RETHINKING HUMAN RIGHTS WITH ARENDT: CRISIS AND PARADOX FOR NON-CITIZENS BETWEEN THEORY AND PRACTICE

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submitted by **MERVE FIRAT** in partial fulfillment of the requirements for the degree of **Master of Science in Political Science and Public Administration, the Graduate School of Social Sciences of Middle East Technical University** by,

Prof. Dr. Sadettin KİRAZCI
Dean
Graduate School of Social Sciences _____

Prof. Dr. H. Tarık ŞENGÜL
Head of Department
Department of Political Science and Public Administration _____

Assoc. Prof. Dr. Aslı ÇIRAKMAN DEVECİ
Supervisor
Department of Political Science and Public Administration _____

Examining Committee Members:

Assoc. Prof. Dr. Cem DEVECİ (Head of the Examining Committee)
Middle East Technical University
Department of Political Science and Public Administration _____

Assoc. Prof. Dr. Aslı ÇIRAKMAN DEVECİ (Supervisor)
Middle East Technical University
Department of Political Science and Public Administration _____

Assist. Prof. Dr. Gülşen SEVEN
TED University
Department of Political Science and International Relations _____

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Name, Last Name: Merve FIRAT

Signature:

ABSTRACT

RETHINKING HUMAN RIGHTS WITH ARENDT: CRISIS AND PARADOX FOR NON-CITIZENS BETWEEN THEORY AND PRACTICE

FIRAT, Merve

M.S., The Department of Political Science and Public Administration

Supervisor: Assoc. Prof. Dr. Aslı ÇIRAKMAN DEVECİ

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The thesis aims to understand and analyze Hannah Arendt's understanding of human rights which is developed over the mass of stateless/non-citizen people that she identified in the gap between theory and practice. From the perspective of the study, there are naturalistic conception and political conception approaches in the human rights literature on the theoretical level. Arendt, on the other hand, develops a critical perspective on human rights by expressing the human rights crisis experienced by stateless people, who are excluded from the form of citizenship and deprived of legal protection, as a paradox. Arendt conceptualizes the "right to have rights" by talking about the existence of a more fundamental right that should be had before human rights. This relationship that Arendt establishes between human rights and citizenship challenges the discourses of human rights such as universality and birthright. By examining Arendt's human rights perspective and conceptualization of the right to have rights, the thesis argues that Arendt produces an alternative way of thinking for human rights, different from these approaches in the literature. After the theoretical analysis, the thesis exemplifies the human rights problems experienced by non-citizens through the impact of the Covid-19 pandemic on refugees and the statelessness

experience of the Syrian stateless Kurds. With these examples, the thesis defends the practical validity of the relationship Arendt established between the subject of rights and citizenship. Thus, the thesis aims to contribute to the literature by evaluating the current validity of Arendt's human rights critique in theoretical and practical terms.

Keywords: Hannah Arendt, human rights, the right to have rights, non-citizens, stateless

ÖZ

ARENDT İLE İNSAN HAKLARINI YENİDEN DÜŞÜNMEK: VATANDAŞ OLMAYANLAR İÇİN TEORİ VE PRATİK ARASINDAKİ KRİZ VE PARADOKS

FIRAT, Merve
Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü
Tez Yöneticisi: Doç. Dr. Aslı ÇIRAKMAN DEVECİ

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Tez, Hannah Arendt'in teori ile pratik arasındaki boşlukta belirlediği devletsiz/vatandaş olmayan insan kitlesi üzerinden geliştirdiği insan hakları anlayışını anlamayı ve analiz etmeyi amaçlamaktadır. Çalışmanın bakış açısına göre insan hakları literatüründe teorik düzlemde doğalcı ve politik anlayış yaklaşımları hâkimdir. Arendt ise vatandaşlık formu dışına itilerek hukuki korumadan yoksun kalan devletsiz insanların yaşadığı insan hakları krizini bir paradoks olarak dile getirerek insan haklarına yönelik eleştirel bir bakış açısı geliştirir. Arendt, insan haklarından önce sahip olunması gereken daha temel bir hakkın varlığından bahsederek "haklara sahip olma hakkı" kavramsallaştırması yapar. Arendt'in insan hakları ve vatandaşlık arasında kurduğu bu ilişki insan haklarının evrensellik ve doğuştan kazanılma gibi söylemlerine meydan okumaktadır. Tez, Arendt'in insan hakları perspektifi ve haklara sahip olma hakkı kavramsallaştırmasını inceleyerek Arendt'in mevcut insan hakları literatüründeki bu yaklaşımlardan farklı olarak alternatif bir düşünce biçimine işaret ettiğini savunmaktadır. Teorik incelemenin ardından, tez vatandaş olmayan insanların pratik düzlemde yaşadığı insan hakları sorunlarını Covid-19 pandemisinin mülteciler

üzerindeki etkisi ve Suriyeli devletsiz Kürtler'in devletsizlik deneyimi üzerinden örneklendirir. Bu örneklerle tez, Arendt'in hak özneliği ile vatandaşlık arasında kurduğu ilişkinin pratikteki geçerliliğini savunmaktadır. Böylece tez, Arendt'in insan hakları eleştirisinin günümüzdeki geçerliliğini teorik ve pratik boyutta değerlendirerek literatüre katkıda bulunmayı amaçlamaktadır.

Anahtar Kelimeler: Hannah Arendt, haklara sahip olma hakkı, insan hakları, vatandaş olmayanlar, devletsizler

to honorable memories of my grandmothers, Xanim and Xatmi Siltan, who had been exiled barefoot to foreign lands with their small children in 1925

and

to their grandchildren Abdulilah Fırat and Sevil Fırat, who did not make me forget the proud stories of those women.

her ku roj û şev diçe,
bi bîranîn û hesrata we, ez bêcîh û sirgûnê vê dinyayê me

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I would like to state that my thesis writing process coincided with a period in which I experienced many things in my life and did not give up on right. These experiences further strengthened my ideals. So, I drop this note for myself:

Last but not least I wanna thank me for believing in me, I wanna thank me for trying do more right than wrong, I wanna thank me for just being me at all times.

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CHAPTER 1

INTRODUCTION

The idea of having rights can be seen as a result of religious, cultural, philosophical, and legal developments and long philosophical discussions throughout history. However, in a modern sense, it was in the 20th century that rights were conceptualized as human rights and became a part of states' domestic law and international law. Since the 20th century, due to world wars, genocides, and civil wars, the protection of human rights emerged as an international priority and various declarations and treaties have tried to make human rights a norm in the international arena. Human rights can be seen as one of the most famous political inventions of modern times.

Today's dominant human rights discourse recognizes rights as universal, inalienable, irreducible to, and undeducible from other rights or laws and acquiesced by being born. Especially, it is accepted that the recognition of human rights and its dominant discourse has settled in life in today’s sense in the 1970s. It can be said that in the last fifty years, human rights have achieved a great victory in discourse, especially in the West. However, it has been accompanied by growing concerns about the practical relevance of the discourse. In recent decades, the increasing waves of immigration and the

resulting refugee crises have led to questioning the validity of human rights theory and discourse. The existence of these homeless and stateless but human masses, who had been put into a crisis of rights between theory and practice, also raises the question of whether human rights are broad enough to encompass all humanity.

The gap opened between the promises and theory of the rights and their reflections in practice does not mean that the history of human rights practice is the story of a complete failure, but this gap unleashes an interesting inconstancy. This inconsistency in practice makes it necessary to return to the theory and examine the theory. Therefore, the theory and practice of human rights have been subjected to a critical inquiry from different perspectives on different grounds. The reason why the masses of refugees and stateless people, although they are human, can remain outside the protective shield of human rights is a part of these discussions on human rights. By making this inquiry, Hannah Arendt emerges as an important name who make critical assessments on human rights through the crisis of stateless people and refugees and identify an important gap in the literature. In this regard, this study explores Hannah Arendt's understanding of human rights which is developed over the mass of stateless/non-citizen people that she identified in the gap between theory and practice.

It was her experience of statelessness after World War II that prompted Arendt to think about human rights. Arendt opened the human rights theory to discussion and mentioned the gaps and problems which human rights face after the refugee crisis during the Second World War and labelled it as *The Paradox of Human Rights* in her book of Totalitarianism in 1951. Arendt reinterpreted the relationship between the states and human rights and claims that when people are deprived of state protection, that is, citizenship, due to various reasons, they are also deprived of a mechanism that can protect their human rights. Arendt suggested that there is an existence of a much more fundamental right before human rights and conceptualized this

right as *The Right to Have Rights* and criticizes the naturalistic human rights theory that mostly accepts natural rights as the source of human rights. Arendt argues that this right is a prerequisite that makes the existence of and access to all other rights, including human rights. Arendt says that this right is necessary for one's views and actions to gain meaning in the world or in the public sphere.

In her article titled *We Refugees*, Arendt (2007: 271) states that human beings are social animals, and it is not easy to sustain life when social ties are broken. Few people have the power to maintain their integrity when their social, political, and legal status is completely confused. For this reason, suicide cases have increased among refugees. Arendt (2007: 268) says, perhaps the philosophers who teach that suicide is the best and supreme guarantee of human freedom are right: while we are not free to create our lives or the world in which we live, we are free to give up life and leave the world. The importance of these determinations of Arendt from today is that the stateless masses, which was her starting point, still exist. These masses of people who continue to live are almost turning the theory and system of human rights upside down with their lives. These people, who are not free, swept away and seen as other wherever they go, are one of the biggest tests of those famous human rights. While they are seen and treated as *"the scum of the earth,"*[1] they also function as the litmus paper of the world and theories. Their presence reveals the true color of theories and discourses.

Arendt's understanding of human rights is neither in the past nor in the future, as a bridge between theory and practice. Arendt, who stipulates the philosophy of both aspects and the human condition, tells the present and takes a step into the future. Arendt, quoting Karl Jaspers, "Give yourself up

[1] Arendt (1951: 267-269) uses the phrase "the scum of the earth" for the stateless, refugee, and migrant groups who became homeless and stateless, in other words, for those who became rightless. She uses the example of Jews, Trotskyists, etc. to those whom the persecutor had singled out them as the scum of the earth.

neither to the past nor to the future. The important thing is to remain wholly in the present" (Arendt, 1964: cited in Buckler, 2011: 1) emphasizing the importance of catching the present and the day. That's why we can call her as the philosopher of the present, based on this vital idea. Especially in order to find a solution to the current problems, it is essential to think and the question *now* as she does. Arendt put human rights to the test and identifies paradoxes, perplexities, and crises based on her experiences like a litmus paper. In this regard, exploring Arendt's understanding of human rights can help us to detect and identify the blind points or the gaps in the current system.

The study examines Arendt's understanding of human rights over two main questions. The first question is where Arendt is positioned in the existing human rights literature and whether she has created an alternative perspective. The second question is whether Arendt's critique of human rights and her determination are valid today. By answering these questions, the study aims to claim that Arendt's understanding of human rights adds a different way of thinking to the human rights literature, and to defend the validity of Arendt's observations and criticisms by exemplifying two public *rightlessness* experiences. One significance of this study is that it covers two public examples (refugees during Covid-19 and Syrian stateless Kurds) that have not been discussed in the context of Arendt's understanding of human rights before, and that this is evaluated with Arendt.

The method of the study is based on using primary and secondary sources on the analysis of Hannah Arendt's issues discussed around human rights issues and the theoretical approaches she developed. Primary and secondary sources will also be used in the literature review, which examines the development and theory of human rights. In addition, references from international texts and reports will be included in the last section.

To introduce the context of the study, there will be an introduction, three main chapters and a conclusion in this thesis. The first chapter is an introduction that aims to provide general information about the subject and describe the research question. The second chapter examines the literature on human rights. The first part of the literature review traces and deals with a memory of rights. Three sub-headings expose what constitutes a memory of rights and what can be counted as certain events and debates related to rights by referring to historical processes. First, the developments that can be associated with the rights, starting from antiquity until the Middle Ages, will be discussed. Then, the period in which the natural rights approach emerged, and many declarations related to rights were published, will be discussed. As the last sub-title, a new modern age for rights, which is also can be called the age of rights, will be discussed. The second part of the literature review addresses the question of how philosophers have sought to explain the foundations of human rights and specifically charts the arguments presented by the two presently dominant approaches in this field: the naturalistic conception approach and political conception approach to human rights. According to the naturalistic conception of human rights, human rights are those rights possessed by all human beings at all times and in all places simply in virtue of being human. In recent years, a new and purportedly alternative conception of human rights, the political conception of human rights, has become increasingly popular. Political conception assumes the characteristic nature of human rights to be understood considering their role or function in political practice.

The third chapter aims to examine Arendt's understanding of human rights from various perspectives. First, the structural relationship that Arendt has established between the nation-state and the possession of rights, which is fundamental in her understanding of human rights, will be discussed. At this point, Arendt came to the conclusion that by conquering the state, the nation sacrificed human rights for its own interests. Then, the dilemmas of human

rights identified by Arendt based on her experiences of statelessness and refugee will be explained. The identification of these impasses leads her to the conceptualization of "the right to have rights." This conceptualization will be explained, and its main arguments will be discussed. Afterwards, it will be discussed what Arendt's criticism of human rights and her conceptualization of "the right to have rights" offer in terms of justifying human rights. At this point, it will be discussed where Arendt's voice is positioned in the theoretical discussions that we consider as naturalistic and political conception approaches. Finally, in this section, *aporetic*[2] thinking style will be examined in order to understand the intellectual logic and style behind Arendt's critical understanding of human rights.

After the theoretical explanations and discussions in the second and third chapters, the fourth chapter aims to examine Arendt's theoretical discussion through practical situations and examples in order to better understand her critique of human rights over non-citizens, stateless people, and refugees from today. For this aim, first, definition of migrant, asylum seeker, refugee, and stateless terms according to international conventions will be explicated. Then, the rights and guarantees created by international law and institutions for the rights of refugees and stateless people will be mentioned. After that, the paradox of human rights for non-citizens through current crises will be exemplified. The restrictive impact of the Covid-19 Pandemic on refugees and the statelessness experience of Syrian stateless Kurds will be examined briefly. Also, besides the fact that this crisis and paradox are experienced in practice, it will be discussed why it is also a theoretical problem. At the end of this chapter, the current validity of Arendt's understanding of human rights will be evaluated by referring to certain thinkers who made evaluations on Arendt.

[2] Arendt describes aporetic character as "the argument either leads nowhere or goes around in circles" (Arendt, 1978: 169). In other words, aporetic means concluding inconclusively, without a result.

Finally, the fifth chapter of the thesis is the conclusion part in which the general evaluation and discussions of the thesis are presented. In this section, the main lines of the thesis will be briefly mentioned, and the answers to the research questions we have mentioned in this section will be given.

CHAPTER 2

AN EXAMINATION OF HUMAN RIGHTS LITERATURE

The literature review of the thesis examines the memory of rights and the philosophical foundation of the idea of human rights. The first part of the review examines what constitutes a memory of rights and what can be counted as certain events and debates related to rights under specific subtitles. While determining these sub-headings, certain historical events are taken as basis. The second part of the review addresses the question of how philosophers have sought to explain the foundations of human rights and charts explicitly the arguments presented by the two presently dominant approaches in this field: the naturalistic conception approach to human rights and the political conception approach to human rights. In the literature, there have been studies examining these two approaches with alternative names. While some studies only dealt with the prominent ones, some studies also examined the thinkers related to the basic principles of these approaches under these headings. This thesis has briefly examined the leading thinkers associated with these approaches and the thinkers who can be associated with the basic principles of these approaches. The purpose of examining the arguments put forward by these two dominant approaches is to help to determine and chart where Hannah Arendt's arguments and concepts on the debates over the foundation of human rights can be

positioned in this field as a different way from these dominant approaches. Hannah Arendt's arguments and theoretical framework are not covered in this chapter but are analyzed in detail in next chapter.

2.1. Thinking About Rights

Thinkers approach the idea of having rights from various perspectives and attribute its origins to different places and dates. The idea that people, or some group of persons, have certain rights can be traced in great religions, cultures, and ancient civilizations like Indian, Chinese, and Mesopotamian civilizations as because they created concepts and rules, and even if not in a written way, they have shown practices on rights under the conditions of the day. In other words, although not conceptually, the idea of rights span thousands of years and emerges as a result of religious, cultural, philosophical, and legal developments and long philosophical discussions throughout history.

The purpose of this section is not to reconcile the memory of rights with the modern concept of human rights, but to trace and think about the discussions and events that can be associated with rights. Since the events and discussions, we will talk about can provide us with an idea of the past about how rights existed or not, how rights were perceived and how rights were shaped in certain periods. Therefore, this first part of the chapter examines what constitutes a memory of rights and what can be counted as discussions and events related to rights under specific subtitles. In the first sub-title, the discussions, and events from antiquity to the Middle Ages, in the second sub-title, the rise of natural rights and declarations, and in the third sub-title, the new modern age for rights are mentioned.

2.1.1. Historical Background of Rights: From Antiquity to the Middle Ages

According to Freeman (2017: 36), there were two core views about the history of human rights until recent times: one views human rights had a little history before the establishment of the United Nations in 1945, and for the other view human rights had a much longer history. Also, Samuel Moyn has recently challenged both views and says that the concept of human rights mentions a global morality that became significant only in the 1970s. So, he claims earlier concepts of rights had different meanings and could not be the basis of human rights (Moyn, 2010). Likewise, MacIntyre (1981: 69) claimed to doubt the existence of universal human rights since, before 1400, the concept of 'rights' did not exist.

Leaving aside the debate of whether there is a universal history of human rights or rights, and even though we cannot say that human rights have a definite origin in history, many developments have been associated with the development of rights throughout history. However, those rights were related to citizenship, status, and classes instead of human rights. Today's dominant understanding that human rights “are literally the rights one has because one is a human” (Donnelly, 2003: 7) is relatively new in terms of law because it was in the modern age that these rights entered the constitutions.

However, from a philosophical point of view, the ideas that oppose the inequality of rights among people and refuse to grant privileges to some people have been encountered since the Antiquity. In this sense, it can be said that the idea of having right is philosophically old, if not conceptually. Certain critical periods have brought the debates and developments on rights to today's idea of having rights. For instance, Aristotle supposed that rights resulted from constitutions. He assumed that some men were enslaved people by nature and used a variety of expressions that can be translated as

'a right' even though he had no conception of human rights (Freeman, 2017: 38). Therefore, this section periodically mentions developments associated with rights.

When the idea of rights is traced in the written sources, many documents may be attached to rights. For example, the first written document referring to individual rights is the Urgakina rights, which the Sumerian King declared to end slavery and the mismanagement caused by corruption. One another document is the Code of Hammurabi, one of the oldest, best-preserved, and the most extended written legal codes in history, which emerged in the Ancient Babylonian Kingdom of Mesopotamia around 1760 BC. Some have suggested that the idea of human rights can be traced to these codes, as they ensure certain legal protections against mutilation and torture even though they are applied only to aristocrats (Pagels, 1979: 59).

Apart from these documents, a memory for theoretical and philosophical discussions of rights can be found in in the philosophers' views who formed the ancient Greek civilization. In the ancient Greek city-states, the individual had no value as a human being, only belonged to the city or was alone. The citizens were the only people who had certain rights and could use those rights. The existence of the right can be seen, but this is presented only as a requirement of being a citizen.

Sophists are one of the movements that can be said to have thought about rights and social problems in ancient Greek civilization and condemned the discrimination in rights. They argued that people's abilities should be developed to live more comfortably and freely (Konan, 2011: 255). The sophists drew attention to the contrast between natural laws and laws made by men and opposed the latter. Sophists opposed the artificial things in society, and for them, slavery was an artificial institution against human nature. However, these humanitarian ideas did not respond much to society at that time because the era, including Ancient Greece, was an agricultural

era based on slave employment. As a matter of fact, according to Freeman (2017), in many cities, slaves made up about 30 percent of the population. Besides the Sophists also the Stoics, who emerged during the collapse of the ancient Greek sites, argued that there is a universal natural law that can be found with the reason above the laws of the state (Kapani, 1993: 18).

In Plato, and Aristo, who are the prominent thinkers of the ancient Greek civilization, there are no thoughts about the possibility of rights which arise from being human only. On the contrary, there is a restrictive intervention in personal rights. For example, Plato divides society into three classes: the producers, the auxiliaries, and the guardians, and says that the members of the serving class have to be obedient to the higher classes who think for themselves and fight (Weber, 1998: 64). Aristotle (1975: 14) also claims that those who are slaves by nature do not have the faculty of reasoning, and the use of slaves is not much different from domestic animals: we benefit from both of them to meet the needs of life.

Also in Roman civilization, a distinction and limitation on rights according to classes is seen. In Romans, where the ruler ruled as the son of the gods, only Roman citizens, a small part of the population, had specific rights, and Romans' legal system was based on the premise that rights are granted or denied by the state (Pagels, 1979: 59). Roman Law formalized the status of slaves, and Roman Law made the condition of being free to have rights.

After the collapse of the Roman Empire, the intellectual life of the western world in the Middle Ages was determined by the hegemony of the Papacy, the institutionalized churches, and feudalism (Kara, Şen, Nalbant, and Karakaş, 2014: 26-27). Church rules that limited and directed all people, including the Pope, and presented as the will of God, were in effect in this era instead of natural law. Even the idea of Christianity opposed the inequality between the slave and the free, Christianity remained only as a recommendation, and persecution of slaves and discrimination between

classes continued in this period as well. Like Christianity, also Islam brought very humane provisions about slaves, but the institution of slavery could not be abolished in the Islamic world either. In addition, the Prophet's Farewell Sermon has also had an important position on rights in the Islamic world. In the sermon, it was declared that all people are equal, and this is an important religious statement in terms of emphasizing the rights and equality of people and universality of equality.

In the Middle Ages, the conflict between divine and human laws constantly caused different groups to form alliances and conflicts among themselves, and this gave rise to certain legal compromises. One of these compromises is the Magna Carta Libertatum (Great Edict of Freedom), which emerged in England in 1215 and was accepted as one of the most important document and development that can be attached to the rights in the Middle Ages of Europe.

The Magna Carta, which was signed between King John of England and the nobles and consisted of sixty-three articles, revealed that the safety of life and property should be defended against all kinds of arbitrary practices by the king. In other words, Magna Carta can be defined as a feudal charter that limits the power and authority of the king to some extent and gives some rights to the barons, rather than a document that gives certain freedoms to the people (Kapani, 1993: 41). Some have described Magna Carta as the first edict of freedom (Mumcu, 1992: 52).

As a result, there were minor developments that can be attached to the idea of rights from Antiquity to the Middle Ages. Especially the Middle Ages had an environment dominated by feudalism and scholastic thought. Also, according to Freeman (2017), the Late Middle Ages was a period of a clear transition from objective rights to subjective rights. However, despite these, it is not possible to say that a human rights idea or practice has been reached in the current sense in the Middle Ages. A significant part of the

developments about the idea of rights that make up today's human rights thought became more apparent in the New Age.

2.1.2. Rise of Natural Rights and Declarations

In the New Age period after the Renaissance, although the divine-based mentality could not be completely abandoned, the understanding of natural law in terms of rights started to take shape again. When it comes to the 17th century, it is seen that two principal thought traditions came to the fore in the issue of rights. The first of these thoughts emphasized natural, subjective, individual rights, and the second objective right and/or civil rights (Tuck, 1979: 54–57).

In this period, it is seen that the discussions of three important thinkers came to the fore. Thomas Hobbes (2018b: 37), one of the influential philosophers of this period, takes man as a "reasonable" being with the capacity to think. For him, the most prominent feature that distinguishes humans from animals is the feeling of knowing and pondering how and why something happens (Hobbes, 2018b: 37-53). For Hobbes, this reasoning required people to authorize a sovereign to act on their behalf, and men were obliged to obey the sovereign if he did not threaten their preservation (Tuck, 1979: 126–131). Because as can be understood from "man is a wolf to man" (Hobbes, 2018a: 1), the natural condition of mankind was a state of great insecurity.

About half a century after Hobbes, John Locke took the natural rights against the political structure formed by the contract before the contract. Because the individual was a sacred being even before being modern individual and was endowed with inviolable, indispensable, and inalienable natural rights. People have certain inherent rights, which are rights such as life, liberty, and property. In other words, the emergence of the right is not dependent on the state, and people did not apply to the state apparatus to have rights. The reason, which we can see as the distinguishing feature of human beings, is a precaution brought to people's actions for their mutual

security (Locke, 2018: 17). Therefore, the state apparatus is obliged to protect the rights of the individual. Locke defended the necessity of the existence of the state as a result of the contract they made equally with each other, which will ensure these rights in man with the help of his own reason (Coşkun, 2014: 92).

Jean Jacques Rousseau, one of the thinkers of the 18th century of enlightenment and industrial revolution, also bases his view of society on the concepts of "state of nature" and "social contract." Unlike Hobbes, Rousseau states that human beings are good by nature, but they are corrupted by society (Dent, 1988: 14). The most essential qualities for man in his natural state are liberty and equality for him. It is a social contract that people have voluntarily prepared in which equality and liberty continue to be protected, and on the other hand, people can agree on their common will to coexist. For this situation, Rousseau uses the concept of "the general will." Unlike Hobbes's transferring all the rights of the individual to a sovereign with unlimited powers, Rousseau transfers the rights of the people to the general will, not to the person. He describes this as "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole" (Rousseau, 2008: 164).

Thus, the discussions of those thinkers we mentioned on idea of the social contract, society, natural rights should not be evaluated independently of the social and economic structure of the period. For example, the slave class, which was the oppressed class before modernization, was the working class in the new age. The working class played a similar role against the newly emerging class, the bourgeoisie. For this reason, when talking about the development and discussions over society or rights, structural changes should be evaluated together with such social changes.

Also, there are developments in practice and structural dimensions in the new and modern era. These developments came mainly in England, France, and America as documents. It is not among the documents that derive from the belief that human beings are endowed with inalienable and indivisible natural rights (Kapani, 1993: 42). However, these declarations have been important stages for the idea, and implementation of rights.

The first of these documents came out in England in the 17th century as the Petition of Rights in 1628, Habeas Corpus Act in 1679, and the Bill of Rights in 1689. The importance of the Petition of Rights, which is a declaration presented to the king by the parliament and approved by the king, is that it limited the arbitrary tax practices of English King Charles I. The other document is the Habeas Corpus Act, which is seen as a guarantee of personal freedom. According to this principle, a person cannot be deprived of his liberty for a long time without being brought before a judge (Aybay, 2015: 30-31). Moreover, the last document, the Bill of Rights, aimed to strengthen parliamentary powers against the king with several arrangements.

In America, in 1776, 13 American colonies at war with England came together and held a congress. As a result, a declaration called the Virginia Declaration of Rights made it clear that people were born equal and free and had natural rights from birth. The American Declaration of Independence was prepared in July 1776, 28 days after Virginia Declaration, and most of the articles contained in the Virginia Declaration of Rights were transferred here. The Declaration stated that people have the right and freedom to live, have property rights, and freely realize their own personality and happiness of their own will (Ünal, 1994: 51-52).

In France, the French Revolution took place in 1789 due to the unbalanced power of the monarchy and the rapid economic and class divisions among the people. This revolution led to the emergence of new ideas in the context

of human rights. As a result of this revolution, the Declaration of the Rights of Man and the Citizen, consisting of 17 articles, was declared by the French parliament. This declaration became legally valid with the new constitution adopted in France in 1791.

The importance of the French Declaration of the Rights of Man and the Citizen is that its content is not only for French citizens but also has universal features, and it states that political power is responsible for protecting natural rights, which are defined as freedom, property, security, and resistance to oppression. Thus, this Declaration inspired the texts that followed it and had an important place in terms of human rights.

In addition to the situation that the French Declaration of the Rights of Man and the Citizen had been a critical threshold for the idea of human rights both in thought and in texts, many criticisms were made against it during the period. Edmund Burke and Jeremy Bentham, 18th-century thinkers, appear as the two chief names of these criticisms. Edmund Burke, one of the philosophers and theorists associated with conservatism, harshly criticized, and attacked the Declaration of the Rights of Man and Citizen with the pamphlet “Reflections on the Revolution in France” published in 1790. Burke argued that the a priori reasoning adopted by the declaration produces concepts that are too abstract to be applied within the framework of society, so it is meaningless. He takes the side of practical and societal framework and rejects the side of metaphysic with phrase “What is the use of discussing a man's abstract right to food or to medicine? The question is upon the method of procuring and administering them” (Burke, 1987: 106). In other words, For Burke (1987: 106), rights “cannot be settled upon any abstract rule” as stated in the declaration, rather it is necessary to evaluate them in the framework of a social framework.

On the other hand, the utilitarian philosopher Jeremy Bentham also criticized the French Declaration of the Rights of Man in his text called

“Anarchical Fallacies.” Bentham criticized the universal norms of the declaration and finds the idea that people have absolute equal rights from birth meaningless and used the expression “nonsense upon stilts” for the concept of natural rights. For Bentham (1987b: 36), while “a natural right is a son that never had a father,” and natural right serves as “moral and intellectual poisons,” “substantive right is the child of law” (1987a: 69). Thus, for him, rights cannot be created by the utopian natural right because right must be created by a society's law enacted by established governments. Also, Amartya Sen (2004: 316) comments that Bentham's suspicion is important and alive today, because despite the use of human rights idea in practical affairs, there are those who see human rights idea as “bowling upon paper” which is a Bentham's phrase for natural rights.

As a result, there have been intellectually discussions over the natural rights, society, and rights. In addition to these discussions, it has been seen in many declarations and documents that the rights of the sovereign are regulated, or the rights of the people are stated. Although the declarations promised rights and regulations, the realization of these rights promised in the declarations was not easy. Even after the critical emphasis of the French Declaration on rights, it was possible to see violations of rights caused by class and economic distinctions in France and Europe. Workers, children, and women, who were the oppressed of this age, still had not regained their rights. Besides that, criticisms that feed current human rights criticisms and target natural rights and universal rights had also been voiced during this period.

2.1.3. A New Modern Age for Rights

The first of the crucial developments in terms of providing a long-term peace plan in the 19th century was the Congress of Vienna, which was held in 1815 to hold talks on the problems that arose in Europe after the French Revolution. The states participating in the congress reached an agreement to abolish the slave trade with the decisions they signed. So, the protection of

rights such as personal, political rights, and religious freedom was evaluated at the international level with this congress. Also in the 19th century, France and England abolished slavery so it was a period of some developments for the institution of slavery. Apart from this, one of the developments in this century is the first Geneva Convention in 1864 and the Second Geneva Convention in 1868 (Ishay, 2004: 162) which were concerned the reformation of armed forces at war.

By the 20th century, the most critical factors affecting the development of human rights were the world wars that caused the death, injury, and migration of millions of people and the change of borders of several countries. The need for energy and raw materials, and market competition, which appeared on an unprecedented scale compared to previous centuries, are the causes of these wars.

Following the end of the First World War, the League of Nations was established in 1920 as an organization that can be considered the basis of the United Nations as a result of the Treaty of Versailles negotiations. The organization aimed to prevent war, and ensure disarmament, peace, and global prosperity through dialogue. However, with the outbreak of the Second World War, it became inevitable that the League could not achieve its goals, and it was decided to dissolve the League in Geneva in 1946 after the war. Despite this, through agencies such as the International Labour Organization (ILO) established under League, there were improvements in recognizing some rights, such as the 1919 Convention, which protects women from pregnancy discrimination in employment.

During the period between the world wars, there was no positive development in the field of political and fundamental rights. According to Ishay (2004: 178) during the interwar period, the inability to create a viable human rights mechanism in domestic and international politics gave fertile soil for the rise of particularist trends. Dictatorships in many European

societies, such as Mussolini in Italy, Hitler in Germany, Franco in Spain, and Salazar in Portugal, also restricted existing rights and caused the death of hundreds of thousands of people. With the start of the Second World War in 1939, many mass murders took place in many countries, such as the Nazi massacre of Jews in Germany, millions of people were forced to migrate, stateless masses emerged, and thus, violations of rights in an unprecedented form and extent were experienced.

After the great destruction and brutality inflicted on people in the Second World War, it became apparent that the existing regulations were insufficient to prevent the violations of rights. In the pre-war period, human rights were left to the discretion of the states as domestic law and internal issue which was included in declarations and constitutions. When it was seen that leaving it to domestic law was unsuccessful in terms of protecting and ensuring rights, a new era for human rights that did not exist before began. The issue of human rights has been moved to the international arena through conventions and agreements, and new regulations have been created that can guarantee rights.

In this context, the Universal Declaration of Human Rights was declared and accepted on 10 December 1948 by the United Nations, which was established in 1945. Thus, the first official step towards universal recognition of human rights was taken with the signing of the Universal Declaration of Human Rights by all member states, consisting of a preamble and thirty articles. Although it is not legally binding, this declaration emphasizes the universality of human rights by creating an element of moral pressure on states.

The preamble and Article 1 of the Declaration state that:

> Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the

> highest aspiration of the common people...All human beings are born free and equal in dignity and rights (United Nations, 1948).

Article 2 states that everyone is entitled to all the rights and freedoms proclaimed in this declaration, regardless of race, color, sex, language, religion, political or other opinions, or national or social origin. Article 3-21 includes classical fundamental rights, freedoms, and political rights such as the right to life and liberty, the prohibition of slavery and torture, the right to be recognized as a person, equality before the law, freedom of movement, the right to asylum, the right to citizenship, the freedom of thought, conscience and religion, and freedom of expression. Article 22-27 includes social, economic, and cultural rights such as the right to work and education right. Lastly, the last two articles of the declaration regulate the exercise of these rights and the responsibilities of individuals and the state (United Nations, 1948).

This declaration inspired many developments after it and was effective in transferring human rights to an international arena. Ignatieff (2001: 83) states the declaration's importance by quoting that Nobel Peace Prize-winning Jewish writer Elie Wiesel sees the Universal Declaration of Human Rights as the sacred text of a "worldwide secular religion."

On the other hand, many human rights documents have been prepared by the United Nations under the title of human rights. Two of these are the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights", which were ratified by the United Nations General Assembly in 1966 and entered into force in 1976, and called as the "Twin Covenants." In the Twin Covenants there are also rights not included in the Universal Declaration of Human Rights, such as the right of self-determination, the right of peoples to own and use their natural resources freely.

In 1950, the European Convention on Human Rights, which was signed by 47 countries and consisted of 59 articles and additional protocols, was prepared by the Council of Europe, and entered into force in 1953. Even though this Convention has been accepted as a common law document and even a kind of constitution of European states, it does not introduce a new category of rights compared to the Universal Declaration of Human Rights. The novelty of this convention is that it is the first agreement that provides and binds the stated human rights.

The states that have signed the European Convention on Human Rights have undertaken the obligation to include the fundamental rights and freedoms guaranteed by the convention into their domestic laws. The European Court of Human Rights has been established as the application authority for those whose rights have been violated to file a complaint. If the court finds a human rights violation, it has a right to make sanctions against the state concerned (Ünal, 2001: 69-70).

After these significant developments in the 20th century, Samuel Moyn (2010) claimed that human rights emerged in the 1970s, not in the 1940s, and on the ruins of prior dreams. According to Moyn, although the declarations were published, the concept of human rights was not as popular as it was supposed in the 1940s and it was limited to international organizations like UN. With a quotation, he states that in the early 70s, the human rights idea had "yet to arouse the curiosity of the intellectual, to stir the imagination of the social and political reformer and to evoke the emotional response of the moralist" (Moskowitz: cited in Moyn, 2010: 3).

Moyn (2010: 4) claims that after the 1970s, "even politicians started to invoke human rights as the guiding rationale of the foreign policy of states." In 1977 the New York Times presented the phrase human rights five times more often than in any previous year. So, for him, Ignatieff and the others were wrong because human rights were not "a response to the Holocaust,

and not focused on the prevention of catastrophic slaughter" (Moyn, 2010: 6). With this perspective, Moyn adds an alternative discourse to the discussions over the history of human rights.

As a result, the historical development of human rights has been attributed to various periods or events in the literature. While some found the roots of contemporary human rights in Greek philosophy or monotheistic religion, or in European natural law or early modern revolutions, some linked it to the in horror against slavery or catastrophic slaughters like Jew Genocide in Nazi Germany. Also, some linked it to the construction of a compelling moral alternative against the collapse of universalistic schemes. Thus, this part of the literature review of the thesis has made a chronological review of the events and development that can be associated with the idea of having rights or human rights by referring to these attributed periods.

2.2. Theoretical Foundation of Human Rights

Many human rights defenders argue that institutionally constructed human rights do not need a major justification because they are legally recognized and implemented. But at the same time, it has been observed in the last 60 years that even though the states themselves legally recognize and declare that they will protect human rights on theoretical and legal grounds, the same states can also arise as the major violators of human rights in practice. Considering this relationship between human rights as an ethical norm and modern states as a political institution, it is necessary to dwell on the question of the philosophical debates of human rights so that our belief in human rights does not grow "dull and torpid" as John Stewart Mill feared. In other words, we must first understand what precisely human rights are and how they are justified in order to understand what we are fighting for, and not merely what we are fighting against (Parekh, 2008: 122).

Freeman (2017: 110) states that "human rights theory should justify the concept of human rights and provide some guidance as to which claims, and

rights are human rights." Also, as Fagan (2012: 9-10) stated, there is a need to construct genuinely compelling and rationally acceptable arguments in support of human rights because human rights defenders face a normative challenge. Because of this challenge and need, many theoretical discussions have been made and continued in human rights literature. One of these critical theoretical debates in human rights literature is what philosophical and moral foundation grounds human rights. Therefore, this chapter deals with the philosophical ground on which these rights are based. In other words, while chapter 3 seeks an answer to why it is necessary to dwell on the question of the philosophical debates of human rights and examines Arendt's critique of human rights, this chapter seeks exploration and clarification of a discussion on the philosophical/moral basis of the foundation of human rights.

Philosophers have provided many different attempts to compelling arguments in addressing the question of the philosophical foundations of human rights. Some philosophers have sought to determine the foundation of human rights by appealing to ideals such as human dignity, nature, history, reason, theism, basic needs, universal interests, equality, autonomy, the capacity for rational agency, and even democracy. Also, some believe that there are no theoretical or normative foundations for human rights. There have been thinkers who have classified these existing attempts and idealizations to legitimize human rights under various names and categorizations. On the other hand, this study makes this categorization between two approaches named the naturalistic conception approach and the political conception approach to human rights. By the naturalistic conception approach the study means those thinkers who believe that human rights are grounded in naturalistic feature of human being in human nature or in morality. In contrast to naturalistic approach, by political conception approach the study means those thinkers who believe that human rights must be grounded upon a basis that deals with the political role and framework of

rights other than human nature or morality. The main purpose of this chapter is to clarify theoretical debates and categories over the foundation of human rights in order to understand and situate Arendtian human rights idea within these debates in the next chapter.

2.2.1. The Naturalistic Conception Approach to Human Rights

Justifications gathered under the title of naturalistic approach to human rights include grounding human rights in many different reasons and bases. The thinkers who offer naturalistic justifications discussed in this study are those who believe that human rights grounded in naturalistic feature of human being in human nature or in morality. Such foundation/base attempts are human dignity (Donnelly 2003), human action and autonomy (Alan Gewirth 1982, James Griffin 2008), capabilities approach (Amartya Sen 2004, Martha Nussbaum, 2001), the theory of basic need (Massimo Renzo 2015), natural moral right (H.L.A Hart 1995), human dignity, self-respect, freedom, and equality (R. Dworkin 1978). In particular, the main features of the naturalistic approach to human rights, with reference to Cruft, Liao, and Renzo (2015: 4), can be summarized as follows: nature of human rights are "a) moral rights that b) all human beings possess c) at all times and in all places d) simply in virtue of being human e) and the corresponding duty bearers are all able people in appropriate circumstances."

The prevailing view in human rights idea today is the view that human rights are inherently possessed. For this longstanding approach, human rights are attained just in virtue of our being human, and that virtue of being human makes human rights different from other kinds of rights. This comes from the natural right and natural law tradition, which we mentioned its root in the previous section. This language of natural rights also appears in basic human rights documents assuming that human rights are grounded in something natural to the human being and with human dignity that is seen as a fundamental aspect of human nature. For example, the first article of the

Universal Declaration of Human Rights (United Nations, 1948) includes that "All human beings are born free and equal in dignity and rights." Also, the International Covenant on Civil and Political Rights (ICCPR) "derives from the inherent dignity of the human person," and the International Covenant on Economic, Social and Cultural Rights (ICESCR) proclaims that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." This assumption of natural human dignity in basic human rights documents illustrates the approach which claims that these dignitarian references form the foundation of human rights.

The dignitarian foundation that seeks to ground human rights stands out in the works of thinkers like Jack Donnelly and John Simmons. For example, Simmons (2000: 185) says, "Human rights are rights possessed by all human beings (at all times and in all places), simply in virtue of their humanity." In this approach virtue of human being and human dignity can be seen as the foundation of human rights. However, there have been various views on how human dignity is attained. For example, Catholic or religious theories suppose that humans' dignity consists in being created in God's image. On the other hand, Kantian theory sees dignity as a foundation based on autonomous moral capacity.

One of the prominent figures of the naturalistic conception approach to human rights is Donnelly with his work "Universal Human Rights in Theory and Practice." Donnelly (2003: 121) has stated that only significant individuals or elite groups had dignity in the pre-modern world, and dignity was based on the particularistic principle of hierarchy. However today, for Donnelly (2003: 10), human rights "are the rights one has because one is a human," and they are held universally against all other individuals and institutions by all humans. Human rights have moral universality in the sense that they take priority over other legal, political, and moral claims and

they are universally accepted as ideal standards by the nations of the world for Donnelly.

Contrary to many, for Donnelly, it is a philosophy rather than human needs that we must surrender our quest for the source of human rights (Freeman, 1994: 502). He claims that the source of human rights is man's moral nature and arises from the “inherent dignity” of the human being. Human rights are needed to maintain dignity, not biologically to sustain life or meet needs. Dignity is the inner (moral) nature and worth of the human person for him. Instead of needs, human rights arise from human action. Human rights are not given to man by God, Nature, or the physical facts of life for Donnelly. So, “Human rights represent a social choice of a particular moral vision of human potential” (Freeman, 1994: 502). Thus, the point to be noted here is that Donnelly does not rely on a theory of human nature and instead takes moral nature as a source of human rights.

Donnelly's one of the primary concerns is to protect human rights from attacks by cultural relativists who argue that some cultures may not understand the concept of “human” or, if they do, may not attach moral significance to it and that the moral realm can be shaped by the boundaries of the community (Freeman, 1994: 492). For cultural relativists, human rights are difficult to be universal because they develop from western values and may even be a new form of imperialism. But critics of cultural relativism see this argument as it justifies human rights abuses. On the other hand, Donnelly argues that human rights can be slightly adapted to different cultures without losing their universal foundation. Also, for Donnelly (2003: 15), to be deprived of human rights means to be estranged from one's moral nature.

Freeman (1994: 503) argues that Donnelly's theory is descriptive rather than normative, and while this analytical theory explains how a comprehensive philosophical justification for human rights can be realized, it provides little

important guidance for carrying out such justification. However, there are also those who say that this situation is almost inevitable.

Another view on the question of foundations of human rights is the view that grounds human rights on human action and autonomy, and Alan Gewirth and James Griffin can be seen as the supporters of this view. Gewirth is one of the strong proponents of this view by offering an agency-based justification for human rights in his work "Human Rights: Essays on Justification and Application" (1982). According to him, although human rights are moral ideas because of their moral significance, they are not based on human nature or the nature of morality. However, based on a rational agency which is a human characteristic. For him, "human rights are derived from the necessary conditions of human action" (Gewirth, 1982: x), and those conditions must be fulfilled human for action to occur. These generic conditions necessary for action are freedom and well-being[3], which characterize all action.

Gewirth says that we are all moral agents and act for a reason or purpose; that is an inherent characteristic of human agency. Satisfying the needs for freedom and well-being to realize our goals and actions requires accepting that others must enjoy access to freedom and well-being[4]. So, this claim shows that all rational agents are rationally bound to accept that all rational agents should possess fundamental human rights (Fagan, 2012: 16). In this perspective, we are all both respondents and subjects of rights. Thus, any denial by any agent of another agent's human rights is "a failure of rationality" (Gewirth, 1982: 21).

James Griffin is another name among those who see human rights as fundamentally moral rights in the separation between moral and political

[3]Gewirth describes freedom as "controlling one's behavior by one's unforced choice while having knowledge of relevant circumstances," and well-being as "having the other general abilities and conditions required for agency" (Gewirth, 1982: 15).
[4]Gewirth expresses the details of this argument as "the principle of generic consistency."

concepts of human rights with his arguments in “On Human Rights” (2008). For him, human rights have a dual foundation. The first ground for human rights is the human agency and autonomy, which he calls the normative agency. The dignity relevant to human rights is connected to the value of normative agency (Griffin, 2008: 152). Normative agency includes three components: autonomy, freedom, and minimal well-being. For Griffin, human rights have the function of ensuring these components and the worthwhile life of people. However, many human rights without a second ground still remain very indeterminate. The second ground is practicalities which are features of human nature and of the nature of human societies. Practicalities are universal, like the condition for rights that one has simply in virtue of being human must and not tied to particular times or places and means. These practicalities define the content of human rights and thus remedy the indeterminate of human rights as a heterogeneous set of considerations that can be “an effective, socially manageable claim on others” (Griffin, 2008: 37-38).

Another view that attracts some as a justification for human rights is The Capabilities Approach developed by Amartya Sen and Martha Nussbaum. In this approach, a capability is a person's real or substantive opportunity or freedom to do and to be certain things. So, capability is kind of freedom and Sen calls it “substantial freedoms.” When human beings have certain capabilities protected, their autonomy and freedom of choice is actualized in this way. Sen proposes that this idea of capabilities can serve as the ground for a quality-of-life assessment in a nation (Nussbaum, 2001: 20-21).

Sen opposes the positivist conception of human rights by saying that human rights are primarily articulations of ethical demand in his article, “Elements of a Theory of Human Rights” (2004). For him, though human rights can inspire legislation, they are not principally legal or proto-legal commands. Central features of human rights are the interactive process of critical scrutiny and open to information and argument (Sen, 2004: 319-321). In this

sense, debating is a part of human rights so that they are questionable and open to dialogue by all. Sen also claimed that the origins of human rights are not only in the Western tradition of natural rights and natural law, but also in non-Western societies such as Akbar, Confucius, Ashoka, and Kautilya, and so he opposes the universality objections of relativists and cultural-based critiques (Sen, 1999: 227-240).

While Sen would not formalize capabilities as a list, Martha Nussbaum gives ten central human capabilities that express the idea of a life worthy of human dignity in her book "Creating Capabilities" (2001). These capabilities are life; bodily health; bodily integrity; senses, imagination, thought; emotions; practical reason; affiliation; relations to other species; play; and control over one's environment (Nussbaum, 2001: 33-34). For Nussbaum, the common ground between the human rights approaches and the Capabilities Approach is that all people have core entitlements just by virtue of their humanity. While she defines Central Capabilities in part in terms of dignity, she proposes that central capabilities form the basis of human rights and governments, and society's duty is respecting and supporting them (Nussbaum, 2001: 62-63). Also, Hapla (2018) says that the capabilities approach and the concept of basic need (below) share common features, but capabilities emphasize the liberal foundations of the individual, freedom, and dignity.

Another suggestion for the justification and foundation of human rights is the theory of basic need, of which one of its defenders is Massimo Renzo. Renzo, in "Human Needs, Human Rights" (2015), "Human Rights and the Priority of the Moral" (2015), develops his theory of basic needs in conjunction with James Griffin's concept of normative agency. As mentioned above, Griffin argues that we, as normative agents, have human rights to protect our ability to create and choose notions of the good life. However, Renzo (2015a: 594) says that according to this view, some people are not the bearer of human rights since many people, such as children and

people with mental disorders, do not fall into the normative agency category. Renzo (2015a: 575) says if we see the torture of a child as a violation of his dignity and humanity, then we need to find another concept of human being apart from the normative agency, and that concept is the idea of basic human needs. These needs are class of needs we have simply as human beings regardless of the specific goals we adopt for ourselves. These are needs like food, air, water, shelter, minimal health, and minimal social interaction to function as human beings (Renzo, 2015a: 577). Thus, Renzo (2015b: 127) believes in the priority of the moral and naturalistic approach over the political approach.

In another attempt to interpret human rights, H.L.A. Hart, a legal positivist, argues the existence of one natural moral right, which is the right of all men to be free in his work "Are There Any Natural Rights?" (1955), while strict positivists do not allow any rights other than those granted by law. According to him, unlike special rights, people have a general right. This is not a right peculiar to those who have them but rights of all people who are capable of choice, in the absence of special circumstances that give rise to special rights (Hart, 1995: 188).

Ronald Dworkin, on the other hand, makes criticism of the legal positivism and its supporter H.L.A. Hart, and utilitarian ethics in his works "Taking Rights Seriously" (1978) and "Rights as Trumps" (1984). Dworkin sees human rights as fundamental to human existence and believes that human rights should be of a higher order that trump and take priority over any other right or alternative consideration. Rights as trumps is a way of ensuring the fundamental ideal of equality in the contemporary doctrine of human rights. Thus, Dworkin offers a substantive moral foundation for rights with the conceptions of human dignity, self-respect, freedom, and equality. Dworkin (1978: 199) claims that citizens have fundamental rights against their governments, like free speech, if that right is necessary to protect their dignity or be equally entitled to concern and respect. These fundamental

rights, which “are prior to the rights created by explicit legislation” (Dworkin, 1978: xi), prevent individual preferences and needs from being sacrificed for the collective welfare.

In this chapter, a number of various positions have been categorized under the naturalistic conception approach to human rights. Because they share an understanding that human rights are by some means related to a naturalistic or foundationalist feature of human being or morality though they may differ in their principle. The positions that have been categorized under the naturalistic conception approach are the most common position for the idea of human rights historically. One of the significant advantages of these positions are that they give us a way to understand how human rights can exist even if they are not recognized or enforced in institutions and a way to combat human rights violations with the idea that human rights are everyone's natural right. The idea that human rights are moral rights that possessed in virtue of human beings is also dominant in international conventions and declarations. Although this idea may not impose certain efficient sanctions on states, it can impact states and society. This understanding has been tried to be criticized and refuted by the political concept and critical approaches to human rights, which are mentioned below, for reasons such as the suspicion of universality, the suspicion that it may be western, and the inapplicability of metaphysical foundations in practice.

2.2.2. The Political Conception Approach to Human Rights

Recently, a new and supposedly alternative conception of human rights that contests the features of human rights mentioned in the natural conception of human rights has become increasingly popular. This approach is the political conception of human rights, and its proponents include John Rawls (1993), Charles Beitz (2009), and Joseph Raz (2010). Other thinkers that the study associates and mentions with the political conception approach are Thomas

Pogge (1995), Richard Rorty (1998), Micheal Ignatieff (2001), and Beth Singer (2019). Generally, this approach is agonistic or skeptical about human nature and universal moral rights. Political conception aims to explain and describe human rights in light of practical political roles or functions that they do. In addition to the justifications of these thinkers, Tasioulas argues that eclectic justifications or justifications that appeal to several bases can be seen in grounding human rights.

One of the first statements of the political conception of human rights can be found in John Rawls's theory of justice and his book, "The Law of Peoples" (1993). In contrast to human nature understanding of natural law theorists, Rawls' understanding of human rights is anti-foundationalist and does not rely on a moral doctrine. For him, classical human rights theory appears western or liberal and confines itself to these groups only. Human rights, for Rawls (1993: 57), "express a minimum standard of well-ordered political institutions for all peoples who belong, as members in good standing, to a just political society of peoples" and role as the condition for a minimally just society. Rawls believes that the contractors are under a "veil of ignorance" and shows how human rights are norms would be chosen under these veil of ignorance conditions. Human rights have three roles: (1) they are the necessary condition of a regime's legitimacy and the decency of its legal order; (2) they are sufficient to exclude intervention by other peoples; (3) they set a limit on pluralism among peoples (Rawls, 1993: 59). Human rights are urgent rights and require an abbreviated list of human rights.

Rawls' view that human rights are the condition of a just society is also important from another point of view. According to him, outlaw states that violate human rights cannot complain if subjected to forceful sanctions and intervention by external factors (Rawls, 1993: 81). So, human rights also function as a basis for judging political regimes or seeing them as admissible.

In an article titled “How Should Human Rights Be Conceived?” (1995), Thomas Pogge, like Rawls, argues that human rights are “political, not metaphysical,” and social institutions are crucial for them. Pogge's institutional understanding of human rights refers to a special class of moral concerns that constrain human conduct, practices, and institutions. These moral concerns are weighty, unrestricted, and broadly shareable. This means each society must be organized in a way that all its members have secure access to the object of human rights. For Pogge (1995: 103-120), establishing just social policies and institutions ensures secure access to any rights. Pogge connects violation of human rights with official disrespect. The most striking claim that Pogge makes is that guardian of human rights against these violations is not just government but also the vigilant citizenry. The vigilant citizenry has a duty to protect and fight for rights in political institutions and communities. In brief, for Pogge (1995: 103-120), human rights make demands and roles upon citizens in protecting it.

Charles Beitz's account of human rights in “The Idea of Human Rights” (2009) is another contribution to the political conception of human rights. Beitz (2004: 198), similar to Rawls, believes that naturalistic conceptions “tend to distort rather than illuminate international human rights practice.” Beitz emphasizes that human rights are important in practice, not their basis in moral realities, and says that a reasonable person can accept and use the idea of human rights without accepting any view of the foundations of human rights. Besides that, unlike Rawls, Beitz takes a broader understanding of the international role of human rights. For example, he believes that there is a better way than Rawls' view of foreign intervention, which is one of the ways applied to influence the internal affairs of societies where human rights are threatened. There is a wide variety of non-coercive political and economic measures that can be classified as assistance to influence those societies. In brief, human rights are “requirements whose object is to protect urgent individual interests against predictable dangers to

which they are vulnerable under typical circumstances of life in a modern world order composed of states" for Beitz (2009: 109).

Similar to other thinkers in the political conception approach, Joseph Raz (2010: 324) argues that naturalist understandings or traditional theories "fail to illuminate or criticize current human rights practice." One of the crucial arguments he makes is that the limits of sovereignty must not be confused with the limits of legitimate authority. According to Raz (2010: 330), just as not every morally wrongful act of an individual can justify the intervention of others, every action that exceeds the legitimate authority of a state cannot be a reason for the intervention of other states, whatever the circumstances. For Raz, human right is not either basic or very important. However, despite this, Raz argues that human rights may be morally important, given the moral significance of the rights that define the moral limits of sovereignty. Besides that, political conception has contributed to the normalization of human rights policy and enriching human rights practice with the development of regional and functional, and the myriad of multinational regimes (Raz, 2010: 337). This means that Raz's understanding of human rights differs from Rawls's understanding as human rights are not just against the state but also against international organizations and agencies, including individuals, groups, companies, or domestic institutions.

Another name who deals with human rights from a political conception perspective is Michael Ignatieff with his work "Human Rights as Politics and Idolatry" (2001). He rejects naturalistic perspectives by saying that there is nothing sacred in human being that deserves ultimate respect for them. If human rights are grounded in metaphysical norms, they actually become faith or secular religion, and this create the idolatry of human rights. Because human rights are not like Dworkin's claim that rights are trump cards (Ignatieff, 2001: 20). In addition, he argues that examples like the Holocaust disprove the claim that people have a natural concern towards other people. The practical application of human rights also shows that

universality and neutrality for human rights are not possible. For example, western countries such as the USA can cooperate with countries where human rights are violated for the foreign policy interests of their countries. So, human rights cannot be above politics and be the last word (Ignatieff, 2001: 21).

According to Ignatieff, people may not agree on why we have rights, but at least they can accept that we need them. Therefore, we must build support for human rights on what such rights actually do for human beings. For this support, human rights cannot be grounded in nature, morality, or the dignity of man but practical ground can be based on human history (Ignatieff, 2001: 54-55). In other words, he builds human rights on the testimony of fear instead of the expectations of hope (Ignatieff, 2001: 80). Historical experience shows that when human beings have defensible rights, being abused and oppressed is become less (Ignatieff, 2001: 4). Hence, human rights are necessary to avoid violence and protect the agency. In brief, Ignatieff (2001: 21-22) says, "human rights is nothing other than a politics, one that must reconcile moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends but between ends themselves."

Richard Rorty is one of the names who challenged foundationalist human rights theories with his Oxford Amnesty Lecture titled "Human Rights, Rationality, and Sentimentality" (1998). According to him, the main problem in human rights is not what human rights are but who can count as human beings and benefit from these rights. Throughout history, some groups or individuals have been deemed inhuman and prevented from enjoying various human rights with dehumanization attempts. For example, during the Serb-Muslim conflicts, the Serbs did not see the Muslim victims as human. For this reason, questioning the foundation of human rights is not helpful and worthy in solving human rights problems. Rorty (1998: 167-

185) claims that there is no basis for any belief, as well as the basis of human rights and foundationalist projects are outmoded.

The traditional moral philosophy's explanation of human rights violations with irrationality is wrong because it is related to the deprivation of sympathy and tolerance of people to each other. The notion of sentimentality is the best weapon for Rorty's understanding to support and promote respect and tolerance for the culture of human rights. He, as a pragmatic, claims that the emergence of human rights culture owes to hearing sad and sentimental stories instead of moral knowledge or discourse. Therefore, according to Rorty (1998: 167-185), we must concentrate our energies on "manipulating sentiments, on sentimental education" in order to see people as fully human and produce tolerance and sympathy among them.

Beth Singer presents another defense for the anti-foundationalist human rights approach in "Pragmatism, Rights, and Democracy" (2019). She rejects the assumption of traditional conception and naturalistic theory of rights that human rights are a priori and essential supported by thinkers such as Donnelly and Sen. For her, saying that there are human rights is equivalent to saying that such a right ought to exist. Because in order for a right to be "operative" and to exist, it must be institutionalized in a community. Thus, human rights are grounded on membership in a political community. Also, human rights cannot be grounded in human nature because human rights are not the characteristic of individuals. Human rights, for Singer (2019: 34), are grounded in "the nature of community or in the requirements of social interaction."

In this chapter, a number of various positions have been categorized under the political conception approach to human rights because they share an understanding that human rights are by some means related to anti-foundationalist grounds and practical political roles or functions though they may differ in their principle. One of the advantages of this position is that it

tries to produce political or practical solutions to problems such as the naturalistic approach being westernized in practice or the inability to protect human rights with metaphysical assumptions in practice. Views in the political conception approach also try to limit and sets the actions of governments to protect and ensure human rights and set a standard for a legitimacy.

The thinkers mentioned both in the sections called natural approaches and political approaches to human rights, and the discussions they developed based on human rights continue to be valid in many ways today and also face criticism. While the natural approach to human rights presents human rights doctrine that is dominant in international documents and discourses, the political approach has tried to develop a basis from a different perspective based on the limitations and weaknesses of natural approaches. There have been thinkers who have taken these approaches and developed different perspectives. For example, Amy Gutman (2001: 25) argues that human rights can have a plurality of foundations rather than a single theory. Tasioulas (2005, cited in Nickel, 2021) similarly argues that "justifications can be based on just one of these reasons, or they can be eclectic and appeal to several." There have also been radical thinkers who criticize or reject the existence of human rights as very different from these two approaches. For example, Alasdair MacIntyre sees human rights as an "ontological error," and "there are no such rights, and belief in them is one with belief in witches and in unicorns" (MacIntyre, 1981: 69). Marxist theory is also among those who criticize human rights. Karl Marx criticized and defined the French Declaration of the Rights of Man and of the Citizen as a bourgeois ideology. Also, Slovej Zizek criticized human rights and claimed that "universal human rights are effectively the right of white, male property-owners to exchange freely on the market, exploit workers and women, and exert political domination" (2011: 164).

Taking into account all of these, the question of where Hannah Arendt's arguments and concepts on the debates over the foundation of human rights can be positioned in this field appears. Since it would be inefficient and unhealthy to evaluate Hannah Arendt's critique of human rights independently of these approaches, these two approaches and their general statements are briefly explained in the sections above. The naturalistic conceptual approach is at the forefront of the dominant approach in human rights thought. The main reference points for human rights defenders and activists coincide with the references of the naturalistic approach. In addition, the dominant language in international law and agreements coincides with this approach. On the other hand, the political concept approach offers a critique by questioning the non-existing practical and political role of the naturalist understanding of human rights. The political approach tries to draw the political framework of human rights and tries to develop important points in terms of increasing its functionality in practice.

As will be examined in the next section, Arendt's human rights view is actually built on a critique of the natural rights approach. Thus, it is possible to distinguish Arendt from naturalistic approaches at many points. At the same time, Arendt emphasizes the importance of political organization by underlining that human rights and human dignity need a new foundation and a new polity. At these points, Arendt has common concerns and highlights as well as different arguments from both approaches. In order to examine these highlights, it is necessary to explain Arendt's human rights approach in detail. Therefore, question of Hannah Arendt's differences and similarities from the discussions of these two main approaches, whether and how she created a third way, is examined in the next chapter.

CHAPTER 3

ARENDTIAN CRITICAL THINKING IN HUMAN RIGHTS

Hannah Arendt, born in Hannover in 1906, is considered by many thinkers as one of the most influential political theorists of the 20th century, with her contributions to political philosophy. She obtained doctorate in philosophy in Germany. After Hitler came to power in 1933, Arendt as a Jewish descent was arrested and fled to Paris after a short detention. Thus, the condition of statelessness had actually started for Arendt by leaving the lands of her citizenship. After the invasion of France by Hitler's Germany, Arendt escaped from France and immigrated to New York in 1941. She continued her career in USA as an editor and writer, and later taught at many American universities. She obtained American citizenship in 1951 and experienced homelessness and statelessness for about 18 years. In 1959, she became the first full-time female professor at Princeton University. The homelessness and statelessness that Arendt experienced throughout her life and all these experiences and her struggle to exist in the world of thought had an impact on her own political theory. These experiences are important, as Arendt said in an interview with Günter Gaus that “I do not believe that there is any thought process possible without personal experience. Every thought is an afterthought, that is, a reflection on some matter or event” (interview,

October 28, 1964). In other words, her vision arose from a combination of the events in her life and her intellectual struggles (Parekh, 2008: 8).

Although most people define her as a philosopher or professional thinker in Kantian sense, Arendt rejected this title. Instead, she wanted to be defined as a political theorist because her studies focused on not the human being as a singular, but human beings in their plurality, for "men, not Man, live on the earth and inhabit the world" (Arendt, 1958: 7). While carrying out her works on this humanity that covers the world, she expressed her thoughts on a wide range of topics. She is best known for topics such as authority and totalitarianism, the nature of power and evil. Her leading works are The Origins of Totalitarianism (1951), The Human Condition (1958), Between Past and Future (1954), Men in Dark Times (1968), and The Life of the Mind (1978).

On the other hand, this chapter of the thesis clarifies Hannah Arendt's critical thinking in human rights debates. In this context, firstly, Arendt's relationship between human rights and the nation-state is mentioned. Secondly, the perplexities of human rights and the concept of the right to have rights produced by Arendt is explained. Thirdly, it is discussed what Arendt contributed to the discussions on the foundation of human rights and whether she offered an alternative to the foundation of human rights. Fourthly, to understand Arendt's logic of criticism for human rights, the aporetic thinking style that constitutes the structure of human rights critique of Arendt is mentioned.

3.1. The Role of the Nation-State Structure in Arendt's Critique of Human Rights: Nation Conquering the State

Even it is possible to see Arendt's interpretations on rights in her several works, she began her life-long thinking adventure on the problem of statelessness and human rights with an essay titled *We Refugees* in 1943. She later published an article titled *The Rights of Man: What Are They?* in

1949 shortly after the Universal Declaration of Human Rights. While she talks about the concept of right to have rights in this article, she explains the reasons for the concept's origination, and broader interpretations of human rights in the ninth chapter of *The Origins of Totalitarianism / Imperialism*, in *The Decline of the Nation-state and the End of the Rights of Men* in 1951. This section of the book in general includes Arendt's critiques of human rights and her claim to the validity of the universality of human rights.

Arendt's view and critique of the human rights make it necessary to be read in a specific historical context. Arendt's historical reading, which pushes her to the process of deprivation of rights, is related to the deep tensions that she claims are inherent in the nation-state. The emergence of nation-states was the result of the nationalism movement that emerged after the French Revolution and the disintegration of multinational empires such as Ottoman, Austria-Hungary, and Russia after the First World War. For Arendt, the nation-state structure has serious problems even in its best form (Beiner, 2000: 51), and human rights problems are not coincidental but related to this nation-state structure. Therefore, this sub-title of the chapter mentions how Arendt understands and relates the tension between the state and nation and human rights.

When talking about the nation-state system, Arendt talks about two types and evaluates them separately from each other. The first type that she evaluates is the Western-type nation-states, which she examples with France as a "nation par excellence." The other nation-state type she considers is the nation-states established in Eastern and Southern Europe. Those Western-type nation-states that emerged after the French Revolution was "the product of firmly rooted and emancipated peasant classes" (Arendt, 1951: 230). For Arendt, since the structure of the Western-type nation-state is based on a solid social basis consisting of the liberated peasant classes of Europe, these nations were able to create a real political structure, and a harmonious

synthesis between nation and state, and enter the scene of history and were emancipated.

On the contrary of the Western-type nations, in Eastern and Southern Europe regions "peasant classes had not struck deep roots in the country and were not on the verge of emancipation" (Arendt, 1951: 231). These people's national character remained a private matter rather than a public concern and civilization. According to Arendt, the masses in this region have not idea of what homeland, patriotism, community, and responsibility for a common mean. For Arendt, one of the reasons for the failure of the nation-states in these regions, which were established after the collapse of multinational empires such as Austria-Hungary, and Russia after the First World Wars with the aim of regulating the nationality problem, is that they were not based on a peasant class firmly rooted in the soil, unlike Western-type nation-states (Arendt, 1951: 229). Arendt (1951: 232) highlights as "no conditions existed for the realization of the Western national trinity of people-territory-state" in these regions of Europe. In contrast with the Western nationalism, tribal nationalism, a kind of nationalism that provided a breeding ground for totalitarianism, "grew out of this atmosphere of rootlessness," as Beiner (2000: 51) puts it.

As mentioned, with Peace Treaties after the war, many peoples in Eastern and Southern Europe regions were brought together into states. For example, in Yugoslavia, Croats and Slovenes were assumed to be equal partners in the administration. A third nationality group called "minorities" was created from the remnants. These newly established nation-states made special arrangements through legal agreements to solve the problems of these minorities within their territories. About 30 percent of the 100 million people in these nation states were formally recognized as specially protected exceptions by minority treaties (Arendt, 1951: 271). Minority agreements to protect the human rights of minorities failed because newly established states saw the rights granted to minorities as a threat to their sovereignty.

According to state representatives, minorities had to either lose their essence and adapt to the country they were in or be liquidated. Also, considering that the League of Nations, a system of sovereign nation-states, created the Minority Agreements, it turned out that these agreements were actually conceived as a painless and humane method of assimilation (Arendt, 1951: 272-274).

Arendt carries her determinations further over the whole nation-state structure, since she sees serious problems in the nation-state idea even in its best form. Arendt (1951: xxi) "tells the story of the disintegration of the nation state" in chapter *The Decline of the Nation-State and the End of Human Rights*. Arendt says that two factors appeared as external and internal that undermine the stability of the European nation-state system. The factors that weaken the nation-state system from the outside are modern power relations, the emergence of imperialism, and pan movements that turn national sovereignty into a farce. These external factors did not arise from the traditions and institutions of nation-states. In addition, the factors that disintegrated the nation-state system from inside were the minorities that emerged with the Peace Agreements and the influx of refugees after the First World War (Arendt, 1951: 270).

According to Arendt, minorities are not the only oppressed groups to emerge from the sufferings between the two world wars. The other group is the stateless, who can be defined as the cousins of minorities. These two oppressed groups, stateless peoples, and minorities did not have any administration to protect and represent themselves. So, they had to live either under the exceptional regulation of the Minority Agreements or in conditions of absolute lawlessness (Arendt, 1951: 269). These people, who were not given the right to establish a state, began to see the Peace Treaties as an arbitrary game that distributed slavery to some and mastery to others (Arendt, 1951: 270). Nationally frustrated peoples shared a strong belief that

a people without their own national state would also be deprived of their human rights (Arendt, 1951: 272).

In the thoughts of nation-state synthesis, it was thought that the nation and the state would be synthesized in the same pot. Also, liberal, and multicultural theses defended that nation states will melt the groups in a single pot and provide an equal ground for all. However, for Arendt, the majority in the nation-state captures the state and shows its own national interests as the interests of the state and destroy the equal ground. Especially in nation-states such as those in Eastern and Southern Europe, which were established after the disintegration of empires with heterogeneous structures and did not have a solid social foundation, the majority of the nation, takes over the state and becomes authoritarian and sometimes even totalitarian. The conflict between nation and state is becoming intolerable and the collapse of this dual nation-state system is looming, as the growing problem of minorities and stateless people has become a threat for the entire European nation-state.

The problem of minorities, refugees and statelessness has revealed the hidden tragedy of nation-states which is to "recognize only nationals as citizens, to grant full civil and political rights only to those who belonged to the national community by right of origin and fact of birth" (Arendt, 1951: 230). Arendt explains this situation of nation-states as that the state was no longer an instrument of the law and transferred to the instrument of the nation. Thus, "the nation had conquered the state, national interest had priority over law" (Arendt, 1951: 275).

Arendt mentions that this hidden conflict between the nation and the state is actually inherent in the modern nation-state from the very beginning and points to its relationship with human rights. According to Arendt, this conflict finds its basis in the fact that the French Revolution combined the Declaration of the Rights of Man with national sovereignty (Arendt, 1951:

230). Fundamental rights were claimed to be both the inalienable legacies of all peoples and the private legacies of particular nations. As a result of these contradictory structure on nation-states, which include the conflict between the nation and the state and the contradictions between national sovereignty and human rights, human rights were protected and strengthened only as national rights.

As stated earlier, in the period between the two wars, nation-states had to deal with the minorities created by the Peace Treaties for the first time, and the immigrant and refugee groups that emerged as a result of the civil war and revolutions. According to Arendt, the situation of the immigrant and refugee groups, which we can also define as the stateless, is worse than the minorities in the face of nation-states. The most important feature that distinguishes these immigrant groups from their predecessors is that these masses were not accepted anywhere and assimilated anywhere. In addition, although being without a state is not a new phenomenon, mass deprivation of citizenship and mass denationalization by the decision of the state emerges as a new and unforeseen phenomenon in this period (Arendt, 1951: 278). When these people left their homeland, they were now homeless; when they left their state, they were now stateless; deprived of their human rights, they were now *rightless*, the scum of the earth (Arendt, 1951: 267).

According to Arendt, such an undesirable stateless mass had significant effects on the nation-state structure. The first major damage done to nation-states by the emergence of hundreds of thousands of stateless people was the abolition of the right to asylum, the only right that has always been considered the symbol of Rights of Man in the field of international relations. For Arendt, the right to asylum shares the fate of Rights of Man; neither ever became a law but acquired an ambiguous existence as a recourse in singular exceptional cases where normal legal institutions were not sufficient (Arendt, 1951: 280-281).

The second great shock and impact of this group on the European world was the realization that it was impossible to get rid of them or to transfer them to the nationality of the country they took refuge in. Repatriation of the refugees or transferring them to the nationalities of the countries in which they took refuge were presented as two solutions to the problem. However, as there was no country left for these people to be sent to, the measures regarding the repatriation of refugees failed. Because neither the countries where these people have their roots nor any other country were willing to accept these stateless people (Arendt, 1951: 292). Hence, Arendt says that the nationalization system of European countries completely disintegrated in the face of stateless people.

Thus, the only country that the world and nation-states offer to the stateless, and the only practical substitute for a non-existent homeland, turned out to be an internment camp (Arendt, 1951: 284). The stateless people stuck in the internment camp within the borders of the nation-state's sovereignty also caused the secret conflict of nation and state to be exposed. This situation of the stateless against the nation-state has also confirmed that sovereignty is nowhere more absolute than in “emigration, naturalization, nationality and expulsion” (Arendt, 1951: 278).

As a result, stateless and homeless people lost their human rights, which are defined as inalienable, when they lost their citizenship, and in Arendt's words, they became *rightless.* Arendt has determined that human rights of minorities and stateless are not protected despite all international efforts during and after the war, while it is assumed that human rights are acquired by being born as a human being in the human rights declarations and are accepted as universal. For this reason, the key point of Arendt's questioning on human rights and rightlessness is that this statelessness and refugee situation actually shows that human rights are not usable and enforceable. This inability of nation-states to protect human rights is not accidental but structural as explained above. For Arendt, nation had conquered the state

and national interests had taken precedence over the law long before Hitler's motto "right is what is good for the German people" (Arendt, 1951: 299).

3.2. Rethinking Human Rights with Arendt: The Perplexities of Human Rights and the Right to Have Rights

Arendt, according to Parekh (2008: 12), makes two different sets of argument for her idea of most fundamental right is a right to belong. The first is historical and it is grounded upon the historical situation of minorities and stateless, and the initial attempts of the international community to protect them (via Minority Treaties and the League of Nations). In this regard, the literature review of the thesis talked about the historical development of human rights in order to understand the historical context, which is Arendt's first set of arguments. In addition, Arendt's historical analysis, that reveals the connection between the manner in which human rights were conceived and the subsequent failure to protect those rights, was mentioned in the previous section. Arendt's historical argument shows that human rights were tied to national sovereignty so that when there was a conflict between the two—as was the case for stateless people and minorities—human rights were incapable of competing with national interests. In a word, the failure to protect human rights outside the state was intrinsic to the way they were conceived.

Arendt's second set of argument, according to Parekh (2008: 12), is both ontological and political. The twentieth century that Arendt experienced taught her that there is a fundamental right that she defines as "the right to have rights" that we did not include in previous human rights notions. While the right to have rights politically means the right to belong to a state or some sort of organized community of people, it also means ontologically the right to have a place in the world where one can speak and act in a meaningful way (Parekh, 2018: 12). For this reason, as Parekh (2018: 12)

says, the loss of the right to have rights brings with it the “loss of a meaningful place in the common world and an enclosure in the private.”

In the section titled “Perplexities of Human Rights” in “The Decline of the Nation-state and the End of the Rights of Men,” Arendt both ontologically and politically problematizes the arguments of human rights theory and develops critical thinking about human rights. She explains the reasons for the origination her conception of *the right to have rights*, and broader interpretations of human rights. Arendt's critiques of human rights begin with the critiques of the abstractness and ambiguity of the concept of human rights, starting with the Declaration of Human Rights in the 18th century. The 1789 Declaration of the Rights of Man and the Citizen included both 'human' and 'citizen' in the title, thus creating an uncertainty as to whether the subject of these rights was all people or French citizens, which also constitutes Arendt's point of criticism.

One implication of the declaration, according to Arendt, was that the declaration of human rights also indicated that much protection was needed in a new age where individuals were no longer safe in the strata into which they were born. Throughout the 19th century it was agreed that there would always be a call for human rights when individuals needed to be protected against the growing power of the state and social injustices. In the establishment of these human rights no authority was invoked due to the Rights of Man were proclaimed to be inalienable, irreducible to and undeducible from other rights or laws (Arendt, 1951: 291). On the other hand, Arendt says, no special law was deemed necessary to protect human rights because all laws were supposed to rest upon them. She mentions:

> Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people’s sovereignty...was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the “inalienable” rights of man would find their guarantee and become an inalienable

> part of the right of the people to sovereign self-government (Arendt, 1951: 291).

With this declaration, the source of the law would no longer be the command of God or the customs of history, but man.

Burke, to whom Arendt also refers, criticize the French Revolution by stating that human rights refer to an abstract and non-existent person as a subject. Burke criticizes the imagination of the human being, declared as the subject of rights by the French Revolution, because it is abstracted from social relations and its rights are a metaphysical abstraction (Arendt, 1951: 299). Burke even prefers "right of an Englishman" rather than the inalienable rights of man. Arendt (1951: 299) refers to Burke's claim that the rights which we enjoy arising "from within the nation," as a source of law, not from the natural law or divine command or any concept of mankind. Burke points to the fear that "inalienable rights would confirm only the 'right of the naked savage,' and therefore reduce civilized nations to the status of savagery" (Arendt, 1951: 300).

Arendt, too, speaks of the "abstract" man who does not exist anywhere, as a paradox that has entered the declaration of inalienable human rights from the very beginning. However, since humanity was conceived in the image of a family of nations after the French Revolution, it gradually became clear to Arendt that the image of man is not the individual but the people. Arendt explains this as:

> The Rights of Man, after all, had been defined as "inalienable" because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them (Arendt, 1951: 291-292).

Arendt's criticism and intellectual infrastructure that led her to the right to have rights is actually made in terms of its practical importance and results. Human rights have never before been a political issue of practical

importance, she states (Arendt, 1951: 293). The implication of the identity of human rights with the rights of the people arose as a result of practical political problems and crises. This situation has made the principles of universal, inalienable and inborn acquisition of human rights of the theory, impracticable and opened them to questioning. The issue of whether the scope of rights is universal or specific to members of a political community is also seen as unclear (Gündoğdu, 2015: 37). The denationalization policies of the Nazis on Jews which are given as an example by Arendt also prove how these principles of the theory are violated in practice or are impracticable. Here the important point is as Schaap (2011: 25) mentions that "the predicament of stateless people was not simply that their human rights had been violated rather they found themselves in a situation of rightlessness." Arendt (1951: 293) states that although everyone seems to agree that the plight of these people who are not citizens of the state is precisely that they have lost their human rights, no one knows what rights they actually lost when they lost their human rights. That's why she dwells on the condition of rightlessness.

Arendt explains what rights they actually lost and argues that the state of being rightless involves two different deprivations. These two deprivations constitute the condition of rightlessness. "The first loss which the rightless suffered was the loss of their homes," and this is not simply the loss of one's physical residence, but "the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world" (Arendt, 1951: 293). For Arendt (1951: 294), this "was a problem not of space but of political organization." The point that made such a disaster different from the forced migration of individuals or people in the history was not the loss of an unprecedented homeland, but the impossibility of finding a new homeland. The political organization model of nation-states of tightly organized closed communities meant that to lose one's home was to lose one's home in the world. When they expelled from this organization,

they found themselves excluded from the family of all nations. They did not have a single place to go on earth, not a single country even where they would be assimilated, not a single piece of territory where they could found a new community of their own (Arendt, 1951: 293). But Arendt is careful to point out that this is because of a political problem, not of a lack of space or a material obstacle like overcrowding (Parekh, 2008: 27).

The second loss is a loss of government protection. According to Borren, "the ideology of the modern nation state system ties citizenship to nationality and nativity" (Borren, 2008: 216), thus in this system it is normal to be excluded from legal protection. However, what is crucial in this loss is that it is not just loss of legal status in their own country, but in all countries. Rightless people were outside of the web of treaties of reciprocity and international agreements, so they take their legal status with them no matter where he goes. Those who are outside of this web find themselves out of legality too (Arendt, 1951: 294). This inability to gain a legal status or persona, to find asylum, is also unprecedented (Parekh, 2008: 27).

These two different deprivations, and losses represent a new aspect of statelessness and immigration problem. What was new was that these refugees or stateless people were persecuted not because of what they did or thought, "but because of what they unchangeably were, - born into the wrong kind of race or the wrong kind of class or drafted by the wrong kind of government" (Arendt, 1951: 294). These people were nothing but human beings who were meant to be innocent, and they showed up in that capacity. This innocence was a mark of their rightlessness as well as the stamp of their loss of political status (Arendt, 1951: 295).

For Arendt (1951: 295), our experience with stateless people showed that it seems to be easier to deprive a completely innocent person of legality than someone who has committed an offense. Anatole France's quip, "If I am accused of stealing the towers of Notre Dame, I can only flee the country,"

shows this reality for Arendt (1951: 295). This situation illustrates the various perplexities inherent in the concept of human rights. As Arendt (1951: 295-296) says the plight of these people "is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them." Only if they remain perfectly "superfluous," if nobody can be found to "claim" them, may their lives be in danger, their right to live be threatened. That's why "Nazis started their extermination of Jews by first depriving them of all legal status and cutting them off from the world of the living by herding them into ghettos and concentration camps" (Arendt, 1951: 296). After making sure that no country would claim these people, they set the gas chambers. In other words, Arendt (1951: 296) points that "a condition of complete rightlessness was created before the right to live was challenged."

Arendt points that the prolongation of their lives is not due to the rights but due to charity because no law exists which could force the nations to feed them. Also, she mentions very crucial points as:

> Their freedom of movement, if they have it all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow (Arendt, 1951: 296).

This means that the fundamental deprivation of human rights is manifested in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice (which are rights of citizens) is at stake when belonging to the community is no longer a matter of course. Arendt (1951: 296) explains this as "they are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion."

This quotation of Arendt also means that even if people under the condition of rightlessness have some rights like right to free expression it does not have any meaning since it cannot abolish the condition of rightlessness. At

the same time, the violation of some rights does not put people under the condition of rightlessness. Arendt exemplifies this as that "a soldier during war may be deprived of his right to life; a criminal may be deprived of their right to freedom" but still they are not rightless as they lack the condition of rightlessness. In other words, the condition of rightlessness is related to the loss of right to have rights, and the loss of political community, not related to loss of some rights even like right to life. Also, her emphasis on slaves is remarkable in this respect as she points:

> Even slaves still belonged to some sort of human community; their labor was needed, used, and exploited, and this kept them within the pale of humanity. To be a slave was after all to have a distinctive character, a place in society-more than the abstract nakedness of being human and nothing but human. Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity (Arendt, 1951: 297).

Furthermore, it is crucial to point to the Arendt's ontological arguments. The deprivation of a place in the world which makes opinions significant and actions effective is related with human condition: plurality. Arendt (1958: 175) says that "human plurality, the basic condition of both action and speech, has the twofold character of equality and distinction." According to Parekh (2008: 108), "action and speech are ways of being with others that establish the reality of both the world and the self." For Arendt, the loss of right to action and right to opinion results in the loss of some of the most fundamental aspects of human life and a general characteristic of the human condition. This is:

> Loss of the relevance of speech (and man, since Aristotle, has. been defined as a being commanding the power of speech and thought), and the loss of all human relationship (and man, again since Aristotle, has been thought of as the "political animal," that is one who by definition lives in a community) (Arendt, 1951: 297).

Arendt's understanding on the loss of speech, action and opinion is linked with her political understanding in terms of distinction of public (bios) and private (zoe) realms. Humans can become political animal and their speech can be heard just in the public realm. As Arendt points out:

> The human being who has lost his place in a community, his political status in the struggle of his time, and the legal personality which makes his actions and part of his destiny a consistent whole, is left with those qualities which usually can become articulate only in the sphere of private life and must remain unqualified, mere existence in all matters of public concern (Arendt, 1951: 301).

Arendt (1951: 301) argues that "the public sphere is as consistently based on the law of equality as the private sphere is based on the law of universal difference and differentiation." To reach the equality it is necessary to reach the public sphere, thus the political community. For Arendt, while there is no equality in the private sphere due to our different characteristics; we enter the public sphere as equals capable of action and speech by the mutual promise. So, public sphere is equalizing the differences based on private sphere. She continues her argument as saying:

> Equality is not given us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights (Arendt, 1951: 301).

According to Gündoğdu (2015: 104), legal personhood is an artificial mask that covers one's face (or one's mere givenness, or bare humanness) to make sure that they do not become justifications for naturalized stratifications and inequalities within a political community for Arendt. Those who are outside of political community and stripped of the protections of this mask were thrown back on the givenness of their natural condition (Schaap, 2011: 23). The people without personhood lack the means to make their speech "sound through;" without the mask equalizing them with other actors, their speech either does not count or is rendered inaudible and unintelligible (Gündoğdu,

2015: 104). Speech of the people who stuck in the private realm is meaningless.

For Arendt, “there is no person without the mask, and masks are the only ways in which persons can appear as equals before the law” (Gündoğdu, 2015: 104). This mask of legal personhood does not remove the differences among human beings but equalize them. So that, personhood determines whose actions, speech and opinions are taken into account in a community. Action is what makes individuals subject and political agent. To be a political agent, to make our voices heard as equal and different individuals, and to be a legal subject, we need to be within the framework of a political community. The loss of action, opinion and speech is the deprivation of essential characteristic of human life and the common world. These losses also mean the loss of human dignity for Arendt.

In this context, understanding the perplexities of human rights and what rights rightless people actually lost exactly, helps to understand what Arendt means by the right to have rights. Rightlessness for Arendt is “the loss of political community, his political status and the legal personality which makes his action and part of his destiny a consistent whole” (Borren, 2008: 214). Therefore, Arendt characterizes the right to have rights, in other words a right to belong to some kind of organized community, as living in a framework where one is judged by one's actions and opinions. The right to have rights, so being a member of a community also allows a person to be judged based on *whoness*, not *whatness*; “it is to be treated as a person based on your words and deeds, and not merely on your membership in a category” (Parekh, 2008: 166).

3.3. Arendt's Understanding of Human Rights in terms of Their Foundation

Landman, who, by evaluating the efforts in philosophy and normative political theory tries to establish the epistemological foundations of human

rights, says that there are definitive foundations for the existence of human rights through various appeals to God, nature, and reason. Landman (2005: 552) mentions that the traditions in rights theories and their effort to claim, "for the existence of rights have variously been criticized by utilitarians as nonsense, communitarians as fantasy, Marxists as bourgeois and postmodernists as relative." So, for him, there has been a cumulative skepticism that has undermined rather than fortified the quest for foundations (Landman, 2005: 553).

Despite these skeptical attitudes, as it is mentioned in the first chapter, philosophers have provided many different attempts to compelling arguments in addressing the question of the philosophical foundations of human rights. Some philosophers have sought to determine the foundation of human rights by appealing to ideals such as human dignity, nature, history, reason, basic needs, universal interests, equality, autonomy, the capacity for rational agency, and even democracy. Also, some believe that there are no theoretical or normative foundations for human rights. The first chapter's aim was to examine and chart these debates under two approaches named the naturalistic conception approach and the political conception approach to human rights. On the other hand, the aim of this part of the thesis is to discuss and charts where can Arendt's phenomenology of human rights be positioned in these two categorizations and discussions over the foundation of human rights and whether Arendt creates a different way from these positions.

The debates in the literature over the foundations of human rights were examined in two categories as naturalistic approach to human rights and political conception approach to human rights. The naturalistic approach shares an understanding that human rights are by some means related to a naturalistic or foundationalist feature of human being or morality though they may differ in their principle. On the other hand, the political conception approach shares an understanding that human rights are by some means

related to anti-foundationalist grounds and practical political roles or functions though they may differ in their principle.

A categorization similar to the one we used in this thesis was made by Parekh. She also distinguished discussions in human rights theory between essentialist and anti-essentialist. While there are thinkers who argue that human rights are based on certain essential characteristics in the essentialism category, the anti-essentialism category deals with thinkers who seek different justifications because human rights cannot be based on human nature or morality. Parekh (2008: 122) argues that "Arendt's phenomenology is situated between these two poles, and as such, offers us an alternative understanding of human rights."

As Arendt problematizes, the problems experienced by stateless people in terms of the subjectivity of rights bring up an examination in the context of human rights theory, since Arendt's view of human rights is primarily a criticism of a natural rights approach. In addition to criticizing the natural rights justification, Arendt stays away from sharp normative justifications. Arendt (1951: 298) states that modern man is equally alienated from history and nature, and that we should seek the origins of human rights neither in nature nor in history. Thus, Arendt rejects all the foundations produced by the theories of rights as the basis for human rights and finds that human rights lack normative foundations.

Arendt (1978: 61, cited in Parekh, 2008: 8) claims after her experiences of statelessness "nobody here knows who I am!" Arendt (1958: 181) tells us to be a nobody is to be denied one's human dignity. For her human dignity needs a new guarantee. This guarantee can only be found in a new law, a new political principle, which must be valid on earth, this time covering all of humanity. Arendt (1951: 298) declares "….to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible." Benhabib argues

that Arendt concludes her analysis here by determining that human rights lack normative foundations and leaves it to its own fate. She continues her argument on Arendt as:

> By withholding a philosophical engagement with the justification of human rights, by leaving ungrounded her own ingenious formulation of the 'right to have rights', Arendt also leaves us with a disquiet about the normative foundations of her own political philosophy (Benhabib, 2000: 82).

Arendt's interpretation of the normative deficiency of human rights and her critique of the natural rights approach raises a point that needs to be clarified. Arendt shares a common point with legal positivism with this critique by explicitly rejecting the understanding of a universal, inalienable, innate, and abstract human being, dignity, and metaphysical principles, which are the main basis and features of naturalistic approaches for the foundation of human rights. Here the important question raises as does this situation position Arendt as a party to the political conception approach, and completely opposite to the naturalistic conception approach to human rights? To answer this question requires reflection on what Arendt bases human rights on rather than natural rights, and how they differ from the arguments of categories and thinkers of naturalistic and political conception approaches.

One important point for Arendt is that she is fundamentally a thinker of plurality. The framework of Arendt's political philosophy is based on understanding political life in a way that guards plurality. Plurality is the condition of equality and difference that corresponds to life in the public realm. Thus, what Arendt is searching is "a way to guarantee the right to have rights that is faithful to the condition of plurality and the indeterminacy of action" (Parekh, 2008: 36-37).

Jeffrey Isaac also argues that action is key for reclaiming the practices of citizenship that can guarantee human rights. Isaac says that human dignity

has two features in Arendt's politics. The first is that even the state is still the foremost political actor, the drive for human rights must always come from the praxis of citizens. The second is that there is a need of conceptualization of citizenship on many levels like local, regional, and global in order to understand citizenship in a way that is suitable for human rights (Parekh, 2008: 37). Isaac (1998: 98, cited in Parekh, 2008: 37) says, "[t]hese are forms of collective empowerment that might provide a new foundation for human dignity."

Parekh (2008), on the other hand, accepts that Arendt may not provide a knock-down argument for why we should uphold human rights but argues that this is not a failure. In this regard, Arendt could be seen as anti-foundationalist. She experienced the failure of human rights that were grounded in metaphysical foundations like God and nature. She thought that even if rights could be based upon a metaphysical idea like natural law or God, they would still only be possible if people were inscribed within a political community.

Contrary to commentators like Benhabib who argue that Arendt does not justify normative grounding, Birmingham (2006) argues that Arendt's philosophy and thought have interpretations that can be related with normative grounding. Birmingham argues that readers of Arendt have failed to hold that one of her primary interests is the working out of a theoretical foundation for a reformulation of the modern notion of human rights. It is thought by many that Arendt does not offer an alternative to the foundation of human rights, and she does not offer any concept to replace the nature, God, or history. However, according to Birmingham, it can be deduced from Arendt's works that she provides an ontological foundation for human rights in the anarchic and unpredicable event of natality with its inherent principle of humanity. Natality has two different principles: the principle of initium and the principle of givenness. According to Birmingham (2006: 33), these two principles form the normative or ontological foundations of Arendt's

right to have rights. The first principle is a relation to the common world, corresponds to our plurality. The second principle links to our singularity and uniqueness. The common, Arendt argues, must include both plurality and uniqueness.

Birmingham reads Arendt's critique of human rights through her critique of sovereignty. According to Arendt, the origins of the sovereignty model of human rights come from Hobbes who reduced human rights to the self-interested power of a sovereign and isolated individual (Parekh, 2008: 38). Although Rousseau seems to oppose the reduction of right to power after Hobbes, he actually continues the Hobbesian tradition with reducing human rights to the will of the sovereign state, because he attributes freedom to the general will of the people (Birmingham, 2006: 40).

In contrast, Birmingham traces the foundation of human rights to the principle of humanity. The ideal of humanity demands that humanity undertake responsibility for all crimes and evils committed by human beings. For Birmingham (2006: 8), this is the predicament of common responsibility for "[o]nly a principle of humanity is able to provide the normative source for an imperative of common responsibility." Thus, this principle of humanity rests in its beginning, in natality, not in the end of the human being (Parekh, 2008: 38). Then, the right to have rights for Birmingham entails a right to appear and she says:

> The event of natality that carries within it the principle of publicness, when restated as the law of humanity (understood as the appearance of the actor among a plurality of actors in a public space of freedom), demands that the actor have the right to appear, or, as Arendt so succinctly puts it, the right to have rights (Birmingham, 2006: 57).

Parekh argues that Birmingham is able to take seriously the ontological aspects of human rights, such as appearing and acting with others and also avoids the danger of seeing the right to have rights as simply a juridical right. However, Parekh criticizes Birmingham as that what she leaves open

is how we move from an is to an ought. It is less clear why we have a right to appear while it is clear in Arendt's work that we appear when we act and that this is rooted in the fundamental condition of natality (Parekh, 2008: 39). Birmingham is reading Arendt's understanding of givenness too broadly. Arendt does not take a completely negative attitude towards the given, nor does she completely affirm.

On the other hand, Arendt, according to Parekh (2008: 39), "wants people to have the possibility of transforming themselves from mere givenness (zoe) into individuals with unique identities (bios)" and "that transformation is only possible through acting and speaking with others in a public space." Protecting human dignity is only possible by transforming bare life into a recognizable human life. That is why Parekh (2008: 40) see Arendt "as calling not so much for the acceptance of givenness within the political, but for the right to belong so that one can speak and act and hence disclose one's individuality."

The concept that will play the role that nature formerly fulfilled to form the basis of human rights in Arendt is idea of "humanity," which for us has become "an inescapable fact" (Arendt, 1951: 298). Thus, "the right to have rights" must be guaranteed by humanity itself. However, it was not clear that this is even possible for Arendt because as long as international law is based on reciprocal agreements and treaties between sovereign states, humanity can never guarantee the right to have rights. Here, the solution for this dilemma for Arendt (1951: 298) is not the establishment of a world government instead of national sovereignty. Because a world government also would destroy what is perhaps the most important concept in politics, the plurality and would destroy the differences among people (Parekh, 2006: 41).

Benhabib (2004) criticizes Arendt as she could not find a philosophical base for human rights and even for her conception of the right to have rights.

Schaap (2011: 27) also point to the puzzle that if human rights are the product of political association, what is the ground of the right to have rights and what basis might a rightless person claim a right to have rights? Rancière (2004: 302), on the other hand, criticizes Arendt as she confines human rights to a tautology or nothingness with equating human rights with citizens' rights. Rancière (2004: 302) comments "Either the rights of those who have no rights or the rights of those who have rights. Either a void or a tautology, and, in both cases, a deceptive trick, such is the lock that she builds."

Gündoğdu, on the other hand, comments for this criticism of tautology as it can be said that Arendt shows when human rights become a tautology or and actually explains the situation in practice. Showing the situation is way of understanding about why human rights cannot be used in cases like statelessness. Gündoğdu (2015: 54) argues that goal of Arendt "is neither to find a new normative foundation for human rights nor to devise an institutional model for their protection," but there are two crucial interrelated tasks for her. These tasks are:

> One involves understanding the new forms of rightlessness faced by asylum seekers, refugees, and undocumented immigrants, and it demands carefully examining the perplexities that these problems bring to view in the contemporary human rights institutions, norms, and policies. The other consists of understanding the political possibilities of contesting rightlessness, and this task requires closely examining how political actors, especially those who find themselves in a condition of rightlessness, navigate the perplexities of human rights and rearticulate the relations between man and citizen, universal and particular, nature and history (Gündoğdu, 2015: 54).

Similar to Gündoğdu, Parekh (2008: 5-6) also believes that Arendt's "goal is not to create a normative ground for human rights that all people will be forced to grant under pain of self-contradiction" but creating understanding is so essential for her.

From the perspective of this study, it is possible to claim that Arendt is not completely opposite or party to the naturalistic conception approach and political conception approach and their thinkers that examined in this thesis. There are many points that Arendt has in common and differs with these approaches and thinkers. For example, Arendt, differs from the political conception approaches because for Arendt, “human rights are the conditions that make human life, understood biologically and existentially, possible” (Parekh, 2008: 147). Thus, they are both necessary and important. Parekh (2008: 147) argues that then Arendt’s position gives us a reason to believe in human rights but without depending on a naturalistic conception.

Arendt’s view differs from the naturalistic position because she clearly denies that we can ever know our nature or essence (Arendt, 1958: 10). Arendt can come to a common point with the rejection of metaphysical principles by political conception approaches. For this reason, there may be points where they get close to some thinkers. For example, Pogge, whom we discussed in the political conception approach, can be seen as one of the thinkers closest to Arendt's position because he focused on the role of citizenship in protecting human rights. Although Pogge does not propose a new concept such as Arendt's concept of the right to have rights, he acknowledges that achieving human rights is linked to people in our social system (Parekh, 2008: 145). In addition, although Rotry's questioning of who counts as human is important for Arendt, Rotry's solution of education differs completely from Arendt's understanding of human rights. Singer, on the other hand, shares a common point with Arendt on her emphasis on the political community to make human rights operative. However, while a community is a group of people who share certain norms for Singer, Arendt takes community as the occasion for self-disclosure (Parekh, 2008: 143).

Donnelly, which we examined under the title of naturalistic approaches, defends the universality of human rights against cultural relativism. It is very difficult for us to count Arendt among the advocates of cultural

relativism, who is in search of a new political principle, a foundation that will guarantee human dignity, despite questioning the naturalistic features of human rights. Also, Gewirth shares the same concept with Arendt by focusing on agency, but their meanings are different. Sen, on the other hand, says that the central features of human rights are being open to argument. In this sense, we can say that Arendt opens human rights to argument and criticism with her understanding. Renzo's basic need and Hart's general rights may be seen as right that citizens can reach in Arendt's sense. Dworkin gives a huge importance to human rights as he sees them as trumps. Arendt in this sense does not regard human rights as a unicorn or idolatry but does not attach such importance like Dworkin.

As Balibar (2009: 261-262) claims, "Arendt has developed one of the most radical critiques of the idea of an anthropological foundation of rights, and the classical doctrine of human rights." However, this radical critique does not make her an enemy of human rights since she does not completely reject human rights and instead, she seeks a new basis for human rights and human dignity. What is critical for Arendt is that human rights should no longer be a matter of mercy but be secured by a new political principle. Balibar (2009: 266) underlines the importance that Arendt attaches to institutions, arguing that for Arendt, humans simply are their rights, and those rights only exist through institutions.

I can say that Arendt's view on human rights and her search for guarantee are built around her political understanding. According to Isaac (1996: 67) the right to have rights "can only be secured by politics, by the civic initiative of those vulnerable to the vagaries of world politics and those in solidarity with them." However, even though Arendt has common points with political approaches in terms of the importance she attaches to human rights' political and practical role and her opposition to the naturalistic characteristics of human rights, it is rather difficult to see how such rights might be rendered valid and how such rights be formulated in Arendt. As

Isaac (1996: 67) argues, Arendt is not a theorist of human rights but "a theorist of the politics made necessary by a world that despoils human rights." Also, as Parekh (2008: 122) mentions, Arendt "never developed a systematic theory of human rights, she avoided discussions of normativity, and she never explicitly said how human rights were justified."

To sum up, considering the debates we mentioned, I think it is not easy to see how Arendt exactly fits into the debate on the foundations of human rights as we understand it today because she was idiosyncratic in her approach to philosophy and understanding of politics. While examining Arendt's view of human rights, there have been thinkers who have drawn a basis for human rights from her political ideas like Birmingham. However, since Birmingham's justification of natality is not clear and precise in Arendt's language, it is necessary to be cautious whether Arendt offers a basis for human rights. But nonetheless, I think that what is the most important in Arendt's views on the foundation debates is her effort and struggle to understand what human rights are and how human rights can be made usable or more effective. Therefore, this study argues that in terms of providing a way to understand human rights, Arendt points to an alternative way of thinking that is different from the two existing approaches. I argue that while Arendt differs from the naturalistic conception approach with her criticism of human rights, she also differs from the political conception approach at some points because her emphasis on a political principle is a quest rather than a theory and a tangible guarantee.

3.4. Arendt's Aporetic Way of Thinking

Hannah Arendt made a significant connection between thinking and action and gave great importance to the faculty of thinking. To fully comprehend Arendt's critique and theory of rights, it is necessary to understand the nature of Arendt's aporetic way of thinking, inconclusive style, and dual nature of thought. Arendt's human rights puzzling is understood only if we carefully

examine how Arendt's critique proceeds (Gündoğdu, 2015: 13). Therefore, this part of the thesis examines the general qualities of faculty of thinking and Arendt's illustration of the thinking method in her writing, which takes the reader on a challenging and thought-provoking mental journey with its terminology and depth.

Despite the importance of thinking as a basic mental activity of humanity and a natural need of human life, it may not seem possible for people to think about thinking in our daily life, where we do not even have time to stop and think, like the impossibility of the eye being unable to see itself. However, Hannah Arendt tries to go beyond the challenge of thinking and starts "thinking through thinking" (Bernstein, 2006: 277).

Arendt traces the mind's journey in three main sections: thinking, willing and judging in *The Life of the Mind*, on which she wrote two chapters on *Thinking* and *Will* and started working since 1961 and died in 1975 before completing the third chapter, the *Judgment*. Although Arendt wrote a major work on thinking late in her career, the importance of thinking and its meaning in human life as an activity shows its existence from the very beginning of Arendt's intellectual life and chains of thought. Thinking is a pervasive theme in Arendt's entire corpus (Bernstein, 2006: 277) and it is possible to come across her thoughts on thinking on the books such as "Human Condition," "Between the Past and the Future," "Eichmann in Jerusalem: A Report on the Banality of Evil," "Men in Dark Times," and various articles and interviews.

In the introduction of *The Life of the Mind*, Arendt states that her preoccupation with mental activities has two different sources, the first of which stems directly from the Eichmann trial in Jerusalem. In her work about the Eichmann case, she asks, "Might the problem of good and evil, our faculty of telling right from wrong, be connected with our faculty of thought?" (Arendt, 1978: 5) and emphasizes that Eichmann and persons like

him under the totalitarian regimes were actually thoughtless rather than being stupid or monstrous. The second from was “certain doubts” (1978: 6) that arose due to the possibility of neglecting the subject, although she announces its task in The Human Condition as “to think what we are doing” (Arendt, 1958: x).

The prioritization of vita contemplativa, or contemplative mind, over vita activa, or active life in the history of philosophy prompted Arendt to think about thinking. According to this general view in the history of philosophy, the active way of life is laborious, public, devoted to the necessity of one’s neighbor; while the contemplative way is sheer quietness, secluded in the desert, and devoted to vision of God (Arendt, 1978: 6). Arendt takes a completely different approach to the view that the ultimate aim of thinking is contemplation, and that contemplation is not an activity but a passivity and ends her study of active life with Cicero's sentence “never is a man more active than when he does nothing, never is be less alone than when he is by himself” (cited in Arendt, 1978: 6) in order to point out her doubts on the relationship between the contemplation and thinking. In other words, Arendt defends the autonomy of thinking against the idea of seeing contemplation as the purpose of thought, and thus aims to abolish the traditional hierarchical superiority of the vita contemplativa over the vita activa.

On the other hand, Arendt asks important questions about the relationship between evil, action and thinking and makes propositions about thinking faculty. For example, if it was thoughtlessness that drove Eichmann and other ordinary Nazis to a cruel position, then the question in her German work, Denktagebuch, shows its importance: “Is there a way of thinking which is not tyrannical?” (Arendt, 1953: cited in Berkowitz & Stroney, 2017: 5). For Arendt, one way to a non-tyrannical way of thinking goes through “Denken ohne Geländer” – “thinking without banisters,” which she defines as: “That is, as you go up and down the stairs you can always hold on to the banister so that you don’t fall down. But we have lost this banister.

That is the way I tell it to myself. And this is indeed what I try to do" (Arendt, 2018). This a new type of thinking that does not need pillars, props, or standards and traditions to move freely without crutches over unfamiliar terrain (Arendt, 1968: 10) and a thinking in new ways without accepted categories and guideposts (Bernstein, 2006: 279).

Thus, one of the arguments worth mentioning here is that while Arendt says that thinking is one of the conditions that prevents people from evildoing, she suggested that it is not thinking per se makes persons withdraw from evildoing (Young-Bruehl, 1982: 279) as it is not a magic wand that solves all problems in daily life or crisis times. Thinking is just one of the faculties of the mind, and it also needs judgment that is the ability of the mind to complete the scheme of the mind. Therefore, it is possible to say that Arendt assumed a certain relationship between thinking and judgment, and between judgment and action.

At this point, since the relationship between judgment and thinking is beyond the scope of this study, it would be judicious to return to Arendt's description of thinking faculty. One of Arendt's ways of describing the faculty of thinking is through via negativa, that is, what thinking is not. In this context, Arendt refers to Heidegger in which he states that thinking does not bring knowledge nor produce usable practical wisdom nor solve the riddles of the universe nor endow us directly with the power to act.

For Arendt the separation of thinking and knowing is significant as she refers to the distinction of Kant between the reason, Vernunft, and intellect, Verstand. The distinction of reason and intellect coincides with two different mental activities, thinking and knowing, and two different mental concerns, meaning and cognition (Arendt, 1978: 14). For Arendt, knowing is related with truth whereas thinking is concerned with meaning. In Arendt's (1978: 15) words, the desire to know is fulfilled by reaching its intended goal,

whether it arises from practical necessities, theoretical perplexities, or from sheer curiosity but the need to think can be fulfilled only through thinking.

Arendt (1978: 57) uses a remarkable metaphor and expresses that the activity of knowing is a world-building activity like the building of houses but on the contrary need to think leaves nothing tangible behind. In searching of meaning and thinking there can be no finality and as she refers thinking is “like Penelope’s web; it undoes every morning what it has finished the night before” (Arendt, 1978: 87).

While Arendt examines the question of what makes us think, Socrates appears as a model of thinker who combined thinking and action in his person as “the one pure example she admits of the thinking man” (Berkowitz, 2010: 241). The first feature Arendt emphasizes is that Plato's Socratic dialogues are all aporetic. In Socrates' dialogues, none of the arguments end in a certain place, it continues constantly in circle because Socrates asks questions that he does not know the answers, and this questioning becomes continuous, so, everything is questioned all over again and this process never ends (Arendt, 1978: 169).

As another point, Arendt states that Socrates is the person who discovered the concept, and it should be asked what he did when he discovered the concept. For example, the word house, although it may seem much easier than defining concepts such as happiness or justice, refers to something much less tangible than the structure we perceive with our eyes. For this reason, the word home is like a frozen thought that thinking must unfreeze whenever it wants to find out its original meaning (Arendt, 1978: 171). The important point here is that Arendt states that thinking does not lead to a definition and is completely futile, but nevertheless, someone who thinks about concepts like piety, justice, courage can improve their own perspective and can make people fairer, more courageous (Arendt, 1978: 171).

To make this way of thinking more understandable, Arendt talks about three similes for Socrates. In the first two analogies, Socrates called himself as a gadfly and a midwife. As a gadfly, Socrates disturbs and arouse people who would otherwise spend their lives asleep, encouraging them to think, because a life spent without thinking is not worth much, nor is it a fully alive, according to him (Arendt, 1978: 172).

As the second analogy and as a midwife, Socrates himself is sterile, so he knows how to give birth to the thoughts of others, and through his sterility he has the expert knowledge of the midwife and decide whether the child was fit to live or not. In this way, Socrates helps those he speaks to get rid of their unexamined prejudgments and what was bad in them (Arendt, 1978: 172-173).

The third analogy that Arendt uses, according to Plato, is that someone else likened him to electric ray, a fish that paralyzes and numbs anyone who touches it. Arendt states that at first glance the electric ray appears to be the opposite of a gadfly because it paralyzes when the gadfly arouses but yet what appears to be stunned from the outside is felt as the highest form of being alive (Arendt, 1978: 173).

Arendt also mentions the wind metaphor used by Socrates in relation to thinking. Arendt (1978: 174) states that Socrates was aware that thinking is concerned with the invisible, and thinking itself is invisible like the wind, and therefore we know its presence and feel it approaching. In other words, the wind, the other metaphors, and that is thinking wake us up in order to solve all the concepts and doctrines that appear in our language in a frozen thought, but when it wakes us and makes us fully alive, we see that we have nothing but perplexities and the only thing we can do is to share them with others (Arendt, 1978: 174).

After all these metaphors, it is understood that life does not continue exactly the same after Arendt's stopping and thinking activity as it creates

perplexities. For this reason, Arendt says that thinking can be as dangerous as not thinking. While people are questioning the given, the possibility arises of turning the inconclusiveness of Socratic questioning into negative consequences and so this time they can adopt the opposite as new values. For this reason, just as there is no dangerous thought, phenomena such as nihilism may arise because thinking itself can be dangerous (Arendt, 1978: 176).

While dealing with Socratic propositions, Arendt also draws attention to the internal and two-in-one of the soundless dialogue criterion that Socrates imposes on the faculty of thinking. According to Arendt (1978: 181), it is better for a person to contradict others than to be at odds with himself. While Arendt questions Socrates' expression of being in harmony with oneself, that is, “being one,” she says that one exists for oneself as well as for others. She says that when the person exists for herself, her unity within her is differentiated. This distinction, the one being two, takes place by thinking and is what Plato and Kant called the talking of the soul with itself and silent dialogue.

The two-in-one of the soundless dialogue requires solitude, self-harmony, which means, these two must be friends, and an ability to visualise the world from the perspective of one another. Arendt (1978: 185) emphasizes that it is this duality that makes thinking a genuine activity where I can be both a questioner and an answerer, and she says that thinking can only be dialectical and critical in this way. In other words, this bilateral dialogue is needed in times of crisis when critical thinking is needed. For example, as a thinking person, Socrates is not alone when he goes home, unlike people who do not think, he is alone with himself. The name of the friend in this house is sometimes conscience (Arendt, 1978: 190). This friend should not be contradicted because no one would want to be the friend of a murderer, and if he is the one who committed the murder, no one would want to share his life with a murderer (Arendt, 1978: 188).

Another important point of Arendt (1978: 191) that differs from other thinkers is that she believes that thinking is not a privilege of a select few, but an ever-present faculty in everyone and therefore, inability to think is an ever-present possibility for everybody and anyone can fall into the situation of escaping from intercourse with oneself. Considering Arendt's thinking as an activity accessible to everyone, it shows the necessity of thinking for everyone.

As a consequence, thinking does not offer ready-made recipes for Arendt, and the wind of thinking can indeed prevent disasters, at least for itself, in the rare moments when everything is on the table. Also, as in Gündoğdu's (2011) judgment, we can find the legacy of Socrates in Arendt's thinking, and it is possible to see the qualities Arendt gives over Socrates for thinking, the projection of the metaphors she uses, and the perplexities in her thought, in Arendt's interpretation of human rights. The reason why Arendt's interpretation of human rights often seems to contradict itself is due to this aporetic way of thinking we talked about in this section. This style is seen in her language in the first volume of The Origins of Totalitarianism: “This book has been written against a background of both reckless optimism and reckless despair” (Arendt, 1951: xvii). For Arendt, who sees herself to think independently without relying on traditions and without being under the shadow of categories, it is important that her thinking does not achieve anything. As Buckler (2011: 33) argues, this may be exactly the source of its power and what gives the thinking activity its active character. From the perspective of this study, this thinking style of Arendt gives an active character to her understanding of human rights as she try to rethink without accepted traditions and guideposts. Therefore, in order to understand the intellectual roots of Arendt's interpretation of human rights, Arendt's method of thinking was briefly mentioned in this part of the thesis.

CHAPTER 4

HUMAN RIGHTS CRISIS AND PARADOX OF NON-CITIZENS: BETWEEN THEORY AND PRACTICE

The first two chapter of the thesis intended to clarify the literature on human rights and the Arendtian critique of human rights. On the other hand, this chapter of the thesis turn to specific situations related to the contemporary problems and struggles of stateless and non-citizens in today's world. As it is mentioned already briefly, after the second world war, human rights regime and language have been increased all over the world. While modern states put their own laws on human rights, on the other hand, they became a party to international law with contracts and agreements. For this reason, when considering the current situation of refugees and human rights, it is necessary to mention the existing legal norms and international organizations in the international arena. In addition to all these international developments, the crises experienced by refugees continue. It is crucial to examine the current crises in this century, where both the discourse of rights and *rightlessness* are increasing.

In this regard, first, the definition of migrant, asylum seeker, refugee, and stateless terms; international law and international organizations related to refugees is mentioned. Then, two current examples of rightlessness crises

experienced by non-citizens is mentioned. The first example is the effect of the Covid-19 pandemic, one of the biggest global crises of the last century, on refugees and the second is the double statelessness experience of Syrian stateless and refugee Kurds. These examples are not mentioned as case studies applying Arendtian theory but as situation and experience of today's world. With these first two example, it is aimed to go beyond the theoretical discussions of human rights literature and scrutinize the practical ground. As it is mentioned, while the discourse and legal developments about rights have increased in practice, it is seen that many crises of rightlessness also have continued and increased. Therefore, the third subtitle clarifies why this crisis in practice should be considered as a theoretical problem at the same time. Finally, while mentioning the limits of Arendtian critical thinking on the issue of human rights, an evaluation of the current validity of Arendt's view of human rights in connection with the previous chapters of the thesis was made and the chapter was concluded.

4.1. Definition of Migrant, Asylum Seeker, Refugee, and Stateless Terms According to International Conventions

Today, although there are differences between them, the concepts of migrant, asylum seeker, refugee, and stateless are used interchangeably from time to time with the same meanings. The concept of the refugee is used in daily life and in the media to express people who leave their country or are forced to leave their country under all circumstances and conditions, regardless of why, in what way, and under what conditions they left their country. However, for a person to be granted refugee or asylum-seeking status, certain conditions must be met. In addition, it should be noted that the requirements in providing these conditions can sometimes differ from the framework established by specific regulations in international law, with limitations or different regulations set by states. In this study, the definitions used in the main international conventions are taken as a basis to avoid conceptual confusion. Considering the transitivity of these concepts, it

should be noted that the current examples discussed in this study may be compatible with all the concepts of refugee, stateless, asylum seeker, and non-citizen. For this reason, the concept of non-citizens has been chosen in the title of the main section. Also, the concept of the field of refugee law, which includes other concepts, is mentioned in the thesis while the legal regulations are mentioned.

As there is no internationally accepted legal definition of a migrant, a migrant can be defined as a person who is not an asylum seeker or refugee who is outside the country of origin (Amnesty International, 2022). An asylum-seeker is "someone whose request for sanctuary has yet to be processed" according to UNHCR (2022). According to the 1951 Refugee Convention, a refugee is:

> Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (United Nations, 1951).

Stateless person is someone who is "not recognized as a national by any state under the operation of its law," according to the 1954 Convention relating to the Status of Stateless Persons.

4.2. The Issue of Refugees in Terms of International Law and International Organizations

While the nation-states and citizenship becoming the primary key to living within a country's borders with the rise of modern states, the border drawn between countries and the protection of these borders from foreign human beings has become one of the most important policies of countries. Especially after the first and second world wars, the changes in the borders and the massive migration and asylum demands due to the devastating effects of the wars caused the issue of migration and refugees to come to the fore at the international level. For this reason, international law and

organizations have become one of the most critical areas to determine, protect and defend the rights of migrants, non-citizens, stateless persons, or refugees.

Before Arendt's article *The Rights of Man: What Are They?* first written in 1946 and later published in German and English in 1949, there were few international protection activities for refugees. The first works on the development of refugee law prior to Arendt's article were made within the framework of the League of Nations since the 1920s. In 1921 The League of Nations High Commissioner for Refugees, as the first organization to protect refugees, was established. In this period, identity documents known as the "Nansen Passport" for refugees who were not citizens of any country were created by the League of Nations. Approximately 450,000 Nansen passports were provided to stateless persons and refugees, including Russian refugees whose citizenship was revoked by Lenin in 1922 and became stateless, and then some groups, including Armenians, Assyrians, and Turks. It can be said that in this period, refugees were recognized in terms of their group characteristics.

As the Second World War came near, dictatorships rose in many parts of the world, and slaughters such as Nazi concentration camps were experienced. During these periods of concentration camps and conflicts, which Arendt personally experienced, people were tried to be dehumanized or stateless, or displaced. The United Nations Relief and Rehabilitation Administration was established in 1943 to help refugees and immigrants who had to relocate and leave their countries due to the policies of the Nazi administration. As the Second World War ended, there were 11 million refugees globally. While these slaughters were taking place and people were becoming displaced persons, the international area did not have enough sanction power, institutions, and documents to prevent the violation of their human rights. The International Refugee Organization (IRO), an intergovernmental organization, was also established in 1946 to deal with the refugee problem

after World War II. However, these formations had not created a long-term refugee protection system as they were a short-term and target-oriented formations.

On the other hand, there have been many international conventions, declarations, and institutions to protect refugee rights since Arendt's article on the tension and relationship between human rights and the nation-state. The international developments, to protect the rights of refugees after Arendt's comments, is of great importance to understand the current situation of Arendt's human rights paradox. As Arendt (1951: 291) claimed that “the proclamation of human rights was also meant to be a much-needed protection in the new era where individuals were no longer secure.” The need for a protection system can be seen as an indication of the ineffectiveness of the nation-state system in protecting rights.

Most of the work on the development of refugee law after Arendt's article has been done within the framework of the United Nations. The Universal Declaration of Human Rights, which is one of the two basic international documents that constitute the legal basis of the international protection of refugees, was adopted on 10 December 1948 by the UN General Assembly. Article 14 of the Universal Declaration of Human Rights guarantees “the right to seek and to enjoy in other countries asylum from persecution” (United Nations, 1948) at the international level. Also, article 15 states that “everyone has the right to a nationality” (United Nations, 1948). According to Gündoğdu (2015: 19) during the drafting process of Declaration numerous participants proposed the wording of article 14 to be changed to “the right to seek and to be granted asylum” to place a positive duty on states, but that suggestion was rejected by most state representatives because of concerns that it would put restrictions on sovereign power over migration control. Gündoğdu (2015: 19) points out that article 14 brings to light the perplexities and failure of international human rights law to provide robust guarantees of personhood to asylum seekers with its aim “to strike a balance

between an individual right to asylum and the sovereign state's right to control its borders."

The ongoing tensions after the Second World War revealed the need for a more comprehensive organization, despite the steps taken by the International Refugee Organization (IRO) since its establishment. IRO was replaced by the United Nations High Commissioner for Refugees (UNHCR). UNHCR is established on 14 December 1950 by the UN to ensure that anyone fleeing violence, persecution, war, or disaster in their home has the right to seek and find safe asylum. The second of the two basic international documents that constitute the legal basis of the international protection of refugees is the UN Convention for the Status of Refugees (Geneva Refugee Convention), and its Protocol adopted by UNHCR. The Geneva Convention was created after the refugee crisis in Europe caused by the second world war in 1951. It was adopted by twenty-six states and entered into force in 1954. It includes the status of refugees, their rights, the responsibilities of countries, and the need for international cooperation and burden-sharing. The 1951 Convention was a first in terms of legally defining a refugee. However, this first legal definition contained extremely important historical and geographical limitations with expressions such as "events occurring before 1 January 1951" and "events occurring in Europe" and "events occurring in Europe or elsewhere" in the definition of refugee.

Since the adoption of the 1951 Convention, new refugee situations have arisen, so the New York Protocol was added in 1967 to include these new refugees within the scope of the Convention. With the 1967 New York Protocol to Geneva Convention, the time limitation on the definition of refugees was removed and the geographical limitation was left to the preferences of countries. As of today, 145 states are party to the 1951 Refugee Convention, 146 states to the 1967 Protocol to the Convention, and 142 states to both.

The Convention states “shall accord to refugees the same treatment as is accorded to aliens generally” (UNHCR, 1951). From this expression, it can be deduced that Convention proves that refugees have fewer and more limited rights than citizens (Yılmaz, 2018). Another point that makes the 1951 Geneva Convention very significant is the principle of non-refoulement, which is one of the basic rules of international customary law and considered as a fundamental human right, has been put into writing with Article 14. According to this non-refoulment principle, a refugee who is on the danger of torture or persecute cannot be forcibly returned, and states must provide refugees with access to their basic rights and security while they are in the country. Benhabib (2004: 35) states that principle of non-refoulement has roots in Kant’s claim from which Arendt also draws from her intellectual legacy that first entry cannot be denied to those who seek it if this would result in their destruction. Benhabib points that although Arendt does not agree with concept of world citizenship, she is influenced by Kant's thoughts on these principles.

The non-refoulment principle also shows its presence in other international documents. Article 3 of the 1967 UN General Assembly Declaration on Territorial Asylum also forbids forcible return or deportation of asylum seekers in danger of persecution. Also, Articles 6 and 7 of 1966 Covenant on Civil and Political Rights and Article 3 of 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide the obligation not to deport or expel a person who is at risk of harm, from their territory. Since the expulsion of refugees may lead to persecution, torture, and human rights violations, it is possible to evaluate the basic human rights documents with the violations of these rights of refugees.

While Eleanor Roosevelt (as cited in Freeman, 2017) described the UN Universal Declaration of Human Rights as “the international Magna Carta,” on the other hand, some described the Geneva Refugee Convention as the “Magna Carta for Refugees.” In addition to these definitions, many

scientists, NGOs, and movements have led to question these international documents for reasons such as the suspicion of universality, being too Eurocentric and Western, or not responding to today's new and changing situation of displacement. There are those who question the present adequacy of the Geneva Convention because the definition of refugee in the Convention does not fit with the new concepts of refugee such as those who migrate due to reasons such as terrorism, food insecurity or climate refugees. Another point of criticism is that Madagascar, Congo, Monaco, and Turkey are among the countries that maintain geographical limitation in the Geneva Convention and so restricts access to rights in favor of state sovereignty. Due to this limitation, millions of Syrians who immigrated to Turkey due to the Syrian civil war in 2011 could not benefit from refugee status and experienced various rights crises.

Furthermore, many other intergovernmental and non-governmental organizations have been established to protect, defend, and develop the rights of refugees. International Organization for Migration (IOM) is another leading intergovernmental organization for the migration issue, established in 1951. IOM is an organization that became an agency of the UN in 2016 and works closely with governmental, intergovernmental, and non-governmental partners to promote humane and orderly management of migration in the world for the support of all. In addition, the work of a number of UN agencies dedicated to human rights also intersects with migration and refugee issues, since the rights of refugees are included in human rights. The European Union, as an important supranational organization, has a number of institutions dealing with migration and refugee issues under the General Directorate of Migration and Internal Affairs. Two of the most important and largest non-governmental organizations that also deal with refugee rights are Amnesty International and Human Rights Watch. Both organizations work to advocate for human rights around the world, including the rights of migrants and refugees.

Various humanitarian organizations such as International Committee of the Red Cross (ICRC) the International Federation of Red Cross and Red Crescent Societies (IFRC), Turkish Red Crescent (TRC), and Refugees International (RI) also work to help vulnerable people and refugees.

In addition to all these international developments, a number of regional legal arrangements have been developed to protect, defend and develop the rights of refugees. For example, the 1969 Organization of African Unity Convention, the 1984 Cartagena Declaration, the European Union Common Asylum System and the Dublin Procedure provide special protections for refugees. These regional arrangements have also helped to better adapt the 1951 Refugee Convention to its modern contexts. While such regional agreements do not guarantee state participation, they are important in broadening refugees' access to rights, providing new models for refugee rights, and providing more leverage for legal and advocacy efforts that support refugee rights (Asylum Access, 2021).

In addition to the legal developments regarding refugees, it is worth noting that stateless people are also included in the above-mentioned arrangements and, although similar to refugees, they are subject to a separate and special status and specific agreements. The key international conventions that address statelessness and bases legal framework are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness adopted by the UN. 1954 Convention is planned to ensure that stateless persons enjoy a minimum set of human rights and create minimum standards of treatment for stateless people in respect to a number of rights such as the right to education, identity, employment, travel documents and housing. The 1961 Convention is designed to prevent statelessness and reduce it over time with establishing an international framework to ensure the right of every person to a nationality (UNHCR, 2022).

As a result, after Arendt's critique of human rights, there have been remarkable efforts and developments for non-citizens, stateless persons, refugees to ensure the right to asylum and protect their human rights. However, as Kale (2017) stated, while these developments have been experienced alongside the strong nation-state tradition that has existed since the foundation of modern states, all the efforts of the society of states have been incapable of approaching the issue of human rights without the lens of nation, birth, and citizen. For this reason, international efforts are briefly mentioned to examine the current response to Arendt's human rights critique. In this context, the discussion of the current validity of Arendt's critique of human rights is left to the last sub-title of the chapter.

4.3. The Paradox of Non-Citizens' Human Rights through Present Examples of Rightlessness Crisis

What led Hannah Arendt to make a scathing criticism of human rights was the great humanitarian crisis and slaughters during the second world war and the emergence of millions of homeless and stateless masses. As mentioned in the previous sections, after Arendt's criticism, some thinkers tried to present a foundation for human rights in the field of human rights theory and tried to overcome perplexities and paradoxes. Besides, to solve these paradoxes in practice, various international agreements, declarations, and international institutions have tried to make refugees a subject of international law to overcome problems and ensure their rights. However, despite all these theoretical and practical efforts, it is seen all over the world that there are still crises in which refugees have significant problems accessing to human rights. In this context, this subtitle of the chapter aims to examine the validity of Arendt's critique by evaluating two vivid examples of the current crisis faced by refugees and stateless people. The first example is the restrictive effect of the Covid-19 pandemic that emerged in 2020 on refugees' access to human rights. The second is the situation of double statelessness of the Syrian stateless and refugee Kurds that emerged with the

migration of millions of Syrians to the surrounding countries during the Syrian civil war that broke out in 2011.

4.3.1. Effect of the Covid-19 Pandemic on Refugees' Access to Human Rights

When the Covid-19 pandemic first broke out in China in 2020 and started to spread rapidly all over the world, it was claimed that the virus spread more quickly to the wealthy and upper classes compared to the lower classes. However, after a short time, it was understood that the effect of the virus was more intense in the lower classes and vulnerable groups. For example, it stood out among the statistics that in the USA, the mortality rate of African Americans was higher than that of whites (Reyes, 2020). Therefore, this overrepresentation of African Americans among Covid-19 cases and the mortality rate shows that coronavirus pandemic is not an equalizer. On the contrary, it shows that the coronavirus pandemic is increasing or worsening present social inequalities attached to class, race, and the access of these categories to the health care system.

UN Secretary-General Guterres (2020), in the early period of the pandemic, made a speech emphasizing the importance of human rights in times of crisis, saying that human rights, which glorified everyone, should guide us in fight against Covid-19. Noting that it is not the virus but its effects that discriminate, he said that the pandemic, which described as the biggest international crisis ever, had disproportionate effects on some societies. At the same time, he stated that hate speech increased, and vulnerable groups is targeted. He also noted that deep weaknesses in the provision of public services and the structural inequalities that hinder access to them became evident during this period (Guterres, 2020).

The coronavirus pandemic has caused many debates in terms of human rights. While some argued that mandatory masks and vaccinations are a violation of human rights, others argued that the marginalization of groups

such as older adults is an invisible human rights crisis. In addition to these discussions, obviously one of the main groups that had difficulties in accessing human rights and most affected by pandemic was refugees from vulnerable groups. The problem of accessing rights of refugees deepened and increased their vital risks with the borders being closed for a long time, the recording of the lives of people at and within the borders and the increasing importance of being legal. UNHCR (2022) states that "people forced to flee or without a nationality are doubly challenged by the COVID-19 outbreak and have particular needs."

Jagan Chapagain (2021), the International Federation of Red Cross and Red Crescent Societies (IFRC) Secretary General, also stated that the Covid-19 pandemic has exacerbated the plight of refugees facing serious humanitarian challenges, and there are alarming trends that show many refugees around the world are unable to pay for meals or rent and have difficulty accessing healthcare and education. He adds refugees have often been left out of socio-economic support policies during the pandemic and this situation leads refugees to adopt negative strategies to survive (IFRC, 2021).

UNHCR (2022) numerical data shows that the pandemic puts approximately 26 million refugees at risk, more than three-quarters of whom live in developing countries. Some of these countries with weak health systems have not successfully provided equal health care to all, creating difficulties for vulnerable groups to access health care. For refugees who live in camps or cities, accessing this service is more difficult as they are not citizens. Refugees were adversely affected by reasons such as the inability to comply with the social distance rule due to the overcrowding of the refugee camps, the lack of access to hygiene and protection equipment such as masks and disinfectants, the difficulty of accessing medical care in case of illness, and the delayed delivery of vaccines to refugees.

Also, research conducted by IFRC in countries such as Bangladesh, Colombia and Turkey show that refugees' livelihoods have decreased during the pandemic, resulting in food security risks and malnutrition problems. Refugees can resort to alternative strategies such as turning to cheap food, consuming less food, or borrowing to buy food or child labour to overcome the problem of food consumption. In addition, the reduced presence of humanitarian organizations in the camps due to restrictions has also led to an increased risk of sexual and gender-based violence and human trafficking. There has also been an increase in child marriages, often seen as an alternative to education or work, since the start of the pandemic (IFRC, 2021).

With the Covid-19 Pandemic, which is one of the biggest global crises in the last century, it has been observed that the strict measures taken by states all over the world affect refugees more than their own citizens. This shows that in times of crisis or in dark times, these fragile masses are at the forefront as those who are mostly ignored, excluded, and exposed to rightlessness. Also, as a global crisis, an essential point of the effects of the Covid-19 Pandemic on refugees is that this crisis has shown that refugees are more open to exclusion and violation of human rights not only in specific regions or only in underdeveloped or authoritarian countries, but also all over the world, including the most developed and liberal or democratic countries.

Parekh (2020: 179). mentions that “merely 2 percent of refugees have access to refuge in any meaningful sense, while the rest are stranded long term in circumstances that don’t reach the threshold of a minimum standard of dignity.” She describes this situation as kind of structural injustice. It is possible to say that this structural injustice deepens when we consider the difficulties experienced in refugees' access to rights during a crisis such as a pandemic. So that, in order to begin to think concretely about what actions we can take and what policies we should support it is necessary to having

developed an understanding of the real problem for refugees and the crucial role Western liberal democracies play in it (Parekh, 2020: 182).

4.3.2. The Double Statelessness of the Syrian Stateless Kurds

The second example of the crisis of rightlessness is the Syrian stateless Kurds. After the Syrian civil war in 2011, a large part of the Syrian population migrated to the surrounding countries over time as asylum seekers or refugees, and the experience of statelessness began for millions of Syrians. Much work has been produced over the years about this major refugee crisis, for which a long-term solution has not yet been produced. However, there is a group that has not been mentioned much in these studies. That is a group of Syrian stateless Kurds. Statelessness was nothing new and did not begin with the 2011 migration for this group. The experience of statelessness with migration from Syria to other countries due to civil war is a double statelessness for them because they never had citizenship in Syria. Before the 2011 Syrian migration crisis, the exact number of this stateless group living within Syria's borders was unknown, but it was estimated to be almost 300.000 according to the UNHCR. A variety of sources indicate that between early 2011 and late 2013, the number of stateless Kurds (ajanib and maktoumeen) Syrian Kurds decreased from 300,000 to 160,000 (Swanson, Zullo, and McGee, 2022).

In terms of international obligations, Syria is a signatory to a number of international documents containing articles on the issue of statelessness. Some of these documents that put Syria under obligation are the Universal Declaration of Human Rights, Convention on the Rights of the Child (1989), Arab Charter on Human Rights (2004). The International Convention on Civil and Political rights (1966) obligates the Syria with Article 24.3 of “Every child has the right to acquire a nationality.” The International Convention on the Elimination of all forms of Racial Discrimination (1965) obligates Syria with Article 5 of “[...]Guarantee the right of everyone,

without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (iii) The right to nationality." Convention on the Elimination of all Forms of Discrimination against Women (1979) obligates the Syria with Article 9.2 of "States Parties shall grant women equal rights with men with respect to the nationality of their children." Convention on the Rights of the Child in Islam (2004) obligates the Syria with Article 7 of "A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined [..]" (Albazari, 2013: 5).

The statelessness process of this population, which can be defined as de juro statelessness according to the "1954 Convention Relating to the Status of Stateless Persons", is based on the Jazira census created in the Hassakeh governorate where bordering Iraq and Turkey and predominantly inhabited by Kurds in 1962. The reason for this census by the Syrian authorities was to help identify groups of immigrants who had infiltrated the region from neighboring Turkey and were affected by the Kurdish uprisings in Iraq. During the census process, some documents were requested from those residing in the province in order to register as Syrian citizens. With these documents, government officials were asking residents to prove they had resided here dating from 1945 or before (Lynch & Ali, 2006: 1).

As a result of this exceptional census, the Kurdish population in the region was divided into three categories, and an estimated 120,000 Syrian Kurds lost their citizenship almost overnight. The residents in the first category are those who provided the necessary documents and proved their previous existence in Syria and remained Syrian citizens. The residents in the second category are those who tried to register for citizenship but lost their Syrian citizenship because they could not provide the necessary documents and were labeled as "foreigner" ("Ajanib"). Ajanib Kurds are only registered as a foreigner, and a foreign residence permit is given to them. The third category residents are those who did not submit any documents related to

the census or attempt to register or who were excluded from the census and labeled as “unregistered residents” (“Maktoumin”). Maktoum Kurds are not registered anywhere by the Syrian authorities, and their existence in Syria is illegal (Swanson, Zullo, and McGee, 2022: 6). Since these statuses obtained with the 1962 census are hereditary, the descendants of Ajanib and Maktoum also inherit the status of statelessness (Albazari, 2013: 15). Also, this inheritance of statelessness discriminates based on gender due to the Nationality Law of 1969 in Syria that structured acquisition and withdrawal of nationality. In Syria, there are no *jus soli*, also called birthright citizenship, but instead, it has paternal jus sanguinis. Since the father is essential in this blood relation, citizenship can only be passed on to the child from the father. Therefore, the child of a stateless father is also stateless.

Moreover, there were debates about how transparent and fair this census process was. Some people did not realize what exactly the state wanted these documents for during the census process. It is one of the prominent pieces of information in the reports that some people were stripped of their citizenship while their siblings or fathers were able to remain citizens. As a result of this denationalization process, the fundamental human rights of Syrian Kurds have been denied. Stateless individuals' access to many areas such as health care, education, property, travel, livelihoods, judicial and political systems, and marriage has been restricted, and access has been completely blocked in some of them. In addition, the demographics of this region were changed due to the restriction of property acquisition due to statelessness, and the policy of Arabization of this region was pursued by placing many Arab groups.

While the Ajanibs have red ID cards issued by the Ministry of Interior stating that they are not Syrian nationals and do not have the right to travel, the Maktoums are virtually invisible because they do not even have this identity document. Maktoums were only once able to obtain an identity document (shahadat taarif), known as “white papers,” issued from local

community leaders (a Mukhtar), but these documents were not legally recognized by the government. Syria granted stateless Kurdish children the right to primary education, but they faced difficulties in enrolling in secondary schools and universities. For example, Ajanibs are required to obtain a report from the state security in order to enroll in university and they are restricted from professions such as law, medicine, and pharmacy.

For Maktoums, there are even more challenging conditions. Regardless of their success and status, there were students who could not go to university because they were not given diplomas. In addition to these, stateless Kurds could not apply to every position and institution in employment. In the field of health, their access to rights was also restricted. They could neither work in public hospitals nor benefit from general rights as patients. They could benefit from private hospitals, but because there were no private hospitals in their regions, they were stuck with travel restrictions when reaching hospitals in other regions. In order to overcome such problems on accessing rights, stateless people have resorted to alternative ways such as accessing health with the cards of their relatives who are citizens and owning property in the name of their relatives. Also, as the last example, the marriages of the stateless both Ajabib and Maktoums were not officially recognized. Marriage could only be recognized if the man was a Syrian citizen (Lynch & Ali, 2006).

Stateless Kurds had participated in many protests demanding their rights before the Syrian civil war. These protests can be compared to Krause's example of protest for the work rights of the Undocumented in Europe and America. According to Krause (2008: 343), the actions of the undocumented are the actions of demanding the right to be visible in the Arendtian sense, rather than being an action of workers' rights. These people, who are only shadows in Krause's words, are excluded not only from human rights but also from humanity, in Arendt's words. In this sense, the actions of the Syrian stateless Kurds to have citizenship rights are in fact the actions of

demanding to be visible and heard in the public sphere. It is the search for the artificial mask of legal personhood that covers their bare-naked humanness and equalize them with other humans within a political community in Arendt's sense.

In March 2011, the Syrian government changed the law allowing those registered as Anjabis to apply for citizenship with decree no. 49. However, Maktoums' situation remained the same as the change in law did not apply to them. Although it is challenging to apply for citizenship due to the Syrian civil war, UNHCR (2018) reported that statelessness data for the country had dropped to 160,000 at the end of 2018, following the naturalization of stateless Kurds.

There were stateless Kurds who migrated from Syria due to the civil war. Stateless Kurds also faced difficulties when they migrated to neighboring and western countries and applied for asylum. For example, a Maktoum family who applied for asylum in the Netherlands had difficulties because they could not prove their marriage legally in the Netherlands as their marriage was not legally recognized in Syria. Also, stateless Syrian Kurds struggled in describing and proving their statelessness situation in the interviews they did in the countries they arrived since the current authorities did not have a good grasp on the subject. Even some authorities recorded stateless Kurds ad "unknown" nationality rather than "stateless" (McGee, 2019).

There is additional confusion in the asylum claims and legal status of the Syrian stateless Kurds, who are required to prove their existence as stateless in Syria. In this context, the methodologies used by the authorities to determine stateless individuals' Country of Origin can be questioned, as proving their statelessness in Syria, and obtaining documents in Syria is a complicated process. One stateless individual from Kurds described himself

and his situation as “a victim of both Syria and Europe as a person holding no nationality in this world” (McGee & Bahram, 2021).

Also, the findings of a recent study (Swanson, Zullo, and McGee, 2022) on the ajanib and maktoums who migrated to the Iraqi Kurdistan Region indicate that 72 percent of those who identified as ajanib in study said they had not applied for citizenship despite being eligible under the 2011 law. The study shows that maktoumeen still do not have legal pathways to citizenship in Syria, and it is hard to return back and apply for the citizenship for many reasons. It is also indicated that while the KRI legal framework provides legal rights to all Syrian Kurdish refugees and represents for many maktoumeen and ajanib their first legal residence, it does not remove their statelessness or the barriers to durable solutions that statelessness poses (Swanson, Zullo, and McGee, 2022).

As a whole, Syria stands out as one of the countries with the largest number of stateless people in the world. The human rights situation of denationalized Kurds was challenging even before the conflict and their descendants have faced great difficulties accessing their fundamental human rights as they are not Syrian citizens. The migration of these stateless Kurds to other countries after the 2011 civil war has created a double statelessness situation for them. The experience of statelessness was different for these people compared to other Syrian refugees.

Furthermore, the stateless Syrian Kurds are an important example in the context of Arendtian political thought and human rights idea. In the previous chapters, Arendt's arguments about human rights in the historical context have been examined in relation to the nation-state. After the Sykes-Picot Treaty, the Kurds in Syria were located within the Syrian State, which had an inhomogeneous structure. This meant that they were a minority. However, the Syrian state took their second-class status from them and implemented a policy of denationalization, which Arendt often mentions.

Arendt points out that while the creation of stateless persons as a result of the war was not a new situation, mass denaturalization as a state decision was a new situation. This completely new situation, denationalization of people, has been applied massively to the Syrian Kurds and has deprived them of what Arendt calls the most basic right, the right to belong to political organization. The destruction of their legal personality has rendered them superfluous and their access to rights has been denied as described.

As a result of the chapter, although it has been more than 70 years since Hannah Arendt made her human rights critique and there have been many developments in international law to make refugees and non-citizens a subject of law, it is also seen that these masses are still faced with significant human rights violations in many parts of the world. The situation of the Syrian Stateless Kurds shows that although states are party to various international law conventions on human rights, they can render some masses stateless. Since 1962, in Syria, this situation has not been prevented, and people who do not have rights have continued to exist until today. Moreover, when these stateless people sought asylum in western countries after the Syrian civil war, their statelessness situation made them even more complicated. The only thing these people can take with them when they leave their land is their naked humanity, pushed out of all legal forms. As can be seen in both examples, refugees or non-citizens still have more difficult access to human rights than citizens. These two examples of rightlessness bring back the following statement by Arendt (1951: 269) on human rights: “The very phrase ‘human rights’ became for all concerned – victims, perpetrators, and onlookers alike – the evidence of hopeless idealism or fumbling feeble-minded hypocrisy.”

4.4. Why should the paradox or crisis of human rights be considered a theoretical problem?

Today, it is possible to say that the human rights doctrine has settled into international law through the developments mentioned in the formation of the human rights section and the structural developments concerning refugees mentioned in the previous section. Especially for the 21st century and beyond, human rights have gained an international dimension that was not there before. Then despite all these structural developments and having come this far legally, a question arises as to why the philosophical foundations of human rights should still be dealt with and why the current human rights crisis or paradox is also a theoretical problem to be faced. This section attempts to answer these questions.

For human rights defenders and academics whose work is geared towards activism, this concept evokes more practical and on-the-ground issues. These can be practical issues such as preventing unjust criminal punishment and political murder and ensuring that refugees achieve their human rights. On the other hand, the concept of human rights also raises theoretical issues about the requirements of legitimate government, the nature of human rights, and the nature of the good life. This shows that human rights have two dimensions and that the concept of human rights raises practical and urgent problems on the one hand and theoretical and abstract problems on the other (Freeman, 1994: 491).

In principle, these two dimensions must be integrated so that all people can achieve minimal violations of human rights on earth. However, this integration has not been reached yet, and it does not seem easy to reach. Human rights activists tend to ignore theoretical problems because they focus on pressing practical issues. Those who are interested in the theoretical problem, on the other hand, may be weak in terms of making human rights accessible to everyone in the short term since they cannot

intervene immediately to the problems in practice. For this reason, as Freeman (1994: 491) says, there is a gap between human rights activism and theory, so it can be called a perplexity/paradox between practice and theory.

Freeman (1994: 491) argues that this gap between human rights activism and theory can be bridged by consensus, and activism can move forward without much involvement with fundamental theory if most of the people involved agree on the principles and practice of human rights. In other words, one of the most important ways of fundamentally solving the problems that human rights face in practice is to focus on and research theoretical problems. Also, Sen (2004: 331) highlights the need for a theory of human rights to provide a foundation capable of addressing the intellectual skepticism about human rights, even though "people who aim to protect human rights are impatient with such a project because it interferes with the more urgent business of responding to human rights violations." In order to establish such a bridge of consensus, various thinkers defended human rights with various concepts and tried to develop their theories. For example, as mentioned before, Donnelly tried to establish this bridge of consensus with the universality of human rights. It should be noted that although there are attempts at a consensus on human rights, there is no clear consensus. What is important here is that while consensus does not justify human rights, it can be means for the realization and sustain of rights (Freeman, 2017)

As another point, human rights have a very close relationship with states. The human rights of individuals are protected against states, and at the same time, states are expected to protect these rights of individuals. For example, consider the refugees trying to reach Greece by sea from Turkey. When the refugees' boats arrive in Greece or just in the middle of the sea, they are pushed back by the Greek authorities, or their boats are sunk. While these refugees are trying to reach human rights by taking asylum in a state, they can also be pushed to death by the state itself. After Turkey made a political

decision and opened its border gates in March 2020, a large pile of refugees had formed between the Greek-Turkish border and caused a major crisis between these countries. The target of this mass, which tried to cross the borders against the states between the borders of the two states, was again the state itself. International organizations and non-governmental organizations generally gather to help refugees and make their voices heard in regions with crises or border crossing areas. These organizations call states to rectify their policies, so the activities and calls made by these organizations are also to the states. So, it is worthy to say that the state is still "the source and a target" (Perugini & Gordon, 2015: 20) of human rights activism.

Despite international law and the calls of international institutions and non-governmental organizations, states can ignore these calls based on the principle of sovereignty. States can see even children and babies who try to cross the sea with boats as a threat to their sovereignty and send those boats to their deaths by pushing them back. Like the example of Turkey opening the Greek border gates, states can claim that they are trying to protect their sovereignty and security after using these refugee masses as a policy tool in the international arena. Such a relationship between human rights and states is not a coincidence as Arendt claims. In practice, the profound consequences of this relationship can be seen almost everywhere in the world and at all times. In fact, some of the discussions on this relationship highlight that the post-war human rights regime helped to legitimize the state as the central entity in the global order. In these discussions, there is a claim that human rights legitimize the state, and "the legitimacy of human rights does not exceed the legitimacy of the state" (Perugini & Gordon, 2015: 21).

In other words, one of the most serious obstacles encountered in the implementation of the rules or laws created within the framework of global policies regarding refugees is the sovereignty of the nation-states. It can be

said that the provisions in the international documents forming the international refugee law that emerged after the Second World War are designed in theory and in practice in a way that is dependent on the current state system and confirms the central position of the nation-state sovereignty. The existence of the condition that people in need of protection must have left the borders of their country of origin in order to be able to apply the agreements that constitute the international refugee law also shows the relationship with the state.

On the other hand, the existence of national legislation and practices of states is one of the factors that can hinder the international refugee protection system. From time to time, states can turn the rules for the protection of refugees into a bargaining issue in international relations. Third country practice is also one of the steps taken by states to try to remove refugees from their states' obligations. The problem of sovereignty of states puts the protection system of refugees in a dead end. For this reason, theoretical discussions are important in order to understand human rights and the tensions between nation-state.

As another point, it can be mentioned that refugees are generally seen as temporary guests. This can play an impeding role in their full enjoyment of their human rights. For example, with the civil war that broke out in 2011, millions of Syrians admitted to Turkey's borders were seen as temporary guests for a long time. As the stay of these guests, who were expected to return at any moment, became longer, hesitations and tensions increased. This tension even gave rise to xenophobia against refugees. For this reason, the fact that the practical decision of whether refugees as human beings can have the same rights as other people is left to the hands of the states pushes the intellectual and theoretical dimensions of human rights to question. Because these crises and paradoxes challenge the dominant human rights claim which says human has rights by virtue of human being in theory.

To sum up, discussing and examining the relationship between human rights and the state, which we frequently encounter in practice, on theoretical and intellectual grounds, is essential to understand and help overcome the current crises of human rights. In this 4th chapter of the thesis, it is aimed to examine the situation decades after Arendt's human rights critique. It is difficult to reconcile Arendt's theoretical framework with today without analyzing the current experience, crisis, and practical problems. In this context, first the international law today, then the stateless experience of the Syrian stateless Kurds in practice today and the negative impact of the Covid-19 pandemic on the refugees' access to rights were examined. Beside these, in this sub-title, it was mentioned why these kinds of crises experienced in practice should be considered theoretically. In this context, Arendt's human rights interpretation mentioned in the previous chapter come out as one of the essential critiques at the point of nurturing the theoretical and intellectual ground and seeking a way to overcome the problems in practice.

4.5. Evaluation of the Current Validity of Arendt's Understanding of Human Rights

As mentioned in the related chapter, Arendt mentions the existence of a much more fundamental right before human rights, namely *the right to have rights*, and expresses the need for a new polity for human rights. This conceptualization of Arendt's is examined on its historical, political, and ontological aspects. The right to have rights, as examined, means a right to being to belong to a state or organized community of people and to have place in the world where one can act and speak in a meaningful way.

After Arendt's evaluation of human rights, many thinkers referred to Arendt in human rights discussions. There were also thinkers who examined Arendt's concept of *the right to have rights* and made positive or negative judgments on it. In this section of the thesis, the main thinkers who made

evaluations on Arendt are briefly mentioned, and then it is aimed to evaluate the current validity of Arendt's human rights understanding. Agamben (1995), Ranciere (2004) and Benhabib (2004) are the most important thinkers who make critical evaluations on Arendt's view of human rights and the right to have rights. Even Agamben (1995: 114-119) thinks Arendt's analysis has not lost anything of its currency despite the passage of time, he makes a different interpretation on her link between human rights and refugees. According to Agamben, instead of thinking about stateless people in terms of human rights, as Arendt did, it is necessary to think about human rights in relation to sovereignty. The refugee deserves to be considered as the main figure, not the marginal, of our political history, as it detaches the trinity of the state/nation/territory from its hinges. The figure of the refugee is the border-concept that establishes the crisis of the concept of human rights and the deprivation of people's rights by the state. But this is not unique to refugees but is actually a type of policy. This figure, on which the refugee forms the basis in the modern world, is homo sacer. For him, this figure shows the nature of sovereignty and naked life, not the relationship between human rights and the stateless. In this sense, human rights are the biopolitical tools of sovereign to create homo sacer for Agamben.

On the other hand, in the previous chapter, it was stated that Rancière thought that Arendt confined human rights to a "tautology" or "void." According to him, human rights do not have an identifiable subject and acceptance of this means denial of rights struggles. At this point, Rancière cites Olympe de Gouges's defense of women's suffrage as an example. For Gouges, if women are equal to men under the guillotine, that is, if they are sanctioned for political reasons, then they should be able to be the subject of the political field. According to Rancière (2004: 297-310), women's gaining the right to vote as a result of demand and struggle shows that human rights can be demanded in the public sphere. However, Rancière is criticized because the example of women being political subjects cannot be the same

as refugees' subjectivity, which would shake the foundations of the nation-state (Yılmaz, 2018: 783).

Benhabib (2004: 22), whom we refer to many times throughout the thesis, criticizes Arendt's raising the problem without suggesting a solution and cannot deconstruct the stark dichotomy between human rights and citizens' rights. While Arendt criticizes the nation-state, she also opposes the ideal of a world state and this leads her to an irresolvable way of thinking and a dead end. Benhabib (2004: 67) emphasizes that even Arendt's relationship between universal human rights and sovereignty cannot be completely unjustified, after Arendt's analysis there have been many institutional and normative developments in international law addressing the paradoxes which she was unable to resolve. With the international developments, steps have been taken to get rid of the state-citizenship monopoly. Benhabib (2004: 22) aims to develop an argument to bridge the gap that Arendt opens between these two dimensions of rights claims and to incorporate citizenship claims into a universal human rights regime.

Furthermore, as we mentioned in the section where we discussed Arendt's view of human rights, one of the arguments sets that led Arendt to the concept of "the right to have rights" is her historical analysis. While talking about the historical situation of the minorities and the stateless, she mentions the initial attempts taken by the international community to protect these groups and whether they are sufficient or not. It should be noted that the developments in the context of human rights in the international arena after Arendt's critique of human rights have played an important role in transforming non-citizens into subjects of international law. The brief historical overview about the developments on the international arena and law that we examined in the thesis shows that there has been a huge change in human rights after Arendt's critique. As Louis Henkin mentions our age is now "the age of rights."

As mentioned in the thesis, it is seen that many international institutions and laws have been created specifically for refugees and stateless people. On the other hand, one of the most important questionings is that whether the institutional developments and international developments find a response in practice in today's world and refute Arendt's criticism of human rights. To be able to question this, it is necessary to examine our newest experiences and our recent fears. For this purpose, the negative effects of Covid-19 on refugees' access to rights were mentioned in the previous sections. As another experience and situation, the stateless experiences of the Syrian stateless Kurds were mentioned.

From the perspective of this study, it is still within the limits of sovereignty for non-citizens to fully access human rights. Accepting that there have been great developments in the international arena and law in the context of refugees and the stateless, I come to conclusion that Arendt's analysis of the relationship between human rights and citizenship is still alive. The stateless experience of the Syrian stateless Kurds justifies this argument. Although the Syrian state is a party to many agreements on refugees and human rights, it has been the country that has the biggest example of statelessness today. The policies of denationalization, which is a tool of nation-states, which Arendt insistently emphasizes, is also exemplified on the Syrian stateless Kurds. At this point, for some, the problems experienced by this stateless mass in Syria may be associated with a totalitarian or anti-democratic regimes. Even if totalitarian regimes influence the deepening of the human rights and citizenship problems experienced by this mass, when we evaluate it with an Arendtian understanding, it should be considered that this is actually a more structural and institutional problem. For Arendt, human rights crises are possible for non-citizens in democratic and liberal countries due to the nature of the nation-state and sovereign. The experience of the Syrian stateless Kurds overlaps with the violation of human rights by making the Jews stateless and turning them into a politically "superfluous"

humans, which Arendt frequently refers to, and constitutes its current example. Those humans are, just like Syrian stateless Kurds who have become superfluous, practically deprived of any protection, and permanently threatened with elimination but are still physically there.

The example of the Covid-19 pandemic, on the other hand, deepening the problem and crisis of refugees' access to rights in almost all parts of the world supports Arendt's view that this problem is not unique to non-developed or totalitarian countries. With the pandemic, it has been seen that the domination of groups such as the police over citizens has increased in terms of complying with order and rules. This domination has moved to a more critical point for refugees. With the strict control of the borders and their closure for a while, refugees and migrants at the borders have become more open to police intervention even in most democratic countries. Arendt (1951: 288) points out that the rise of stateless groups in non-totalitarian countries has given rise to a form of police-regulated lawlessness, which in practice resulted in the free world being coordinated with the legislation of totalitarian countries.

During the pandemic period, the increase in refugee child workers, the increasing difficulty of accessing rights such as basic food and shelter, the exploitation of refugees who cannot work formally in the labor market showed that the violation of the rights of refugees in all dimensions increased. In particular, the fact that refugees cannot access basic health services easily because they are not citizens has proven that the human rights of vulnerable groups are more at risk in times of crisis. In many countries, it was seen that the vaccination service was ranked according to the order of importance such as age and chronic diseases, while it was seen that the refugees came after the citizens in this importance and were among the groups that had the last access to the vaccine. This situation sheds light on a chronic problem that Arendt points out as refugees are seen as the scum of the earth.

On the other hand, writers such as Birmingham, Gündoğdu and Parekh argued that Arendt actually presented an alternative way of thinking to the debates of human rights when Arendt's human rights view evaluated with her political thoughts. According to Parekh,

> Arendt is interested not in solving the problem of statelessness, but in deepening our understanding of it by placing it within its modern context, while at the same time, suggesting a way that the ontological deficits of statelessness might be tempered (Parekh, 2008: 36).

Similarly, Gündoğdu expresses this argument:

> The Arendtian framework that I propose in this book refuses to see these perplexities as dead ends leading nowhere other than rightlessness; instead, it takes them as challenging political and ethical dilemmas that can be navigated differently, including in ways that bring to view new understandings of the relationships between rights, citizenship, and humanity (Gündoğdu, 2015: 5).

Parekh believes that Arendt's understanding of human rights is a radical proposal. On the other hand, Gündoğdu describes her human rights understanding as radical rethinking. At this point it is important to point that Arendt's critique is not an attempt to expose generally shared assumptions about human rights. In a Socratic fashion, Arendt carefully examines these beliefs in response to statelessness to see not only what has become untenable but also what has achieved a new meaning or relevance (Gündoğdu, 2015: 13).

In order to understand the logic of Arendt's understanding and criticism of human rights, it is necessary to dwell on Arendt's way of thinking. Otherwise, Arendt may appear to think of a dead end when identifying perplexities and paradoxes. On the contrary, Arendt's circular cycle of identifying impasses stems from her way of thinking and her aim to invite everyone to think. As Young-Bruehl (2006: 159) states "each of Arendt's books and essays contains a reflection on how not to think about the topic she is going to consider."

I argue, from the perspective of this thesis, that Arendt's understanding of human rights is in a cycle like Penelepo's web and it undoes the things that it finished the night before every morning. For example, while Arendt argues that “the right to have rights,” that is, the right to be a member of a political community, is a fundamental right that precedes and constitutes human rights, it can be thought that she presents citizenship as a solution. However, she refutes this idea by giving an example of the Jewish state, which was established after the statelessness process experienced by Jews. Arendt states that while the Jewish state is thought to have solved the problem of statelessness, it solved neither minorities nor the stateless problem. On the contrary, the solution of the Jewish question, like almost all the events of our century, says that it has only brought forth a new category of refugees, namely the Arabs (Arendt, 1951: 290). Thus, while one group gains the right to have rights, which are the only basis for accessing human rights, other groups are deprived of these rights. I argue that this situation can be compared to the world-building activity that Arendt uses inspired by Socrates. The activity of knowing and the need to think, which we build as if we were building a house, leaves nothing tangible behind.

According to the perspective of this study, Arendt's inconclusive method offers us an alternative way of thinking about human rights, contrary to criticisms that her human rights thinking is invalid or outdated. I think that like the wind metaphor she uses on thinking, Arendt tries to awaken us with her thoughts like a wind that is invisible but makes us feel its presence and touch. Arendt tries to transform us into fully alive beings by melting frozen thoughts with her thinking activity on human rights. In addition, the two examples we mentioned show the existence and validity of Arendt's human rights critique and determinations in practice today, despite all international developments. While the problem that Arendt analyzes strikes us as a “blind spot in the system of rights,” and denotes an area that escapes our

understanding, she also enables us to detect and understand this blind spot with her critical thinking on human rights.

Thus, I positioned Arendt as a different way of thinking in the human rights literature. Although she seems close to the political conception approach with her emphasis on political and practical ground, I positioned her separately from both approaches because her political approach is different. As Benhabib (2000: 232) points out, we read Arendt "today precisely because of the problematic distinctions and juxtapositions she creates, and not despite them; we read her because she helps us to think politically, not because she answers our political questions." Also, Arendt explains her purpose for writing as follows: "What is important for me is to understand. For me, writing is a matter of seeking this understanding, part of the process of understanding" (interview, October 28, 1964). I think that we can see this matter of seeking understanding in her human rights perspective. For these reasons I claim that she is in a different position from other approaches because she directs readers to political thinking from a different perspective.

CHAPTER 5

CONCLUSION

The main purpose of this thesis is to understand and analyze Hannah Arendt's understanding of human rights which has been developed over the mass of stateless/non-citizen people that she identified in the gap between theory and practice. Human rights have two important dimensions, theoretical and practical. Human rights theory is faced with a normative challenge due to crises in the practical field. For this reason, there is a need to create acceptable theoretical arguments in order to increase the functionality of human rights in practice. The integration of these two dimensions is essential for all people to benefit from human rights as claimed and for minimizing human rights violations. In order to establish a bridge of consensus and achieve integration between these dimensions, both theoretical and practical dimensions of human rights should be examined and emphasized. In this context, Arendt is an important thinker who opens the theoretical dimension of human rights to question through practical experiences, namely the human rights crisis of the stateless and refugees.

This thesis analyzed the relevant human rights theory literature under the two poles: The naturalistic conception approach and the political conception approach to human rights. The naturalistic conceptual approach is at the

forefront of the dominant approach in human rights thought and grounds human rights in naturalistic feature of human being in human nature or in morality. The political concept approach, a new and supposedly alternative conception of human rights, contests the features of human rights mentioned in the natural conception of human rights. Political conception aims to explain and ground human rights in light of practical political roles or functions that they do and tries to develop a framework in terms of increasing its functionality in practice.

The great mass of migration and refugee crises that emerged after the First and Second World Wars led Arendt to question human rights theoretically. According to Arendt, the crises of refugees in terms of fundamental rights and subjectivity shook the idea and theory of human rights to its foundations and challenged its inclusiveness, usableness, and enforceability. Thus, it is important how Arendt’s critique and understanding of human rights are positioned in human rights literature. For this reason, the thesis focused on Arendt's understanding of human rights by examining the human rights literature that is examined as naturalistic conception and political conception approaches. In the thesis, I positioned Arendt as an alternative way of thinking in the human rights literature.

According to the perspective of this thesis and as I explained the contents of the dimensions in the thesis, Arendt's understanding and criticism of human rights is based on a three-dimensional argument: historical, political, and ontological. Her historical argument is based on the historical situation of minorities and stateless people and the first unsuccessful attempts by the international community to protect them. Arendt's historical argument shows that human rights depend on national sovereignty, and that human rights cannot compete with national interests when there is a conflict between the two—as is the case with stateless people and minorities. The failure to protect human rights outside the state was intrinsic to the way they were conceived. This conflict between sovereignty and human rights is an

institutional problem that is inherent in the nation-state system and where the nation conquers the state.

The political and ontological arguments that make up Arendt's understanding of human rights are based on what she defines as the perplexities and paradoxes of human rights. The basis of Arendt's critique of human rights is the abstract and ambiguity of the concept of human rights. Influenced by Burke's criticism, she questions the imagination of human beings. Also, she questions the idea of human rights are defined as inalienable, irreducible to, and undeducible from other rights or laws.

At this point, Arendt evaluates the refugee crises in practice and states that when people lose their political roof, they lose all their rights, and that no authority protects their rights. Arendt conceptualizes the “right to have rights” by talking about the existence of a more fundamental right that should be had before human rights. The right to have rights, politically, means a right to being to belong to a state or organized community of people. The basic right that people should have in order to be a subject and bearer of rights is a right that can be gained by people having a political framework, that is, citizenship.

On the other hand, the right to have rights means ontologically the right to have a place in the world where one can speak and act in a meaningful way. The loss of the right to have rights results in the loss of some of the most fundamental aspects of human life and a general characteristic of the human condition. Loss of a meaningful place in the common world leads to the exclusion of people from the public sphere and their confinement to the private sphere. Being included in the public sphere and making people's speeches and actions meaningful and visible is only possible with the legal personality, that is, the political organization, that covers bare humanity.

In order to discuss the position of Arendt's understanding in the context of human rights theory, the main discourses and thinkers of two main

approaches and views that completely reject human rights are included in the study. According to the argument of this thesis, it is clear that Arendt occupies a special and different position in the human rights literature, as distinct from those who completely reject human rights and from naturalistic and political approaches. Arendt started a theoretical discussion in terms of the subjectivity of rights by analyzing human rights on refugees and stateless people who cannot access human rights. The criticisms and comments directed at her until today show that her determinations still carry weight as a matter of discussion.

Arendt's critique of human rights and her conceptualization of the right to have rights clearly accuse the foundations produced by the natural rights approach and finds that human rights lack normative foundations. According to her, modern man is equally alienated from history and nature, and that we should seek the origins of human rights neither in nature nor in history. According to her, the denial of human rights experienced by refugees and stateless people also denies the human dignity of these people. Therefore, human rights need a new guarantee. While she differs from the political conception approach by not rejecting human dignity, she shares a common point with political approaches as she highlights the political and practical importance of human rights.

Arendt is criticized for not providing a normative and sharp solution to the guarantee and basis of human rights and for not being able to justify her conceptualization. While seeing the nation-state system as the basis of human rights crises, she is accused of imprisoning human rights in a paradox by showing that access to human rights is only possible in being member of state. Also, she may cause the stateless mass trapped in the private sphere to remain in a silent and unresolved circle, with its emphasis on the importance it attaches to the public sphere and the meaninglessness of their actions and speeches in the private sphere.

It is obvious that Arendt, like other thinkers, did not offer a ready-made prescription for human rights and even did not offer a definitive solution to the human rights debate. However, Arendt, like those who reject human rights, does not take a radical position, and ignore the importance of human rights. Arendt's inconclusive style in her understanding of human rights has something to do with her aporetic thinking style. In this context, the thesis argued that Arendt’s understanding of human rights included a different way of thinking to the human rights literature by evaluating the aporetic thinking style that she inherited from Socrates.

The point that Arendt does not clearly present a normative basis for human rights is related to her style of thinking without banisters. According to the argument of the thesis, this thinking style of Arendt does not make her human rights arguments weak in the literature. On the contrary, she has brought a different perspective to the human rights literature with a type of thinking that does not need any standard or traditions to move freely crutches over unfamiliar terrain. She identifies a blind spot in the system and makes a due diligence on a mass caught in a crisis of rightlessness between the theory and practice of human rights.

With the examples she took from Socrates, I think that Arendt's understanding functions as a gadfly, midwife, and electric ray in human rights literature. I explain this function of Arendt as follows: Arendt disturbs and arouse people who would otherwise spend their lives asleep, encouraging them to think like a gadfly. At a time when human rights were just emerging, she immediately made a criticism and encouraged people to think and make critique about it. I think that as a midwife, Arendt gives to birth to the thoughts of others. After her, several thinkers gave importance to the subjectivity of rights and to debates of the foundation of human rights in context of non-citizens. I think that as an electric ray, Arendt paralyzes and numbs anyone who reads her with her style. Arendt's understanding of human rights aims to reflect on and identify blind spots, rather than

prescribing human rights within a framework. In other words, she guides readers not what to think but what to not think about the human rights.

After reviewing the human rights literature in terms of foundation debate and arguing that Arendt pointed to an alternative way of thinking in these debates, the thesis questioned the current validity of Arendt's view of human rights. Since Arendt's critique, developments in international law for both refugees and stateless people, increase in international conventions burdening states to protect refugees' asylum and fundamental rights, and the establishment of international bodies are testing the current validity of Arendt's critique. On the other hand, despite the development of human rights in international law, it is obvious that non-citizen, stateless and refugee people still experience crises and problems in accessing rights and the subject of rights.

In this context, it is important to evaluate whether the right of non-citizens to have rights is still denied with public examples in practice today, to determine the validity of Arendt today. Thus, the thesis embodied today's problems through two examples, just as Arendt embodied her theoretical determinations through practical public examples such as the Jewish statelessness problems. For this purpose, the restrictive effect of the Covid-19 pandemic on refugees' access to rights and the stateless experiences of Syrian stateless Kurds were discussed in this thesis.

According to the reports and statements of international institutions working to protect the rights of refugees, the Covid-19 pandemic has had negative effects on refugees' access to rights. It has been observed that refugee groups, who had difficulties in accessing rights in many countries before the pandemic, had much deeper problems in many dimensions such as basic health, food, and shelter during the pandemic. The pandemic has revealed who the priorities of their states are in dark times and who can access to the public rights. In Arendt's words, the restrictive and negative effects of the

pandemic on public showed that refugees are still treated as the scum of the earth, not only in authoritarian, totalitarian or undeveloped countries, but in most countries.

On the other hand, very similar to the statelessness experiences of the period that led Arendt to her theoretical determinations, the Syrian Kurds' 60-year experience of statelessness still stands alive and brings the debate about the right to have rights to the agenda again. Although the Syrian state is a party to many international conventions on statelessness and human rights, 60 years ago it pursued a policy of statelessness on some Kurds, who are minority groups. This stateless group, called Ajabib and Maktoum, was unable to enjoy public basic human rights such as legal marriage, access to education and health rights. This situation coincides with the policy tool that the totalitarian states use to destroy the legal and juridical personhood in order to render people superfluous. In addition, the stateless Syrian Kurds, who had to migrate to other countries after the 2011 civil war, experienced a second crisis of rightlessness. Since they do not have a legal status, they have experienced many problems in their asylum applications and admissions. In the examples discussed, although there have been legal developments in the international community regarding human rights, it is seen that nation-states act within the context of regulations in their own domestic laws, not within the framework of weakly binding international agreements.

This thesis examined the Arendtian understanding of human rights and located it in the literature on the basis of human rights. I tried to discuss the current validity of Arendt's criticisms and determinations. Arendt's human rights determinations are still in need of discussion today, and it is important to carry the practical problems to the theoretical ground and question human rights in terms of identifying and solving the sources of human rights crises. In this direction, this thesis aims to contribute to the human rights literature by discussing the public examples in practice on a theoretical basis and to

make an inquiry on the sources and reasons of the gap between theory and practice of human rights to search a way for a bridge of consensus between two. The study showed that the human rights crises experienced by refugees and stateless people are not a coincidence of fate, but that it is an inherent problem in nation-states and sovereignty. There is no guarantee that anyone will one day become refugees, especially given the denationalization policies over the Syrian Kurds. Therefore, it may be a good time to rethink the concept of human rights and reflect on the gaps and blind spots between theory and practice.

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APPENDICES

A. TURKISH SUMMARY / TÜRKÇE ÖZET

Hak sahibi olma düşüncesi, tarih boyunca dinî, kültürel, hukuki gelişmelerin ve uzun felsefi tartışmaların bir sonucu olarak görülebilir. Ancak modern anlamda hakların insan hakları olarak kavramsallaştırıldığı ve devletlerin iç hukukunun ve uluslararası hukukunun bir parçası haline geldiği zaman dilimi 20. yüzyıldır. 20. yüzyıldan itibaren dünya savaşları, soykırımlar ve iç savaşlar nedeniyle insan haklarının korunması uluslararası bir öncelik olarak ortaya çıkmış ve çeşitli beyannameler ve antlaşmalar ile insan hakları uluslararası arenada norm haline getirilmeye çalışılmıştır. Bu anlamda, insan hakları, modern zamanların en ünlü siyasi icatlarından biri olarak görülebilir.

İnsan haklarının teorik ve pratik olmak üzere iki önemli boyutu vardır. Günümüzün baskın insan hakları teorisi ve söylemi, hakları; evrensel, devredilemez, indirgenemez, diğer haklardan veya kanunlardan çıkarılamaz ve doğuştan kabul edilmiş olarak kabul eder. İnsan haklarının son elli yılda özellikle Batı'da söylemde büyük bir zafer kazandığı söylenebilir. Bununla birlikte, söylemin gücüne pratik önemi hakkında artan endişeler de eşlik etmiştir. Son yıllarda, artan göç dalgaları ve bunun sonucunda ortaya çıkan mülteci krizleri, insan hakları teori ve söyleminin geçerliliğinin sorgulanmasına yol açmıştır. Teori ile pratik arasında bir haklar krizine girmiş bu evsiz ve vatansız/devletsiz ama insan kitlelerinin varlığı, insan haklarının tüm insanlığı kapsayacak kadar geniş olup olmadığı sorusunu da gündeme getirmektedir.

İnsan hakları teorisi, pratik alandaki krizler nedeniyle normatif bir meydan okumayla karşı karşıyadır. Hak vaatleri ve teori ile bunların pratikteki yansımaları arasında açılan uçurum, insan hakları tarihinin tam bir başarısızlık hikayesi olduğu anlamına gelmez, ancak bu boşluk ilginç bir tutarsızlığı açığa çıkarır. Uygulamadaki bu tutarsızlık, teoriye geri dönmeyi ve teoriyi incelemeyi gerekli kılmaktadır. Bu nedenle pratikte insan haklarının işlevselliğini artırmak için kabul edilebilir teorik argümanlar oluşturmaya ihtiyaç vardır. Bu iki boyutun bütünleştirilmesi, iddia edildiği gibi tüm insanların insan haklarından yararlanabilmesi ve insan hakları ihlallerinin en aza indirilmesi için elzemdir. Bu boyutlar arasında bir uzlaşı köprüsü kurmak ve bütünleşmeyi sağlamak için insan haklarının hem teorik hem de pratik boyutları incelenmeli ve üzerinde durulmalıdır.

İnsan hakları teori ve pratiği farklı zeminlerde farklı açılardan eleştirel bir sorgulamaya tabi tutulmuştur. Mülteci ve devletsiz kitlelerin insan olmalarına rağmen insan haklarının koruyucu kalkanının dışında kalabilmelerinin nedeni bu insan hakları tartışmalarının bir parçasıdır. Bu noktada, Hannah Arendt bu sorgulamayı yaparak devletsizler ve mülteciler krizi üzerinden insan haklarına dair eleştirel değerlendirmeler yapan ve literatürdeki önemli bir boşluğu tespit eden bir isim olarak karşımıza çıkmaktadır. Bu bağlamda bu çalışma, Hannah Arendt'in teori ile pratik arasındaki boşlukta belirlediği devletsiz/vatandaş olmayan insan kitlesi üzerinden geliştirdiği insan hakları anlayışını incelemektedir.

Arendt'i insan hakları hakkında düşünmeye iten şey, II. Dünya Savaşı'ndan sonraki devletsizlik deneyimiydi. İnsan hakları teorisini tartışmaya açan Arendt, 1951'de yazdığı *Totalitarizmin Kaynakları* adlı kitabında İkinci Dünya Savaşı'ndaki mülteci krizinden sonra insan haklarının karşı karşıya kaldığı boşluk ve sorunlardan bahsetmiş ve bunu *İnsan Hakları Paradoksu* olarak adlandırmıştır. İnsanların çeşitli nedenlerle devlet korumasından, yani vatandaşlıktan mahrum bırakıldıklarında, insan haklarını koruyabilecek bir mekanizmadan da mahrum kaldıklarını iddia etmektedir. İnsan haklarından

çok daha temel bir hakkın varlığını öne süren ve bu hakkı *Haklara Sahip Olma Hakkı* olarak kavramsallaştıran Arendt, insan haklarının kaynağı olarak çoğunlukla doğal hakları kabul eden doğalcı insan hakları teorisini eleştirir. Arendt, kavramsallaştırdığı bu hakkın, insan hakları da dahil olmak üzere diğer tüm hakların varlığını ve bunlara erişimi sağlayan bir ön koşul olduğunu savunur. Arendt, kişinin görüş ve eylemlerinin dünyada veya kamusal alanda anlam kazanması için bu hakkın gerekli olduğunu söyler.

Çalışma, Arendt'in insan hakları anlayışını iki ana soru üzerinden incelemektedir. İlk soru, Arendt'in mevcut insan hakları literatüründe nerede konumlandığı ve alternatif bir bakış açısı oluşturup oluşturmadığıdır. İkinci soru ise Arendt'in insan hakları eleştirisi ve tespitinin günümüzde geçerli olup olmadığıdır. Çalışma, bu soruları yanıtlayarak, Arendt'in insan hakları anlayışının insan hakları literatürüne farklı bir düşünce tarzı kattığını iddia etmeyi ve Arendt'in gözlem ve eleştirilerinin geçerliliğini iki kamusal *hak-sızlık* deneyimini örnekleyerek savunmayı amaçlamaktadır. Bu çalışmanın bir önemi de Arendt'in insan hakları anlayışı bağlamında daha önce tartışılmamış iki kamusal örneği (Covid-19 sürecinde mülteciler ve Suriyeli devletsiz Kürtler) kapsaması ve bunların Arendt ile birlikte değerlendirilmesidir.

Bu soruların ve ilintili olarak doğabilecek irili ufaklı birçok sorunun cevabını bulmak için yöneldiğimiz insan hakları literatüründe ise öncelikle haklar üzerine oluşmuş düşüncelerin belleği serimlenmeye çalışılmıştır. Bu kapsamda antikite döneminden, haklar çağı olarak da adlandırılan ve insan haklarının ortaya çıktığı 20. yüzyıla kadar haklar ile ilişkilendirilebilecek olay ve gelişmeler ele alınarak bir haklar düşüncesi belleğinden tarihsel olarak söz edilmiştir. Daha sonra ise Arendt'in insan hakları literatüründe konumlandırabilmek ve bu literatürde nasıl bir konuma sahip olduğunu anlamak amacı ile insan haklarının teorik temellendirilmesine yönelik tartışmalara değinilerek insan hakları teorisine dair literatür serimlenmiştir.

Bu tez, ilgili insan hakları teorisi literatürünü iki eksen altında analiz etmiştir: İnsan haklarına yönelik doğalcı anlayış yaklaşımı ve politik anlayış yaklaşımı. İnsan hakları düşüncesindeki baskın yaklaşımın başında doğalcı anlayış yaklaşım gelir ve insan haklarını insanın natüralist özelliğinde, insan doğasında veya ahlakta temellendirir. İnsan haklarına yönelik doğalcı anlayış yaklaşımı altında Donnelly, Gewirth, Griffin, Dworkin gibi çeşitli düşünürlerin pozisyonları ve temellendirmeleri kategorize edilmiştir. Bu pozisyonlar, ilkelerinde farklılık gösterseler de, insan haklarının bir şekilde insanın veya ahlakın doğalcı veya temelci bir özelliğiyle ilişkili olduğu anlayışını paylaşıyorlar. Doğalcı anlayış yaklaşımı altında kategorize edilen pozisyonlar, tarihsel olarak insan hakları fikrinin en yaygın pozisyonudur. Bu pozisyonların önemli avantajlarından biri, insan haklarının kurumlarda tanınmasa veya uygulanmasa bile nasıl var olabileceğini anlamamızı ve insan haklarının herkesin doğal hakkı olduğu düşüncesiyle insan hakları ihlalleriyle mücadele etmemizi sağlamasıdır. İnsan haklarının, insandan dolayı sahip olunan ahlaki haklar olduğu düşüncesi uluslararası sözleşme ve beyannamelerde de hakimdir. Bu fikir devletlere ciddi boyutlarda etkili yaptırımlar uygulamasa da devletleri ve toplumu etkileyebilmektedir. Bu anlayış, evrensellik şüphesi, batılı olabileceği şüphesi, metafizik temellerin pratikte insan haklarına uygulanamazlığı gibi nedenlerle aşağıda belirtilen politik anlayış ve insan haklarına eleştirel yaklaşımlar tarafından eleştirilmeye ve çürütülmeye çalışılmıştır.

Yeni ve alternatif bir insan hakları anlayışı olan politik anlayış yaklaşımı, doğalcı insan hakları anlayışında belirtilen insan haklarının özelliklerine karşı çıkar. Politik anlayış, insan haklarını, yaptıkları pratik siyasi roller veya işlevler ışığında açıklamayı ve temellendirmeyi amaçlar ve uygulamada işlevselliğini artırması açısından bir çerçeve geliştirmeye çalışır. İnsan haklarına yönelik politik anlayış yaklaşımı altında Rawls, Betiz, Raz, Rorty gibi çeşitli düşünürlerin pozisyonları ve temellendirmeleri kategorize edilmiştir. Bu pozisyonlar, ilkelerinde farklılık gösterseler de

insan haklarını temelcilik karşıtlığında temeller ve pratik siyasi roller veya işlevlerle ilişkili olduğu anlayışını paylaşırlar. Bu konumun avantajlarından biri, pratikte doğalcı yaklaşımın batılılaşma veya pratikte metafizik varsayımlarla insan haklarının korunamaması gibi sorunlarına karşın siyasi veya pratik çözümler üretmeye çalışmasıdır. Politik anlayış yaklaşımındaki görüşler de insan haklarını korumak ve sağlamak için hükümetlerin eylemlerini sınırlamaya ve belirlemeye çalışır ve meşruiyet için bir standart belirler.

İnsan hakları literatürünü serimlendikten sonra ise, Arendtçi eleştirel insan hakları düşüncesi incelenmiştir. Bu tezin bakış açısına göre ve tezde boyutların içeriğini de açıkladığım gibi, Arendt'in insan hakları anlayışı ve eleştirisi üç boyutlu bir argümana dayanmaktadır: tarihsel, politik ve ontolojik. Tarihsel argümanı, azınlıkların ve devletsiz insanların tarihsel durumuna ve uluslararası toplumun onları korumaya yönelik ilk başarısız girişimlerine dayanmaktadır. Arendt'in tarihsel argümanı, insan haklarının ulusal egemenliğe bağlı olduğunu ve ikisi arasında bir çatışma olduğunda insan haklarının -devletsiz insanlar ve azınlıklarda olduğu gibi- ulusal çıkarlarla rekabet edemeyeceğini gösteriyor. İnsan haklarını devlet çatısı dışında korumadaki başarısızlık, bu hakların tasavvur edilme biçimine içkindi. Egemenlik ve insan hakları arasındaki bu çatışma, ulus-devlet sisteminin doğasında var olan ve ulusun devleti fethettiği kurumsal bir sorundur.

Arendt'in tarihsel analizi onu, dünyanın ve ulus-devletlerin vatansızlara sunduğu tek ülkenin ve var olmayan bir vatanın tek pratik ikamesinin bir toplama kampı olduğu sonucuna götürmektedir. Ulus-devlet egemenliği sınırları içinde toplama kampına sıkışan devletsizler, gizli ulus-devlet çatışmasının da açığa çıkmasına neden olmuştur. Arendt'e göre devletsizlerin ulus-devlete karşı bu durumu, egemenliğin hiçbir yerde göç, uyrukluğa geçirme, sürülme ve milliyet konularında olduğundan daha mutlak olmadığını da teyit etmiştir.

Arendt'in insan hakları anlayışını oluşturan politik ve ontolojik argümanlar ise, Arendt'in insan haklarının çıkmazları ve paradoksları olarak tanımladığı argümanlara dayanmaktadır. Arendt'in insan hakları eleştirisinin temeli, insan hakları kavramının soyutluğu ve muğlaklığına dayanmaktadır. Burke'ün eleştirilerinden etkilenerek hiçbir yerde var olmayan "soyut" insan tasavvurunun, vazgeçilemez insan hakları bildirgesine en başından beri girmiş bir paradoks olduğunu belirtir. Ayrıca, insan hakları fikrinin devredilemez, indirgenemez ve diğer haklardan veya kanunlardan çıkarılamaz olarak tanımlanmasını sorgular.

Bu noktada pratikteki deneyim ve sorunlardan beslenerek mülteci krizlerini değerlendiren Arendt, insanların siyasi çatılarını kaybettiklerinde tüm haklarını kaybettiklerini ve hiçbir otoritenin haklarını korumadığını belirtiyor. Arendt, insan haklarından önce sahip olunması gereken daha temel bir hakkın varlığından bahsederek "haklara sahip olma hakkı"nı kavramsallaştırır. Politik olarak haklara sahip olma hakkı, bir devlete veya örgütlü bir insan topluluğuna ait olma hakkı anlamına gelir. Kişilerin hak öznesi ve hak sahibi olabilmesi için sahip olması gereken temel hak, politik çerçeveye sahip kişilerin kazanabileceği, yani vatandaşlık hakkıdır.

Arendt, politik çatısını kaybedip haksızlık durumuna düşen insanların koşullarından bahseder. Arendt, haksız olma halinin iki farklı yoksunluğu içerdiğini savunuyor. Bu iki mahrumiyet haksızlığın şartını oluşturmaktadır. Arendt'e göre hak-sızların ilk yitirdikleri şey, yurtları oldu ve bu, kişinin sadece fiziki ikametgahını kaybetmesi değil, içinde doğdukları ve dünya yüzünde kendileri için belli ve ayrı bir yer oluşturabildikleri bütün bir toplumsal dokunun yitirilmesi demektir. Arendt'e aktardığı üzere bu bir mekân değil, siyasi örgütlenme sorunuydu. Böyle bir felaketi tarihteki bireylerin veya insanların zorunlu göçünden farklı kılan nokta, eşi benzeri olmayan bir vatanın kaybı değil, yeni bir yurdu bulmanın imkansızlığıydı. Sıkıca örgütlenmiş kapalı topluluklardan oluşan ulus-devletlerin siyasi örgütlenme modeli, birinin evini kaybetmesinin dünyadaki evini kaybetmesi

anlamına geliyordu. Bu cemaatten kovulduklarında kendilerini bütün milletler ailesinden dışlanmış buldular. Yeryüzünde gidecek tek bir yerleri, hatta asimile olacakları tek bir ülkeleri, kendilerine ait yeni bir topluluk kurabilecekleri tek bir toprak parçası bile yoktu. Ancak Arendt, bunun yer eksikliği veya aşırı kalabalık gibi maddi bir engelden değil, siyasi bir sorundan kaynaklandığını belirtmekte dikkatlidir.

İkinci kayıp, siyasi bir yönetimin korunmasının kaybıdır. Borren, modern ulus devlet sisteminin ideolojisi yurttaşlığı milliyet ve doğuşla ilişkilendirdiğini belirtir. Bu nedenle bu sistemde yasal korumadan dışlanmak normaldir. Ancak bu kayıpta can alıcı olan, sadece kendi ülkelerinde değil, tüm ülkelerde hukuki statü kaybı olmasıdır. Haksızlar mütekabiliyet antlaşmaları ve uluslararası anlaşmalar ağının dışında kaldılar, bu yüzden nereye giderse gitsin yasal statülerini yanlarında götürüyorlar. Bu ağın dışında kalanlar da kendilerini meşruiyetin dışında bulurlar. Hukuki bir statü veya kişilik kazanamama, sığınma bulma konusundaki bu yetersizlik de emsalsizdir.

Öte yandan, haklara sahip olma hakkı, ontolojik olarak kişinin dünyada anlamlı bir şekilde konuşabileceği ve hareket edebileceği bir yere sahip olma hakkı anlamına gelir. Haklara sahip olma hakkının kaybı, insan yaşamının en temel yönlerinden bazılarının ve insanlık durumunun genel bir özelliğinin kaybıyla sonuçlanır. Ortak dünyada anlamlı bir yerin kaybolması, insanların kamusal alandan dışlanmasına ve özel alana hapsedilmesine yol açmaktadır. Kamusal alana dahil olmak, insanların söz ve eylemlerini anlamlı ve görünür kılmak ancak yasal kişilik yani çıplak insanlığı kapsayan siyasi örgütlenme ile mümkündür.

Düşünceleri anlamlı, eylemleri etkili kılan dünyada bir yerden yoksunluk, insanlık durumuyla ilgilidir yani çoğulluk ile. Arendt, hem eylemin hem de konuşmanın temel koşulu olan insan çoğulluğunun, eşitlik ve farklılık olmak üzere ikili bir karaktere sahip olduğunu söyler. Parekh'e göre, eylem ve

konuşma hem dünyanın hem de benliğin gerçekliğini oluşturan başkalarıyla birlikte olma biçimleridir. Arendt'e göre, eylem hakkının ve kanaat oluşturma (görüş) hakkının kaybı, insan yaşamının en temel yönlerinden bazılarının ve insanlık durumunun genel bir özelliğinin kaybıyla sonuçlanır.

Arendt'in konuşma, eylem ve görüş yitimi anlayışı, kamusal (bios) ve özel (zoe) alan ayrımı açısından onun politik anlayışıyla bağlantılıdır. İnsanlar sadece kamusal alanda politik bir hayvan haline gelebilir ve konuşmaları duyulabilir. Arendt, özel alan evrensel fark ve farklılaşma yasasına dayandığı gibi, kamusal alan da tutarlı bir şekilde eşitlik yasasına dayalıdır der. Eşitliğe ulaşmak için kamusal alana, dolayısıyla siyasi topluluğa ulaşmak gerekir. Arendt'e göre farklı özelliklerimiz nedeniyle özel alanda eşitlik yokken; kamusal alana karşılıklı sözlerle eylem ve konuşma yeteneğine sahip eşitler olarak giriyoruz. Yani kamusal alan, özel alana dayalı farklılıkları eşitlemektedir.

Gündoğdu'ya göre, Arendt'e göre yasal kişilik, kişinin yüzünü (ya da salt verililiğini ya da çıplak insanlığını) örten, doğallaştırılmış tabakalaşmalara ve eşitsizliklere mazeret olmamasını sağlayan yapay bir maskedir. Schaap'a göre siyasi topluluğun dışında kalan ve bu maskenin koruyuculuğundan sıyrılanlar, doğal durumlarının verililiğine geri atıldılar. Kişiliği olmayan insanlar, konuşmalarını "seslendirecek" araçlardan yoksundur; onları diğer aktörlerle eşitleyen maske olmadan konuşmaları ya sayılmaz ya da işitilmez ve anlaşılmaz hale getirilir Gündoğdu'nun belirttiği üzere. Dolayısıyla, özel alana sıkışan bu yasal kişilik maskesinden yoksun olanların konuşması anlamsızdır.

Arendt'in anlayışının insan hakları kuramı bağlamındaki konumunu tartışmak amacıyla, iki ana yaklaşım ve insan haklarını tamamen reddeden görüşlerin ana söylemlerini ve düşünürlerine çalışmada yer verilmiştir. Daha sonra ise Arendt'in insan hakları anlayışını politik düşünceleri ile beraber serimleyerek inceledik. Bu tezin iddiasına göre Arendt'in insan hakları

literatüründe insan haklarını tamamen reddedenlerden, doğalcı ve politik yaklaşımlardan farklı ve özel bir konuma sahip olduğu açıktır. Arendt, insan haklarına erişemeyen mülteciler ve devletsizler üzerinden insan haklarını analiz ederek hakların özneliği açısından teorik bir tartışma başlatmıştır. Bugüne kadar kendisine yöneltilen eleştiri ve yorumlar, tespitlerinin hâlâ tartışma konusu olduğunu gösteriyor.

Arendt'in insan hakları eleştirisi ve haklara sahip olma hakkı kavramsallaştırması, doğal haklar yaklaşımının ürettiği temelleri açıkça suçlar ve insan haklarının normatif temellerden yoksun olduğunu tespit eder. Ona göre modern insan, tarihe ve doğaya eşit derecede yabancıdır ve insan haklarının kökenlerini ne doğada ne de tarihte aramamız gerekir. Ona göre, mültecilerin ve devletsizlerin yaşadığı insan haklarının reddi, bu insanların insanlık onurunu da inkâr etmektedir. Bu nedenle insan haklarının yeni bir güvenceye ihtiyacı vardır. Politik anlayış yaklaşımından insan onurunu reddetmemesi gibi noktalar ile ayrılırken, insan haklarının politik ve pratik önemini vurgulaması nedeniyle politik yaklaşımlarla ortak bir noktayı paylaşmaktadır.

Arendt, insan haklarının güvencesine ve temeline normatif ve keskin bir çözüm getiremediği ve kavramsallaştırmasını gerekçelendiremediği için eleştirilir. İnsan hakları krizlerinin temelinde ulus-devlet sistemini görürken, insan haklarına erişimin ancak devlete üye olmakla mümkün olduğunu göstererek insan haklarını bir paradoksa hapsetmekle suçlanmaktadır. Ayrıca, kamusal alana verdiği önem ve özel alandaki eylem ve söylemlerinin anlamsızlığına yaptığı vurguyla, özel alana hapsolmuş devletsiz kitlenin sessiz ve çözümsüz bir çemberde kalmasına neden olabileceğine yönelik endişeler dile getirilir.

Arendt'in diğer düşünürler gibi insan hakları konusunda hazır bir reçete sunmadığı, hatta insan hakları tartışmasına kesin bir çözüm önermediği açıktır. Ancak Arendt, insan haklarına inanmanın cadılara ve tek boynuzlu

atlara inanmakla aynı olduğunu savunan insan hakları karşıtları gibi radikal bir tavır da almaz. Bunun yansıra insan haklarının önemini de göz ardı etmez. Arendt'in insan hakları anlayışındaki sonuçsuz üslubunun, onun aporetik düşünme tarzıyla bir ilgisi vardır. Bu bağlamda tezde, Arendt'in Sokrates'ten devraldığı aporetik düşünme tarzını değerlendirerek, Arendt'in insan hakları anlayışının insan hakları literatürüne farklı bir düşünme biçimini dahil ettiğini savunmaktayım.

Arendt'in insan haklarına dair net bir normatif temel sunmadığı nokta, onun tırabzansız düşünme tarzıyla ilgilidir. Tezin iddiasına göre Arendt'in bu düşünce tarzı, onun insan hakları argümanlarını literatürde zayıf kılmaz. Bilinmeyen zeminlerde koltuk değneklerini özgürce hareket ettirmek için herhangi bir standarda veya geleneğe ihtiyaç duymayan bir düşünce tarzıyla insan hakları literatürüne farklı bir bakış açısı getirmiştir. Sistemde bir kör nokta tespit eder ve insan hakları teorisi ile pratiği arasında bir haksızlık krizine girmiş bir kitle üzerinden durum tespiti yapar. Bir başka deyişle, durup insan hakları üzerine düşünür.

Sokrates'ten aldığı örneklerle Arendtçi insan hakları anlayışının insan hakları literatüründe atsineği, ebe ve torpil balığı gibi işlev gördüğünü düşünüyorum. Arendt'in bu işlevini şöyle açıklıyorum: Arendt, aksi takdirde hayatını uykuda geçirecek olan insanları rahatsız eder, uyandırır, onları bir atsineği gibi düşünmeye teşvik eder. İnsan haklarının henüz yeni yeni ortaya çıktığı bir dönemde, hemen bir eleştiride bulunmuş ve insanları bu konuda düşünmeye ve eleştiri yapmaya teşvik etmiştir. Bir ebe olarak Arendt'in başkalarının düşüncelerini doğurduğunu düşünüyorum. Ondan sonra birçok düşünür, hak özneliğine ve vatandaş olmayanlar bağlamında insan haklarının temellendirilmesi tartışmalarına önem vermiştir. Arendt'in bir torpil balığı olarak onu okuyan herkesi üslubuyla felç ettiğini ve uyuşturduğunu düşünüyorum. Arendt'in insan hakları anlayışı, insan haklarını bir çerçeve içinde tarif etmekten çok, üzerine düşünmeyi ve kör noktaları belirlemeyi amaçlar. Yani insan hakları konusunda ne

düşüneceklerini değil, neleri düşünmeyeceklerini okuyucuya yönlendiriyor. Arendt'in insan hakları anlayışının hazır bir reçete sunmaması ve hatta sonuçsuz bir üslubunun olması, Penelepo'nun ağı gibi bir döngü içinde olması ve önceki gece bitirdiğini her sabah bozması ile ilgilidir.

Tez, temellendirme tartışması açısından insan hakları literatürünü inceledikten ve Arendt'in bu tartışmalarda alternatif bir düşünce tarzına işaret ettiğini savunduktan sonra, Arendt'in insan hakları anlayışının mevcut geçerliliğini sorgulamıştır. Arendt'in eleştirisinden bu yana hem mülteciler hem de devletsizler için uluslararası hukuktaki gelişmeler, uluslararası sözleşmelerin devletlere mültecilerin sığınma haklarını ve temel haklarını koruma sorumluluğunu giderek daha fazla yüklemesi ve uluslararası kuruluşların kurulması, Arendt'in eleştirisinin mevcut geçerliliğini test etmektedir. Öte yandan, uluslararası hukukta insan haklarının gelişmesine rağmen, vatandaş olmayanların, devletsiz ve mültecilerin haklara erişimde ve hak özneliğinde hala kriz ve sorunlar yaşadıkları aşikardır.

Bu bağlamda, Arendt'in günümüzdeki geçerliliğini tespit etmek için vatandaş olmayanların haklara sahibi olma hakkının hâlâ inkâr edilip edilmediğinin kamusal örneklerle değerlendirilmesi önemlidir. Böylece tez, tıpkı Arendt'in teorik tespitlerini Yahudilerin devletsizlik sorunları gibi pratik kamusal örneklerle somutlaştırması gibi, bugünün sorunlarını iki örnek üzerinden somutlaştırmıştır. Bu amaçla bu tez çalışmasında Covid-19 pandemisinin mültecilerin haklara erişimi üzerindeki kısıtlayıcı etkisi ve Suriyeli devletsiz Kürtlerin devletsizlik deneyimleri ele alınmıştır.

Mültecilerin haklarının korunması için çalışan uluslararası kuruluşların raporlarına ve açıklamalarına göre, Covid-19 pandemisi mültecilerin haklara erişimini olumsuz etkiledi. Pandemi öncesi birçok ülkede haklara erişimde zorluk yaşayan mülteci gruplarının pandemi sürecinde temel sağlık, gıda, barınma gibi birçok boyutta çok daha derin sorunlar yaşadıkları gözlemlendi. Pandemi, karanlık zamanlarda devletlerin önceliklerinin kimler

olduğunu ve kamu haklarına kimlerin erişebildiğini ortaya çıkardı. Pandeminin toplum üzerindeki kısıtlayıcı ve olumsuz etkileri, mültecilere yalnızca otoriter, totaliter veya gelişmemiş ülkelerde değil, çoğu ülkede hala Arendt'in deyimiyle dünyanın posası muamelesi yapıldığını gösterdi.

Öte yandan, Arendt'i teorik tespitlerine götüren dönemin devletsizlik deneyimlerine çok benzer şekilde, Suriye Kürtlerinin 60 yıllık devletsizlik deneyimi hâlâ canlılığını koruyor ve haklara sahip olma hakkı tartışmasını yeniden gündeme getiriyor. Suriye devleti, devletsizlik ve insan haklarına ilişkin birçok uluslararası sözleşmeye taraf olmasına rağmen, 60 yıl önce azınlık grupları olan bazı Kürtler üzerinde vatansızlaştırma/devletsizleştirme politikası izlemiştir. Ajabib ve Maktoum olarak adlandırılan bu devletsiz grup, yasal evlilik, eğitim ve sağlık haklarına erişim gibi kamusal temel insan haklarından yararlanamadı. Bu durum, totaliter devletlerin insanı fuzulileştirme amacı ile yasal kişiliği yok etmek için kullandıkları politika aracıyla örtüşmektedir. Ayrıca 2011 iç savaşından sonra başka ülkelere göç etmek zorunda kalan devletsiz Suriyeli Kürtler ikinci bir haksızlık ve devletsizlik krizi yaşadılar. Hukuki bir statüye sahip olmadıkları için sığınma başvurularında ve kabullerinde birçok sorunla karşılaşmışlardır. Böylece, ele alınan örneklerde, uluslararası toplumda insan haklarına ilişkin hukuki gelişmeler yaşanmasına rağmen; ulus-devletlerin, bağlayıcılığı yeterince güçlü olmayan uluslararası anlaşmalar çerçevesinde değil, kendi iç hukuklarındaki düzenlemeler çerçevesinde hareket ettikleri görülmektedir.

Sonuç olarak, bu tez, insan haklarının temellendirilmesine yönelik teorik tartışmaların serimlemesini yapmış ve Arendtçi insan hakları anlayışını inceleyerek onu literatürde farklı bir düşünme anlayışı olarak konumlandırmıştır. Arendt'in insan hakları tespitleri günümüzde hala tartışmaya muhtaçtır. İnsan hakları krizlerinin kaynaklarının tespit edilmesi ve çözülmesi açısından, pratik sorunların teorik zemine taşınması ve insan haklarının sorgulanması önemlidir. Bu doğrultuda bu tez, pratikteki kamusal örnekleri teorik bir temelde tartışarak insan hakları literatürüne katkıda

bulunmayı ve insan hakları teorisi ile pratiği arasındaki kopukluğun kaynaklarını ve nedenlerini sorgulamayı ve bu uçurumun giderilmesi amacı ile ikisi arasında bir mutabakat köprüsü oluşturacak yolları aramayı amaçlamıştır. Çalışma, mültecilerin ve devletsizlerin yaşadığı insan hakları krizlerinin bir kader tesadüfü olmadığını, ulus-devletlerin ve egemenliğin doğasına içkin bir sorun olduğunu göstermiştir. Özellikle Suriye Kürtleri üzerinde uygulanan vatandaşlıktan çıkarma politikaları göz önüne alındığında, kimsenin bir gün mülteci ya da devletsiz olmayacağının garantisi yok. Bu nedenle, insan hakları kavramını yeniden düşünmek ve teori ile pratik arasındaki boşluklar ve kör noktalar üzerine düşünmek için iyi bir zaman olabilir.

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