"The usefulness of rights comes to an end when they lose their aim of resisting injustice."

— Costas Douzinas, *The Guardian,* 12/10/2008

Introduction

Human rights have since their first declaration in 1789 been heavily criticised. One returning criticism has been that human rights are 'abstract' or 'formal' and therefore *de jure* as well as *de facto* 'empty'; an understanding that famously led Edmund Burke to declare that he would rather enjoy the rights of an Englishman than the inalienable Rights of Man. Following this reading, one would think that it is a brute fact that the Rights of Man only can be implemented to the extent that they coincide with the national rights guaranteed by the state. In this way, the only *de facto* subject of human rights is the citizen and the only *de facto* sphere of implementation of human rights is the state. The line of political exclusion from society and from the nation-state thus designates the borderline of the sphere in which human rights can be implemented. Following Jeremy Bentham, this criticism will conclude that the 'natural' Rights of Man appear to be "nonsense upon stilts."

Another more recent criticism ties the formulation of human rights to the inscription of ‘bare life’ in the realm of politics. Following this criticism human rights appear as a part of a broader tendency of politics as “governance of life” (biopolitics) which has its endpoint in the total domination of ‘bare life’ in the concentration camp.

In light of these criticisms, human rights do not appear in a flattering light: either they are complicit with the political exclusion *from* the state, or they are complicit with the repression *within* the state. Either way human rights seem to amount to nothing more than a humanitarian mask of the structural violence of the state. For this reason, the emancipatory potential of human rights seems bleak.

The problems do however not end here. If a link can be established between the exclusion *from* the state and the repression *within* the state (as it is done, at least tentatively by both Hannah Arendt and Giorgio Agamben) not only human rights but also national rights seem to be a futile ground for emancipatory politics. If both the problem of political exclusion from the state and repression within the state can be tied to the sovereign power of the nation-state, not even “the rights of an Englishman” seem to present a foundation of political resistance.

In that case it becomes crucial to raise the question of how we can think politics as a form of counter-power to the repression of the sovereign power of the nation-state. On the backdrop of these discussions, this essay sets out to discuss the relationship between human rights, political exclusion and repression, and political agency in the writings of Hannah Arendt, Giorgio Agamben and Jacques Rancière, asking ultimately from where or from whom political emancipatory politics can be thought.

Hannah Arendt: The Perplexities of the Rights of Man

In *The Origins of Totalitarianism,* in the chapter "The Decline of the Nation-State and the end of the Rights of Man," Hannah Arendt discusses a fundamental perplexity of the Rights of Man (more commonly known as "the problem of refugees"). The perplexity consists in a historical link between nation-states and human rights implying that the crisis of one also signals the crisis of the other.

The perplexities of the Rights of Man, Arendt argues, has its origin in the very first declaration of human rights where a problematic link was established between the *universal inclusion* of the Rights of Man and the poltical *exclusion* from nation-states, ironically manifested in the

title: “Declaration of the Rights of Man *and* Citizen” anno 1789. The Rights of Man were declared to be the end and meaning of national government and the people (the citizens) was declared to be the sovereign of the nation-state. In this way, Arendt argues, the emancipated man is from his birth a part of a sovereign people whereby human emancipation becomes equalized with national emancipation. The the citizen is thus from the founding moment the subject of the Rights of Man (Arendt 2009:290).

If it was the case that all human beings belonged to one nation-state or another where the constitution was founded upon the Rights of Man, we might agree with Burke and proclaim the emancipation of mankind in the name of “the Rights of an Englishman.” This is however not the case.[1] The implication of the identification of the Rights of Man with the Rights of the Citizen first became visible when huge numbers of *de facto* or *de jure* stateless people turned up within the European nation-states. What became apparent was that even though human rights were declared independent of all goverments, the fact of the matter was that when human beings no longer could claim protection by their own governments, whereby they had to fall back upon the rights they were supposed to be entitled to merely by being men, no authority or institution was willing to guarantee them (Arendt 2009:292).

The exclusion from the nation-states was, as Arendt shows, an unfortunate consequence pertaining to the nation-state system itself. This was predominantly the case when the nation-state system was implemented in geopolitical areas that could not live up to “holy triad” of the nation-state: state-people-territory,[2] i.e. absolute sovereign state power over one people

living in a demarcated territory. When the nation-state system was implemented in Southern and Eastern Europe with the Peace Treaties after the First World War, many different peoples were united in nation-states but often only one of the peoples were endowed with the name "state people" ("the nation") and entrusted with government (Arendt 2009:270ff). The Minority Treaties and The League of Nations founded to protect the now huge minorities (such as the Slovaks in the former Czecho-Slovakia, or the Croats and Slovenes in the former Yugoslavia) proved utterly impotent in protecting these minorites from internal repression, political exclusion, and in some cases denaturalization (Arendt 1944:357, Arendt 2009:270ff).[3] The result was that Europe litteraly was overflown with *de facto* stateless people in the interwar period.

The loss of the *de facto* stateless, Arendt argues, though widely discussed, was however different than what was mostly imagined. Firstly, the stateless lost their homes and thereby the entire social texture into which they had been born. This loss was however in no way new; what was new was the impossibility of finding a new home (Arendt 1944:353). This impossibility was not due to overpopulation but the political framework of nation-state in which the statesless constitute an impossible category and an unsolvable problem. The only solution to the problem of statelessness imaginable within the nation-states system was to incorporate them into the political framework of the nation-state either by repatriation or by naturalization (Arendt 2009:281). In the interwar period, the failure of both strategies, however, became apparent. The stateless could in general not be repatriated because they were, *de facto* or *de jure,* expelled from or had fled from their country of origin; the stateless could not be naturalized because nation-states in general only reckoned 'nationals,' i.e., people born in the territory and citizens by birth, as citizens (Arendt 2009:283-285). Furthermore, in a world inhabited by nation-states, no new territory existed where the statesless could found a community on their own. When the stateless lost their home they therefore remained homeless.

Secondly, the stateless suffered the loss of governmental protection, which meant the loss of a legal status, not only in their own country, but in all countries; only the second loss was unprecedented in history (Arendt 2009:294). In the nineteenth century, many countries offered governmental protection through the right to asylum to those people who for political or religious reasons had been prosecuted by their country of origin (Ibid.). This policy—which generally was unofficial and intented for exceptional cases—broke down in the interwar period when the numbers of stateless people on European soil made it impossible to understand statelessness as a few exceptional cases (Ibid.). Furthermore, the majority of the stateless did not qualify for this older policy of asylum since they were not procecuted because of political or religious believes but because they belonged to the wrong kind of race or the wrong kind of class (Ibid.).

The calamity of the stateless, Arendt argues, was however not so much that the stateless have been deprived of human rights but that they have been expelled from all political communities. With her wry sense of humour, Arendt remarks that the stateless in a way enjoys more freedom than the citizen (Arendt 2009:296): the stateless is free to leave and has the freedom of speach. His calamity is however that no one will listen to him and that he will be welcomed nowhere. The calamity of the stateless, Arendt argues, is manifested in “the deprivation of a place in the world which makes opinions significant and actions effective” (Ibid.) The extremety of the situation of the stateless is not the deprivation of their right to freedom but the right to action; not their deprivation of the right of freedom of thought but their right to opinion (Ibid.).

The right to belong to a commuity, the "right to have rights" Arendt argues, could not have been understood within the categories of the eighteenth century, since it is their understanding that the source of human rights are *man* and not *men*: "The desive factor is that these rights and the human dignity they bestow should remain valid and real even if only a single human being existed on earth; they are independent of human plurality and should remain valid even if a human being is expelled from the human community" (Arendt 2009:297-298).

It is from political life that the stateless are expelled, and it is for this reason, according to Arendt, that they are expelled from humanity as such: "Man, it turns out, can lose all so-called Rights of Man without loosing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity" (Ibid.). We therefore stand in the curious situation that the condition of the people who are *nothing but men*—the refugees, the stateless, the *sans papier*—that is, the people who ought to have been the embodyment of human rights, makes it impossible for other people to treat them as fellow-men.

Agamben: Biopolitics and The Rigths of Man

In *Homo Sacer* Giorgio Agamben devotes his chapter on biopolitics to a reading of Arendt's discussion of the interrelated fate of the nation-state and the Rights of Man alluded to in the title: "The Decline of the Nation-State and the End of the Rights of Man": "Linking together the fates of the rights of man and of the nation-state," Agamben writes, "her striking formulation seems to imply the idea of an intimate and necessary connection between the two, though the author herself leaves the question open" (Agamben 1998:126).[4]

In the "Declaration of the Rights of Man and of the Citizen," anno 1789, Agamben perceives the originary formulation of the modern form of biopolitics, that is, the inscription of mere life (*zoe*)—which roughly corresponds to Arendt's understanding of the life of the private sphere—into the jurido-political framework of the nation-state.[5] With reference to Michel Foucault, Agamben argues that the ancient distinction between the private life (*oikia*) and the political or public life (*polis*) has been transgressed: "For millennia," Foucault writes "man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question."[6] The heart of biopolitics, in Agamben's understanding, is that mere life (*zoe*), and not qualified meaningful life (*bios*), is what is at stake in politics.

The hidden foundation of the nation-state is biopolitics, Agamben argues, and it discloses itself in "The Declaration of the Rights of Man and the Citizen." From this title, Agamben argues, it is not clear what the relationship between *man* and *citizen* is; whether they are two autonomos beings or whether they are one and the same, that is, whether *man* always already is included in the *citizen*; and, he continues, if it is the latter it is still not clear what this relationship consists in. In accordance with Agamben's explication, it is the pure fact of the *birth* of man that is the bearer of human rights (Article 1: "Men are born and remain equal in rights"). At the foundational moment, the birth of the natural life of man yield for the figure of the citizen and the sovereign power of the nation (Article 2: "The goal of every political association is the preservation of the natural and indefeasible rights of man" and Article 3, "The principle of all sovereignty resides essentially in the nation")[7] In this way, Agamben argues, the nation, which etymological is derived from *nascere,* "thus closes the open circle of man's birth" (Agamben 1998:128).

This birth of biopolitics in modernity, Agamben argues, thus manifests itself in two links: firstly a link of *man-citizen* and, secondly, a link of *birth-nation*. Since *man* cannot be separated from *citizen, birth* immediatly becomes *nation* in a way where no separation can exist within the political framework of the nation-state. For this reason, Agamben argues, *birth* for the first time in history becomes the immediate bearer of sovereignty.

In this way, Agamben argues, bare natural life becomes polticised. Here again, Agamben draws heavily on Foucault's *The History of Sexuality* where a growing inclusion of man's

natural life into the mechanisms of power is discernt. Agamben does however take Foucault's analysis further and argues that the politics of life very easily can flip over to a politics of death: "thanatopolitics." An example hereupon is given by Agamben in his analysis of the "Euthanasia Programme for The Incurably Ill" in Nazi Germany (Agamben 1998:140-141). The Euthanasia Programme took place from February 1940 to August 1941 and in this period 60,000 men, women and children were killed (Ibid.). These killing were discursively portrayed and understood as "the elimination of life unworthy of being lived"[8] in the words of Karl Binding (specialist in penal law) and Alfred Hoche (medicine) (Agamben 1998:136). In their book, *Authorization for the Annihilation of Life Unworthy of Being Lived,* what Agamben calls "the fundamental biopolitical structure of modernity," is introduced; namely a distinction between valued life and valueless life.[9] Binding asks: "Are there human lives that have lost the quality of legal good that their very existence no longer has any value, either for the person leading such a life or for society?"; the answers, as must be expected, is in the affirmative (Agamben 1998:138-139). These human beings, who "have neither the will to live nor the will to die," Binding suggests can be killed without punishment through an "act of grace," or "mercy killing" (*Gnadentod*) if authorized, in the last resort, by a state committee (Agamben 1998:139-140). This sovereign decision upon the life not worth living, that is, the decision on political exclusion, is not exclusive to Nazi Germany but is present in all modern societies: "Every society sets this limit; every society—even the most modern—decides who is 'sacred men' [i.e., the "life not worth living"] will be" (Ibid.)

It is important that this decision is of a juridico-political nature: the killing of "life not worth living" can not be separated from the deprivation of rights[10]: Agamben thus argues that the inscription of mere live (*zoe*) into the polis with the links man-citizen and birth-nation manifested in the "Declaration of the Rights of Man and Citizen," the juridico-political decision upon exclusion becomes an ever present possibility. Since bare life is the bearer of sovereignty as such, the jurido-politico decision upon the value of life thus coincides whith the decision upon political exclusion, that is, the decision upon *qui sont "les membres du*

souverain" (Agamben 1998:129).

When Agamben presents his much debated thesis that the camp is the 'nomos' of modernity, one has to understand that it primarily is a juridical analysis of the biopolitical decision of political exclusion discussed above. The camps are, Agamben argues, not born out of ordinary law, nor as one might suppose out of criminal law, but out of the state of exception of martial law (Agamben 1998:167). The state of exception refers to the temporal suspention of normal legislation, rights, and the constitution with reference to either external threat (war) or internal strife (civil war); a situation Agamben provides manifold examples of. There is however an important novelty in the juridico-political foundation of the camp which differentiates it from the original notion of the state of exception. Where the state of exception is temporary, the camp is a "state a of willed exception" or a permanent state of exception (Agamben 1998:169).

This permanent state of exception, Agamben argues, has in modernity become a tool of governmentality (Agamben 2005:3) and (Agamben 1998:30-31). In State of Exception, Agamben presents a theoretical and historical introduction to the juridical notion of the state of exception. What becomes clear from his analysis is an inner relation between the laws in Germany between 1933-1945 ("Decree for the protection of the people and State") and the USA Patriot Act from 2001 which was passed to protect "the national security of the United States": if a citizen is under suspicion of endangering the national security his or her constitutional rights are de facto suspended. With the USA Patriot Act as a role model

"terror-laws" have been passed in most of Europe and at least to that extent it is understandable why Agamben understands the permanent state of exception (the camp) as the new paradigm for government (Agamben 2005:1-4).

The ultimate consequence of Agamben's analysis is thus that we, under the post-9/11 terror laws, live in the jurido-politico framework of the camp where we potentially can be deprived of all our rights and be reduced to the life not worth living. A discussion of whether this analysis is convincing or not is outside the scope of this paper. What I will ask instead is therefore how we can think political action or resistance if we, at least for the sake of the argument, accept Agamben's analysis.

Since no one enjoys the security of citizenship political resistance has to come from the excluded ones: the refugees, the stateless, the inmates of the camp. In short, the people who have no possibility of political action and resistance within Arendt's diagnosis are the people whose life in Agamben's theory is most political (Agamben 1998:180). This does however not mean that the people who are "the scum of the earth" have a possibility of political action in the Arendtian sense: for Agamben, all human beings in the modern nation-states whose laws are founded upon the permanent state of exception are reduced to the bare life of the inmates of the camp (pure zoe). Agamben's analysis is in this respect much more radical than Arendt's: where there still exists a possibility of meaningful political life in Arendt's perspective (though it might be quite scarce), no such possibility exists in Agamben's perspective. The life of the inmates of the camp is thus the only ground from which political

resistance can come from.

In his discussion of *Der Muselmann* (the muslim), who made up the lowest part of hierarchy within the camp, Agamben exemplifies what political resistance might look like in the biopolitical era of the camp. The *Muselmann* is a being of pure zoe. Not only has he as his fellow inmates been excluded from all social and political communities to which he belonged; he barely belongs to the realm of the living.[11] He can no longer distinguish between "pangs of cold" and "the ferocity of the SS"; between "nature" and "political rule." He has lost even his animal instincts; he is without will either to live or to die. "Because of this," Agamben argues, "the guard suddenly seems powerless before him, as if struck by the thought that the *Muselsmann's* behaviour (...) might perhaps be a silent form of resistance" (Agamben 1998:185).

It is from such a zone of indistinction, Agamben argues, "a new politics must me thought" (Agamben 1998:187). In Agamben's perspective, biopolitics has in modernity reached its climate and it is therefore no longer possible to distinguish, as the classics did, between *zoe* and *bios*, and this understanding had to be the foundation for a rethinking of the political space in modernity (Ibid.). "This is why," Agamben writes, "the restoration of classical political categories proposed by Leo Strauss and, in a different sense, by Hannah Arendt can have only a critical sense. There is no return from the camp to classical politics" (Ibid.).

The possibility of political resistance is however bleak in Agamben's political theory. The hopeless situation that applied to the excluded for Arendt applies to all human beings for Agamben, and political resistance is therefore reduced to the bare life of the living dead manifested in the body of the *Muselmann*.

Rancière: The part of those without part

Even though Agamben's and Arendt's discussion of the perplexities of the Rights of Man might seem very different, Rancière argues, in his polemical text "Who is the subject of the Rights of Man?", that the ultimate consequence of Arendt's razorsharp distinction between the realm of politics (*polis*) and private realm (*oikos*) is the radical suspension of politics as presented in Agambenian biopolitics (Rancière 2012:66ff). The attempt to purify politics by the exclusion of "ambigous actors" (the refugees, the stateless, the *sans papier*), Rancière argues, reduces politics to state power (since no one inhabits the *polis* today) and all human life is therefore banned to the life of the private. In this way politics vanishes into the relationship between Agambenian sovereign power and bare life. "The will to preserve the realm of pure politics," Rancière writes, "ultimately has politics vanish in the pure relationship between state power and individual life. So politics gets equated with power and power itself gets increasingly construed as an overwhelming historico-ontological destiny form which only a God can save us" (Ibid).

In this light, a rethinking of politics becomes important. For Rancière, this means the we have to ask to the subject of the Rights of Man, that is, Rancière argues, the subject of politics. To argue this point, Rancière returns to Arendt's discussion of the perplexities of the Rights of Man. Arendt's argument is, according to Rancière, that the subject of the Rights of Man is either the non-political man (the stateless, the refugee, the *sans papier*), in which case the Rights amount to nothing, or, the subject of the Rights of Man is the citizen, in which case they amount to a tautology (asuming here that the Rights of Man already are granted to the citizen by his national rights). Following this argument, the Rights of Man are no more than a deceptive trick: either they are a void or a tautology. This argument is however only valid, Rancière argues, if we presume that the Rights of Man are the rights of a single subject, who simultaneously is the bearer and the source of these rights, and who only makes use of the rights he actually posseses. Rancière argues againt this assumption with an at first sight obscure statement: "the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not" (Ibid.). The subject of the Rights of the Man is therefore not "a single *x*"; the relationship between the subject and rights is much more complex (Ibid).

The subject of the Rights of Man, Rancière argues, it to be understood as a process of subjectivation which bridges the gap between the forms of existence discussed by Arendt: the nonpolitical life of the private sphere and the political life of the public sphere (Arendt 1944:58). These two subjects—man and citizen—are however not to be understood as designating collections of individuals. They are to be understood, Rancière argues, as "political subjects" or "surplus names," which means that they carry a dispute of political exclusion with them. Political predicates (e.g. man, citizen, freedom, equality) are in Rancière's perspective

not enclosed categories disignating fixed entities or groups: “Political predicates,” Rancière writes, “are open predicates: they open a dispute about what they entail, whom they concern and in which cases” (Ibid).

When Arendt draws the line of political exclusion as the border of the implementation of the Rights of Man between the man and the citizen as fixed groups she thus precludes the political question of the Rights of Man. In Rancière’s perspective, politics as such concerns the border of political exclusion. Politics is the activity of questioning the border of implementation of rights, of putting into question who the citizens are, or what it means the be free or equal. Rancière provides an example hereupon: “During the French Revolution, a revolutionary woman, Olympe de Gourges, made this point very clearly, famously stating that if women were entitled to go to the scaffold, then they were also entitled to go to the assembly” (Ibid). By this statement, Olympe de Gourges called into question the border of implementation of the Rights of Man. Though women, according to the Rights of Man were born equals, they were not equals as citizens: women could neither vote nor stand for election. Their exclusion from political life, though in a blunt contradiction to the Rights of Man, was justified on basis of one of the most common arguments of political exclusion, namely that women could not be included in the realm of political life since they belonged to the private domestic sphere. Olympe de Gourges’ argument made it however quite clear that it is not possible to draw a razorsharp line between the domestic and the political since bare life proved to be political when women where sentenced to death as enemies of the revolution. If the bare life of the women was political in death their bare life had to be political also in life: “If they were as equal ‘as men’ under the guillotine, then they had the right to the whole equality, including equal participation of political life” (Ibid).

Olympe de Gourges' short and brilliant argument is a examplary manifestation of how the subject of the Rigths of Man can be a process of subjectivation that manages to bridge the gap between different political subject positions such as 'man' and 'citizen'. By transcending the border between bare life and political life, Olympe de Gourges shows that "the Rights of Man are the rights of those who have not the rights that they have" (i.e., women, though born equal in rights, do not live an equal life as citizen) and "have the rights that they have not" (women are entitled to equal political life since they are already included in the sphere because their death can be politized).

Though she is not fully included in the political realm described by Arendt, though she appears enacted on the borderline of political exclusion, Olympe de Gourges statement is a true political action. At the same time, Olympe de Gourges action can in no way be understood as the "silent form of resistance" of the *Muselmann*. In Rancière's work, a strong similarity in the work of Arendt and Agamben becomes visible, namely the assumption that politics, in order to exist needs a specific sphere from which the necessity of private domestic life is excluded. The calamity of modernity is, for both Arendt and Agamben, that political life has been penetrated by the logic of the private; in Arendt's vocabularey this amounts to "the rise of the social sphere" (Arendt 1998: 38ff); in Agamben's words borrowed from Foucault this is the biopolitical era. Eventhough their conclusions are different (whether or not we can/have to/ought to "return to politics") they are equally blind to the possibility of political action as a process of subjectivation which obviously blurs the distinction between the public and the private but not in the biopolitical modus of the camp.

Actions such as that of Olympe de Gourges goes to the heart of what Rancière understands as politics, which he calles *dissensus*: " A dissensus is not a conflict of interests, opinions or values; it is a division inserted in 'common sense': a dispute over what is given and about the frame within which we see something as given" (Rancière 2012:69). What Olympe de Gourges calls into question is the political *topos* as such, that is, she calls into question what can appear as political at all (e.g. the life of women). Where Arendt understands politics as the realm in which it is possible to act in concert, Rancière undestands politics as the ability to put into question the borderline of that realm. Politics for Rancière does therefore not belong to one specific realm or one specific subject; it is the calling into question of the already established categories of realms and poltical subjects, or, what he calls "the distribution of the sensible." The subject of the Rights of Man, or the political subject, is the capability to stage scenes of dissensus; to call into question the distribution of the sensible. In this way politics becomes the action of those who do not partake in government, whoever they might be in different political periods: politics is "the part of those who have no part" (Rancière 1999:30).

Conclusion

No (or very few) spheres of pure politics entirely distinguished from the logic of the private sphere exist within the border of the modern nation-state; so much can be agreed upon by the three authors discussed in this essay.[12] Whether it is possible or even desirable to return to such a sphere is however an open question. Even if there is a return path from the camp to the Arendtian polis, is it one we want to take? The pure sphere of politics might be able to solve the problem of repression within the political realm, but it cannot solve the problem of exclusion from the political realm. The polis was exactly founded upon the

exclusion of the women, the minors, the slaves, and the foreigners. In this way, the equality and freedom of the political life of the included was parasitic on the inequality and repression of the life of the excluded. The biopolitical sphere of the modern state does, however, not present a promising foundation for political agency if it amounts to nothing more than the "silent resistance" of the Muselmann.

What is ignored by Arendt and Agamben are the statements, arguments, and actions of people who live on the borderline of society, like the sans papier movement in France, who exactly bridge the gap of political exclusion by questioning this gap in itself in their demand for official documents of legal residence: "*droit de cité pour les sans papier*" (Balibar 2001:17). What we have to understand is therefore that categories such as "the private," "the public," and "the social" are themselves open for political contestation: they are not spheres containing specific and unquestionable individuals or groups. Politics does in this light become the exception that calls the rule into question.

Following Rancière, I will argue that the emancipatory potential in human rights does not reside in its historical content but as a genuinely political praxis that calls into question the current distribution of the sensible; a praxis that Costas Douzinas has named "right-ing" (Douzinas 2000: 215-216). Such a praxis might manifest itself in a dissensus that makes the discrepancy between the ideal and the real visible (as done by Olympe de Gourge) but it might also be manifested in a flat denial of the historical content of human rights: "When the chasm between the missionary statements on equality and dignity and the bleak reality of

obscene inequality becomes apparent, the false promises of humanitarianism will lead to uncontrollable types of tension and conflict. Spanish soldiers met the advancing Napoleonic armies, shouting 'Down with freedom!' It is not difficult to imagine people meeting the 'peacekeepers' of the New Times with cries of 'Down with human rights!'" (Douzinas 2008). Following Douzinas, I will argue that the time has come where we leave the essentialist humanist understanding of human rights behind and embrace human rights as a praxis which opens towards the changing conditions of human societies and demands from new groups of new rights: if rights are not tied to concrete fights and demands against injustice they loose their meaning and relevance.

If politics has a proper place in our world today then it is on the border, and if human rights should participate in any form of emancipatory politics they have to be understood as a borderline concept which calls the social imaginary into question. A concrete example of what that might mean has been given by Étienne Balibar. In his discussion of the democratization of borders (which has to be contrasted to their opening or their abolition) Balibar argues for a multilateral control of borders negotiated by the all the states and all the populations affected by the borders; not merely citizens but also stateless people, refugees, diasporas, migrants and so on. Such forms of politics, Balibar argues, ought to be the focal point for a new understanding of citizenship and rights which he calls a "cosmopolitics of human rights" (Ibid.). If human rights are to leave its heritage of statism and individualism we have to start to imagine collective solutions to collective problems in a similar manner in the name of human rights: we have to transgress the fixed understanding which still haunts liberal democracies, namely, that nation-states and individuals already prescribed by the law are the principal loci for political rights, power and action.

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[1] Arendt writes: "It is one of Europe's misfortunes that the emancipation of the people in the form of the nation could only be accomplished in a few Western countries." See (Arendt 1944:361).

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[2] As Arendt points out this unity of state-people-territory is limited to a few Western European countries with France as the prime example: ”None of these [Easteren European] nationalities—this is especially true of those in the Balkans—has ever felt with the same absoluteness as Westeren Europeans that their national adherences were identical with the places in which they lived.” (Arendt 1944:362).

[3] In *Concerning Minorities,* Arendt writes: “The last twenty-five years, actually, should have taught the whole world that national conflicts cannot be resolved by setting some up as nations and others as ‘minorities’: forcing the former to renounce part of their sovereignty within a system of national states for the sake of their ‘minorities,’ while trying to persuade the latter to acquiesce to a protection acknowledged only with extreme reluctance.” (Arendt 1944:353)

[4] It might not be entirely just to Arendt to say that she leaves the question of the inherent relationship betwen the decline of the nation-state and the end of the Rights of Man open. As already discussed, Arendt argues that the conflations of the Rights of Man and the rights of the citizens, meaning the nationals, leads to a continual existence of stateless people, who no longer are or never were national within the borders of the nation-states, and furthermore, that their continial existence, guaranteed by the political framework of the nation-state, leads to the downfall of the juridical foundation of the nationstate, that is, the equality before the law, whidch spells the end of the nation-state and the possibility of totalitarianism: ”Deadly danger to any civilization is no longer likely to come from without (...) Even the emergence of totalitarian governments is a phenomenon within, not outside, our civilization.” (Arendt 2009:302).

[5] “Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state. The same bare life that in the *ancien régime* was politically neutral and belonged to God as a creaturely life and in the classical world was (at least apparently) clearly distinguished as a *z?e* from political life (*bios*) now fully enters into the structure of the state and even becomes the earthly foundation of the state’s legitimacy and sovereignty.” (Agamben 1998:127).

[6] Agamben cites Foucault, *La volonté,* 188. It ought to be mentioned here that Agamben differs from Foucault on this point: where Foucault understand biopolitics as inherent to modernity, Agamben understands bipolitics as inherent to sovereign power as such (1998:3).

[7] Agamben cites *The Declaration of the Rights of Man and Citizen,* Article 2 and Article 3 (1998:128).

[8] The notion of ”life unworthy of being lived” is by Enzo Traverzo, in his genealogy of Nazi violence, in an interesting manner put into context with the a new kind of society and warfare which metamorphosed violence into new extreme ”practices of extermination” which all had “dehumanization” as their focal point: the discipline of Taylorism, the Fascist domination founded upon mass mobilization, the dehumanization of the enemy and finally the concentration camps (Traverso 2003:90-99).

[9] In this context, Agamben argues that the Euthanasia Programme can be read in the context of Carl Schmitt's *The Theory of the Partisan,* where Schmitt critiques the introduction of the concept of value into law (Agamben, 1998:137) and (Schmitt 2007:78).

[10] A similar point is made by Arendt "The extermination camps appear within the framework of totalitarian terror as the most extreme form of concentration camps. Extermination happens to human beings who for all practical purposes are already 'dead.' Concentration camps existed long before totalitarianism made them the central institution of government, and it has always been characteristic of them that they were no penal institutions and that their inmates were accused of no crime, but that by and large they were destined to take care of 'undesirable elements,' *i.e.* of people who for one reason or another were deprived of their juridical person and their rightful place within the legal framework of the country in which they happened to live" (Arendt 1944:55).

[11] A similar point is made by Arendt when she discuss the organized torture of the concentration camp as "calculated not so much to inflict death as to put the victim into a permanent status of dying" (Arendt 1944:58).

[12] The final passage of *The Human Condition* discuss the possibility of political action in contemporary society concluding: "In this existentially most important aspect, action, too, has become an experience for the privileged few, and these few who still know what it means to act may well be even fewer than the artists, their experience even rarer than the genuine experience of love for the world" (Arendt 1998:324).