

one another and their state. Yet, here also lies the possibility for recovery over time, which does not proceed in a linear manner, but as Robben notes, moves through cycles and oscillations that may never be fully resolved. By focusing on trust and betrayal in this way, Robben's work can also offer insights into studies of other societies grappling with repressive states or the legacies of repression. Robben thus makes a significant contribution to Argentina's human rights history, but also to the enduring value of anthropology and the social sciences to such studies. Fundamentally, this work reinforces what studies of violence can tell us about how we relate to one another as citizens and people, how we generate meaning, and at the core, what it means to be human.

**Natasha Zaretsky, Ph.D.\***

**Senior Lecturer, New York University**

\* *Natasha Zaretsky is a Senior Lecturer at New York University and a Visiting Scholar at the Rutgers University Center for the Study of Genocide at Human Rights, where she leads the Truth in the Americas Initiative. She has published numerous articles about memory, human rights, and transitional justice in Latin America and is co-editor of Landscapes of Memory and Impunity (Brill, 2015). She recently authored Acts of Repair: Justice, Truth, and the Politics of Memory in Argentina (Rutgers University Press, 2021).*

## On the Right to Have Rights

**Stephanie DeGooyer, Alastair Hunt, Lida Maxwell, Samuel Moyn, *The Right to Have Rights* (Verso, 2018), ISBN 9781784787547, 147 pages.**

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged according to actions and opinions) and a right to belong to some kind of organized community, when there suddenly emerged millions of people who had lost and could not regain these rights because of the new global political situation.

Hannah Arendt, *The Origins of Totalitarianism*

Hannah Arendt first wrote the phrase "the right to have rights" in a publication in the 1949 summer issue of *Modern Review*.<sup>1</sup> Many years prior to that publication, Arendt was a stateless refugee. Fleeing Hitler's Germany, she sought refuge in France. Yet after the German occupation of France in 1940, Arendt once again had to flee, but appealing to US diplomats would not do her any good since the "State Department discouraged the issuance of visas to any of the thousands of refugees fleeing the Nazis."<sup>2</sup> Luckily, as it turned out, Arendt eventually managed to become a naturalized US citizen in 1951. Reflecting on her struggle as a stateless refugee, Arendt's phrase "the right to have rights" appeared again near the end of her book, *The Origins of Totalitarianism*. In the book, Arendt thought about the preconditions that are necessary for any civil, political, or social rights. If such rights were to exist, there first had to be

1. STEPHANIE DEGOOYER ET AL., *THE RIGHT TO HAVE RIGHTS* 5 (2018).

2. *Id.* at 1.

a “right to have rights.”<sup>3</sup> But what might it mean to claim a “right” to have rights? And what might Arendt have meant in coining this infamous phrase?

Many activists have treated the phrase as an “uncomplicated synonym for human rights.”<sup>4</sup> On a first pass reading of the phrase, we might be inclined to take it as the assertion that behind all civil rights stands an inalienable *moral* right, one fundamental right that is pre-legal. Understood in this way, the singular right in the phrase was “born out of the realization that in order to have rights, it seems that one must first have a right to be a member of a political community.”<sup>5</sup> All well and good. But Arendt was skeptical of inalienable moral rights. So, the usage of the singular “right” in the phrase gave rise to a paradox for her: if one does not already belong to a right-conferring political community, then how can one assert the right to belong? Put differently, if you need to belong in order to assert any rights, then how can there be a “right to have rights”?<sup>6</sup> In an attempt to clarify Arendt’s phrase, and the puzzles it raises, *The Right to Have Rights* presents us with an extended meditation on the phrase. Rather than solicit four separate analyses of the phrase, each chapter examines a piece of Arendt’s phrase: in Chapter 1, Stephanie DeGooyer examines the singular “right”; in Chapter 2, Lida Maxwell examines what it is “to have” rights; in Chapter 3, Samuel Moyn examines the plural “rights” contained in Arendt’s phrase; and finally, in Chapter 4, Alastair Hunt asks us to consider the question that the phrase poses: *who* are the bearers of these rights?

In what follows I will briefly examine each chapter of the book (omitting commentary on the afterword), and then offer up a critique of what I take to be a shortcoming of the book, namely, its lack of engagement with natural rights theorists (and so-called Orthodox accounts of human rights).

In the first chapter of the book Stephanie DeGooyer attempts to complicate the popular understanding of Arendt’s phrase, understood as an “uncomplicated synonym for human rights.”<sup>7</sup> DeGooyer asks if this reading “merely restate[s] and reinforce[s] the tautological relationship between citizen and universal rights that Arendt identifies in her critique of human rights?”<sup>8</sup> Given Arendt’s skepticism of human rights, DeGooyer wonders how Arendt can “speak of a right for millions of stateless persons to belong to a political community without, at the same time, claiming a transcendental source for rights, precisely the kind of right she wearily critiqued in her analysis of human rights?”<sup>9</sup> The puzzle, roughly put, then, is how we are to make sense of Arendt’s phrase—the right to have rights—since Arendt holds that grounding rights in human nature amounts to a “naïve or ideological avoidance of the difficult task of figuring out how to live together according to rules of justice.”<sup>10</sup> In an effort to resolve the puzzle, DeGooyer seeks to carve out a hybrid position between the two dominant understandings of the phrase “the right to have rights”—one that is consistent with Arendt’s skepticism towards rights-talk.

In Chapter 2 we turn our attention to the “to have” in the phrase “the right

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3. *Id.* at 2.
  4. *Id.* at 12.
  5. *Id.* at 13.
  6. *Id.* at 13.
  7. *Id.* at 12.
  8. *Id.* at 23.
  9. *Id.* at 25.
  10. *Id.* at 27.

to have rights." Lida Maxwell rightly points out that Arendt parts ways with an understanding common to the liberal tradition. Rather than being metaphysical properties that we can all recognize as self-evident, rights are, for Arendt, things that we participate in bringing into existence. As Maxwell writes, "'to have' rights means to participate in staging, creating, and sustaining, [. . .] a common political world where the ability to legitimately claim and demand rights becomes a possibility for everyone."<sup>11</sup> And while Maxwell acknowledges that this understanding of what it means "to have" a right is founded on a more fragile base, its commitment to truth over "a dangerous myth" allows us to actually confront the present "reality of rightlessness."<sup>12</sup> Instead of lapsing into comforting and supposedly self-evident moral certitudes, Arendt's critique of rights, Maxwell suggests, allows us to see the need of working towards making a world where everyone can, in practice rather than in theory, claim their rights.<sup>13</sup>

In Chapter 3, we move from the singular right to the plural "rights." Here, Samuel Moyn aptly points out that Arendt could have called her basic right the right to be a citizen; "but she did not—she called it the right to have rights."<sup>14</sup> But Moyn wonders whether this framing was a mere accident given Arendt's overall disdain for natural rights. If so, perhaps attempts to interpret Arendt's phrase as the beginnings of a transcendental argument are misguided. Far from being concerned with the metaphysical conditions of possibility of claiming

any plural rights, Arendt seemed more interested in understanding what rights *are* by looking at what they *do*. Rather than try to square the phrase with the rest of Arendt's corpus, Moyn presents the refreshing possibility that perhaps we should understand Arendt's phrase as an "incidental artifact" given that the phrase was at "crosspurposes with other tendencies in her outlook."<sup>15</sup> Perhaps it is not flattering to conclude that such a brilliant thinker as Hannah Arendt could write a five-word phrase that, despite garnering so much attention, is inconsistent with the rest of her corpus. And yet, it seems accurate to observe that even the best minds among us contain multitudes; that they are writers of inconsistencies perhaps reveals their intellectual courage to struggle within a dialectic, rather than purporting to always stand outside it.

The final chapter of *The Right to Have Rights* asks of Arendt's phrase: "of Whom?" That is, *who* are the individuals that hold this right? It is somewhat puzzling, Alastair Hunt writes, that Arendt's phrase, in contrast to phrases like "the rights of man" or "women's rights," "doesn't give the bearers themselves a name."<sup>16</sup> So who are the bearers? One obvious response is that they are humans. But Hunt, citing Arendt's skepticism of so-called "human rights," takes this lack of specificity in Arendt's phrase as a clue to the meaning of the phrase. The point of Arendt's phrase is to be understood, so Hunt argues, as a diagnostic tool for calling into question our "assumptions about who counts as a subject of rights."<sup>17</sup> If it is true, as Arendt wrote in *The Origins*

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11. *Id.* at 48.

12. *Id.* at 58.

13. *Id.* at 58.

14. *Id.* at 59.

15. *Id.* at 71.

16. *Id.* at 75.

17. *Id.* at 18.

of *Totalitarianism*, that “Inborn human dignity . . . not only does not exist but is the last and possibly most arrogant myth we have invented,” then perhaps there is a live possibility that we might come to regard entities traditionally regarded as lacking dignity—non-human animals or the environment—as worthy of the inclusion in our discourse on rights.<sup>18</sup> The open-endedness of Arendt’s phrase, then, presents us with a space in which we can finally begin to ask questions that have been previously thought to be settled.

*The Right to Have Rights* is a pithy book. In fewer than 120 pages, it manages to illuminate both what Arendt might have intended in writing the phrase, and what we might glean from the phrase today. Drawing on a wide range of expertise—from disciplines such as English, History, Law, and Political Science—the book often emphasizes the value of arriving at rich interpretations of the phrase, rather than permanently closing the question of its meaning. Perhaps, then, the ultimate value of Arendt’s phrase, even if it does not neatly fit into the rest of her corpus, as Samuel Moyn suggests, is its capacity to provoke us to think about the 1 percent of humanity—the “65.3 million people” who are either “an asylum-seeker, internally displaced, or a refugee.”<sup>19</sup>

For all its merits, however, some of the arguments advanced in *The Right to Have Rights*, seem too hasty. For instance, DeGooyer refers to Selya Benhabib’s Kantian reading of Arendt’s phrase, which says that the singular right in the phrase is a *moral right*. That is, it is a pre-political and non-legal right “that tells us that we

*ought* to have rights, such as a right to water or a right to health care, and that this right is universal for all human beings.”<sup>20</sup> So, according to Benhabib, even if a state did not *recognize* your rights against, say, being tortured, you would still have those rights in virtue of being human. Moral rights, roughly put, do not come into being when a state or law says so; on the contrary, their prior existence is the standard by which we often judge particular laws or states as being or acting unjustly. And yet, despite Benhabib’s influence, DeGooyer takes issue with her view since it allegedly fails to take us “beyond Arendt’s paradox.”<sup>21</sup>

But this seems strange; for Benhabib’s view *does* take us out of Arendt’s paradox. Recall that Arendt’s paradox was *how* persons not already belonging to a political community can at once assert the right to belong. Benhabib’s solution is to say that the right to belong—to participate in civic life—is a moral right; hence, its *existence* does not depend on the recognition of others. Arguably, this is a virtue of Benhabib’s view (and many other scholars working from Kantian and natural law traditions) since it can neatly explain why stateless persons have rights—and we have corresponding duties to respond to those rights—even if we fail to recognize those rights.

Of course, this is not to say that there are not any problems with the view for which Benhabib advocates. But it is strange that DeGooyer fails to engage critically with Benhabib’s view beyond asserting that Arendt has shown that appealing to the quality of being human is “incapable of generating any rights” and

18. *Id.* at 75.

19. *Id.* at 104, cited in *With 1 Human in Every 113 Affected, Forced Displacement Hits Record High*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) (20 June 2016).

20. DEGOOYER ET AL., *supra* note 1, at 24.

21. *Id.* at 27.

that such appeals are “naïve” or “ideological.”<sup>22</sup> What we are left wondering is just what exactly Arendt’s argument is against this way of thinking of rights. Perhaps DeGooyer finds Benhabib’s way out of Arendt’s paradox unsatisfying, but an argument for why the reader should find it unsatisfying is merely asserted, rather than argued for.

Lida Maxwell also takes issue with the conception of rights advocated for by Benhabib: “While we tend to think of rights as natural possessions that adhere to us by virtue of our humanity, Arendt suggests that the conditions of stateless people reveal this common sense to be an illusion.”<sup>23</sup> And while the rhetorical flare of terms like “illusions” and “myth” are frequently cited when critiquing proponents of natural rights, again, as was the case with DeGooyer’s critique of Benhabib, we find the same conflation of two distinct concepts, namely, 1) existence and 2) recognition. Let me explain.

The move seems to be as follows: Natural rights could not exist because we can cite cases in the past when persons, institutions, or states have failed to recognize or engage in any meaningful political action when so-called natural rights were under threat. Here is the problem: while it is true that the failure to recognize the existence of a legal or social right entails that the right does not exist in a meaningful sense, it does not follow that failing to recognize the existence of a moral right entails that it does not exist in any meaningful sense. To assert without argument that our collective failure to recognize the rights of stateless

persons entails that they have *no* rights is to beg the question against the view that some rights—namely moral rights—*don’t* depend on being recognized to exist. Just as carbon emissions continue to grow year over year whether we recognize it or not, so too do natural rights theorists believe that moral rights persist in the absence of recognition.

But Maxwell gives us no argument to think that the natural rights theorist distinction between 1) the existence of a right and 2) the recognition of a right is unsound. Rather, we are simply told that “Arendt’s critique of the idea of rights as natural possession shows the idea of rights universalism to be a dangerous myth: a myth that emboldens a homogenizing, imperial politics and, in so doing, allows us to ignore the reality of rightlessness in favour of comforting, if illusory, moral certitude.”<sup>24</sup> Again, we are left wondering just *how* Arendt’s critique really shows rights universalism to be a “dangerous myth” which gives rise to “imperial politics.” Far from being a charitable engagement with contemporary proponents of natural rights, this statement seems to strawman such positions by use of such rhetorical flare.

Alastair Hunt, in Chapter 4 of the book, claims that “the idea of human rights [. . .] repeats the biopolitical logic of racism.”<sup>25</sup> Hunt writes that there is an analogy between human rights and racism insofar as “both profess that birth in a natural group by itself determines an individual’s status as a subject of rights.”<sup>26</sup> But this analogy is so broad as to extend to anything that human beings *are* or *have*

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22. *Id.* at 27.

23. *Id.* at 49.

24. *Id.* at 58.

25. *Id.* at 79.

26. *Id.* at 80–81.

in virtue of being human. One could say, for instance, that the claim that “human beings are rational animals” shares an analogy to racism insofar as both purport to pick out things that human beings have in virtue of being human. But rather than human rights being analogous to racism, there seems to be a *disanalogy*. For instance, racism—like sexism—is contrastive; it attributes a *lack of rights* to some human beings, while attributing a *surplus* of rights to other human beings. In contrast, human rights blur accidental distinctions between human beings, and encourage us to see what we share in common with one another—our humanity.

Nevertheless, building on the faulty analogy, Hunt claims that “human rights categorically exclude as rights-bearing subjects all those who have the bad luck of being born into nonhuman species.”<sup>27</sup> But is this true? Is this a fair representation of those who advocate for human rights? Must they necessarily, as a matter of consistency, be committed to the project of denying non-human animals rights? Hunt seems to make the case for this on logical/semantic grounds: “saying *all* human beings ‘are born and remain free and equal in rights’ amounts to saying *only* human beings are born this way.”<sup>28</sup> Notice Hunt’s usage of italics, which attempts to equate “all” with “only.” Now consider the following statement: “For all X, if X is a river then X contains water.” Now ask yourself: does it follow from the previous sentence that *only* rivers contain water? The answer is: No, of course oceans, lakes, streams, and ponds *all* contain water. Upshot: Hunt is wrong to claim that the universal character of human rights is *necessarily* exclusionary.

Despite making such insightful remarks about Arendt’s phrase at times, one cannot help but notice that Hunt’s claims—as many other authors’ in the volume—fail to meaningfully engage with their supposed interlocutors. In fact, at times, one gets the feeling that the interlocutors are created out of thin air; for it is hard to think of anyone writing about human rights these days who claims that saying *all* human beings “are born and remain free and equal in rights” amounts to saying, “*only* human beings are born this way.”<sup>29</sup> That seems like an uncharitable interpretation of someone who wants to say that human beings have different rights than non-human animals—e.g., a right to vote or a right to education.

What seems problematic amongst most of the aforementioned authors is either the claim articulated by natural rights theorists that human rights are “self-evident” or Benhabib’s Kantian-styled view. Yet many of the authors in this volume take it as self-evident that human rights could not possibly be grounded in our shared humanity, or dignity, etc. But we are left in the dark with respect to *why* we should think this; we are left with a muddled collection of bold assertions, rather than arguments, which are taken to settle the view. In a way, then, we find ourselves right back at square one insofar as it is assumed to be self-evident that natural rights are a non-starter.

**Jordan David Thomas Walters\***  
McGill University

\* Jordan David Thomas Walters is a Ph.D. student in the Department of Philosophy at McGill University.

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27. *Id.* at 84.

28. *Id.* at 84.

29. *Id.* at 84.