torn out of time and dropped into a crack of timelessness. This is what the French Revolution signified for her: The moment that the timeless life of the poor – that unframed frame that always threatens to wreck the motion machine – appeared on the scene of history and threatened to obstruct the cinema of public appearance.<sup>3</sup>

In a recent essay I have attempted to register or notice this timeless existence with regard to the life and death of Bram Fischer, defence counsel in the Rivonia Trial, descendant of an elite Afrikaner family with every aspect of generations of familiarisation with the world well intact, only to become a refugee in the most real or “perfect” sense of the word: a failed refugee, one who ultimately crossed all significant boundaries, between life and death and between substance and nothingness without crossing any geographic international border. The only border that he managed to cross was the one between civil life, or formed life, and the staggered phases of formless existence that begin where civil life ends: imprisonment – incarcerated death – secret incineration - nothingness. It is still not known what became of Bram Fischer’s ashes in the end. In a recent exploration of this reversed narrative of Fischer’s life, I invoked the phrase “When time gives.”<sup>4</sup> There is no discrepancy between this “giving of time” and the “breaking of time” that I have begun to invoke here. The “giving of time”, invoked with reference to Bram Fischer, was indeed a case of “time breaking.” “Something will have to give,” we often say, when tensions become too much. We invariably mean by that, that something or someone is going to break apart. We often talk about the splitting of the universe when we talk like this, without realising that we do.

The endeavour to pause the motion machine and to register the moment when time breaks ultimately requires recourse to a particular kind of language, a language of which the very aim is to halt the flow of time and to wrest from it a singular date, so as to save its unrepeatable singularity. This is the purpose of poetry, Paul Celan tells us, as we shall see

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<sup>3</sup> I am alluding to this paragraph in Arendt *On Revolution* 48: “[T]his multitude, appearing for the first time in broad daylight, was actually the multitude of the poor and the downtrodden, who every century before had hidden in darkness and shame. What from then on has been irrevocable, and what the agents and spectators of revolution immediately recognized as such, was that the public realm – reserved, as far as memory could reach, to those who *were* free, namely carefree of all the worries that are connected with life’s necessity, with bodily needs – should offer its space and its light to this immense majority who are not free because they are driven by daily needs.”

<sup>4</sup> See Van der Walt “When Time Gives: Reflections on two Rivonia Renegades” in Awol Allo (ed), *The Court Room as a Space of Resistance. Reflections on the Legacy of the Rivonia Trial*, (Aldershot: Ashgate Publishing, 2015) 37-62.

towards the end of this paper. The poetry that Celan has in mind can of course not be presented or even represented in this paper. Celan in any case tells us that he is referring to a poem that does and cannot not exist: “*Ich spreche ja von dem Gedicht, das es nicht gibt!*”<sup>5</sup> I will nevertheless allude to this non-existing poem towards the end of this paper to resist the language of law; more specifically in this case, to resist the language of international law that promises one thing and blandly delivers another. Of course, as already conceded above, this paper will also fail to deliver. It will fail to pause the motion machine that it seeks to pause. It will ultimately not enter the timeless crack of time. It will not meet the refugee stranded there. In this respect, it will do little or no better than the law. All that it can hope to do, in the end, is to keep the memory of failed promises alive in a way in which the language of law cannot do, and is also not meant to do. But it will also show how a regime of law itself turns into a regime of lawlessness when its broken promises become all too glaringly evident.

This is the end of the introduction to this paper. From now on, the rest of the paper will unfold in three steps. It will pause the DVD reader twice, so to speak, to bring into focus – still badly blurred, no doubt – the two moments of radical de-familiarisation and resistance to re-familiarisation that mark the hiatus of refugee status. And then it will stop it a third time for purpose of zooming in on the hiatus itself, or at least to the limited extent that this can be done. The paper will accordingly unfold in three parts or sections. Section I will focus on de-familiarisation. Section II will focus on the twofold resistance to re-familiarisation announced above. Section III will pause one more time to determine how much we can possibly glean from the hiatus itself, and of those who have been drawn into its vortex. All three sections will pay attention to key themes in Arendt’s work. They will also lean on two recent monographs on Arendt, both of which highlight concerns with *wandering, migration* and *migration* status in her work and are therefore of specific importance of the theme of this paper.

## I. DE-FAMILIARISATION

I will rely on a recently published monograph by Hans-Jörg Sigwart to explain the process of “de-familiarisation” without which the genesis of refugee status cannot be grasped in sufficient depth. The title of Sigwart’s book is *The Wandering Thought of Hannah Arendt* and the main theme of the book concerns the “wandering” nature of Arendt’s political theory. As Sigwart shows well, Arendt consciously contrasted this “wandering” status of political theory with the unpolitical “wondering” of philosophers. Political theorists are wayfarers who wander off into the world, creating it in fact, while doing so. Philosophers, to the opposite, are narcissistically embroiled in a singular experience of existence. They are arrested by a sense of wonderment that generally prevents them from taking part in the political creation of and participation in the world.<sup>6</sup>

Let us take a closer look at this world-creating force of politics that Arendt contemplates. It pivots on a *practice of politics* that negotiates the tension between the boundless freedom to create new worlds, on the one hand, and the need to subject this freedom to stabilising limits and boundaries, on the other. This practice of politics is informed by a very specific

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<sup>5</sup> Paul Celan, *Der Meridian* in Celan, *Gesammelte Werke* (5 vols, Frankfurt a.M: Suhrkamp, 1983) III, 199.

<sup>6</sup> Hans-Jörg Sigwart, *The Wandering thought of Hannah Arendt*, London: Palgrave, 2016, 11-28.

“epistemology of politics,” as Sigwart calls it. At stake in this “epistemology of politics,” he contends, is an “enlarged mentality” that is capable of considering matters of common concern from the perspective of everyone concerned and not from an individual or isolated perspective.<sup>7</sup> This enlarged mentality has four basic characteristics: 1) it concerns an *interpretive integration* of particulars; 2) it performs an interpretive *self-localization*; 3) it produces a simultaneously pluralistic and common perspective of a *political “we,”* and 4) thus constitutes, not only an enlarged mentality, but a *bounded form of enlarged mentality*.<sup>8</sup>

Let us zoom in further on the first two elements of this epistemology of politics, *interpretive integration* and *self-localisation*. *Interpretive integration*, explains Sigwart, entails a “talkative and argumentative interest in the world” that subsumes particular observations under generalisations that are interesting to everyone concretely involved.<sup>9</sup> At stake in these generalisations is the articulation of “concrete generalisations” that are *situated* in contexts of common concerns. This *situated* or contextual character of the generalisations that interpretive integration produces, distinguishes them from the context-free universals that Kant’s practical philosophy contemplated.<sup>10</sup> The second element, *self-localisation*, derives from the first and could be considered another dimension of the first. The interpretive generalisation of particular encounters turns the abstract totality of these encounters into a *world*. In the process of doing so, it also furnishes the interpretive process itself with a familiar and comprehensible location. In other words, the “talkative and argumentative interest” in “things” turns these “things” into the coordinates of a specific space and a habitable world. It turns the randomly scattered looseness of particulars into the “*Wirklichkeitsdichte*” or “density” of “a worldly reality.”<sup>11</sup> This is how it situates itself. This is how it effects an *interpretive self-localisation*. But this is not all. The interpretive generalisation of particulars not only produces the world in which the interpretive subject finds a home, it also produces the interpretive subject itself. Concomitantly to its production of world density or *Wirklichkeitsdichte*, “talkative and argumentative interest in the world” also produces the very density of selfhood and the very density of political agency.

A political subject finally steps out of the whole gamut of interpretive encounters through which human consciousness turns its environment into a common world. And with it steps into view – with little or no delay – the third characteristic of “enlarged mentality” that underpins Arendt’s epistemology of politics. The interpretative emergence of political subjectivity not only entails a plurality of subjects that relate to one another as second and third persons. It also entails a collective subject, a veritable collective first person – a *we* – that somehow manages to sustain the plurality or second and third persons within itself. The political understanding of this “we” in which “I” and “many others are participating ... does ... not so much imply to understand one another as individual persons, but to look upon the same world from one another’s standpoint, to see the same in very different and frequently opposing aspects.”<sup>12</sup>

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<sup>7</sup> Sigwart, 63.

<sup>8</sup> Sigwart, 65.

<sup>9</sup> Sigwart, 66.

<sup>10</sup> Sigwart, 67-68.

<sup>11</sup> Sigwart, 73.

<sup>12</sup> Sigwart, 75.

The notion of “enlarged mentality” that Sigwart is describing here with reference to Arendt’s epistemology of politics comes from Kant. Sigwart nevertheless makes sure that Arendt’s acute sensitivity for the historicity and contextual contingency of all interpretive generalisations is not lost upon his readers. It is not Kant’s a-contextual universalism that is at stake in Arendt’s enlarged mentality, but a *bounded* version of it that one associates with the concrete *sensus communis* of an actual political community. The space of appearance of such a concrete *sensus communis* cannot be infinite. It is “a limited ‘space’ with relatively concrete and stable boundaries.”<sup>13</sup>

These four essential epistemological characteristics of political action add up to a description of political understanding that reads like a page taken out of Gadamer’s *Wahrheit und Methode*.<sup>14</sup> That Gadamer may well be a ghost writer here would seem to be confirmed by Sigwart’s characterisation of political understanding with reference to Gadamer’s notion of *Einrücken*, that is, the ability to meaningfully relate to the perspectives of others and to integrate oneself ... into the meaningful horizon of a common world and its ‘tradition’ of stories and memories.”<sup>15</sup>

We will come back once more to Sigwart’s fine presentation of Arendt’s “wandering thought” towards the end of this essay, but we have followed him far enough for now to take from it what is crucial for our endeavour to come to grips with the process of de-familiarisation that culminates in the hiatus of refugee status. What Sigwart brings to our attention with his meticulous exposition of Arendt’s epistemology of politics concerns much more than a mere epistemological *of politics*. It also concerns the way in which politics, understood broadly, becomes fundamental epistemology; not only in Arendt’s work, but in the whole “hermeneutic tradition,” so to speak. What one sees him describing here, with reference to Arendt, is the way in which the hermeneutic or linguistic turn in philosophy and the social sciences took the integration of space and time away from the ahistorical transcendental epistemology that one associates with Kant, and relocated it in the practice of finite historical understanding. Sigwart effectively distils from Arendt’s thought an explication of the way in which the *linguistic-political* creation of a common world literally performs the integration of common time and space that Kant’s *Schematismuslehre* attributed to the “schematising function” of transcendental subjectivity.<sup>16</sup> A proper grasp of this hermeneutic relocation of the integration of time and space in practices of historical narrative and interpretation is crucial for any endeavour to come to terms with the crisis of refugee status, as will become clear presently. Let us first allow this hermeneutic plot to thicken a bit more.

More or less one and a half centuries after Kant, Claude Lefort rearticulated the schematising integration of time and space in his inquiry into the role of *theologico-political* narratives in Western politics. Lefort invoked the apparent “permanence” of the *theologico-political* narratives to account for the way in which societies consider themselves constrained to

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<sup>13</sup> Sigwart, 81.

<sup>14</sup> See Hans-Georg Gadamer, *Wahrheit und Methode*, Tübingen: J.C.B. Mohr (Paul Siebeck), 1975.

<sup>15</sup> Sigwart, 69, referring to Gadamer, *Wahrheit und Methode*, 275 (the last page of the section “Das Beispiel des Klassischen” – Sigwart used a later edition of *Wahrheit und Methode* and accordingly cites a different page number).

<sup>16</sup> Kant, *Kritik der reinen Vernunft in Werke in 10 Bänden* (Weischedel Edition) vol. 3, Darmstadt: Wissenschaftliche Buchgesellschaft, 1983, 187-194.

account for the “opening” in which they are held.<sup>17</sup> It becomes clear from Lefort’s essay on the “permanence of the theologico-political” that the whole gamut of historical and interpretive narratives with which societies organise space and time and “the opening in which it is held,” invariably culminates in an over-arching theologico-political narrative. The over-arching theologico-political narrative structures, organises and secures the opening in which societies are held. Now, it is this opening, the very opening of this opening, that suddenly looms large again when refugee status commences. It suddenly looms large because of the way in which the commencement of refugee status undoes the organisation and securing of work that *theologico-political* narratives do. It is of course a tragic and devastating irony that this stripping is frequently, if not invariably, precipitated in the first place by the crudest of *theologico-political* narratives. Be it as it may, it is with due regard to this naked opening of the opening that one begins to grasp the depth and width of the hiatus of refugee status. It entails nothing less than the gaping emergence of bare existence for which there is no longer, and not yet, an integrating narrative. The hiatus becomes manifest when linguistic-political and theologico-political narratives no longer facilitate the self-localisation and self-densification that schematises time, space and selfhood.

I have followed aspects of Sigwart’s fine engagement with Arendt’s thought meticulously for purposes of co-opting it for a description of the radical de-familiarisation that ultimately leads to the hiatus of refugee status. This co-option can of course only become productive when one reverses the progression of the political epistemology that is of concern here. For this purpose, one needs to read Sigwart’s exposition of Arendt’s political epistemology backwards and against its grain. Sigwart describes the process of *familiarisation* through which the world takes form according to Arendt. A description of the process of de-familiarisation that leads to refugee status must therefore reverse the trajectory of Arendt’s epistemology of politics. One must begin where it ends and from there proceed to its point of departure, so to speak. Sigwart never elucidates or announces this point of departure. He appears to accept that one, *everyone*, is always already taken up in the process of narrative integration, always swimming along midstream in Gadamer’s process of *Einrücken*. This is of course not surprising, given the way in which hermeneutic philosophy is keen to stress the inescapability or universality of the “hermeneutic situation.”<sup>18</sup> This “universality of the hermeneutic situation,” however, becomes markedly less self-evident and less significant when someone sets out on the trajectory that ends in refugee status. Is it an exaggeration to say that the inception of refugee status concerns an evaporation of hermeneutic status? I would like to suggest it is not; in any case, not if one takes care not to surreptitiously reduce hermeneutic status again to nothing more than the non-narrative and ahistorical capacity of the abstract Kantian subject to integrate time and space.

Now, if this suggestion holds water, if it is correct to say the inception of refugee status entails the evaporation of hermeneutic status, it would compel one to observe that an incisive inquiry into refugee status demands a fundamental reversal of the intrinsic trajectory of Gadamerian hermeneutics. At stake for any attempt to move in the direction of the hiatus of refugee status, is not a process of *Einrücken*, but of *Ausrücken*, a process of “setting out” in

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<sup>17</sup> Claude Lefort, “Permanence du théologico-politique?” in *Essais sur le politique* (Paris: Editions du Seuil, 1986), 287: “Que la société humaine n’ait une ouverture sur elle-même que prise dans une ouverture qu’elle ne fait pas....”

<sup>18</sup> Gadamer, *Kleine Schriften I*, Tübingen: Mohr (Siebeck), 1967, xx.

the most radical sense of the phrase “setting out.” Of concern, here, is the process of leaving and leaving behind everything that a hermeneutic process of *Einrücken* may have assembled in a former time, a former time that ended precisely when this *Ausrücken* began. *Ausrücken* severs the very sequence and flow of time. “In a crack in our old wall, I buried my intentions and left, writes Yousif M. Qasmiyeh about the last moment before setting off into the unknown and unfamiliar.<sup>19</sup> It is the narrative schematising of time and space itself that shatters when *Ausrücken* leaves behind the essential elements of one’s intentionality. A veritable phenomenological exercise commences when one leaves one’s intentions behind in the crack of an old wall, as we shall see closer to the end of this paper. One enters another crack, the crack in time and space where things have yet to appear again, as if for the first time.

Sigwart justifiably focuses on the “forward-looking” trajectory of *Einrücken* and world-creating hermeneutics in Arendt’s work. This is surely the dominant trajectory of her work. However, if this were the only operative trajectory in her work, one would have to conclude that Arendt can ultimately tell us very little of the refugee status that she invokes with such force in her essay “We refugees.” Anyone who would like to rely on Arendt’s own work to come to an incisive understanding of her essay “We Refugees” would therefore have to ask whether there is a different – perhaps less visible, but significant enough – aspect of her work that effectively “turns around.” Is there an aspect of her work that turns away from the trajectory of *Einrücken*, so as to mark the opposite trajectory of *Ausrücken*?

The remarkable passage from *On Revolution* already quoted in the Introduction above would suggest that this is indeed the case. The passage invokes a hiatus between times, *a break in time* that allows for an interim manifestation of a “time” before or after time, a time outside time that is perhaps better portrayed as *timelessness*. Indeed, the passage appears to invoke a veritable *timelessness* that interrupts the times that emerge from the schematising integration of time and space performed by world-creating hermeneutics. It describes this timelessness that precedes and succeeds time, quite remarkably, exactly with reference to aimless migrations of persons or peoples after the demise of one world and before the rise of another. Arendt writes:

“With respect to revolution, these tales ... insist on a hiatus between the end of the old order and the beginning of the new, whether it is of no great importance in this context whether the hiatus is being filled by the desolate aimless wanderings of Israeli tribes in the wilderness or by the adventures and dangers which befell Aeneas before he reached the Italian shore.... [T]his hiatus obviously creeps into all time speculations which deviate from the currently accepted notion of time as a continuous flow; it was therefore an almost natural object of human imagination and speculation, in so far as these touched the problem of beginning at all...”<sup>20</sup>

Revolutions, I argue elsewhere, actually have little to do with the hiatus to which Arendt links them here. It is rather towards *renegade* moments that precede, and possibly precipitate revolutions – they can also fail to do so – to which the thinking of the hiatus should lean. It is in the renegade that we find someone who is closely related to the refugee. Perhaps the refugee is, in the final analysis, a renegade, and vice versa. It is in the figure of the renegade

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<sup>19</sup> Yousif M. Qasmiyeh, “The Crack also Invites,” held in the private collection of Lyndsey Stonebridge, and also quoted by her in a most profound paper “We, the Refugees: Hannah Arendt in Baddawi,” presented in Berlin at *Zentrum für Literatur- und Kulturforschung*, 15 March 2018.

<sup>20</sup> Arendt, *On Revolution*, 205.



– a figure that no longer enjoys the comfort of a stable persona (and has to take on makeshift personas like Bram Fischer) – that we find the one who is uprooted from all worlds, the one who has traversed the most complete process of de-familiarisation that life can sustain without sinking back into lifeless matter. One would go much too fast if one would also link the renegade and the refugee to the *musulman* on which Agamben reflects in *Remnants of Auschwitz*, but making some links may well be warranted on another occasion.<sup>21</sup> The refugee is in most cases not yet the walking dead that is the *musulman*, but she is the walking hiatus and the difference between the two may be less knowable than we think. (24 minutes)

## II. RESISTANCE TO RE-FAMILIARISATION

The refugee has fallen into, or has become, the hiatus. From here, from where she is and from whom (or what?) she has become, she faces the ordeal of a double resistance to any re-familiarisation that may restore a world for her, her own resistance, and the world's resistance. First, her own resistance: Clawing her way back means entering the ordeal of re-familiarisation with unfamiliar soil and air; re-familiarisation that is, in fact, not strictly speaking a re-familiarisation, but a totally new familiarisation. It concerns a first familiarisation with unfamiliar organisations of soil and air, unfamiliar schemas of time and space. Clawing her way back requires accepting as her own the hard density of an alien reality, the *Wirklichkeitsdichte* of others that meets her like a fence, yet another fence. It is an ordeal with abyssal dimensions. The hiatus itself – the break in time in which she finds herself – is nothing but the thinnest of air, but it is still closer the world left behind than the one she is compelled to enter. The first step into this new world is one more step away from the world left behind. The first step of re-familiarisation is yet another step of de-familiarisation.

There is absolutely no reason to expect that the process of re-familiarisation would and should be embraced with optimism, enthusiasm, let alone joy. Any such optimism, enthusiasm or joy would be bizarre in the case of one who has lost everything except bare existence. Yes, Arendt does refer to the “optimism” of refugees in “We refugees”:

“We wanted to rebuild our lives, that was all. In order to rebuild one’s life one has to be strong, and an optimist. So we are very optimistic.”<sup>22</sup>

Less than half a page down she begins to ridicule this optimism:

We were told to forget; and we forgot quicker than anybody could ever imagine. In a friendly way we were reminded that the new country would become our new home. And after four weeks in France, or six weeks in America, we pretended to be Frenchmen or Americans. The more optimistic among us would even add that their whole former life had been passed in a kind of unconscious exile and only their new country now taught them what a home really looks like .... With the language ... we find no difficulties; after a single year optimists are convinced they speak English as well as their mother tongue. And after two years they swear solemnly that they speak English better than any other language – their German is a language they hardly remember.<sup>23</sup>

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<sup>21</sup> See Agamben, *Remnants of Auschwitz*, New York: Zone Books, 1999, 41-86.

<sup>22</sup> Arendt, “We refugees,” 110.

<sup>23</sup> Arendt, “We refugees,” 111.

Two pages down the truth about this optimism would come out: It is “insane” and “next door to despair.”<sup>24</sup> The truth of their refugee status came to them in the camp of Gurs. There she “heard only about suicide.” Suicide was even considered “a collective action” and it ultimately took “a violent courage of life” to overcome the allure of suicide. And from what Arendt writes, it is quite clear that this “violent courage of life” actually pivoted on a kind of suicide, namely, the acceptance that personal life and expectations had to be ignored. They had been taken over by bigger things:

The general opinion held that one would have to be abnormally asocial and unconcerned by general events if one was still able to interpret the whole accident as personal and individual bad luck and, accordingly, ended one’s life personally and individually.<sup>25</sup>

The paradox is clear. To live on as a person, in order not to end one’s life “personally and individually,” the refugees in Gurs had to suspend and forget their personal lives. The dialectic between private and public life that Arendt described so confidently in *The Human Condition* evidently failed here. Whatever “public spirit” remained possible here, could only be sustained by a suicide of the person, even if this suicide was not physical suicide.<sup>26</sup>

Arendt’s reflections on the mental states of mind of refugees testify to the reality that one cannot sincerely and realistically expect any consistent optimism among refugees who wait in utter uncertainty to begin with life again, to begin at the very beginning, by taking leave of everything that life was until “the whole accident” occurred. Under these circumstances consistent optimism, optimism that is not the “next door” neighbour of despair, would only signal a lack of real refugee status. It would be the sign instead, of the wanderlust of the wayfarer, adventurer or wanderer for whom the world left behind is not truly lost; it would be the sign of one that is still relatively closely related to the public figure who ventures courageously into the world with the comforting knowledge that his home is intact and waiting upon him; the public figure of whom one of the most significant passages in Arendt’s whole oeuvre speaks.<sup>27</sup> It is this wanderer that Sigwart’s rendition of Arendt’s “wandering thought” contemplates almost throughout his book (surprisingly without citing this key passage). Almost. There is an exceptional page to which we’ll return towards the end of this paper. And we will return to it in order to look for answers to the following constellation of questions:

What can one come to know of the one who cannot speak for and from stable and secure selfhood? How shall we assess the courage of one whose virtue is not reflected in the eloquent and profound public appearance of those who venture out from secure homes, knowing that they can return to them after the performance? How shall we admire or at least respect the superhuman endurance and persistence of the one who has to claw her way back

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<sup>24</sup> Arendt, “We refugees,” 113.

<sup>25</sup> Arendt, “We refugees,” 113.

<sup>26</sup> Perhaps it was the real and traumatic experience of the breakdown of this dialectic that inspired Arendt to articulate it so expressly in *The Human Condition*. See in this regard Sigrid Weigel “The Initial point of Arendt’s political anthropology,” paper presented in Berlin at the *Zentrum für Literatur- und Kulturforschung*, 15 March 2018.

<sup>27</sup> Arendt, *The Human condition*. For a further engagement with the significance of this passage, see Van der Walt “Law and the Space of Appearance in Arendt’s Thought” in Goldini and McCorkindale (eds) *Hannah Arendt and the Law*, Hart Publishing, Oxford, 63 – 88.

from gaping nothingness? How shall one desire her? How shall one embrace the bearer of this inhuman endurance when she no longer offers substance to an embrace, when she has lost and not yet regained the density of selfhood that the self draws from the density of an adequately interpreted world? *Where* shall one find the self for whom the notion of self-localisation remains a fiction until such time as it has passed through an act comparable to suicide, passed through the last act of de-localisation without which re-localisation cannot commence? How shall one register the shallow breathing of this living hiatus, the shallow breath of breaking and broken time?

Who will recount what happens when time breaks? And what account can be given of this break? These are the questions to which we shall return below. Suffice it to imagine for now the almost insurmountable resistance to re-familiarisation that inhibits the transcendence of refugee status and the passage to a new world. If this resistance could be imagined for a moment, many other phenomena associated with refugee and “immigrant” status would become comprehensible in a way that they may well not become otherwise. We cannot interrogate here the highly unstable and frequently fictitious distinction between refugee status, on the one hand, and a different kind of “immigrant” status on the other, a distinction that is often presented as one between “real refugees” and “economic refugees.” Let us simply take a cue from a typical variety of societal malaise frequently associated with both, namely, the unwillingness and inability to “integrate socially.” This malaise is of course almost always effectively complemented by an inability and unwillingness to allow and facilitate social integration from “the other side” of this abyssal gap. We shall turn to this “other side of the coin” in a moment. Before we do so, let us first take proper leave of “this side of the coin” with this question: Is the extent to which refugees resist social integration (whatever this might mean: unwillingness to adopt local language and culture, delinquency, etc.) not a last desperate act of resistance to the semi-suicidal self-denial that ultimately conditions functional adaptation to an alien cultural and social environment?

Let us turn to the other side of the coin, now, by observing that even eviscerated spectres continue to haunt. In fact, *especially they* or *only they* continue to haunt. A new spectre appears to haunt Europe, one could and should well say, with reference to both Marx and Derrida.<sup>28</sup> It threatens to contaminate Europe with the condition of the hiatus. It threatens to turn Europe into a veritable disintegrating clan of exorcists for whom “ever closer union” has come to take the form of some progress towards greater consensus regarding refugee quotas. “The comity of European peoples went to pieces when, and because, it allowed its weakest member to be excluded and persecuted,” wrote Arendt in “We refugees.” One should rephrase: The comity of European peoples went to pieces because of its apocalyptic inability to recognise one of its members as a member. It is of course too early to say whether apocalypse is again in the offing, but it is fair to observe that an already catastrophic inability to recognise a member as a member is again signalling the real possibility that a certain Europe is coming to an end. What may remain of “Europe” after this end, may well be unrecognisable to itself. Europe’s time may well be breaking, as it has done so often before. And that which may come after this break may well be incomparable to that which has preceded it.

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<sup>28</sup> See Jacques Derrida, *Spectres de Marx*, Paris: Éditions Galilée, 1993.

But why are we talking about the inability to recognise a member as a member against the background of the current refugee crisis in Europe? Are the refugees who have crossed Europe's borders in recent months and years not foreigners? Are they not non-members in the most reliable sense of the word "non-member"? Do they not come from foreign countries with the most "non-European" ways of life conceivable? Well, that is not what international law tells us. This is not what *European* international law tells us, for one should frankly admit that the international law of concern here is essentially *European law*, law that is based on principles of civilisation – both secular and religious – that are essentially of European origin. And this *European* international law, argues Ayten Gündoğdu in an exquisite recent monograph on Arendt and international law, not only erases the difference between European and non-European citizenship, it also erases the distinction between citizenship and non-citizenship as such. It proclaims, in other words, universal membership in a legal community that is essentially a European legal community.

Let us begin with Gündoğdu's critical rereading of Arendt's work against the background of a universal rights culture that was not yet established at the time Arendt published her forceful and enigmatic critique of human rights in *The Origins of Totalitarianism* in 1949. What has changed in the course of the seven decades that have passed since 1949 that may require a reassessment of this critique? Gündoğdu responds to this question against the background of key developments of international law in the course of the second half of the twentieth century. She begins her discussion of this development by noting how Arendt considered human rights a "stepchild [of] nineteenth century political thought" that no political party took seriously then and was still not being taken seriously almost fifty years into the twentieth century. Humanitarian concerns with violations of human dignity were still limited to the engagements of "professional idealists ... and philanthropists" and "international jurists without political experience," wrote Arendt in 1949, a year after the Universal Declaration of Human rights was adopted by the United Nations. The scope and effect of these concerns, she claimed, remained negligible as a result of a state-centric framework of internal law that guaranteed no protection beyond the protection of constitutional rights of citizens.<sup>29</sup>

It is against the background of this framework of international law that *The Origins of Totalitarianism* put forward the enigmatic concept of "a right to have rights."<sup>30</sup> In an essay published almost a year after the Universal Declaration of Human Rights (UNDHR), Arendt still bemoaned "the lack of reality" of the rights articulated in the Declaration. The essay nevertheless acknowledged the significance of the notion of "a crime against humanity" invoked by Justice Jackson during the Nuremberg trials.<sup>31</sup> Arendt recognised the right to asylum as the only significant "symbol of the rights of man" in international law in *The Origin of Totalitarianism*, but contended that this symbol had practically been abolished because of the pressures of massive statelessness in the course of the twentieth century and the uncodified status of this right in both international treaties and national constitutions. The right to asylum accordingly enjoyed little more than a "shadowy existence" that could be invoked in "exceptional cases." It warranted no general institutional protection.<sup>32</sup>

<sup>29</sup> See Ayten Gündoğdu, *Rightlessness in an Age of Rights. Hannah Arendt and the Contemporary Struggles of Migrants*, New York: Oxford University Press: 2015, 6.

<sup>30</sup> Gündoğdu, 6, referring to Arendt, *The Origin of Totalitarianism*, 298.

<sup>31</sup> Gündoğdu, 6-7, referring to Arendt, "The Rights of Man': What are they?" *Modern Review* 3 (1) 1949, 36-37.

<sup>32</sup> Gündoğdu, 8, referring to Arendt, *The Origin of Totalitarianism*, 280-281.

Things nevertheless started to change significantly after 1948 in ways that Arendt never seemed to credit with due significance, argues Gündoğdu. Article 14 of the UNDHR already codified the right to asylum. The 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol stipulated more extensive rights for refugees and asylum seekers. Article 15 of the UNDHR addressed the central problem of statelessness that Arendt raised in OT by prohibiting states from either depriving citizens of nationality or denying their rights to change their nationality. In addition to this, the International Covenant on Civil and Political Rights (ICCPR) “requires states to grant all individuals who reside within their territory and subject within their jurisdiction a set of rights ‘without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ (Art2.1 ICCPR).<sup>33</sup> Gündoğdu observes in this regard the opinion of several commentators that the ICCPR renders the distinction between citizens and non-citizens insignificant from a basic rights perspective. Further to this, article 26 of the ICCPR provides for equality before the law and equal protection of the law of citizens and non-citizens in a way that basically seem to render obsolete the “dispossession of personhood” and “rightlessness” that were central to Arendt’s analyses in the *The Origin of Totalitarianism*.

The list is not exhaustive, but it accounts for the major developments of human rights protections in international law since Arendt’s analysis of the lack of these protections with reference to statelessness, observes Gündoğdu, and one must agree with her that it surely calls for the new assessment of the relevance or Arendt’s assessments of these concerns. How might one still attribute significance to Arendt’s scepticism regarding human rights in *The Origin of Totalitarianism* in view of the extensive codification of international human rights law in the course of the second half of the twentieth century?

Gündoğdu response to this question is not the one the international lawyers would expect. It may well be, she contends, that the extensive codification of human rights protections in contemporary international law has in many respects rendered human rights violations less, rather than more visible. Confidence in readily available positive legal protections may well have induced a certain complacency with regard to the myriad of ways in which the actual protection of human rights often fall dismally short of the promise that positive law appears to warrant. Gündoğdu refers to striking observations of Yasemin Soysal and Seyla Benhabib in this regard. Soysal writes:

“[R]ights provided to migrants by the international human rights framework can be contested and undermined by various sets of economic and factors ... These problems arise due to “an ‘implementation deficit,’ a discrepancy between formal rights and their praxis.”<sup>34</sup>

Benhabib echoes Soysal’s observations with a selection of metaphors that leads one straight to the precipice of the gaping non-recognition that has permeated the inner recesses of confident human rights discourses and the international comity of peoples that they promise. She writes:

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<sup>33</sup> Gündoğdu, 9.

<sup>34</sup> Gündoğdu, 10, quoting Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago: University of Chicago Press, 1994, 134.

“These groups exist at the limits of all rights regimes and reveal the blind spot in the system of rights, where the rule of law flows into its opposite: the state of exception and the ever-present danger of violence.”<sup>35</sup>

There is an Agambian flavour in this sentence to which we shall return below. Suffice it to observe for now how the norm/practice contradiction in international law that Gündoğdu brings to the fore here, gives one adequate reason for arguing that the current refugee crisis in Europe pivots in many respects on the failure “to recognise members as members” invoked above. Whether one is really confronted with a failure to recognise a member as a member, or rather the “exclusion of [a] member” that the last lines of “We Refugees” invoke, is a question that will stay with us until the end of this paper. I shall ultimately insist that it is indeed a case of non-recognition that is at stake here, for reasons that I will articulate then. From a strictly practical or legal perspective, however, the question is ultimately not that important. It is evident that international law is not doing what it claims to be doing. It is either not recognising all members of the global comity of peoples as members, as it says it is, or it is excluding some members notwithstanding the fact that they are recognised as members.

This norm-practice contradiction in international law reflects the other side of the double resistance to re-familiarisation that renders an effective and incisive release from the hiatus of refugee status so deeply problematic and highly unlikely. The refugee not only needs to overcome her own existential resistance to re-familiarisation. She must also overcome existential resistance of local citizens against this re-familiarisation.

I have pirated Gündoğdu’s arguments at length now and need to get back to the thread of my argument. I nevertheless wish to put up for reflection one more key contention that she makes. Is there any further use of Arendt’s enigmatic invocation of “the right to have rights” against the background of pervasive positive human rights law that is belied by pervasive failures of human rights protection? Does an Arendtian insistence to supplement the pervasive positive system of primary rights with an additional right – a kind of meta-right or primary-primary right – make any sense against the background the massive failure of primary rights that Soysal and Benhabib and many others bring to our attention? Gündoğdu believes it indeed makes continuing sense to sustain this enigmatic supplementation. The supplementation, she claims, can serve as a denotation of a set of practices through which the dormant recognition of human rights in international law can be activated. She cunningly invokes in this regard the performativity on which all natural or basic right norms turn, that Arendt invokes in *On Revolution*. She indeed makes a most pertinent point here, one which resonates significantly with the performativity on which Hans Kelsen’s supposedly “pure theory of law” ultimately depends, as I argue elsewhere.<sup>36</sup> The performativity that she brings into contention here nevertheless falls significantly short of the more fundamental performativity that I wish to bring to bear on the hiatus of refugee status. It is this deeper performativity that I wish to approach with the constellation of questions announced above. To restate those questions in a nutshell: Who will come to recognise the refugee and how will

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<sup>35</sup> Gündoğdu, 11, quoting Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, Cambridge/New York: Cambridge University Press, 2004, 163.

<sup>36</sup> Van der Walt, “Law, Utopia, Event: A Constellation of Two Trajectories” in Austin Sarat et al, (eds) *Law and the Utopian Imagination*, Stanford: Stanford University Press, 2014, 60 – 100.

this recognition take place. Who can give account of the hiatus, and how can this account be recounted? Perhaps we are ready to turn to this question now.

### III. RECOGNISING THE HIATUS

The extensive engagement above with Sigwart's and Gündoğdu's fine readings of Arendt seeks to extract from them a key insight. At stake in their work is, respectively, two concerns: 1) an explanation and exposition of the schematising functions with which twentieth century philosophy of language replaced and/or supplemented Kant's transcendental *Schematismuslehre* with the world-integrating function of language and narrative (Sigwart), and 2), an inquiry into the way in which a significant portion of this narrative and linguistic integration of the world, human rights discourses, appear to fail (Gündoğdu).

Language and narrative – “stories” and a “talkative and argumentative interest in the world,” as Sigwart puts it – are today widely understood to execute key elements of the integrating functions that Kant attributed to the performative imagination of the transcendental subject of knowledge. To put it once more in the terms that Sigwart extracts from Arendt's work: Language and narrative are widely understood today as the essential competences that render “world-densification,” “self-localisation” and “interpretive integration possible.” They are key to the common temporal and spatial coordinates – common space and time – that underpin the comprehensible worlds that humans share.

This being the case, it is well advisable to check from time to time how well the world-constituting narratives are performing the task of integration that twentieth century philosophy has entrusted to them, especially if there are clear signals in the air that this integration is not panning out as well as one might hope. And it is in this regard that Gündoğdu confronts one with evidence of a glaring failure of essential twentieth century political and legal discourses, namely human rights discourses, to perform this narrative integration.

I have allowed this plot of narrative integration and disintegration to thicken, above (see the end of Section II) by also linking it to the fundamental “ordering of space and time” that Lefort invokes when he writes about the theologico-political narratives through which European human societies hold themselves in “an opening they do not create.” Lefort's famous claim is that democracy is the only narrative that endeavoured to maintain this opening “open” or empty, but also failed to do so in the end by resorting to a deifying narrative of the state. During the twentieth century, this narrative deification of the state in Revolutionary and Enlightenment discourses was replaced by a conservative Christian human rights discourse, Samuel Moyn tells us.<sup>37</sup> Putting all of this together, one can argue that the discourses of international human rights law recount the theologico-judicial ordering of a common humanity with which twentieth century conservative Christian discourses replaced the theologico-political ordering of humanity of Modernity symbolised by the Enlightenment discourse of the French revolution. The word “symbolised” is not employed casually here. It

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<sup>37</sup> See Samuel Moyn, *Christian Human Rights*, Philadelphia: University of Pennsylvania Press, 2015, 9; *The Last Utopia*, Cambridge, Massachusetts: Harvard University Press, 2012, 25 – 26.

invokes the fundamental holding together (*symbolein*) of a form of life that Lefort attributes to the political (*le politique* as opposed to *la politique*).<sup>38</sup>

The key point that comes to the fore in view of Gündoğdu's account of the failure of human rights discourses to live up to their promises concerns a fundamental failure of the political (*le politique*) and the symbolic in our time. This point can be unpacked very precisely with reference to the forceful language of Benhabib quoted in Gündoğdu's account: 1) If human rights discourses are the operation – the becoming operative – of a blind spot, as Benhabib tells us; and 2), if this blind spot performs a fundamental obfuscation of a critical junction “where the rule of law flows into its opposite: the state of exception and the ever-present danger of violence,” then, 3), the symbolic holding together that theologico-juridical human rights discourses perform evidently consists in surreptitiously sustaining a hiatus that splits humanity instead of holding it together. The failure of hermeneutic and theologico-political or theologico-juridical integration of time and space at stake here culminates in nothing less than a failure of the basic schematising function that Kant attributes to transcendental subjectivity. If the space of the rule of law is simultaneously the space of the exception and the ever-present danger of violence, and if the space of a common humanity actually remains the space of a divided humanity, the very spatial and temporal coordinates of humanity and the rule of law evidently get scrambled in a way that sucks everyone and everything concerned into a vortex devoid of space and time. The deep end of Arendt's profound observation at the end of “We Refugees” begins to meet a deeply perplexed gaze here: “The comity of European peoples went to pieces when, and because, it allowed its weakest member to be excluded and persecuted.” Once fundamental narratives of integration and inclusion begin to allow the weakly integrated and badly included to drop into cracks where the narratives simply no longer apply (or turn into their opposite), the authors and principal narrators of these narratives will also be sucked into the cracks of non-application.

It is this abyssal narrative failure to which Gündoğdu's invocation of the performative contradiction of human rights norms alludes: The fundamental performative operation that is really operative in international human rights law, is not the sustenance of a common humanity through human rights norms and discourses, but the sustenance of a divide *through* the sustenance of human rights discourses.

Early in her book, Gündoğdu expressly dissociates her fine critique of Arendt and of international human rights discourses, from Giorgio Agamben's complete retreat from human rights discourses. She opts for a continued “navigation and reworking of the perplexities of human rights,” instead of Agamben's pursuit of a “nonstatal and nonjuridical politics [of] human life.”<sup>39</sup> However, her engagement with important human rights case law later in the book ultimately compels her to acknowledge – even if only indirectly – the force of Agamben's description of migrants as *homines sacri*, that is, as a form of life that “ceases to be politically relevant.”<sup>40</sup> It also bears mentioning again how the selection of metaphors to which Benhabib resorts to describe the deeper reality of international law, intimates a

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<sup>38</sup> See Lefort, “La question de la démocratie” in Lacoue-Labarthe, P and Nancy, J.L (eds) *Le Retrait du Politique*, 1983, Paris: Galilée, 71-88.

<sup>39</sup> Gündoğdu, 24.

<sup>40</sup> Gündoğdu, 116



veritable Agambian regard for the complex way in which the law operates by means of a fundamental exclusion or *banning* of sacred life (or bare life, *zoe*) from political life (*bios*).<sup>41</sup>

Gündoğdu's prominent citation of these metaphors early in her book shows that she is not shying away from the deep contradictions and paradoxes of human rights law. She ultimately opts to sustain the self-contradictory theologico-juridical symbolism of conservative Christian human rights discourses with the intention of "navigat[ing] and reworking [their] perplexities." Hers is undoubtedly a complex, admirable, and important discourse that merits being taken as a point of departure for all critical inquiries into the state of symbolical, hermeneutic, theologico-political, juridico-political and schematising narratives in our time. It is, however, also a discourse that can benefit significantly from a more focused engagement with the phenomenological tradition of critical inquiry that she herself invokes to characterise Arendt's theoretical position, and she does so in a way that resonates firmly with the conception of critical phenomenology that I wish to put forward here. Gündoğdu writes:

[O]nce Arendt's conceptualization of *vita active* is read alongside her account of statelessness, it begins to appear in a new light as a critical phenomenology providing crucial resources for understanding the conditions that can make it very difficult for some lives to be recognized as human.<sup>42</sup>

The rest of this essay will endeavour to offer a more focused inquiry into the exclusionary practices of human rights discourses from the perspective of a critical phenomenological mode of socio-political inquiry.

The work of Agamben offers one a first plausible point of entry into a phenomenological critique of human rights discourses. Gündoğdu's repeated invocations of Agamben probably indicates that she knows this well. Like her, however, we shall also not follow Agamben in this pursuit. It nevertheless bears mentioning that his probing analyses of the politics of the *ban* can be considered one of the most forceful attempts at a fundamental phenomenology of law circulating today. The analysis of the politics of the *ban* (that brings about the fundamental banning of sacred life from political life) pivots on the fundamental phenomenological insight into the way in which transcendental intentionality (the intentionality that constitutes a realm of consciousness) performs an operation of inclusion and exclusion without which inclusion (the selection of a juridico-politico-epistemological realm that is not banned) is impossible.

There are clear signals in Arendt's work that her "wandering thought" also has its roots in the neighbourhood of phenomenology, as I argued before. It is not necessary to re-examine key elements of phenomenological thinking in her work that I examined then.<sup>43</sup> I shall instead engage directly with Maurice Merleau-Ponty whose work Arendt read with much admiration.<sup>44</sup> I have also pointed out clear signs of an influence of Merleau-Ponty's work on

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<sup>41</sup> See Agamben, *Homo Sacer*, Stanford: Stanford University Press, 1998, 28 – 48; 81 – 86.

<sup>42</sup> Gündoğdu, 162. It is important to note here also Sigrid Weigel's argument that her essay "We Refugees" was the gateway to this critical phenomenology of the political. See Weigel "The Initial point of Arendt's political anthropology," (fn. 26 above).

<sup>43</sup> Van der Walt, "Law and the Space of Appearance," 63.

<sup>44</sup> See Arendt's letter to Heidegger in *Hannah Arendt Martin Heidegger Briefe* (Frankfurt am Main, Vittorio Klostermann, 1999) 225.

her own thought before and it is not necessary to do so again here.<sup>45</sup> In what follows, I shall only take recourse to a number of key elements of Merleau-Ponty's phenomenological thinking that offer us significant insight into Arendt's reference to the "hiatus between the end of an old order and the beginning of the new" quoted in full above.<sup>46</sup>

Merleau-Ponty refers repeatedly and extensively to a fundamental chiasm and fission – *le chiasme, la fission fondamentale* – in his work *Le visible et l'invisible*.<sup>47</sup> What is at stake in this chiasm and fundamental fission? The literal meaning of fission is "splitting." The literal meaning of chiasm is "crossing." *Le visible et l'invisible* constitutes a sustained interrogation of a fundamental splitting and crossing of the visible and invisible through which existence yields to perception. This splitting and crossing through which existence becomes visible and invisible concerns the primal event that gives birth to historical reality, that is, temporal reality or space conditioned by time. Evidently at stake in the inquiry in *Le visible et l'invisible* is that to which *La Phénoménologie de la Perception* already refers as "the birth of history" or "history in the state of its birth" – *l'histoire à l'état naissant*.<sup>48</sup> Of concern here is the earliest moment or not-yet moment in which the difference between the visible and invisible becomes manifest *for* – and *before* – the first time.

Phenomenology is for Merleau-Ponty the endless endeavour to grasp the sense or direction of history in its nascent state. According to him, phenomenology pursues this birth of history or histories with "the same laborious attention and astonishment" and "the same exigency of consciousness and will" that inform the work of Balzac, Proust, Valéry or Cézanne.<sup>49</sup> The neighbourhood of phenomenology is the neighbourhood of novelists, poets and painters, he suggests. This is the neighbourhood from where it seems feasible to look for answers to the questions posed above: What can we know of the hiatus, the break in time, the breaking of time? Who might recount what happens when time breaks? And what account can be given of this break?

The answer that Merleau-Ponty prompts one to offer in response to the "who?" question is evident: novelists, poets, artists and philosophers that share the same astonishment at the birth of history. Is Arendt's concern with the hiatus that ruptures the flow of time not also informed by this astonishment of artists, poets, novelists and phenomenologists with the birth of history? Sigwart nevertheless cautions us against accepting this answer too quickly. The first chapters of his book are substantially dedicated to Arendt's express wish to distinguish her "wandering" political theory from the "wondering" or "wonderment" of

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<sup>45</sup> Van der Walt, "Law and the Space of Appearance," 63 – 88.

<sup>46</sup> Arendt, *On Revolution*, 205, also quoted above at fn. 19 above.

<sup>47</sup> Merleau-Ponty *Le visible et l'invisible*, Paris: Gallimard, 1964, 172 – 204, 268 – 270. For a forceful discussion of the crossing of the visible and invisible in Arendt's thought against the background of current refugee and migration politics, see further also Marieke Borren, "Towards and Arendtian politics of In/visibility: On Stateless Refugees and Undocumented Aliens," *Ethical Perspectives: Journal of the European Ethics Network*, 15 (2) 2008, 213 – 237. I am indebted to Andrew Schaap for bringing Borren's work to my attention.

<sup>48</sup> Merleau-Ponty *Phénoménologie de la Perception*, Paris: Gallimard, 1945, 22.

<sup>49</sup> Merleau-Ponty *Phénoménologie de la Perception*, 22-23: "Si la phénoménologie a été un mouvement avant d'être une doctrine ou un système, ce n'est ni hasard, ni imposture. Elle est laborieuse comme l'œuvre de Balzac, celle de Proust, celle de Valéry ou celle de Cézanne, - par le même genre d'attention et d'étonnement, par la même exigence de conscience, par la même volonté de saisir le sens du monde ou de l'histoire à l'état naissant."

philosophers. Philosophers are too embroiled in their unique experience of existence; they have no inclination towards or knack for the public wanderings of politics and political theory, insisted Arendt.<sup>50</sup> The astonishment that Merleau-Ponty's phenomenologist shares with artists and poets would appear to pivot on exactly this philosophical sense of wonderment that Arendt dismisses as unhelpful for political theory. The matter is nevertheless not so clear or simple. Arendt's political theory was at least sometimes also enticed by the allure of poets and novelists. Sigwart's description of Arendt's theoretical self-localisation pays specific attention to her fascination with Kafka's narrative localisation of the "thinking ego" in a "battleground" "between the experiential forces of past and future."<sup>51</sup> This "*in between position in time*" "transforms the continuously flowing stream of sheer change ... into time as we know it." However, this "in between position" not only allows for and experience of time as we know it, it also allows for "relating oneself to [its] contradictions." In doing so, it opens up "possibilities for a gradual withdrawal from the present and for critical self-reflection."<sup>52</sup>

In other words, Kafka's narrative position intimates a moment of silent observation that is located (or locates itself) outside the regular flow of time and current concerns. Arendt discerns an element of this stepping outside the current of time and current affairs in her own theoretical position. However, she ultimately also disqualifies Kafka's description of this "stepping outside" because it "steps out too far." Kafka's narrative position ends up in a space too removed from politics and human affairs, argues Arendt. By stepping out of the current of time, Kafka no longer relates himself to time, but ends up in "a timeless region ... beyond human clocks and calendars" about which Western metaphysics have been dreaming "from Parmenides to Hegel."<sup>53</sup>

An interesting point must nevertheless be noted here: In this step towards and away from Kafka, Arendt narrowly opens the door for the wonderment of the philosopher and the poet to enter the affairs of the city. Sigwart also notes in this regard that Arendt ultimately does appropriate for herself and for political theory the wondering or *thaumazein* of the philosopher, provided this *thaumazein* remains focussed on politics and the affairs of the city.<sup>54</sup> Arendt's misgivings about the philosophical tradition's penchant for an "individualising [and] almost isolating experience" of wonderment obviously demands some reconsideration against the background of this concession that political theory is ultimately also, at least partly, claimed by a considerably individualising and isolating sense of wonderment, or something very comparable to it.

Arendt ultimately draws away from her fascination with Kafka's poetic withdrawal from the current of time and the current of current human affairs. Again, Kafka's wondering ultimately wanders too far out, too far away from common human affairs, according to her. This poetic *thaumazein* – arguably even a step or two further out and away from the city than philosophical *thaumazein* – must return to the world of common human affairs. However, her brief concession to this poetic wondering leaves an intriguing trace on her thinking, or at least on Sigwart's summation of everything that makes up "the affairs of the city" in her

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<sup>50</sup> See again Sigwart, 11 – 28.

<sup>51</sup> Sigwart, 94 – 95, referring to Arendt, *The Life of the Mind, vol. I, Thinking*, 203.

<sup>52</sup> Ibid.

<sup>53</sup> Sigwart, 95, referring to Arendt, *The Life of the Mind, vol. I, Thinking*, 207.

<sup>54</sup> Sigwart, 99, referring to Arendt, *Philosophy and Politics*, 103.

thinking. Poetic wondering ultimately appears to be nothing less than one of the key elements of urbanity that is crucial for sustaining urbanity, observes Sigwart. It is the essential element of urbanity that prevents the city from descending into a provincial affair. As he puts in a remarkable paragraph:

The citizen's *amor mundi*, in order to be prevented from degenerating into a narrow and exclusive provincialism, aggressive forms of nationalism, or even into ideologies of complete collective self-functionalisation, needs to be accompanied by the poet's careless political irresponsibility, by the novelist's affinity for uncomfoting and even alienating experiments, and by the wandering political theorist's subversive propensity to transcend any concrete political horizon and to question the credal passion of political deeds, narratives and traditions."<sup>55</sup>

Sigwart is doing a remarkable job here of making Arendt step away from the twee hermeneutics that at times informs her conception of politics; a remarkable job of making her step closer to a tradition of critical theory of which the key characteristic has always been to mark the non-identity between hermeneutic practices and hermeneutic realities. He does a remarkable job of recording the role that art and poetry have always played in exposing the irreducible breach in human affairs that no interpretive project can cover up or close. Whether Sigwart is remaining faithful to Arendt's texts here, or not, is ultimately not an important question. Perhaps he is really following Arendt's wandering thought. Perhaps he is venturing out on a wandering and wondering path on his own. Suffice it just to say that he has read her work well enough to discern a profound thought lurking in it that is not often recognised in scholarly engagements with her texts. This thought could be described as a concern with the two irreducible and irreconcilable trajectories that claim the human imagination, the trajectory that leads it down the *reasonable* path of collaborative constructions of common worlds that ultimately produce law and the orderly freedom that law renders possible;<sup>56</sup> and the trajectory of *deraison*, as Michel Foucault puts it, the trajectory that leads it into the pursuit of a mad freedom common among poets and artists.<sup>57</sup>

Were one to endorse this thought, one could argue that law and poetry mark the projected opposite ends of the spectrum of possibilities in which the human imagination engages. One could then argue further that philosophy and political theory find themselves somewhere more to the middle of the spectrum, philosophy probably somewhat closer to poetry, political theory probably somewhat closer to law. The theoretical endeavour that insistently and consistently charts both these trajectories takes both these trajectories equally seriously. It engages in the creation and sustenance of common worlds that result from common hermeneutic projects. But it nevertheless refuses to be walled up behind the epistemological confinement of these worlds.<sup>58</sup> It is a thinking that surely takes its civil responsibility *within* these common worlds seriously, but nevertheless remains perpetually susceptible to the allure of a different kind of thinking that relentlessly explores the outsides of these worlds, as Foucault once put it.<sup>59</sup>

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<sup>55</sup> Sigwart, 127.

<sup>56</sup> This is the trajectory to which Christian Volk dedicated his recent monograph on Arendt. See Volk, *Arendtian Constitutionalism. Law, Politics and the Order of Freedom*, Oxford and Portland: Hart Publishing, 2015.

<sup>57</sup> See Michel Foucault, *Histoire de la folie à l'âge classique*, Paris: Gallimard, 1972, 554 – 557.

<sup>58</sup> As Derrida once pondered a Mandela that was not walled up thus. For a discussion, see Van der Walt, "When Time Gives," 38 – 57.

<sup>59</sup> See Michel Foucault, *La pensée de dehors*, Paris: Fata Morgana, 1986.

Assuming, then, that both these two trajectories are discernible in Arendt's work, one could argue that one is not taking leave of her thought when, in an attempt to find a language that might allow for a real negotiation of the radically de-familiarising otherness of refugee status, one opts for following her down the path opened up by the "poet's careless political irresponsibility [and] the novelist's affinity for uncomfoting and even alienating experiments," as Sigwart puts it. We would not be taking leave of her thinking if we were to do so. We would be opening it up for a potential that she acknowledged occasionally, but predominantly preferred to shelter in the nocturnal space to which her essay "We Refugees" alludes:

But sometimes I imagine that at least nightly we think of our dead or we remember the poems we once loved.<sup>60</sup>

The oblique link that this phrase makes between poetry and death is notable. It may not lead one all the way to the link between art and madness that Foucault makes in the last chapters of *L'histoire de la folie*,<sup>61</sup> but one would have to be quite wilfully deaf not to notice a real resonance between these two links, the link between poetry and death, and the link between poetry and madness.

Why would one opt for noticing and registering – perhaps with some help from Sigwart – these links here? Why would one opt for stressing this nocturnal poetic side of Arendt's thought? Why would one decide to respond to her marginal – and perhaps only implicit – recognition of poetry as a retreat from the domesticity of civil politics, instead of following her down the central line that runs through her work, the trajectory of which takes one straight into a domiciling domesticity from which her famous distinction between the private home and the public sphere offers no escape? Well, we have seen above, following Gündoğdu, that Arendt herself told us that that the politics of domicile simply fails to include the plight of the stateless person, the very person with whom we are trying to arrange an unlikely meeting here. And we have seen that close readers of her work ultimately admit that nothing much has changed, either in her lifetime, or in the four decades that followed, in spite of highly impressive expansions of international human rights law that allegedly erased the distinction between citizens and non-citizens.

Hence the allure of a different language that does not resist, but decidedly pursues the most radical de-familiarisation with itself conceivable; a language that relentlessly harks back to the sheer absurdity of existence that prevailed before ages of common coinage and currency secured themselves by force of the most fortified distinctions between the familiar and the unfamiliar thinkable. The poem is the place where all tropes and metaphors want to be guided into absurdity, writes Paul Celan: ... *das Gedicht wäre somit der Ort, wo alle Tropen und Metaphern ad absurdum geführt werden wollen*.<sup>62</sup> In other words, the poem is the place where language embarks on the most fundamental forfeiture of familiarity thinkable. When

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<sup>60</sup> Arendt "We refugees" 112. In her paper "Who Are We – „We Refugees“?", presented at in Berlin at *Zentrum für Literatur- und Kulturforschung*, 15 March 2018, Susannah Young-ah Gottlieb argues that this concern with the poetic played a much more prominent role in Arendt's work than I suggest here. More careful engagement with her paper when it becomes available may well move me to rephrase some of the contentions I make above with regard to the role of poetry and the poetic in Arendt's work.

<sup>61</sup> Foucault *Histoire de la folie* (fn. 56 above), 554-557.

<sup>62</sup> Paul Celan, "Der Meridian", 199.

one follows the poem down this path, it may well lead one towards – or into – this forfeiture. The further one follows it, the more must one expect to forfeit. The poem could thus become the site of an extraordinary dispossession; the site of the most complete dispossession thinkable; the site of a dispossession that would certainly include the dispossession of domicile.

“*Ce qu’il y a à saisir est un dépossession.*”<sup>63</sup> That which needs to be grasped, is a dispossession, wrote Merleau-Ponty in a singular phrase that seems to echo his invocation of the will to grasp history in its state of birth – “*la ... volonté de saisir ... l’histoire à l’état naissant*” – cited above. If the poem is the site of this dispossession, it is also the site of a meeting with the dispossessed stranger who seeks asylum, the stranger already dispossessed of domicile, the stranger who already dropped into a crack in time where history has come to an end and has yet to commence again. The poem is indeed a secret meeting with such a stranger, suggests Paul Celan: “Das Gedicht ist ... einsam und unterwegs ... [a]ber steht ... gerade dadurch ... im Geheimnis der Begegnung.”<sup>64</sup> Whether this secret meeting might one day inform a reform of international human rights law, as Richard Rorty appeared to hope,<sup>65</sup> is a question that we cannot and need not pursue now. Suffice it to conclude that it holds, for now, the only promise of entering the crack in time and space that the asylum seeker has already been compelled to enter. The poem holds the only promise of meeting her on an equal footing, the equal footing of equal dispossession. It is the only promise of a common humanity that is *conditioned* by the hiatus, instead of being ripped apart by it.

#### IV. CONCLUDING REFLECTIONS

Let us face what would appear to be an inescapable consequence of the human/inhuman condition: International law is never going to allow for an unequivocal global dispossession of national citizenships that will allow for the standard and non-exceptional recognition of global citizenship. The equivocations – pointed out by Gündoğdu with reference to telling human rights case law – through which international law sustains a distinction that it claims to erase are conditioned by a default setting of human intentionality. The equivocations that sustain an inclusionary-exclusionary system of international law result from the way in which all notions of “humanity” and “the human” remain shadowed by the irreducible “inhumanity” and “non-human” that they exclude. Only on the back of these exclusions can the concept or ideal of humanity become a distinct focus point of human intentionality and, consequently, intentional political practices. The inclusionary discourse of international human rights law will continue to be betrayed by exclusionary human rights practices as long as the ideal of humanity itself remains a function of an initial operation of exclusion.

The global dispossession of national citizenships that will allow for the standard and non-exceptional recognition of global citizenship is *an unpoetic fantasy*. It is an *unpoetic* fantasy, not because it is vulnerable to the accusation of bad poetry, but because it entertains the *anti-poetic* vision of a general or generic juridical resolution of the gap between language and the singularity of “the human condition” that emerges with every critical application of law.

<sup>63</sup> Merleau-Ponty *Le visible et l’invisible* (1964) 319.

<sup>64</sup> Celan, *Der Meridian*, 197-198.

<sup>65</sup> Richard Rorty, “Human Rights, Rationality and Sentimentality” in Stephen Shute and Susan Hurley (eds), *On Human Rights: The Oxford Amnesty Lectures*, New York: Basic Books, 1993.

The singularity that comes to the fore here – the unique case<sup>66</sup> – refuses integration into the generic and repeatable terms of law. The idea that an application of law can bridge the gap that opens up here is an *unpoetic* fantasy, because it is a *juridical* fantasy.

It is a *fantasy*, not only because of the unlikeliness of its materialisation when considered against the background of historical records, but also because lack of historical materialisation is exactly what conditions it as a normative idea. The norm-praxis discrepancy of international rights law that Gündoğdu describes so well, is exactly what conditions the continuing validity of the norm. The norm will mutate and continue to recreate its criteria of compliance so as to sustain the lack of materialisation that ensures its enduring validity.<sup>67</sup> The moment that it no longer does this, it simply falls silent and vacates the scene of political and/or juridical contention, either to allow for a different register of contention, or – may the heavens forbid – an absence of contention that would imply a mode of adaptation or submission to contingent circumstances that is irreconcilable with the Kantian or Enlightenment conception of human freedom; a conception that must still be considered a key aspect of the juridical fantasy at stake here, notwithstanding Moyn’s forceful thesis that its current form or format is more specifically the legacy of a conservative Christianity of a later age. It should be noted, that Hans Kelsen duly acknowledged the irreducible gap between the norm and its application when he emphasised the presupposition of validity that is needed to overcome the validity deficit of the Foundational Norm or *Grundnorm* that sustains the validity of the rest of the legal system (as conceived from the perspective of a pure theory of law).<sup>68</sup> It is with this presupposition in mind that it is perfectly apt and accurate to talk about a *juridical fantasy* here. When Kelsen tells us that the law exists by virtue of a presupposition he invites us to act *as if* the law exists. This is the legal theoretical way of instructing us that the law is indeed nothing but a *juridical fantasy*.

Approaching the status of international law in this way – that is, insisting that the validity of the normative ideals of the Enlightenment is conditioned by the discrepancy between these ideals and any practice or praxis aimed at giving effect to them – is to present it in terms of Hegel’s epochal critique of Kant’s practical philosophy in the *Phenomenologie des Geistes*.<sup>69</sup> One can of course also put it in other terms. Another option would be to articulate the matter in terms of a Socratic regard for the irreducible gap between idea and praxis which informs Arendt’s critique of human rights, according to Gündoğdu. Arendt’s critique of human rights, she argues, does not amount to a categorical dismissal of human rights discourses, but constitutes an ongoing Socratic engagement with their irreducible perplexities or aporias for the sake of an adequately critical but nevertheless committed praxis and politics of human rights.<sup>70</sup>

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<sup>66</sup> Neil MacCormick “A Very Unique Case” in Zenon Bankovski and James Maclean, eds., *The Universal and the Particular in Legal Reasoning* (Aldershot: Ashgate, 2006). (footnote incomplete).

<sup>67</sup> This is the vintage point of critique that Hegel levelled at Kant’s practical philosophy. See Hegel, *Phänomenologie des Geistes* in *Werke in 20 Bänden, Bnd 3*, Frankfurt a. M: Suhrkamp Verlag, 1970 [1807]:453-464.

<sup>68</sup> Hans Kelsen, *Reine Rechtslehre* (Aalen: Scientia Verlag, 1994) 66-67.

<sup>69</sup> See footnote 66 above.

<sup>70</sup> See especially Gündoğdu, 25-54 (chapter 2).

This paper has opted to articulate the discourse/praxis discrepancy with reference to the fundamental exclusionary operation of the human mind that the phenomenological tradition of critical inquiry brings to one's attention. Edmund Husserl already analysed the way in which human intentionality is the effect of *Abschattungen*, acts or incidences of shadowing that allows for the zone of illumination associated with intentionality. It is this incidence of *Abschattungen* that Merleau-Ponty re-articulates in *Le visible et l'invisible* as incidences of chiasms and crossings between the visible and the visible that allow for the emergence of determined or defined zones of visibility on the basis of which common space and time, and common lived realities, become possible.

Why could this phenomenological approach to the discrepancy between normative discourses and praxes, in general, and human rights norms and praxes, in particular, offer a promising alternative to dialectic critiques of the tension between concept and reality that one might associate with either Socratic or Hegelian conceptions of dialectics? It could do so because of the way in which it takes leave of the idea that a concept, which is essentially the outcome of an operative exclusion, can re-include what it excludes without rendering itself inoperative again. Any such re-inclusion must render the concept deeply dysfunctional. The function of the concept is to exclude and it should be allowed to perform that function coherently if it is to inform any kind of praxis at all. The return to the excluded must be pursued fundamentally differently, and it is this fundamentally different return to the excluded that phenomenology offers.

Following Merleau-Ponty (see again the previous section), one can call the initial operation of exclusion that launches a whole trajectory of conceptual exclusion "the birth of history." It is the birth of all historical projects of hermeneutic generalisation and exclusion that soon enough culminate in "bounded forms of enlarged mentality," as Sigwart calls it, the birth of a concrete *sensus communis* of an actual political community as a "limited 'space' with relatively concrete and stable boundaries."<sup>71</sup> It is the birth of this "limited 'space'" that soon enough also facilitates a comprehensive regime of property and "just" entitlements. One may well ask whether the birth of this limited space is not fundamentally conditioned by the motivation to construct a regime of property and entitlement, but this question need not detain us here. Suffice it to note that it is this birth of limited spaces with relatively concrete boundaries and attendant property regimes that conditions refugee status. It is the precondition for refugee status. Refugee status depends on boundaries that effect an exclusion and registers the refugee as the one who comes from the outside.

It is to the birth of this history or histories of "limited spaces" with "relatively stable boundaries" to which phenomenology returns, according to Merleau-Ponty. And this return to history in its state of birth – this reversal of history that reaches back into the deepest recesses of its commencement as a project of exclusionary generalisation and distribution of entitlements – is nothing but an act of dispossession, the most fundamental act of dispossession possible. "[S]aisir le sens du monde ou de l'histoire à l'état naissant" is nothing but "*saisir ... un dépossession.*" The global dispossession of national citizenships that will allow for the standard and non-exceptional recognition of global citizenship demands a return to, and a re-imagination of, the birth of history. It demands the return to a non-judicial

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<sup>71</sup> Sigwart, 81.



language, a language that relentlessly retreats from all conceptual histories that secure frameworks of entitlement, so as to imagine a completely different commencement of history.

The phenomenological inquiry proposed here as an alternative path towards the recognition of the excluded “other” does not compete conceptually with the concept. Instead, it retreats from the concept and retreats from conceptuality as such. It seeks to return to its origin, that is, to the commencement of the conceptual trajectory, by reversing this trajectory. By reversing the conceptual trajectory, it seeks to catch a glimpse of history in its state of being born. It seeks to catch a glimpse of that which exceeds and precedes time, “time” always being the broadest conceptual denomination of a reign of already established concepts. It is content to let the concept do the work that is required of it. It simply takes leave of this conceptual work for the sake of registering a “different time” that is not really “a time,” but the timeless zone that opens up when time breaks, that is, when a break between times occur, when a reality becomes apparent that exceeds current time or times, a reality that current time cannot accommodate. Taking its cue from an enigmatic passage in Arendt’s *On Revolution*, this paper has referred to this breaking of time as the *hiatus*. It has also taken from Arendt’s essay “We Refugees” the cue to link refugee status directly to this hiatus, and to describe it as an instantiation of this hiatus.

It is important to note that Gündoğdu ultimately also comes around to acknowledge the necessity of the return to the hiatus. As shown above, Gündoğdu expressly opts for Arendt’s “working through the perplexities” of human rights” instead of just dismissing them as Agamben does. However, her recognition of the force of Agamben’s critique may well be one of the factors that moves her to ultimately articulate an acute understanding of this “working through of perplexities” that ultimately admits that it is not a “working through” that is at stake here, but a return to the beginning, a return, in fact, to the hiatus. Early in her book, she already stresses the “aporetic” nature of the “working through” she has in mind, with reference to Arendt’s use invocation of the *aporias of human rights* in the German translation of *OT*: “Aporien der Menschenrechten.”<sup>72</sup> However, a strict reading of the word “aporia” would suggest the aporias of human rights actually do not allow one *any way through*, as especially Jacques Derrida’s close scrutiny of the word “aporia” reminds us well.<sup>73</sup> The working through of the “aporia of human rights” that Gündoğdu has in mind, can therefore not entail a “working through” of perplexities in the hope of resolving them, so as to arrive at a perplexity-free theory and practice of human rights.

Gündoğdu is very clear about this. The “working through” that she envisages is ultimately not a matter of *finding a way through*. It concerns an incessant return to the “abyss of freedom” that “ruptures the linear continuity of time.”<sup>74</sup> That is also how she comes to interpret Arendt’s enigmatic notion of “a right to have rights.” According to her, the right to have rights concerns the freedom to engage in the constitutive political practices through which human rights regimes are inaugurated and sustained. These practices are “characterised by contingency and fragility.” It is “by no means certain that these inaugural practices will result

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<sup>72</sup> Gündoğdu, 28, referring to Arendt *Elemente und Ursprünge Totaler Herrschaft*, München and Zürich: Piper, 601.

<sup>73</sup> Derrida, J, *Force de Loi: Le ‘Fondament Mystique de L’Autorité’* (1990) *Cardozo Law Review* 919-1045.

<sup>74</sup> Gündoğdu, 166.

in the political and legal recognition of these new rights claims.”<sup>75</sup> To be sure, in view of her own emphasis on the aporetic status of these rights, one must actually just accept that they won’t be recognised; in any case, not in a way that answers adequately to the promise they seem to hold. That, however, does not deprive one of the irreducible political freedom to return to the abyssal commencement and recommencement on which politics inevitably turns; the freedom to break with the linear continuation of the past and to recommence with the task of re-affirming normative commitments that one knows have a record of failure and are bound to fail again. The understanding of this performative re-inauguration of human rights – rupturing, as it does, the “linear continuity of time” is more insurrectional than revolutionary, as Gündoğdu suggests expressly with reference to Étienne Balibar.<sup>76</sup> In this respect, her understanding of this performative inaugurating practice comes very close to what I elsewhere call the “renegade moment” with reference to Nelson Mandela’s and Bram Fischer’s insurrections.<sup>77</sup>

We have taken from Sigwart’s portrayal of Arendt’s concept of political theory the idea to entrust the description of the hiatus of refugee status to the one who withdraws from current affairs and current politics, the politically “irresponsible” and “careless” poet, as Sigwart puts it, even the mad poet, as Foucault would have it. It is doubtful whether Gündoğdu would articulate the return to the hiatus in this way. This is not her language, and it also need not be her language. However, her acute description of the political freedom to re-affirm normative ideals that have failed in the past and are likely, if not doomed, to fail again, takes an aesthetic or poetic turn towards the end of her book. This is already clear from her description of this political recommencement in terms of “contingency and fragility.” The political recommencement that ruptures the flow of time does not proceed from the strength of established concepts, but from particular observations that may lead to the articulations of new concepts, she avers with reference to Kant’s conception of reflective judgment.<sup>78</sup> It should also be noted that Gündoğdu’s engagement with Arendt also culminates in an extensive discussion of her essay on Kafka “The Jew as Pariah.”<sup>79</sup> She is surely not unmoved by the “poetic outside” of Arendt’s thoughts on human rights. Be it as it may, it is this return to the hiatus of time through a return to poetic observations of “particularity” that the phenomenological reversal of conceptual exclusion aims to push back even further by entrusting it to the Sigwart’s irresponsible and Foucault’s mad poet. Why?

Why entrust this irresponsible or mad poet with the task of recognising the hiatus of refugee status? Because this poet is the only one who would be inclined to duly and persistently avoid the language of the world to describe what does not belong to the world. Invocations of “particularity” does not suffice here, for they already surreptitiously invoke universals that “recognise” the particular as a particular. They already begin “too late.” They already invoke a world and a timeframe – a framework of universals – within which particulars can be

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<sup>75</sup> Gündoğdu, 166-168.

<sup>76</sup> Gündoğdu, 173.

<sup>77</sup> Van der Walt “When Time Gives: Reflections on two Rivonia Renegades,” fn. 4 above.

<sup>78</sup> Gündoğdu, 180.

<sup>79</sup> Gündoğdu, 203-212.

registered as “particulars.”<sup>80</sup> The “irresponsible” or “mad” poet is the only one who would duly avoid temporal or timely discourses to describe or articulate that which does not belong to time. At stake, here, is a language that even exceeds the invocation of particularity, for it is aware that the invocation of particularity is always already reflectively on its way back to the universal.

This is the instruction we receive from Paul Celan’s *Meridian Rede*. Celan refers to this timeless hiatus that precedes and exceeds time as a “date.” The poet endeavours to wrest from time, a unique and unrepeatable date. The poem is the endeavour to prevent the assimilation of the date in and by the flow of time. The poem is nothing less than an attempt to pause the time machine, and thus to observe something that cannot be observed from the currents of time and the cinematic stages of the world; an attempt to observe, not a timeframe, but a timelessness that cannot be framed; a timelessness that withdraws from, and disappears between, the frames or frameworks of time.

Such was the date of the 20 of January that Büchner sought to rescue from the flow of time when he described Lenz’s journey through the mountain, suggests Celan. Who else then, but the poet, someone like Büchner, but surely also someone like Celan himself, can describe the refugee’s journey through the endless dessert, her flight from the al-Shabab soldiers who murdered her father and mother and the father of her own children in front of her eyes?<sup>81</sup> Who will describe this voyage of which every step takes her further and further away from the children she left in the care of others in pursuit of the mad idea that Europe might one day offer them an escape from hell? Perhaps he who is making a similar journey and knows the utter recommencement it demands. Yousif M. Qasmiyeh writes: “They have all come to re-originate the beginning with their hands and feet.”<sup>82</sup>

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<sup>80</sup> See Scott Veitch, “A very unique case; Reflections on Neil MacCormick’s Theory of Universalization in Practical Reasoning”, in Zenon Bankovski and James Maclean, eds., *The Universal and the Particular in Legal Reasoning* (Aldershot: Ashgate, 2006) 143-158. (footnote incomplete).

<sup>81</sup> This is the story of a young woman who was found sleeping under a bridge in Metz before she was taken in to the “Welcome” programme of the local Caritas organization.

<sup>82</sup> Yousif M. Qasmiyeh, “Vis-à-Vis or A Camp,” in *Writing the Camp*, <https://refugeehosts.org/2016/09/30/writing-the-camp/>. I am again indebted to Lyndsey Stonebridge’s references to this poem in her paper “We, the Refugees: Hannah Arendt in Baddawi,” (fn. 19) above.