

EVALUATING THE HUMAN RIGHTS OF STATELESS PEOPLE:
REFLECTIONS OF
ARENDR, AGAMBEN, AND RANCIERE

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ELÇİN TÜRKDOĞAN

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Approval of the Graduate School of Social Sciences

Prof. Dr.
Meliha Altunışık
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science.

Prof. Dr. Raşit Kaya
Head of Department

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Science.

Assoc. Prof. Dr.
Cem Deveci
Supervisor

Examining Committee Members

Assoc. Prof. Dr. Cem Deveci (METU,ADM) _____

Assoc. Prof. Dr. Fahriye Özçoban Üstüner (METU,ADM) _____

Assist. Prof. Dr. Çağatay Topal (METU,SOC) _____

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Name, Surname: Elçin Türkdoğın

Signature :

ABSTRACT

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Türkdoğan, Elçin

MS., Department of Political Science and Public Administration

Supervisor: Assoc. Prof. Dr. Cem Deveci

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As it is widely accepted, human rights are inalienable and equal rights that we have simply because we are human. They are guaranteed to all people regardless of their nationality, race, sex, ethnicity, etc. Moreover, they are rights that their holder cannot lose them temporarily or permanently. Yet, today many millions people around the world are denied to exercise their most basic human rights because they are not citizen of any country. They are stateless people. Although there have been many international human rights mechanisms to protect rights of stateless people, in real life almost all stateless people are still subject to torture, discrimination, xenophobia, racism, difficulty enjoying their social, economic and cultural rights, and arbitrary and indefinite detention. Considering this contradiction, this thesis aims to question the meaning of the existence of stateless people for human rights

theory. This issue was firstly studied by Hannah Arendt. Then, her analysis has been developed by many authors in different manners. Two important figures among them are Giorgio Agamben and Jascque Rancière. Thus, this thesis attempts to evaluate the human rights of stateless people in the light of approaches of three authors: Arendt, Agamben, and Rancière. Considering critical power of both of three approaches to human rights in contrast to mainstream theories of human rights, this thesis regards Jascque Rancière's approach as an explanatory approach for human rights of stateless people since it focuses on political power of human rights for even stateless people.

Key words: Arendt, Agamben, Rancière, human rights, stateless people.

ÖZ

DEVLETSİZ İNSANLARIN İNSAN HAKLARINI YORUMLAMAK: ARENDR, AGAMBEN VE RANCIERE YORUMLARI

Türkdoğan, Elçin

Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü

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Bilindiği gibi insan hakları insan olduğumuz için sahip olduğumuz devredilmez ve eşit haklardır. İnsan hakları milliyetleri, ırkları, cinsiyetleri, etnik kimlikleri ne olursa olsun herkesin sahip olduğu haklardır. Dahası, insan hakları sahiplerinin geçici veya kalıcı olarak kaybedemeyecekleri haklardır. Fakat günümüzde dünya genelinde milyonlarca insan herhangi bir ülkenin vatandaşı olmadığı için en temel insan haklarını kullanmaktan mahrum bırakılmaktadır. Bunlar devletsiz kimselerdir. Her ne kadar devletsiz kişilerin haklarını korumak için birçok uluslararası insan hakları mekanizmaları olsa da gerçek hayatta neredeyse tüm devletsizler işkenceye, ayrımcılığa, yabancı düşmanlığına, ırkçılığa, sosyal, ekonomik ve kültürel hakları kullanmakta birçok zorluğa ve keyfi ve süresiz alıkonulmaya maruz kalmaktadır. Bu tez bu çelişkiden yola çıkarak devletsiz insanların insan hakları teorisi için ne

ifade ettiđini sorgulamayı amaçlamaktadır. Bu konuyu ilk olarak Hannah Arendt tarafından çalışılmıştır. Daha sonra onun çalışması birçok yazar tarafından farklı biçimlerde geliştirilmiştir. Bu yazarlardan iki önemli figür Giorgio Agamben ve Jascque Rancière'dir. Bu nedenle bu tez devletsiz kişilerin insan haklarını bu üç yazarın (Arendt, Agamben ve Rancière) yaklaşımları çerçevesinde değerlendirmeye çalışmaktadır.

Anahtar kelimler: Arendt, Agamben, Rancière, insan hakları, devletsizler

To

My grandfather Muharrem

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CHAPTER ONE

1. INTRODUCTION

The main idea in human rights studies is that human rights are rights that we have simply because we are human. Thus, they are inalienable and equal rights. This means that their holder cannot lose them temporarily or permanently. They are rights that are guaranteed to all people regardless of their nationality although national territorial states are responsible to protect and provide these rights (Donnelly, 2003). Yet, in spite of the main premise of human rights, many millions people around the world are denied to exercise their most basic human rights because they are not citizen of any country. Although these people are defined under different categories such as undocumented migrants, asylum seekers, guest workers, and individuals with temporary protection from deportation, etc. I will use the term of “stateless” to define them. It is because, in my view, statelessness is the most appropriate term to define people who lack their own government and are unable to enjoy rights that were supposed to be inalienable¹.

¹ Although in the international law, stateless people is a technical word used to define specific group of people who are not considered as national by any State (1954 Convention relating to the Status of Stateless Persons) in reality there are groups of people who fit the definition of stateless as being de

Throughout history, people became stateless for many reasons such as racial, ethnic, and religious exclusion, migration, refugee flight, racial or ethnic exclusion, collapse of empire, etc. Yet, aftermath of 20th century is important for researching human rights of stateless people because since then the plight of stateless people became more visible in the human rights discourse. In 20th century, with the collapse of old empires such as Austro-Hungarian, Ottoman and Russian Empires and the rise of nation state, many people lost their citizenship and found themselves without any documentation in the condition of statelessness. To deal with over a million individuals fleeing from their countries, the first international coordination unit on refugee affairs was established: League of Nations' High Commission for Refugees in 1920, led by Fridtjof Nansen. This flow was followed by the refugee crisis during World War II. As a result, in 1943 the United Nations Relief and Rehabilitation Administration (UNRRA) were established to repatriate the displaced persons of Europe following the war. With the end of Second World War, UNRRA was dissolved and its tasks were bestowed upon the International Refugee Organization (IRO), which was founded in 1945. However, as result of continuity of refugee flow, United Nations reevaluated the issue of refugee protection, in 1949 United Nations General Assembly decided to establish United Nations High Commissioner for Refugees (UNHCR). Although since 20th century the common belief has been that the issue of refugee is a temporary problem, massive population movement across Europe in the aftermath of the Second World War and over the

facto or functionally stateless, such as undocumented migrants, asylum seekers, guest workers, and individuals with temporary protection from deportation, etc.

following decade displacement crises in Asia and Latin America, waves of refugees in Europe from the series of wars in the Balkans show that the issue of refugees is not as temporary, ad hoc and geographically and requires not a temporary emergency response but durable solution. In addition to international institutions, various international agreements on rights of stateless people such as Rights of All Migrant Workers and Members of Their Families (1990), Convention Relating to the Status of Refugees (1954), and the Convention relating to the Status of Refugees (1951) were signed. Moreover, many international and regional human rights agreements include provisions emphasizing rights of stateless people such as Universal Declaration of Human Rights (Article 15), International Covenant on Civil and Political Rights, (Article 26), The International Covenant on Civil and Political Rights (Article 2(1)), International Convention on the Elimination of All Forms of Racial Discrimination (Article 1), the International Covenant on Economic, Social and Cultural Rights (Article 2 (2)), and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 5 (1)), etc.

According to these provisions, the stateless people should not be subjected to torture, ill-treatment, slavery, arbitrary arrest, and unfair trial, invasions of privacy, refoulement, forced labor, child labour and violations of humanitarian law. They also have the right to marry; protection as minors; peaceful association and assembly; equality; freedom of religion and belief; social, cultural and economic rights; labour rights, etc. (UNCHR, 2006: 6). Based on developments in

international human rights law and instruments some scholars (Soysal 1994, Joppke 1999, Hansen 2000) argue that the gap between citizen and non-citizen has diminished, and thus non-citizens have had many rights similar with citizens². According to Soysal, thanks to international and regional treaties, governments are forced to expand the rights of non-citizens. Although it is right to argue that those developments in international human rights mechanism expand rights of stateless people in theory, the reality is far away from premises of these declarations. Today, almost all stateless people are still subject to discrimination, xenophobia, racism, lack of political representation, difficulty enjoying their social, economic and cultural rights, especially right to health, education and work. Moreover, many non-citizens face arbitrary and indefinite detention. Although some of them fled from their country of origin because of persecution, they are detained in overcrowded, unhygienic and dangerous prisons for unknown time-period and without a contact with their families, access to legal assistance and the opportunity to challenge their detention (UNCHR, 2006: 7). This reality reveals that there is a gap between rights ensured by human rights instruments and realities the stateless people face.

Here, we should question this gap. What is the reason of the existence of such gap? In other word, why is the situation of stateless people contradictory with

² Although Randell, Soysal and Jopke supports the idea that human rights instruments provide non-citizen with rights similar with rights of citizen, their arguments show differences. While Randell Hansen and Joppke argue that although rights were expanded to stateless people with the international law and treaties, it is true only when they are adopted in domestic law and respected by the government, Soysal argues that as result of developments in international human rights instruments, post national citizenship as a new type of citizenship emerged.

the main premise of human rights (all people have rights regardless of their nationality)? Or, why do people who lost their nationality lose also their human rights? In my view, studying on such questions can provide us with significant understanding of human rights in the contemporary world.

In parallel with importance of the phenomenon of stateless people, the field of studies on stateless people has increased over the latter part of the twentieth century. “As the number of refugees and forced migrants in the world soared into the tens of millions, the study of its causes and consequences has acquired an institutional base in specialist research centers, academic journals and international research organizations” (Black, 2001: 57). In this context, many international body’s reports have drawn particular attention to the practice of denying and revoking rights to non-citizens. In these reports, conventions, relevant international instruments, and legal provisions for stateless were examined in terms of need for reforms to protect of human rights of stateless people. The common point among such research is that the plight of statelessness results from gap between the domestic law and international human rights law and violations of human rights by state. Thus, solution they offer is that “nationality laws and practice must be consistent with general principles of international law above all human rights law” (Blitz, 2009: 38). This approach to the statelessness mostly deals with reasons, consequence and possible solution of stateless people. Yet, as Blitz claims, “the vast majority of writing on statelessness and related issues, however, has not introduced

theoretical considerations but has taken the form of descriptive reports which have sought to set an agenda at critical times” (2009: 37). While they see the solution of the statelessness in fostering human rights all around the world, they hesitate to question the stateless people in terms of theoretical and philosophical manner of human rights. In my view, while they research what human rights mean for stateless people, they neglect to ask what stateless people mean for human rights.

In my view, the situation of the stateless people brings important questions regarding human rights. As we know, the main premise of human rights is that all persons, by virtue of their birth, should enjoy all human rights without discrimination. Yet, the condition of stateless challenges this premise. They are group of people who are not able to claim even their basic rights since they are people with no right to be present in the state and people whom states see as temporary guest not full members and they are under the threat of deportation. Indeed, they are deprived of participating in political organization and security in terms of government protection even at abroad. If it is the case, how can we explain inaccessibility of human rights for stateless people? Thus, in my view, stateless people can be treated as a laboratory in which human rights theory can be read or even modified or abolished. As Hannah Arendt claims, stateless people are “the most symptomatic group in contemporary politics” (1986: 277).

In the thesis, I will try to find out what this symptom signs regarding human rights. Yet, I will not deal with human rights instruments, government violations or

the history of human rights treaties in the light of stateless people but I will discuss human rights of stateless people in more theoretical manner of human rights. My main aim is to question whether human rights are useless or not for stateless people. Moreover, I will try to find out whether human rights are tool of sovereign or tool for politicization in the contemporary world. Do we need to reshape, left or keep them? Moreover, I believe that studying on these subjects would provide us with more comprehensive understanding of politics of human rights.

The thesis consists of four main chapters. In the second chapter, I will discuss human rights of stateless people in the view of Hannah Arendt. In this chapter, I will aim to present the paradoxical relation between human rights and stateless people. In this respect, I will emphasize on Arendt's view since the existence of stateless people was firstly evaluated in terms of human rights by Arendt. In this chapter, I generally will focus on the plight of stateless in terms of rights-based approach. Yet, it does not mean that I will search which human rights stateless enjoy or which they do not. I will discuss the plight of people as the condition under which people lack their all rights. Based on this plight, I will try to present Arendt's discussion: the plight of stateless revealed the perplexity of human rights which is that human rights are empty for those who lack membership in a nation state. In this context, I will try to question whether human rights are useless for people who have nothing than being human. I believe that this chapter will provide us with a good starting point which shows why this issue needs attention.

Yet, I believe that although studies of Arendt on human rights in the context of the plight of stateless people are very influential in human rights studies her theory is not complete to reach a comprehensive argument about human rights of stateless people. She is not clear whether human rights are necessary for stateless people or not, whether we should reject human rights totally or not. Thus, her theory is developed, interpreted and followed by many scholars. While some scholars evaluate Arendtian evaluation as more hopeful theory for human rights, some scholars focus on her offer: “right to have right”. While some scholars argue that thanks to Arendt’s understanding of right to have right, the stateless people can take part in the public, some scholar insists that Arendt sees stateless people as hopeless. Discussions on the human rights of stateless which start with Arendt’s diagnosis develop the issue in the different way. In my view, as followers of Arendt, Agamben and Rancière fit example of scholars who have same starting point but diametrically opposite end points.

In the third chapter, I will discuss human rights of stateless people in the view of Agamben. In this chapter, I will try to present the main idea of Agamben on the human rights: human rights are component of the sovereign power which we should get rid of completely in regardless of who we are: stateless or citizens. I will emphasize on human rights in the context of sovereign and biopower. In this context, I will try to find out why Agamben call us to leave human rights in contemporary world. The main aim of this chapter is to find out that whether human

rights are safeguard of human beings or tool of sovereign. Moreover, I will quandary whether they are helpless for stateless people or collaborative of the sovereign even in the creation of stateless people. I believe that Agamben's discussion will represent one answer to question which is unanswered in Arendt's theory: do we need to leave human rights totally?

Although Agamben recommends us to abandon human rights approach for stateless people, many protests of stateless people based on the discourse of human rights have occurred all around the world. The stateless people have called states to consider their human rights through protests such as sewing together of lips, hunger strikes, fires, etc. By approaching human rights, they cry out that they are legal. In this context, there is need deeper evaluation on what human rights would give the stateless people. I will try to answer this question in fourth chapter. In this context, I will study on argument of Jacques Rancière on human rights in the context of political subject. In this chapter, I will question the possibility of thinking human rights in different sense. Indeed, I will discuss whether human rights have a potential hope for stateless people to be included into the politics in the view of Rancière. In general, I will question political power of human rights for all people, especially stateless people?

In conclusion, in the light of three approaches (Arendt, Agamben and Rancière), I will try to reach evaluation of human rights of stateless people in terms politics of human rights by comparing and contrasting three different approaches.

This final chapter will reveal whether human rights are unenforceable for stateless because of emptiness, collaborative of sovereign power or its wrong interpretation in the contemporary world politics. I aim to show that their failure for stateless people reveals the necessity of questioning human rights in the context of politics and political subject. Overall, I aim to reach the conclusion that stateless people show that human rights are not universal truth which belong to each human being regardless their nationality, but they are not also empty, useless or dangerous tool. Rather, they have potentiality to be tool for continuity of politics.

CHAPTER TWO

2. HUMAN RIGHTS AS USELESS TOOLS

2.1. Introduction

In one of the most powerful chapters, *The Decline of the Nation State and End of the Rights of Man* of the *Origin of Totalitarianism*, Hannah Arendt focuses on the latent truth of human rights which became visible with the existence of stateless people; the perplexities of rights of man as she called it³. She claims that the First World War devastated the European politics, resulting in the existence of increasing number of people for whom there is “no appropriate niche in the framework of general rule”⁴(1968: 286). As a result of collapse of multinational and multi-ethnic empires of Central and Eastern Europe with the impacts of self-determination and of social revolution, two victim groups (stateless and minorities) emerged (Keedus, 2011). Nation states failed to deal with these people through method of repatriation and naturalization since there is not any country which

³ Although Hannah Arendt does not focus on the theory of human rights directly, problem of human rights was central to her political theory (Isaac, 1996).

⁴ It should be noted that although Arendt begins her thesis of human rights with impacts of World War I on the earth, she also claims that the existence of these people cannot depend on one factor but every political events since the end of World War I added a new category to the people who are outside the pale of the law.

wanted to take the stateless and states were unable to naturalize them (Parekh, 2008:19-20). Although nation states realized the threat of the existence of stateless people against their legal and political institutions, they were desperate about the solution (1986: 86). Since stateless people are deprived of having status in general of law, states started to deal with them illegally. In this context, the state smuggled its stateless to neighboring countries, the police helped them to pass illegally into the other territories (1986: 83-84). Thus, the problem of statelessness was transferred from the nation-state to the police. The police took authority to act on its own, rule over the stateless while emancipating itself from the rule of law. Indeed, they become subject to the police's arbitrary and unrestricted rule. "Finally, the extension of the police's competence in dealing with the stateless paved the way for the establishment of internment camps as the only remaining solution for dealing with the stateless" (Borren, 2008: 218-19). At that point, Arendt states that "as early as thirties, this (internment camp) was the only country the world had offered the stateless"⁵(1986: 284).

Arendt defines reason behind the existence of the stateless with establishment of the nation-state based on the main trinity of state, people and territory. "The ideology of the modern nation state (nationalism) holds that only those people who are born on the territory of a particular nation state are citizen of

⁵ In this context, she claims what happened to Jews in Germany as a descriptive example of the solution of minorities and stateless problems adopted by Hitler. Hitler first "reduced to Jew to unrecognized minority, then drives them as stateless people across the borders, and finally gathered them back from everywhere in order to ship them to extermination camp (Arendt, 1986: 290).

that state. That is: citizenship (political membership) is grounded on (biological) birth. The ideology of the modern nation state system thus ties citizenship to nationality and nativity” (Borren, 2008: 216). Moreover, nation states are based on the logic of being rooted in land with homogeneity of population after the World War I. For Arendt, this is “conquest of the state by the nation” (Arendt, 1986: 343). According to Parekh, stateless people as group of people who are driven out from the old trinity of state-people-territory (people who did not belong to a nation) were unable to claim protection from any state. Even since they are not tied to the land and destroy the homogeneity of population they were threat to nation state.

According to Arendt, people who are driven out from any legal order because of being outside national state reveal that there is a wrong with the understanding of human rights (validity of human rights is derived from moral status of a human being). In contrast to understanding of human rights, stateless people show that validity of human rights could end for people who are still human beings. While she develops her critique of traditional understanding of human rights, she reaches political understanding of human rights called “right to have rights”. Thus, to understand Arendtian view of human rights we need to understand the problem of the human rights embodied in the body of stateless people. Since condition of rightlessness is main characteristic of the stateless people on which Arendt criticizes human rights I will study on firstly the plight of stateless people (condition of rightlessness) and then, what it whispers about human rights in traditional sense.

Finally, I will attempt to define Arendt's understanding of human rights: right to have rights.

2.2. The Plight of Stateless People: Condition of Rightlessness

After Arendt developed her thesis on the perplexities of human rights, many positive developments took place in the international arena to protect the rights of the stateless⁶. All agreements mentioned above oblige states to grant stateless people lawful residence in appropriate cases (UNHCR, 2006: 10). As a result of these developments, Arendt's discussion on nation states in terms of human rights was criticized of being outdated (Brunkhorst, 1999: 96). In this context, some scholars reached the idea that protection of human rights enlarges, resulting in the protection of human rights of stateless. Moreover, some scholars argue that as a result of rise of international human rights, the national citizenship has declined (Linklater, 1998; Jacobson, 1996; Soysal, 1994; Sassen, 2002) and the rights of non-citizens are met in the international human rights system. However, restrictive immigration control policies all around the world, harsh treatment against to the stateless people or non-citizen, discrimination against them, the increasing existence of refugee camps, arbitrary detention of non-citizens, etc. even in the liberal

⁶ After the Universal Declaration of Human rights: in 1949 "Nationality, including statelessness" was included in the lists of topics which will be codified by the International Law Commission, the Convention Relating to the Status of Refugees was declared on 28 July 1951, a Draft Convention on the Elimination of Future Statelessness, and a Draft Convention on the Reduction of Future Statelessness were produced by the International Law Commission in 1953; A Convention Relating to the Status of Stateless Persons was signed in 1954,etc.

democratic state which base their legitimacy on their commitment to human rights demonstrates the crisis of human rights (Krause, 2008) which means the human rights are used as only right of citizens (Benhabib 2004; Brysk 2002, Brysk &Gershon 2004). Moreover, in contemporary world, they suffer from the lack of many human rights mentioned in International Human Rights Declaration, such as “recognition everywhere as a person before the law” (International Covenant on Civil and Political Rights(ICCPR) Article 16); “the right to liberty of movement and freedom to choose his residence” (ICCPR, Article 12); being “equal before the law and entitled without any discrimination to the equal protection of the law” (ICCPR, Article 26); the right “to take part in the conduct of public affairs, directly or through freely chosen representatives” and “to vote and to be elected at genuine periodic elections “ (ICCPR, Article 25). Moreover, they usually suffer from the violation of rights such as right to an adequate standard of living, right to work, right to a high standard of physical and mental health, right to an education, the right to social security; right to gain adequate skills training.⁷

Here the question is: why protection of some rights of refugees, asylum seekers or stateless people with international mechanism is not enough to end the plight of stateless people? Arendt answers this question by defining the plight of stateless people with losses which make them unable to use their fundamental rights enacted by the International Human Right Declarations, and other international

⁷ International Covenant on Economic, Social and Cultural Rights; Articles 1, 6, 9, 11, 12, 13 and 15.

mechanism. Thus, the argument stating that as a result of developments in international human rights mechanism stateless people enjoy rights which are same with rights of citizens cannot be relevant. It is because

the calamity of the rightlessness is not that they are deprived of life, liberty, and the pursuit of happiness, or equality before the law and freedom of opinion-formulas which were designed to solve problems within the given communities- but that they no longer belong to any community whatsoever. The plight is not that they are not equal before the law, but that no law exists for them; not they are oppressed but nobody wants to oppress them (Arendt, 1968: 295-296).

Although at the first instance the plight of the stateless people seems as a consequence of failures in the implementation of human rights⁸, Arendt rejects this approach. According to her, the failure of rights of man to meet the calamity of growing number of people who are forced to live outside the law did not result from ill-will. In other words, “the predicament of stateless people was not simply that their human rights had been violated. Rather, they found themselves in a situation of rightlessness” (Schaap, 2011).

The rightlessness is not about loss or enactment of rights. Rather it is a void condition although some fundamental rights are still granted. On the one hand, she argues, loss of human rights does not cause absolute rightlessness. She claims that “a soldier during war may be deprived of his right to life; a criminal may be deprived

⁸ As I mentioned in first chapter, conditions of stateless people are usually evaluated in the context of the commitment of country to human rights. As a result of this approach, nation states have been invited to improve their institution and align their legal standard in accordance with the international human rights standards by the international bodies such as European Union and United Nation Bodies and NGOs in the field of human rights.

of their right to freedom” (Parekh, 2008: 28). Yet, in both cases people are not in the condition of the rightlessness. On the other hand, having discrete rights is not enough to prevent someone from entering under the condition of rightlessness (Krause, 2008). This means that the enactment of human rights cannot abolish condition of rightlessness. For example, refugees can have right to free expression, right to equality before law but this does not mean that they are not in the condition of rightlessness. It is because rights of people under the condition of rightlessness do not have any meaning since they do not belong to any community and there is not any law for them. In this respect, Arendt asserts;

the prolongation of their lives is due to charity and not to rights, for no law exists which could force the nations to feed them; 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 (1968: 296).

It shows that the condition of rightlessness is not related to loss of some rights even fundamental ones such as right to life, liberty and equality before the law. Then, what does the condition of rightlessness mean? Arendt equates rightlessness with “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). According to Arendt, condition of rightlessness which stateless people suffer from is defined as deprivation of polity (home) and legal standing. First, stateless people suffer from the loss of home in the world in which they are born into. In other words, they suffer from the deprivation of a place in the world

where one is judged by one's action and opinions. Krause (2008) explains such loss as lack of belonging. Moreover, Arendt states that "it is the loss of entire social texture into which they were born and in which they established for themselves a distinct place in the world" (Arendt, 1968: 293). Arendt points out that in 20th century the problem was not that they lost a distinct place in the world but that there is no possibility to find new one. As we mention, "they could not reside peacefully in their country of refuge since they could not or would not assimilate; their home country would not take them back (except to punish them); and no other country in the world would grant them the right of asylum" (Parekh, 2008: 27). It is not because of material restriction, but it is because today's political organization is based on family of nations. Since in the world of nation states, political membership is related to have effective link with the state in terms of being acquired by being born in the country (known as *jus soli* or the law of the place), being born to a parent who is a citizen of the country (known as *jus sanguinis* or the law of blood), stateless people lost their political community when they lost their home and effective links to the country where s/he stayed. When the stateless people lost their membership of political community, they lost space in which they are seen and heard. Hence, the condition of rightlessness is the loss of political community, "a place in the world which makes opinion significant and action effective" (Arendt, 1968: 296-297). Second, they face loss of government protection, resulting in not only loss of legal status in their own but all countries. Since the international system is organized on the relationship between nation states, a person is only visible and

has appearance in other countries if they are under the protection of a government of country. Thus as soon as stateless people are outside the protection of the government, their illegality stretched to all countries they came across. For Arendt, they are also unable to gain legal status. Since “stateless person has lost her public persona, her legal status, all distinctions that require public recognition, and her unique identity” (Parekh, 2008: 25) they became nothing but human. It is clear in the situation of stateless people that absence of legal identity causes the absence of any identity at all. Thus, “the stateless person has become a human being; not an individual with unique identity and history; not a professional; not someone connected to a community; not a citizen, alien, tourist, etc” (Parekh, 2008: 26). It is because legal identity is central to the personhood (Lynch, 2005).The stateless person appeared to be nothing but innocent human being, which is the greatest misfortune. Also “this, ultimately, is what they were persecuted for” (2008: 28). Arendt adds that the innocence they have is the mark of rightlessness. It seems paradoxical since it is easier to deprive innocent person of legal status than those who committed crime. This shows that loss of legality of rights is not related to any crime. As a result of being in such condition, they are judged by not what you have done but who you are. In this context, Arendt defines the paradox of loss of the rightlessness as follows;

The paradox in the loss of rightlessness is that such loss coincides with instant when a person becomes a human beings in general- without profession, citizenship, opinion and different in general, representing nothing but his own

absolutely unique individuality which deprived of expression within and action upon a common world losses all significance (1968: 299).

One might argue that understanding of the rightlessness condition is based on Arendt's understanding of politics based on the distinction between *bios* and *zoe*, in other words, public and private sphere. For Arendt, stateless people are people who are thrown back to the private realm with having no public manifestation. According to Arendt, while the public realm is the realm of equality, the private is realm of difference. Only being in the public realm provide our differences to be equalized. It is because equality is not given but is result of human organization. Difference in the private realm is that we cannot change. Since the stateless people are trapped in the private realm, they are the symbols of difference with nothing to make them equal and recognizable in the public realm. They are trapped in the private realm in which they do not have any political appearance that makes people visible in the real world. According Arendt, it is the state of nature that rightlessness are thrown back and it is because they lost their connection with output of human artifact, common labor of human beings. It means that those who lost their political status were thrown back on the givenness of their natural condition (Schaap, 2011). As a consequence of which they are left to their givenness, they are nothing but human.

For Arendt, while being thrown into the private sphere, stateless people lost two important parts of human condition: loss of right to speech and action. In this context, Arendt focuses on the relevance of speech and ability of act which have

been considered as essential characteristics of human since Aristotle's time. Arendt occupies the idea of Aristotle that human being is defined by his capacity for speech and thought. For her, human are political animals by virtue of speaking animals. Having language differentiates human from animal through enabling them to distinguish what is useful and what is just and unjust. According to Aristotle, if only the human communities enable their members to participate in public affairs for the benefit for the whole, they are political. Therefore, it can be argued that potential of human beings, having language, can only be realized in the political community. One might argue that the loss of legal personhood which make stateless thrown back to their givenness means loss of relevance of speech and action. Since for Arendt, personhood is an artificial mask of each member of the polity, which establishes the equality and enables one's voice to sound through, the loss of personhood equals loss of language. In this context, Kristeva argues that when someone became a foreigner (non-citizen), no one listens to him/her and s/he has never the floor. Even if s/he had floor, her/his speech is erased by the talk of community. This means that his/her speech is ineffective among the political community. This is because s/he does not have status to make his/her speech meaningful (1991: 20). This shows us how being outside the political community without having legal status is related one of human condition: ability of speech. Indeed, being in the condition of rightlessness makes us away from the condition of human. Furthermore, being deprived of political community also affects the ability of act since it damages the condition of plurality. According to Arendt, "human

plurality, the basic condition of both action and speech, has the twofold character of equality and distinction” (1958: 17). Plurality means living “as distinct and unique being among equals” (Arendt, 1958: 178). Since the action requires the company of other people, the action and plurality are related. For Arendt, the action refers the process of beginning and being in motion. It is what makes us free subject. For her, we are free as long as we act. Also for Benhabib, action is what makes what we are (2004: 26). Hence, we can say that speech and action are necessary for us to interact in the world and for construction of individuality. Since deprivation of speech and action causes the loss of human relationship, the life ceases to be a human life without speech and action. As a consequence, such life is no longer lived among man (Arendt, 1958: 176).

As it is mentioned above, the condition of rightlessness is a place in which opinions are not significant. For Arendt, the politics is the realm of opinion, since the opinion is an expression of the way the world appears to an individual (Parekh, 2008: 33). Since the opinion requires political experience of acting and speaking with equals within the plurality, being deprived of action and speech results in being without capacity of opinion. This is important for the theory of Arendt since capacity to form opinion is at the center of being member of political realm. At that point, Parekh states that: “the state of absolute rightlessness for Arendt is a state of being deprived, not of freedom to do what you want, but the right to action, not the right to think what you want, but the right to form an opinion” (2008: 29).

When we look the condition of the stateless, Arendt argues, we see that a condition in which people are deprived of speech, action, and thus ability to form opinion and to be part of political community (Parekh, 2008: 33). This means that they are deprived of essential characteristic of human life. In fact, according to Arendt, political agents are constructed by action and speech. Through political discussion and public debate opinions are formulated, which make people distinct and equal beings in polity. This means that capacities of speech, action and opinion are realized with being participants in the political community or having political status. This is why stateless people in rightlessness condition in which they lost their political standing, political communities, are denied of their capacity of speech, opinion and action. All these deprivations people were subjected to make them lose their human dignity although they are still human beings. That is to say, for Arendt, since human dignity is related to human action, thus if someone lost his/her political standing s/he also lose her/his human dignity.

Furthermore, for Arendt, to realize that being human is required to be qualified for political life and to have time for politics⁹ (Schaap, 2011). Considering this argument, we can reach the point that according to Arendt, for participating into the politics, one should first liberate oneself from the necessities of life. In order to participate in politics, we should be recognized as speaking

⁹ In *The Human Condition* (1958), Arendt argues that in the ancient-city state since requirement of biological life were met by women and slave, free men who are unburdened by tasks of *zoe* located in domestic sphere could be an artificial space for politics by engaging in politics (Owens, 2009).

animals. At this point the question comes; how are we recognized as speaking animals? According to Schaap (2011), for Arendt, it is accomplished by being participant in politics, acting and speaking within community of equals (which is the human artifact, not given adjective). With this understanding, stateless people who are living all around the world as refugee, migrants, stateless have no chance to be speaking animals or to participate into the political community. Since in the world of nation states stateless are thrown out from political life as soon as they lost their tie to nation state, there is no chance for them to be political actor without being member of nation state (participant of the political community). Yet, on the other hand, there is no chance for them to participate in political community without being political actors. According to Schaap, this type of mentality of politics naturalized current division between those who are qualified for politics and those who are not.

In light of above, one might argue that for Arendt, what the poor suffers from is not economic deprivation but the political deprivation. If we formalize this for suffering of rightlessness in same direction we can reach that what rightlessness suffer are not worst living conditions or deprivation of their basic life, but political deprivation that prevents them from being political actor through which human beings use their rights or improve their condition. In other words, their basic plight is their deprivation of political standing. Yet, here the question arises, how can we explain recent struggles of stateless people? In my view, Arendt would define them

as non-political since they are based on necessities and stateless are not qualified to be political actor. Since they are not in the group of equal beings, political community, where can we locate their struggle or action? As it is seen, it is located in the private realm. With this view, she undercuts the possibility of labeling the struggle of stateless by approaching human rights as political. It is because such struggles are directed towards necessities. This also means that what human rights means for Arendt is not something in relation with politics but private sphere.

For Arendt, the existence of such condition in which people can not enjoy any rights, even human rights albeit they are still human have important things to tell us about the contemporary world, especially human rights. In other words, the image of stateless people is an important lens through which understanding of human rights can be read in the system of nation states. More importantly, their existence is important to evaluate what the relation between politics and human rights is and how it should be. Indeed, what Arendt see about human rights with existence of the stateless people is important to understand human rights in general.

2.3. What is wrong with Human Rights?

For Arendt, those people who lost their citizenship show us that human rights are not inalienable rights but civil rights (Parekh, 2008: 24). Since human rights are only enjoyed by citizen, they are empty in the contemporary world. In this context, she claims that:

no paradox of contemporary politics is filled with more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights, which are enjoyed by only citizens of the most prosperous and civilized countries...(Arendt, 1968: 279).

For Rancière (2004), Arendt defines emptiness of human rights by explaining two possible situations; citizens who have human rights and the stateless people who have human rights. In the former cases, Arendt mentions that a person who had already had rights since s/he is part of political community and s/he has also human rights. According to her, in that case people have rights which they already had. Therefore, having human right does not mean anything more; it is just a repetition. On the other hand, in latter condition, we can talk about people who have not any citizenship rights since they are out of any political community, but have human rights. As it is mentioned above, although these people named as stateless people are under the condition fitting with what the human rights promise, the human rights are useless for them. In fact, , human rights belong to people who do not have any rights. Since they do not have any citizenship rights, it is nonsense to speak about their human rights because they do not have the ability to use them and there is no mechanism to enable them exercising their human rights. Also it is clear that without being citizens under the protection of a government it is almost impossible to use any rights. Thus, in the contemporary international organization which is built on nation states seems suggesting nothing more than citizenship rights. Therefore, the inner paradox of human rights called as the perplexities of rights of man unveiled by the plights of stateless people is that human rights are

empty instrument for both citizens and stateless people since they are only enjoyed by people who have link with a nation state. In other word, if we have citizenship rights spring from being a member of political community (being member of nation state), we have also human rights, yet on the other hand, if we are not citizen, and we also do not have human rights. In conclusion, what became clear with existence of stateless people is that human rights are only valid with membership in a national state. Also we realized that “as soon as someone became human beings, s/he was unable to claim her human rights” (Parekh, 2008: 26). This is at the center of the paradox of human rights called by Arendt.

Moreover, the miserable fate of stateless people and minorities reveals that human rights and nation states are linked but also in conflict. It is the nation state which both violates the human rights and is obliged to protect human rights. Benhabib defines this situation as: “dilemma [...] between sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other” (Benhabib, 2004:2). Parekh mentions that in the theory of Arendt, this problem can be tracked back the way in which human rights were thought in the Declaration of the Rights of Man and Citizen in 18th century (2008:1). She points the ambiguities between human rights and nation state which are illustrated by the tension between the second and third article of the 1789 Declaration of the Rights of Man and of the Citizen. While the second article states that the legitimacy of political organization is based on the preservation natural and

inalienable rights of man such as liberty, property, security, and resistance to oppression the third article states: “ the principle of all sovereignty resides essentially in the nation. No body or individual exercise any authority which does not proceed directly from nation.” Thus, the rights of man were tied to the national sovereign. This also means that human rights can be protected by civil rights which can only be protected by nationals. Although with the declaration, the sovereignty was based on the man and man was also emancipated from religious or God s/he was swallowed up by the people. This means that it is only sovereign people who are able to secure the protection of rights (Parekh, 2008: 23). Thus, Arendt mentions that rights of man were represented by the rights of people. That is what the stateless people reveal: the man lost his/her rights when he lost his status of people in 20th century (Parekh, 2008: 23). In this context, Arendt claims that:

Since the Rights of Man were proclaimed to be ‘inalienable,’ irreducible to and undeducible from other rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal. No special law, moreover, was deemed necessary to protect them because all laws were supposed to rest upon them. 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” (1968: 291).

Hence, in the logic of the nation states system “only nationals can be citizens, and only citizens can have inalienable human rights” (Borren, 2008: 216). Therefore, stateless people cannot claim human rights protection since they are not born on the territory and posses a national identity. This condition shows that

contrary to popular belief human rights protect those individual who have lost the protection of a nation-state, rather they accomplish the reverse. As a result, in the view of Arendt, “in a world governed by the nation-state system, human rights claims are powerless; at best they provide a sign of a hopeless idealism” (Borren, 2008: 217).

For Arendt, this entire picture unveiled by the stateless people can be grasped by focusing on the abstractness of human rights theory. She agrees with Edmund Burke’s critique that rights of man are too abstract. Although she does not go far as Burke who prefers “right of an Englishman” than human rights, she argues that the problem of traditional understanding of human rights is that human rights are “reckoned with an ‘abstract’ human being who seemed to exist nowhere, for even savages lived in some kind of social order” (Arendt, 1986: 291). Indeed, human in the human rights are abstract since they did not exist in any place and any time. In contrast to traditional understanding, Arendt argues, what human rights theory should depend is the figure of man which is particular and distinct people (men) rather than Man.

According to Ian Balfour and Eduardo Cadava (2004), human rights seem to pertain all human but since the earliest declarations human right theory has been articulated on the tension between man and citizen. This tension cultivated the discussion concerning who has the right to be protected and who has not. This tension become visible with the appearance of non-citizen since when human rights

is divorced from citizenship rights, rights as such are also lost. When the continuity between citizen and man is divorced, stateless people are no longer recognized as human. According to Etina Ballibar (2007), basic rights that are assumed to be natural and unalienable are threatened when citizenship rights are destroyed. Therefore, if the link between citizen and man is broken down; stateless people become only human without citizenship. Since they are not allowed to be citizens, they could not be the subject of the human rights although what they have is only being human which the human right theory sees enough for someone to have human rights.

Furthermore, what the plight of stateless people demonstrates is the fact that traditional understanding of human rights is based on the wrong understanding of human dignity. While in traditional human rights discourse human dignity refers natural quality, for Arendt the existence of stateless people prove that there is nothing in the mere givenness. In other words, although the human rights theory defines human dignity as a status gained by being only a human and defines it something that comes by birth, for Arendt human dignity is related to human action, thus if someone lost his/her political standing s/he also lose her/his human dignity. Human dignity can only flourish under the sphere of *bios*: under conditions of plurality and publicity. The understanding of human rights which is based on inalienable human nature cannot work since human nature can only come to existence “through the sheer artificiality of a man-made world, agreements between

people, and membership of a shared common and public world” (Borren, 2008: 219). As we mention, stateless people are reduced to “nakedness of being human” (Arendt, 1986: 299) since they are excluded from political life because of naturalism of nation state (nativity is the principle of citizenship). The statelessness which brings the loss of his/her political status simultaneously brings the loss of his/her human dignity. This show that human dignity is not related to private life but political life. In this respect, Arendt states that:

The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general – without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself – and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance (1986: 299).

Thus, what is the main problem of traditional human rights reflected by stateless people is his understanding of human nature: absolute and established beyond political sphere. Therefore, for Arendt we need an understanding of human rights based on accurate human nature. Thus, we need for fundamental human rights to provide human being with actualizing their humanness. Arendt defines this right as right to have rights. One might argue that the existence of stateless is not only mirror of problems inherent to the traditional human rights but ground on the basis of which we re-conceptualize human rights which have a political vigor. The stateless people show that to have human rights which are accessible for every human being in the world, we should have human rights developed in relation to politics: right to have right.

2.4. Right to Have Rights

According to Arendt, right to have rights (right to membership) should be basic human rights as response to possibility of being stateless. We may argue that her insist on right to have rights as basic human rights results from the fact that without membership in a community we cannot talk about any human rights. She claims that

We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation... The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth-century because they presume that rights spring immediately from the "nature" of man... (Arendt, 1968:177-178)

One might argue that the logic behind right to have rights shows similarity with understanding of basic rights in theory of Henry Shue. According to him, basic rights are rights on which enjoyment of all other rights depend. (Shue, 1980: 19) He states that

Basic rights... are everyone's minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept. Why should anything be so important? The reason is that rights are basic in the sense used here only if the enjoyment of them is essential to the enjoyment of all other rights. This is what is distinctive about a basic right. When a right is genuinely basic, any attempt to enjoy any other right by sacrificing the basic right would be quite literally self defeating, cutting the ground from beneath itself. (Shue, 2008: 19)

In similar way, right to have rights is basic human rights since it is required for all rights to be enjoyed. For Arendt, fundamental human right is not right to liberty, right to freedom, and right to justice, etc but right to political inclusion. It is because it provides possibility of having other rights. As we realize in the existence of stateless people is that when belonging to a political community is prevented, all other rights means unreliable. That is the reason behind Arendt's insists on defining right to belong a political community as basic human rights.

According to Arendt, with right to have rights everyone should have right to live in a place where s/he is judged by their action and opinion. Yet, we should not understand right to have rights as moral imperative since it has risk of a misunderstanding: defining right to have right in the context language of rights of other. In contrary to this understanding, for Arendt right to have right is not something to be bestowed; on the contrary it should be taken. Also Arendt's focus on political notion of the right to have right rather than its moral notion indicates that Arendtian offer of "right to have rights" is more related to political action. Krause (2008) defines the remedy offered by Arendt as not a type of seeking transcendental rights but seeking a political solution. For her, Arendt's theory of right to have right enables everyone belong to a community in which they determine rights and duties which will not be pre political in nature, on the contrary they will be outcomes of historical and particular public debate (Krause, 2008).

Human rights should not be merely given by birth rather they should be created by action in the common world. In other words, we have human rights as soon as they are product of common world; product of our speech and action. To have such kind of rights, we firstly need to be part of political community. That is why the fundamental human right in the view of Arendt is the right to belong a political community. She defines the difference between her understanding of human right and the human rights in conventional manner by claiming that " 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, 1968:301). This means that the rights are not given or we are not born with them. Rather they are created by us through speech and action. For her, human rights also depends our decision to secure them. Therefore, they can only be made real through our political membership.

According to Birmingham, right to have rights in the theory of Arendt should be read as the opportunity for unqualified human existence to be in the political realm. According to him, right to have rights enables stateless to enter into the arena of politics; their status will be transformed to political status. With the conception of right to have rights, Arendt defines a notion of citizenship based on the idea that citizenship is open to all who live in and want to participate in the state. Thus, Birmingham (2006) defines her notion of citizenship as active citizenship. This means that everyone in the state will have the right to political

membership, which is convenient with her understanding of right to have rights. At that point, he mentions that it is only through having experience of citizenship, participation such as political representation, voting, etc. that stateless people become citizens (Brimmingham, 2006: 140).

In contrast to Brimmingham, Parekh (2008) evaluates the theory of Arendt as theory in which there is no any call for the acceptance of mere givenness in the political realm. Moreover, for Isaac (1996), since human rights are constituted on private life and not related to political identity and political community, the struggle based on the discourse of human rights cannot be a remedy. This shows that Arendt is “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” (Parekh, 2008: 40). It is because for Arendt transformation from givenness (*zoe*) into good life (*bios*) would only be possible through acting and speaking.

Since nature and history could not be successful in capturing potentiality and unpredictability of human nature, they would not be guarantee of the most fundamental human right, right to have rights. Instead of nature or history, human rights should be guaranteed by humanity itself according to Arendt. She claims that “...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” (Arendt, 1968: 178)

In my view, there is a gap in Arendt's theory of right to have rights. It is the question; how the stateless people who are exposed a life deprived of public appearance and are excluded from politics actualize their transformation through acting and speaking? Although Arendt emphasizes the necessity for asylum seekers, refugees to be incorporated into the public space and political action, she, in none of her writings, explains how they can accomplish it. She does not define a formula for the realization of what she offers. Moreover, she does not clearly define whether she is supporting human rights or not. Also she does not answer question whether human rights are necessary? In this context, Benhabib (2004) criticizes Arendt since she refuses to give a normative justification for human rights that cause many unanswered question. Moreover, in Arendt's theory, it is not clear how right to membership is guaranteed, who give or withdraw such recognition. Although Arendt's answer is humanity as guarantor of right to have rights, it seems to me a quite ambiguous. She also claims that it is not clear whether it is possible or not.

After Arendt evaluated the human rights in her popular text, many scholars referred to her perspective while dealing with the human rights in international arena, problems of human rights or the human right in the cases of stateless people (Agamben 1998; Douzinas 2000 Brysk 2002; Benhabib 2004; Brown 2004; Balibar 2004; Hamacher 2004; Ranciere 2004; Zizek 2005). Some of them claim that after Arendt wrote on the issue, there occurred many changes called as the development in international law such as 1951 Geneva Convention, Convention relating to status

of stateless people, etc, thus her argument is outdated. Yet, certain implementations even in democratic states that draw their legitimacy from a commitment to the human rights (arbitrary detentions, refugee camps, establishment of border security, discrimination in almost all spheres of public life) show that the rights of non-citizens are still unmet in the existing human rights system(Brysk, 2002). On the other hand, while some scholars, who employ Arendt's theory as starting point, reject the idea of human rights since they define the human right as the main reason behind the plight of people, some others emphasize human rights as the only way of solution for the plight of these people. Yet, what is common in their work is to focus on human rights of stateless people in the context of political approach.

In my view, Arendt's analysis of human rights of stateless people seems a starting point or detaching latent problem of human rights. Yet, she presents neither well-defined diagnosis nor treatment. As a result, there are many arguments and discussions which start with Arendt's detection but have different end-point. Therefore, to deepen the issue of human rights of stateless in terms of politics, it would be better to emphasize different scholars who develop opposite theories on the basis of Arendt's detachment. In this context, I will focus on two scholars representing different approaches: Agamben (who represents radical approach to human rights) and Rancière (who represents modest approach to human rights). Agamben, by drawing Arendt's theory of the plight of refugee in the *Origins of*

Totalitarianism, suggests that not the citizen or human but the refugee ¹⁰ is only thinkable political category. In his arguments, he calls us to see that all declarations of rights are strengthening the political system based on the sovereign. He rejects all declaration of rights including the International Human Rights Declaration since they reinforce the national sovereignty. Thus, we can say that Agamben starts his theory of human rights in the context of the stateless and calling for a politics beyond the human rights. On the other side, as Agamben, Rancière also based his theory of human rights on Arendt's argument on the human rights. Yet, in contrast to Agamben, for Rancière, focusing on man or citizen as subject of human rights to discover the problem of human right is meaningless. For him, the power of human rights results from the abstractness of the subject which is considered as one of the main reason of the paradox of human rights. Rancière, unlike Agamben and Arendt, believes in the curative power of human rights for the plight of asylum seekers. In general, while both Arendt and Agamben do not deal with the solution of the plight of stateless, Rancière offers solution based approach of human rights.

Hence, in my view, Agamben and Arendt are representatives of two different theories of human rights based on the evaluation of human rights in the context of the calamity of the stateless people which was firstly came into the light by Arendt. While Agamben seems almost a radical theorist, Rancière is more

¹⁰ In my view, Agamben uses the term of refugee not in the manner of international legal term but in similar way with what Arendt calls the stateless people. Therefore, in the following part, I will use the term of refugee and stateless as interchangeable.

moderated one among scholars who deal with the evaluation, even the critique of human rights.¹¹ Therefore in the following chapter, I will try to focus on the representatives of these groups; Giorgio Agamben who insists on the necessity for rejecting of human right and Jascques Rancière who evaluates the human rights as powerful mechanism for politics. By dealing with these two scholars I will try to evaluate human rights in the cases of stateless people with the hope of filling the gaps which is left in Arendtian theory.

¹¹ I intentionally define Rancière as one of scholars who criticizes the human rights since unlike the liberal theorists who absolutely defend the human rights he is aware of the problematic side of human rights. Yet this does not make him give up seeing the human rights as solution for the stateless people.

CHAPTER THREE

3. HUMAN RIGHTS AS TOOL OF SOVEREIGN

3.1. Introduction

In a similar way with above-mentioned scholars, Agamben analyzes human rights by focusing mostly on the difficulties stateless people face while they are demanding their rights. It might be argued that Agamben's critique of the human rights is one of the most radical arguments based on Arendt's conclusion regarding the human rights in the context of the stateless people since he totally rejects to think stateless people in terms of human rights. It is because he believes in the existence of strong link between human rights and the sovereign.

According to Colin McQuillan (2005), main arguments in the books of Agamben (*Homo Sacer, State of Exception, and Means without Ends*) are generally based on contemporary debates concerning the nature of the sovereign and its relation to politics. In this context, Agamben specifically examines main logic behind darkness of the recent decades such as genocides, ethnic wars, holocaust, return of concentration camp, secret torture areas as area of enemy combatants, detention of foreigners in inhumane condition. According to him, all dark events

including plight of stateless people in the contemporary world show nature of sovereign. What we specifically examine in these events is the existence of new figure of naked life (Agamben calls it *homo sacer*) over which the sovereign easily dominates through inscription of biological life into the political life (in other words, politicization of life).¹²

In the book of *Homo Sacer* he focuses on various figures of naked life over which the sovereign dominates; Wilson diagnosed with leukemia who wanted to make his body an experimental laboratory and the Muselmann in the concentration camp that no longer belongs to the world of men in any way (Agamben, 1998: 86). Yet, the most decisive figure of *homo sacer* in the theory of Agamben is the refugee in the modern world. Therefore, Agamben considers importance of investigation of the condition of stateless people to reveal hidden truths regarding political system of contemporary world and its actors. He claims that “the refugee should be considered for what he is, that is, nothing less than a border concept that radically calls into question the principles of the nation-state and, at the same time; helps clear the field for a no-longer-delayable renewal of categories” (Agamben, 1995: 116).

¹² Although Agamben’s ideas are usually dismissed as highly pessimistic, in the interview made by Vacarme in 2004, Agamben defends himself against the charge of pessimism by claiming that there is always a hope in the evaluation of the dark situation. (Vacarme, 2004: 123).

While he supports the investigation of stateless people, he rejects the evaluation of the condition of stateless in the context of the human rights. He argues that “it is necessary resolutely to separate the concept of the refugee from that of the Rights of man, and to cease considering the right of asylum....” (Agamben, 1995: 116). While he rejects to consider refugee under the title of human rights, he argues that we need to listen what stateless people tell us more carefully to hear the real story about human rights. Indeed, in the view of Agamben, we need to look human rights in the mirror of stateless people. As we discussed, human rights discourse is usually used in the study of the stateless people as a possible solution or as a tool which might be used to handle with the problems of stateless people. In the works of Agamben, human rights are also presented as tools; but they are not tool to be used for the solution of problems of stateless people but the biopolitical tool of the sovereign. This means that they are not declaration of freedom, equality, etc. On the contrary, they are tools for creation of *homo sacer* on which the sovereign dominates. More specifically, their fundamental notion is to manage the inscription of biological life into the legal order of the nation state. He claims that:

It is to stop looking at the Declarations of Rights from 1789 to the present as if they were proclamations of eternal, metajuridical values that bind legislators to respect them, and to consider them instead according to their real function in the modern state. In fact, the Rights of Man represent above all the original figure of the inscription of bare natural life¹³ in the legal-political order of the nation-state (Agamben, 1995: 116).

¹³ According to Agamben, in the ancient regime the *bare life* was life which belonged to God, and in the classical world it was distinct life (*zoe*) from political life.

To understand what Agamben means with being biopolitical tools of the sovereign, we need to have a look on the major components of his theory on sovereign. Therefore, in the following part, I will discuss what the human rights mean for Agamben in terms of the refugee under three titles developed around the logic of the sovereign. First, I will try to show the relation between subject of human rights and the new political figure produced by the sovereign. Secondly, I will focus on the role of human rights in the relation between the sovereign and political subject. Finally, I will try to answer whether human rights take place in the consolidation of the sovereign sphere (the camp) or its abolishment.

3.2. The New Political Figure: Homo Sacer

According to Agamben, the political subject of the modern state is “not man as a free and conscious political subject but, above all, man’s bare life’ (1998:128). In this context, in *Homo Sacer*, he uses the concept of *homo sacer* to describe the new political subject. Agamben defines *homo sacer* by referring to the term of *sacer mons* which is based on the figure of archaic Roman law. He reached the following definition: one who is not permitted to be sacrificed but can be killed without condemning for homicide. While defining the term of sacred being who can be killed with impunity, he focuses on two theories. Whereas one theory explains that since *homo sacer* belongs, as a sacrifice, to the law of god, murdering of such person cannot be evaluated in terms of penal law. But this theory lacks of comprehensive explanation of the ban on *homo sacer*. Second group claims that

since *homo sacer* is already owned by the god, it cannot be re-sacrificed. They are not sufficient to explain of absence of penalty for people who killed those belonged to god. Therefore, for Agamben “neither of positions can account economically and simultaneously for the two traits whose juxtaposition...constitutes the specificity of *homo sacer*: the unpunishability of his killing and the ban on” (1998:73).

For Agamben, theories failed to explain *homo sacer* because they evaluated the life of *homo sacer* as if it is inside either human or divine law. In contrast such explanations, Agamben argues that “we are confronted with a limit concept of the Roman social order that, as such, cannot be explained in a satisfying manner as long as we remain inside either the *ius divinum* or the *ius humanum*” (Agamben, 1998: 74). This means that while being those who cannot be sacrificed means being outside the divine law, being killed with impunity refers to be outside the human law. Therefore, the meaning of the life of *homo sacer* which “cannot be sacrificed and yet may be killed” is subjected to double exclusion, both from the human law (*ius humanum*) and from the divine law (*ius divinum*) (Agamben,1998: 82). Indeed, we may argue that main characteristic of the *homo sacer* is the double exclusion the figure encounters. Yet, the act of exclusion is also what makes them belong to both of these domains at the same time. Agamben claims that “*homo sacer* belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed” (1998: 82). Hence, the place where *homo sacer* exists is not human law or divine law but the most biopolitical place of the world: the camp.

It is the dimension of biopolitics where *homo sacer* exists. Agamben shows the Jews during the Holocaust as one of the most decisive examples of the *homo sacer*.

In this respect, he claims that

The Jew living under Nazism ... is, as such, a flagrant case of a *homo sacer* in the sense of a life that may be killed but not sacrificed. His killing therefore constitutes, as we will see, neither capital punishment nor a sacrifice, but simply the actualization of a mere “capacity to be killed” inherent in the condition of the Jew as such. The truth – which is difficult for the victims to face, but which we must have the courage not to cover with sacrificial veils – is that the Jews were exterminated not in a mad and giant holocaust but exactly as Hitler had announced, “as lice,” which is to say, as bare life. The dimension in which the extermination took place is neither religion nor law, but biopolitics (1995: 114).

According to Prem Kumar Rajaram and Grundy-War, the refugee fits into the category of *homo sacer* (2004: 40). They argue that the refugee is outside the law, thus s/he is subjected to inhumane treatment, forcible transport to countries where their lives are under the threat. S/he suffers from lack of deprivation of appropriate rights and depends on the charity and good will of the state (Kumar and War, 2004).¹⁴ Thus, they are outside the scope of responsibility and accountability. Moreover, according to Malkki, the refugee is deprived of wider social and political context of their lives, thus they are reduced to basic needs (Malkki, 1996: 378). Since the stateless people fled from their original political community in which they were members (citizen), they are excluded from the political sphere in the country they fled to. This means that stateless people are deprived of the politicized sphere

¹⁴ They focus on the aid camp and detention centers as examples of place where the refugee lost his/her rights and depends on the charity of aid worker or the guards. According to Barbara Harrell-Bond, refugee in aid center enters a situation where aid becomes charity. For more information, please see the article by Barbara-Bond (2000, 51-85).

of life represented by the notion of citizenship. Indeed, in Agamben's view, refugee in the condition of exclusion means that s/he is excluded from the sovereignty they should be subjected to. Yet, this does not mean that refugee is outside the logic of the sovereign. On the contrary, the sovereign paradoxically includes those who are excluded into its own structure to maintain itself since the sovereign is "the originary structure in which law refers to life and includes it in itself by suspending it" (Agamben, 1998: 28). Thus, creation of stateless people depends on the production of political body by the sovereign. While the sovereign decides who will be incorporated into the political realm (citizens), it also defines who will remain outside. In the modern world, the refugee is the one of the figures who will be outside political sphere. Yet, as I mentioned above, being outside the political sphere does not mean having no relation. On the contrary a relation remains: being included as an outsider. Otherwise, we could not explain why the refugee is under the absolute and arbitrary control of the sovereign. In this respect, the sovereign has a strong weapon to put them under its violence: this weapon is the mechanism of human rights.

Agamben does not negate the refugee unlike Arendt. Rather, the refugee beyond human rights is important in the theory of Agamben. For him, refugee puts the sovereign of nation state under crisis since it cuts the continuity between man and citizen. This means that the refugee shows that the political figure of the contemporary world is two-headed creature: biological and public man. The refugee

shows that when a person lost its tie with the nation which s/he establishes with birth s/he was thrown out the sphere of politics also. Indeed, the figure of refugee break the fiction of the sovereignty based on the continuity between biological man and public man. That is why he supports the idea of community “in which the guiding concept would no longer be the *ius* (right) of the citizen but rather the *refugium* (refuge) of the singular” (Agamben, 2000: 24). Yet, this approach represents a refugee figure beyond the human rights. When we inject human rights in the condition of refugees, we see the transformation of refugee into the *homo sacer*. Indeed, “while the refugee is putting the fiction of the sovereignty under the crisis since it breaks up identity between man and citizen, as a result of intervention of the human rights, they become the figure of human rights that signals infringement of political life over the biological life” (Krauss, 2008: 19).

Therefore, one might argue that human rights are one of ways for injecting of the stateless into the public realm. This means that the life of stateless people which is excluded from the sovereignty is included into the sovereign sphere via the tool of human rights. In other words, the human rights include the life which was suspended into the structure of the sovereign. Through human rights, their life is transformed into the new form of life which exists at the threshold between private and political sphere. They are trapped into the sovereign realm as bare life. This is the main reason why they are under the total domination of the sovereign power. This new life is the life of biopolitical life. Indeed, refugees become the ultimate

‘biopolitical’ subjects: those who can be regulated and governed by the sovereign (Owens, 2009: 567-582). In general, the inclusion by the human rights makes life sacred and this makes the homicide possible.

In conclusion, the evaluation of human rights in the refugee condition demonstrates that human rights are one of designed tools of the sovereign to create new *homo sacer* who is subjected to the double exclusion from both the political and private sphere, thus is directly subjected to the sovereign domination. It should be noted that since the biological life in the private sphere is out of the sovereign area, political life in the public sphere is protected from the domination of the law, the sovereign needs to create a new life which it governs as it wishes. Thus a new type of *homo sacer* as subject on which sovereign exercise its power as it wishes is created by the sovereign with the help of human rights.

Thus, the injection of human rights discourse into the issue of refugee results in the transformation of refugee into *homo sacer*. Yet, I want to argue that there seems to have a contradiction in Agamben’s argument. While he points the refugees as the representative of *homo sacer* since they are living at the threshold between private and public, he does not clearly describe whether the refugee is taken into this threshold from the private realm by the human rights or they are already at the threshold without any effects of human rights. If Agamben is talking about the latter, it seems quite contradictory to claim that those who are already *homo sacer* are transformed into *homo sacer* by the human rights.

In my view, to understand the role of human rights in the existence of *homo sacer* in detail, we need to examine the political relation of sovereign from which *homo sacer* exists: the relation of ban where *homo sacer* is captured as human victim (1998: 83). By doing so, I will also try to explain political relation of sovereign in terms of main components of Agamben's theory of political relation: sovereign, biopolitics, and state of exception.

3.3. The Political Relation Where the Homo Sacer is Born Out

Agamben defines the political relation in which new form of life (biopolitical life) is borne out by referring to Jean-Luc Nancy's account of the logic of the sovereign ban (Panagia, 1999). For Agamben, the original political relation from which political community emerges is a relation of ban, not the mutual contract. While the classical theory based on the idea of social contract assumes that people left their natural freedom to become legal, free, and equal persons that guarantee the recognition of their mutual interest in the law, Agamben completely rejects such an understanding of political community. For him, the sovereign exercises its power by placing the life outside the area in which law protects, named as ban relation. This is what constitutes the political community for Agamben (Schaap, 2011). Yet, it should be noted that the ban which connects bare life and the sovereign is not simple sanction since sanction also means being in the order of community. It is, rather, the abandonment by which the victims are drawn into their own separateness (Laclau, 2007: 13). This means that bare life exists as life which

is abandoned into their separateness through ban relation. However, with this relation it is still under the command of sovereign. In other words, “bare life is produced in and through this fundamental act of the sovereignty (ban relationship) in the sense of being included in the political realm precisely by virtue of being excluded” (Hussain and Ptacek, 2000:496). Therefore, the relation between the sovereign and subjects, through which political community operates is not contract but, rather, ban.

It is a limit figure who is subjected to the relation of ban or the relation of exception. It is represented as the figure of bandit in the theory of Agamben. The term of bandit was used for a person who is banned from the city, thus can be killed without committing murder. Although at the first instance the bandit seems as completely outside legal order by losing his social status, in reality s/he is in still in relation with political community, albeit s/he lost his/her political status, because he has the status of bandit. Agamben states that “he is someone whom all members of the political community are entitled to kill” (Schaap, 2011: 26). S/he is neither fully human nor animal since s/he is either non-member of political or member of community: one who keeps his/her membership as excluded from political community. Agamben claims that “the life of the bandit, like that of the sacred man, is not a piece of animal nature without any relation to law and the city. It is, rather, “a threshold of indistinct one and of passage between animal and man, *physis* and *nomos*, exclusion and inclusion: the life of the bandit is the life of the *loupgarou*,

the werewolf, who is precisely neither man nor beast, and who dwells paradoxically within both while belonging to other” (Agamben, 1998:105). Hence, “he who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather abandoned by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable’ (Agamben, 1998: 78).

Considering the ban relationship on the basis of which the political community is structured, we can state that subjects in the political community based on the relation of ban are not right-bearing men which are defined as political subjects in the contract theory. Rather, for Agamben, “What has been banned is delivered over to its own separateness and, at the same time, consigned to the mercy of the one who abandons it – at once excluded and included, removed and at the same time captured” (Agamben 1998:110). It is clear that the subject (bandit) regulated by the sovereign through the ban relationship cannot be the figure of citizen which totally belong to the sphere of law. In contrast to the citizen, it is neither in law nor biological life. This subject is one who is included in political community with inclusive exclusion, which is *homo sacer* who is captured in the sphere of the sovereign through the ban relationship.

In the light of above, one might argue that the bandit, in other words, *homo sacer* has the body of both citizen and man and s/he lives in both the sphere of biological and the juridico-political life. In this context, the aim of the sovereign is to create such subjects who can be killed but not sacrificed. In other words, it aims

to create a sphere based on ban relation in which the *homo sacer* is born out. In Agamben's theory of political relation of sovereign, two terms are critical: biopolitics and the state of exception. Thus, studying on sovereign in terms of biopolitics and state of exception would be helpful for us to have better understanding the political relation where the sovereign born out and the place of human rights in this relation.

3.3.1. Sovereign: Biopolitics and State of Exception

According to Lemke, "in the study of Agamben *homo sacer* is at the foundation of the sovereign" (2005: 5). The sovereign produces *homo sacer* through biopolitics. This means that there is the biopolitics at the centre of the sovereign.

The term biopolitics firstly appears in the works of Michel Foucault as a concept related to biopower. According to Foucault, bio-power indicates what "brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life" (Foucault, 1990: 143). Foucault, in his theory of biopolitics, talks about two different forms of power; the sovereign power and bio-power. According to him, in the 18th century "bio-power replaces the right to take life and let live [the sovereign power] with that of a power to foster life-or disallow it to the point of death" (Ojakangas, 2005; 6). After this transformation, the power began to work heavily on population with the use of knowledge of birth/fertility rates, and reproduction. It can be claimed that

disciplining individual body and social regulation of the body of population are both historically and analytically separated from each other as two forms of “power to life”, namely, the sovereign and bio-power in the work of Foucault. While the sovereign power, in other words the juridico-institutional power, is the form of power over life and death, which “in reality to take life or let live” (Ojakangas, 2005: 6), bio-power (modern form of power) aims to have positive influence on life, to optimize and multiply life by regulating and controlling it (Foucault, 2003: 241). While the sovereign power is exercised by means of law and violence, bio-power is performed through biological, psychological and social technologies. Moreover, whereas the sovereign emphasizes death, the bio-power rejects it and focuses on the birth and life of individual and population (Ojakangas, 2005: 6).

For Agamben, understanding of Foucault of biopolitics lacks of the explanation about the transformation of control over life into a power of extermination of biological life into the camps of totalitarian regimes (1998: 119). In this respect, Agamben criticizes Foucault for limiting his analysis of biopolitics with hospitals and the prisons and not dealing with the phenomenon of the concentration camp. This causes a negligence of the politics of the great totalitarian states in the twentieth century (Agamben, 1998: 118).¹⁵ For Agamben, this

¹⁵ Agamben claims that while Foucault does not bear inquiry on totalitarian state because of the absence of analysis of camp in his study, Arendt works on the structure of totalitarian states by discerning the link between totalitarian rule and the particular condition of life that is the camp. Yet, what escapes from Arendt is biopolitical perspective. Since two thinkers were unable to link together their insights, they did not reflect on the political problem of our age. In this context,

deficiency has resulted from the analytical separation between the sovereign and bio-power. For him, it is impossible to separate the sovereign power-juridico institutional power-from the bio-power. Rather, the activity of the biopolitical machine is inherently linked with the sovereignty (Agamben, 1998). If we accept the definition of Agamben, biopolitics is the inscription of natural life into the politics we should not ignore its link with the sovereign. Since the modern states take biological life as a target, there is a visible bond between the sovereign and natural life, thus there is link between the sovereign and biopolitics (Ojakangas, 2005: 7). Hence, for Agamben the biopolitics consists of continuous combination of both the power that “exerts a positive influence on life that endeavors to administer, optimize, and multiply it” and “a formidable power of death” (Foucault 1990: 137).

Moreover, Agamben rejects the historical separation of these two forms of power. “Whereas Foucault reads the movement from politics to biopolitics as a historical transformation involving the inclusion of *zoe* in the polis, for Agamben the political realm is originally biopolitical” (Vaughan-Williams, 2010: 1079). Indeed, Agamben insists that modern networks of biopower did not simply modify hierarchical relation between sovereign and its subject on the contrary the sovereign is still important component of political order. As Agamben claims, sovereign is “entering into an ever more intimate symbiosis not only with the jurist but also with the doctor, the scientist, the expert, and the priest” (1998: 122). For Agamben,

Agamben urges us to become aware of the political nature of bare life to clarify the deficiencies at the centre of their studies (1998:120).

Western politics has always been biopolitics. Throughout history biopolitics has had continuous but at the same time hidden fashion. We were just able to realize the relation between politics and life in the context of modern state and the sovereign practice (Agamben, 1995). One visible practice of the sovereign practices is human rights.

In the time of Ancient Greek, meaning of life includes two terms, *zoe* (it expresses the simple fact of living common to all living) and *bios* (form of living peculiar to a single individual or group). Whereas *zoe* was excluded from *bios* in ancient times, with emergence of nation state life became central to politics. While in the ancient times and in Roman Law natural life, a simple fact of living, only belonged to home and private realm, at the end of 18th century, “life in and of itself is for the first time offered up as political category” (Agamben, 1998: 122). Indeed, for Foucault, as a result of entrance of *zoe* into the *bios* in modern era, the fundamental shift in the relation between politics and life occurred. Since then, the simple form of life is included in the political calculation. This is what stays at the heart of modern biopolitics (Vaughan-Williams, 2010).

Aristotle separated simple fact of living (*zoe*) from the good form of living (*bios*) of political community. Yet, according to Agamben, since the political community is built upon such exclusion, it cannot be entirely exclusion, but, rather, it is inclusive exclusion (Ojakangas, 2005). This means that *zoe* has never entirely been excluded from the *bios*. On the contrary *zoe* has been included into the

political sphere through its exclusion from polis. For Agamben, this inclusive exclusion is what the political relation or original act of the sovereign (abandonment), which I already mentioned in the previous part, operates on. Yet, it should be remembered that the new life occurred in the politicized biological sphere is neither natural nor political life, but it is the limit concept of life located at the threshold of polis (representative of bios) and *oikos* (representative of biological life) (Mills, 2004). The sphere of *zoe*, after the politicization (as result of inclusive exclusion) became the sphere in which new life (politicized bare life) are born out (Hussain & Ptacek, 2000).

Yet, although Agamben mentions that biopolitics is not modern term, in his book of *Means without Ends*, he claims that the distinction between *zoe* and *bios* has gradually disappeared (2000:3). In the modern world, there is no clear-cut zone between *zoe* and *bios*. Hence, bare life and juridical order enter into the threshold of indistinction. At that point, politics becomes biopolitics and *homo sacer* is confused with the citizen (1998:171). Agamben claims that the threshold between *zoe* and *bios* is the place of the sovereign. Politicization and valorization of life implies a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only sacred life. Every society sets this limit; every society decides who is a sacred man. In modern times, bare life no longer has a particular place. On the contrary, it is injected into biopolitical body of every living being. According to Butler, the task of biopower is to create people

“as less than human without entitlement to rights, as the humanly unrecognizable. This is different from producing a subject who is defined with the law; and it is different from production of a subject who takes the norm of humanness to be its constitutive principle. The subject who is not lawful subject is neither alive nor dead, neither fully constituted as a subject nor fully de-constituted in death” (Butler, 2004: 98).

As we remember, Agamben defines *sacer mon* as one who belong neither *ius divinum* nor the *ius humanum*. The subject which biopower creates is similar with *sacer mon*. They are under the sovereign command by being politicized biological body. Based on the definition of *homo sacer*, we may argue that what is constituted by biopower is *homo sacer* who is living death. While the term of death is symbol of being outside of law, the term of living represents being included into law through exclusion. This means that they are living as result of their death. For Agamben, with power to declare people who are reduced to bare life, man’s natural life is included in the mechanism and calculation of power (1998: 113). Agamben claims, as a result of emergence of biopolitics, natural life became the place of the sovereign decision (1998: 129). According to Agamben, while deciding on who are abandoned by law and reduced to the level of biological life, the sovereign performs its original task of producing politicized bare life. (1998: 6) According to Ojakangas, by performing this task, the sovereign establishes itself (Ojakangas, 2005; 7). Indeed, this sovereignty is constituted on its politicized bare life while producing bare life (Fitzpatrick, 2001).

Based on the power of the sovereign to decide who will be captured in the bare life, it can be claimed that politicized biological life is produced by twofold

operation of politicization and depoliticization. Firstly, “natural life is politicized since it is qualified by the sovereign in being unconditionally exposed to the threat of death (bare life can be killed without committing murder); second, good life is depoliticized through the disqualification of the subject’s right to speak (bare life cannot be sacrificed)” (Schaap, 2011: 32).

In the light of above, it can be claimed that the sovereign and biopolitics are linked with each other on the ban relationship. According to Anna Selmeczi, for Agamben, “it is crucial to study the sovereign and biopolitical models of power in parallel, because it is in the very intersection of these two—in the ambiguous zone of the sovereign exception—that we can locate bare life: the life that can be taken without committing homicide and to which we are all reduced contemporarily” (2009: 521). Therefore, not only biopolitics but also state of exception¹⁶ takes important role in Agamben’s understanding of sovereign.

Referring to the argument of Schmitt on the sovereign¹⁷, Agamben defines the sovereign as being outside and inside the juridical order at the same time.

¹⁶ Agamben bases his understanding of state of exception on the idea of Arendt that there is a contact between mass democracies and totalitarian state; they both built their sovereign power on the naked life (Agamben, 1998). Since state of exception is in the foreground in mass democracies, democracies are getting close to totalitarian states (Richard Ek, 2006). The political organization of both totalitarian and democratic states is not order. Rather it is threshold between order and disorder in which people pass from one side to another. Therefore in this organization, holding a person in the order is quite similar with putting him/her in the camp (Bos, 2005).

¹⁷ For Schmitt, “sovereign is he who decides on the exception” (1985: 5). Sovereign is not only related to normally valid order but go beyond it. This means that when there is a threat of transformation of a normal situation into the exception, sovereign awakens (Schmitt, 1985). Since there is no law adaptable to the chaos, the sovereign decide exception to guarantee the situation as a

Schmitt states that the sovereign guarantees the validity of law through declaring the state of exception. The juridico-political order has the structure of an inclusion of what is simultaneously pushed outside. The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular force of law consists in this capacity of law to maintain itself in relation to an exteriority (Schmitt, 1985).

Agamben builds his theory of state of exception¹⁸ on the idea of Schmitt based on the idea of suspension of law for the preservation of the juridical order. Yet, while Agamben heavily draws on Schmitt's work, they cultivate quite different conceptions of exception (Huysman, 2008: 166). While "in the Schmittian conception of exceptionalism, the dialectic between norm and exception is a central element of political dynamics, [Agamben's] notion of the exception-as-the-rule combines the collapse of the dialectic between norm and exception—or, in his terminology, law and anomie—with a specific reading of the camp as a locale and a matrix of the direct exercise of the sovereign power upon the physical, bodily life of people" (Huysman, 2008:171-172). Indeed, Agamben's idea of state of exception is

whole in its totality. For Schmitt, "here the decision must be distinguished from the juridical regulation, and (to formulate it paradoxically) authority proves itself not to need law to create law" (Schmitt, 1985: 19-22).

¹⁸ According to Humphreys, "Agamben identifies the state of exception as a modern institution, with roots in the French revolution, ascendancy during the First World War, and dominance by the mid-20th century as the 'paradigmatic form of government.'" (Humphreys, 2006: 678).

based on the indistinction between legal and illegal, public and private, life and norm, the political and the juridical. In this respect, Agamben claims that:

In truth, the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside [of the juridical order] do not exclude each other but rather blur with each other (2005:23)

It can be claimed that Agamben's logic of exception consists of two points: Schmitt's theory of the sovereignty of law and Benjamin's theory of mythical violence over bare life. For Schmitt, the state of exception is related to a state of emergency. Since the state of emergency threatens the existence of state, state suspends the normal order to solve this condition. Yet, for Agamben the state of exception is more related to exclusion. But what is excluded during state of exception is still in relation to the rule of the sovereign in the form of suspension enacted by the sovereign (Agamben, 1998). Therefore, while Schmitt puts the sovereign outside the sphere of law (sovereign declares the state of exception to protect viability of law), for Agamben the sovereign stands at the threshold between fact and law as being in relation with both of them. On the other hand, in the essay of *Critique of Violence*, Benjamin questions the conventional belief that violence is employed by law as only means to consolidate the justice. In contrast to this traditional belief, Benjamin claims that:

For the function of violence in lawmaking is twofold, in the sense that lawmaking pursues as its end, with violence as the means, what is to be established as law, but at the moment of instatement does not dismiss violence; rather, at this very moment of lawmaking, it specifically establishes as law not an end unalloyed

by violence but one necessarily and intimately bound up with it, under the title of power. Lawmaking is powermaking, assumption of power, and to that extent an immediate manifestation of violence. Justice is the principle of all divine ends making, power the principle of all mythic lawmaking (Benjamin 1996: 248).

From this passage we can derive that the sovereign is not only using violence for the creation of justice but also employing violence to create power over life. Therefore, in the view of Benjamin, it can be claimed that, since violence is mean of sovereign, sovereign is about placing life in the state of exception as bare life. This means that as symbol of sovereign violence is not outside the law. Yet it is at the threshold outside and inside. By incorporating the notion of the sovereign in Schmitt and violence in Benjamin, we can claim that for Agamben the state of exception is where there is no difference between law and force, and where although individuals are not subject in law and but subject to it. Therefore, we can claim that the state of exception exists in neither outside nor inside of law. This place is defined by Agamben as the threshold between biological life and political life, in other word, *zoe* and *bios*, where the new life created through the sovereign act of ban; inclusive exclusion. He claims that “the relation of the exception is the relation of ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather abandoned by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable” (1995:28). As we remember from the previous part, this place is completely concrete place of biopolitics.

Recall that, politicized naked life is produced by the sovereign at the threshold of between biological life and political life (state of exception) and biopolitics is related to the disappearance of the line between these spheres, we can understand that the human rights, by creating a new life, performs a biopolitical tool for the sovereign. In this respect, sharing the same genetic, the declaration of human rights is twin of the sovereign.

If we evaluate the refugee in terms of the political relation-ban relation, we can see that they are among those who are forced to live outside the legality by the sovereign. As a result of the ban relation, the refugee is divested from their rights and thus reduced to a life that can be killed without legal punishment (Kalyvas, 2005). As we remember from the previous chapter on Arendt's conception, the condition in which the refugee is thrown back is the rightlessness. Yet, in contrast to Arendt, for Agamben this rightlessness is the artificial condition created through the abandonment. It is because the refugee are not just excluded from the political sphere but they are also included in the sphere as an outsider who is controlled by the tool of the sovereign-human rights- under the domination of the sovereign. It is artificial because it is created by the sovereign to guarantee the normal system. This means that stateless are thrown back to exception (inclusive-exception) to provide the continuity of the political order based on the state sovereignty. As it is seen, the refugee in our contemporary world is the one of the most decisive figure for the explanation of ban relation in which *homo sacer* exists.

Agamben does not see any hope in granting (human) rights to these people since he also believes that granting rights is one of the biopolitical ways to constitute biopower over the life. Therefore, one might argue that considering the role of human rights in biopolitics unveiled with the refugee situation, Agamben does not evaluate human rights as a check on the sovereign, which can be used to protect the refugee against sovereign. Rather, human rights make refugee being under the limitless power of the sovereign. Yet, Agamben does not only reject human rights he is also against any type of rights. As Kalyvas (2005) underlines, Agamben asserts that the new politics which carries hope for future will be nonstatal and nonjuridical politics.

According to Agamben, the ban relation in which the *homo sacer* born out creates a new sphere of action (1998:82). It is the sphere where the life becomes sacred. This sphere is created by the sovereign decision on the state of exception. He claims that “ the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life – that is, life that may be killed but not sacrificed – is the life that has been captured in this sphere ” (1998: 83). He describes this sphere in the image of the camp.

3.4. The New Political Sphere: Camp

According to Agamben, when the state of exception becomes the rule, the space of camp is opened. Agamben claims that “the camps constitute a space of

exception in which not only is law completely suspended but fact and law are completely confused” (1998: 170) “In the camp, the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order” (Agamben, 1998: 172). The important characteristic of the camp is that “the camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space” (1998: 170). As a result of this characteristic, the camp is the structure in which the state of exception exists normally.

In the camp, it does not make any sense to question whether what happened in the camp is illegal or legal since “the camp is a hybrid of law and fact in which the two terms have become indistinguishable.” (Agamben, 1998:70) In this context, he argues that:

Only because the camps constitute a space of exception in the sense we have examined – in which not only is law completely suspended but fact and law are completely confused – is everything in the camps truly possible. If this particular juridico-political structure of the camps – the task of which is precisely to create a stable exception – is not understood, the incredible things that happened there remain completely unintelligible. Whoever entered the camp moved in a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense. (1998: 170)

For Agamben, the camps are produced when the modern state enters into the crisis and the state starts take the care of nation’s biological life as one of its task (1998). Since the old nomos of nation-state (land-order-birth) was destroyed due to

existence of people who are contradictory with old nomos of nation state traditional mechanisms cannot regulate this new situation any more. Solution for this crisis is the camp, in other word, permanent state of exception. The camp is the new hidden mechanism that regulated the inscription of life in the order. In this respect, Agamben defines the camp as the new added element to the nomos of nation-state (land-order-birth). In similar way with Arendt, Agamben thinks that thanks to camps, nation states have been able protect their existence.

That is why the camp is labeled as “the new biopolitical nomos of the planet” in the work of Agamben. As a last point in the work of the camp, he also urges the world to realize that “the camp replaces polis as the contemporary biopolitical paradigm” (Ek, 2006: 369). In this context, Agamben (1995) points out that the camp is the most absolute biopolitical space in which inhabitants lost their political identity and fall into the bare life. The “essence of the camp consists in the materialization of the state of exception and in the consequent creation of a space for naked life as such” (Agamben, 2000: 39). Indeed, the camp is the political space where politics becomes biopolitics, fact and law become indistinguishable and inhabitants become the *homo sacer*. Moreover, for Agamben, “the camp is a management technology best suited to the production of naked life on the threshold” (Ek, 2006: 368).

According to Agamben, in the world many places can be defined as the examples of the camp, such as concentration camp, refugee camps, and transit

zones at the airport, detention centers for refugees. Similar with the other types of camp, in detention centers for foreigners and transit zone in international airport normal order is suspended and decision on whether people are treated in humane or inhumane way is left not to the law but to the figure of the sovereign named as the police in such places (Schaap, 2011).

As it is known, the refugee camps are temporary buildings which have been settled and run by the United Nation High Commissionaire for Refugees (UNHCR), governments, and NGOS. The refugee camp, in theory, is built by the aim of providing protection for stateless people with the intention of being temporary. Yet, in reality, the refugee camp became place where many of inhabitants have lived for long time in unhygienic and insecure condition. Some of the inhabitants live there during their life time. Inhabitants of the camp are represented as illegal in the residence countries, thus they are unable to have any political right to be recognized. In general, in contrast to the International human rights standards, their human rights are not met in even the camps built by the United Nations. Refugees in the camp are usually deprived of the right to life, liberty, the right to recognition before the law, the right to not to be held in arbitrary detention, the right to freedom of movement and residence, the right to leave any country, the right to seek and enjoy asylum, the right to nationality, the right to own property, the right to work, to free choice of employment, the right to have a standard of living adequate for the health and well-being of themselves and their families. These human rights are

denied to inhabitants of the camp although they are guaranteed for all human being. Moreover, according to UNHCR, arbitrary and prolonged detention including immigration detention and restriction in closed refugee and displaced persons camps, administrative detention¹⁹ of the stateless people are increasingly common around the world (UNHCR, 1997). Although there is little information about the calamity of the stateless persons in the detention because they are hidden by the government, the world is aware that they are living a life which is left to the state, even to the guardian of the detention centre. It is what Agamben talks about when he refers to the clear domination of the sovereignty on the stateless people without any mediation in the camp (biological space). Moreover, according to Report of the UN Working Group on Arbitrary Detention, “a straight analysis of the statistics indicates that in some countries the number of noncitizens in administrative detention exceeds the number of sentenced prisoners or detainees, who have or are suspected of having committed a crime” (United Nations Human Rights Council, 2008, 18). This point can also be considered an indicator of the argument of Arendt that the innocence of these people is the main reason behind their plight. It shows that being stateless is worse than the condition of those who committed crime. While these people are still protected by the law during their stay in prisons, the

¹⁹ It is a kind of detention of individual by the state for security reasons without trial. It is used by states to hold immigrants those who arrived at the country without having legal documents and is used as interim step until immigrants, rejected asylum seekers are deported and asylum seekers obtained the legal status of refugee.

stateless persons usually do not have such kind of protection. According to Mathew

Holt:

Refugee camps are zones of exclusion from law, or, more profoundly, from justice, and have the fundamental tendency to place the refugee and/or asylum seeker into a position of not only guilt before innocence but, and more cryptically and insidiously, of life before entitlements—that is, they are treated as specimens of (dubious and suspicious) health, security and order before they are treated as humans bearing inalienable rights. In other words, they are reduced to their biological being rather than promoted in their political being (Holt, 2003:90).

As Robinson claims, the stateless people, as all inhabitants of camps, are subjected to transformation of their life to politicized naked life. As a result, while entering the camp, they become the *homo sacer*. Therefore, they can be tortured and ill-treated without their death being seen as murder. As it is known, throughout the world, in almost all refugee camps victims have been subjected to inhumane treatment including ill-treatment, torture, etc., which is contrary to the international human rights standards. If we follow the idea of Agamben, we can realize that detainees were not subject to inhumane practice because of ill-practice of this or that state. At that point, Agamben calls us to ask the correct question to understand the logic and mission of the camp. According to him, we should not ask how people behave in such inhumane way, but rather we should question “carefully the juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime” (1998: 171). Indeed, focusing on the authorities of camp, or the type of state in which the camp is established is

completely a wrong way to find out a reasonable explanation about cruel treatments in the camp. Rather, we should acknowledge that everything is possible in the camp because not only law is completely suspended but law and fact are completely confused (1998). Thus, it is meaningless to think what happens in the camp in the context of nexus of legality or illegality.

For some scholars (Guild 2003; Johns 2005; Puggioni 2006), the reading of the camp by Agamben ignores what happens in the camp and the significance of the human rights since such reading focuses on the life detached from any mediation between the sovereign power and body. (Huysmans, 2008: 172). Agamben is always aware of various demands for human rights to end the state of exception. However, such demands, whatever their intention is, work to establish new foundation for the sovereign power whose power is weakened with the existence of the stateless people. Also they expand the exception (for example, camps all around the world) which becomes increasingly rule. (Hussain & Ptacek, 2000). Indeed, human rights strengthen the sovereign in the way of bringing human life under the control of law to exercise unlimited domination over it.

In conclusion, on the one side, the camps appears as the form of organization chosen by the sovereign as organization to perform task of controlling, caring or using naked life (Ek, 2006). On the other side, human rights are biopolitical mechanism of sovereign which repair the sovereign power which is damaged by the existence of the stateless people. Therefore, both of them are

collaborator of the sovereign. As a result, human rights cannot be mechanism to abolish camps or to protect stateless people in the camp. While Arendt offers right to have right as main right to resists the legacy of death camp, Agamben insists that referring to any type of human rights collapses back into the biopolitics. Therefore, for Agamben, the role of human rights is not about closing down the camp. Rather, its role is to strengthen the sovereign's control over the bare life by inscribing the biological life into the political life. Indeed, human rights have also a role in the consolidation of the sovereign place: the camp. While he radically rejects the human rights as a possible solution for the domination and violence of the sovereign which is most visible in its own sphere-camp-, he offers politics beyond human rights.

3.5. The Role of Human Rights

Agamben tries to underline certain fundamental events²⁰ of modernity which represent the incursion of *zoe* (biological life) into the bios. There are mechanisms, ideas, tools which provide the incursion of *zoe* into the bios. Thanks to these mechanisms, the sovereign is able to produce the naked life. The declarations of human rights are among these biopolitical mechanisms. For him,

The first recording of bare life as the new political subject is already implicit in the document that is generally placed at the foundation of modern democracy: the 1679 writ of habeas corpus. Whatever the origin of this formula, used as early as the eighteenth century to assure the physical presence of a person before a court of

²⁰ In the book of *Homo Sacer*, Agamben (1998) mentions various types of biopolitical mechanism.

justice, it is significant that at its center is neither the old subject of feudal relations and liberties nor the future citizen, but rather a pure and simple corpus. (Agamben, 1998: 123)

According to Douzinas, there has been “the inexorable rise of registration, classification and control of individuals and populations” as result of the declaration of human rights (2007: 129). Agamben claims that human rights take important role in the inscription of biological life into the juridico-political life by blurring the distinction between *zoe* and *bios*. One might argue that for Agamben as a result of human rights the life of man (*zoe*) began to take place in the place of political being (*bios*). Yet, this does not mean that by virtue of the human rights who is excluded from society (for example; women, Lesbian, Bisexual, Transgender (LGBT) individuals, immigrants) are included in society. It does not mean that human rights constitute a political subject. Rather, the subject created by human rights is neither man nor the political subject; neither pure biological being nor political subject. On the other hand, the figure implied in the declarations of rights of man is both citizen and member of universal humanity but is not fully each of them. In this context, he points the ambiguity of the title of the French Declaration of the Rights of Man and Citizen. He argues that “in the phrase *La déclaration des droits de l’homme et du citoyen*, it is not clear whether the two terms *homme* and *citoyen* name two autonomous beings or instead form a unitary system in which the first is always already included in the second”(Agamben, 1998 : 126-127). In contrast to Arendt (who argues that the man is included in the citizen, thus the subject of human rights is citizen) and many human rights supporters (who shows the man as the subject of

human rights), Agamben claims that “a simple examination of the text of the Declaration of 1789 shows that it is precisely bare natural life – which is to say, the pure fact of birth – that appears here as the source and bearer of rights” (Agamben, 1998 : 126-127). He means that it is bare life which is transformed into the politicized bare life by its inclusion into *bios*. Thus, the subject is not man or citizen but a creature including both man and citizen that 1789 Declaration was talking about. Indeed, the subject of the human rights is the politicized-biological life, which is the life of *homo sacer* for Agamben. Indeed, human rights play role in producing a new limit sphere of life constructed between biological and political life; it is the politicized naked life. Agamben claims that:

On the one hand, the nation-states become greatly concerned with natural life, discriminating within it between a so-to-speak authentic life and a life lacking every political value. On the other hand, the very rights of man that once made sense as the presupposition of the rights of the citizen are now progressively separated from and used outside the context of citizenship, for the sake of the supposed representation and protection of a bare life that is more and more driven to the margins of the nation-states, ultimately to be recodified into a new national identity (1998: 132).²¹

One might argue that the existence of the refugee whispers us crisis of nation state by showing the distinction between man and citizens although the nation state is constructed on the idea that they are identical. This creates damage in

²¹ Agamben talks about two phenomena that loosen the link between nation-birth. In this context, he claims that “the immense increase of refugees and stateless persons in Europe (in a short span of time 1,500,000 White Russians, 700,000 Armenians, 500,000 Bulgarians, 1,000,000 Greeks, and hundreds of thousands of Germans, Hungarians, and Rumanians were displaced from their countries) is one of the two most significant phenomena”. The other is the contemporaneous institution by many European states of juridical measures allowing for the mass denaturalization and denationalization of large portions of their own populations (1998:132).

the logic of nation state. At that point, human rights give treatment service for nation states. It is performing this task by putting the birth (*zoe*) at the centre of law (*bios*): inscribing biological life into political life. Indeed, we can claim that the human rights have made an endeavor to re-hidden the crisis of nation state unveiled by the existence of refugees. While human rights are trying to include the excluded one into the realm of politics, it not only politicizes the *zoe* but also depoliticize the *bios*. As a result of this two-facet act, two-facet sphere of life in which human being (who has two faces-death and life) live emerges. In contrast to main argument claiming that these people are protected by the human rights, they are left to the control of the sovereign; they are left to the pity of the sovereigns. This means that not biological man in the *zoe* but politicized-biological man and depoliticized political being living at the threshold between fact and law, is left to the mercy of the sovereign. Moreover, for Agamben what we need to see in the declaration of rights of man is an ideological association between human rights and nation and the fact that both of them are structured on the birth. He points out that the first article- all men are born free and equal- as proof of his main claim (it is bare life that is the original source and bearer of rights) (Schaap, 2011). In other words, it is not *bios* (life with a form) which is the source of rights. Taken bare life as the basis means the fact of being born is politicized.

Moreover, Agamben evaluates human rights as humanitarianism since it separates the rights of man from the rights of citizen. He argues that as a result of

such humanitarianism separated from politics, the sovereign is reproduced. In this respect he mentions that:

The separation between humanitarianism and politics that we are experiencing today is the extreme phase of the separation of the rights of man from the rights of the citizen. In the final analysis, however, humanitarian organizations—which today are more and more supported by international commissions—can only grasp human life in the figure of bare and sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight [...]. A humanitarianism separated from politics cannot fail to reproduce the isolation of sacred life at the basis of the sovereignty, and the camp—which is to say, the pure space of exception—is the biopolitical paradigm that it cannot master. (Agamben, 1998: 133-4)

For Agamben, humanitarian efforts to cope with the problem of refugee are not successful. It carries on the state of exception which transforms the refugee into a sacred figure. Also, efforts to develop a law to be above the nation have not been/will not be successful because all these efforts have remained/will remain tied to the nation states. Furthermore, in international political atmosphere it is clear that if states are concerned with their international prestige and aspire to remain respectable members of international community, they need to structure their legitimacy on the ground of human rights. This means that the international order is structured on the bare life which is produced by human rights. Since human rights are the biopolitical mechanism which provides inclusion of *zoe* into the *bios*, the international system depending on the category of human increasingly produce more and more the states of exception, or more and more camps.

According to Whyte, “we observe the worst reflection of such inscription as legitimization of state militarism through human rights discourse” (2009: 153). The humanitarian interventions which legitimize themselves by referring to human rights can be shown as a descriptive example of the legitimization of state militarism through human rights discourse.

In conclusion, Agamben blames the human rights for being the biopolitical mechanism of the sovereign which serve for repairing the crisis of nation-state by strengthening the inscription of bare life into the bios. Since the explanation of human rights in the context of biopolitics and any struggle based on human rights contributes to the intervention of the sovereign into human life, he focuses on the need for politics beyond human rights. Unlike Arendt’s point including the call for “right to have rights” as main human rights, he reaches to the conclusion that we need politics which will be non-judicial (2000: 112).

One might argue that thanks to Agamben, we have a critical evaluation of human rights in terms of the relation between the sovereign and biopolitics. It is clear that as an important issue of modern politics, human rights theory is required to be evaluated in more critical sense than the conventional approaches do. Yet, this does not mean that the theory of Agamben is completely acceptable. It might be argued that his theory on human rights cultivates certain contradictions and shortcomings. Therefore, as he offers for the theory of Foucault on biopolitics, his own theory is also in need of being completed or modified.

First of all, although Agamben demonstrates the problematic notion of human that is insofar presupposed as either those who are citizen and those who are represented in terms of their vulnerability; it is not clear how human rights could be biopolitical power while the politicized bare life is produced by placing individuals in a state of rightlessness. Indeed, how human rights produce bare life by injecting rights to people who are left to rightlessness condition. This means that while they are already in the rightlessness condition, how human rights transform them into politicized naked life. We may claim that Agamben is right when he points out the contradictory nature of the subject of human rights on the basis of the homo-sacer, since the human rights seem as if they refer to a subject who has already rights (citizenship rights) or who have no rights. Yet, in my view it seems quite contradictory to claim that the subject of human rights is living dead who will never be the part of the political sphere. In my view, human rights can give a chance for those who are not in the political community to be part of it although Agamben refuses such possibility in a radical manner.

Moreover, argument of Agamben based on the idea that political struggle in terms of rights brings inscription of bare life into the politics seems also problematic. As a result of such understanding, we are not allowed to see any tactical use of human rights in particular context of the social and political struggles. According to Mills (2008:101) and Ivison (2008: 194), in contrast to Agamben, Foucault was able to recognize potential strategic value of rights in

political struggles although he criticized human rights. Yet, in the theory of Agamben, any attempts of stateless people in the context of human rights can only make them being trapped in the same system. At that point, Edkins and Pin- Fat argue that “Agamben are gesturing toward the conclusion that bare life (as) a power- less life and, correspondingly, that life constituted within biopolitics cannot be a political life” (Edkins and Pin- Fat 2004: 7). They reject the idea of Agamben that resistance of the stateless based on human rights is not possible just because their life and the discourse is *zoé* and never *bios*. In this regard, they show the example of the resistance of the stateless people to accept the bare life; hunger strike of asylum seekers who sewed their eyelids and lips shut in. Moreover, Rancière also criticizes the understanding of the camp in Agamben. He argues that camp is the parcel of the political rather than a space of bare life. He claims that:

Politics does not exist because men, through the privilege of speech place their interests in common. Politics exists because those who have no right to be counted as speaking beings make themselves of some account, setting up a community by the fact of placing in common a wrong that is nothing more than this very confrontation (Rancière, 1999: 9-10).

Furthermore, Agamben’s solution as politics beyond any state seems quite ambitious. Politics without state seems so radical to actualize. In this context, Michael Ignatieff criticizes Agamben’s theory in terms of his total rejection of the current system based on nation states. They support a limited national the sovereignty by constructing their idea on the argument of Arendt. According to Ignatieff, Arendt teaches us that rights can be only be protected “by legitimate and

democratic nation-states, which guarantee rights as part of their constitutional architecture and which provide clear remedies in law and a guarantee of civic inclusion to all its members regardless of origins" (2001:17). For Ignatieff, legitimate institutions can guarantee the protection of human rights. He also mentions that the nature of the sovereignty is changing since states are becoming respectful to international human rights law. Thus it is utopian to reject the nation state completely; "national constitutional regimes represent the best guarantee of human rights (2001:35). Moreover, "*In The Necessary Nation*", Gregory Jusdanis proposes limited national the sovereignty. What he offers is a federal system which "can prevent endless territorial fragmentation by allowing various groups to exist in a corporate political structure that does not threaten their ethnic, racial linguistic or religious values" (2001: 218). He opposes the idea of future community based on the absence of state by questioning how diasporas defend themselves when it is needed in the absence of a state (2001: 218). Generally speaking, both authors believe that what we need is the limited national the sovereignty and state which would be more respectful with the international human rights. For them, to give up human rights together with the whole juridico-political system is both utopian and meaningless in reality.

In the light of discussion of Agamben and critiques of his theory, I can say that although there are missing points, and contradictions in his theory, Agamben is one of the important figures in the evaluation of the human rights by reference to

the paradox of human rights mentioned first by Arendt. Against the liberal theory which carried the unquestionable belief in the rule of law and universal human rights, Agamben shows us an alternative evaluation of the human rights by referring human rights of stateless people. Yet, total rejection of human rights, even any rights in the theory of Agamben has ignorance against political movement approaching human rights. Thus, in the following chapter, I will focus on Rancière's theory of human rights based on the idea that the human rights provide a resource for political actors to establish formal equality as an attempt to verify the reality of political equality in a situation of social inequality.

CHAPTER FOUR

4. HUMAN RIGHTS AS TOOLS FOR POLITICIZATION

4.1. Introduction

Rancière entered into the academic world with the publications focusing on an alternative reading of the history of the labor movements. Although at the beginning, the work of Rancière did not receive a wide audience, after his major book on political philosophy, *Disagreement*, interest in his works started to grow. Since then, his theory of politics based on the radical perception of democratic equality has become one of the main references in contemporary political thought (Deranty, 2000: 1).

One might argue that his argument on human rights is one of the most reference points for the studies evaluating human rights in the contemporary world. It is because he presents an evaluation of human rights which is neither totally optimistic nor pessimistic. While he accepts the failure of the human rights in the contemporary world, especially in the situation of the stateless people, he also sees a powerful hope in the discourse and practice of human rights.

Rancière's discussion of human rights is one of the significant attempts to think about the human rights in the condition of stateless people. In this context, in similar with the authors who focus on paradoxes of human rights he pursues his human rights reading on Arendt's influential essay from the *Origins of Totalitarianism*, 'The Decline of the Nation State and the End of the Rights of Man' (Whyte, 2009: 149).

Similar with his other works; he begins discussing human rights by re-defining human rights in the condition of stateless people which is already named as the paradox of human rights by Arendt.²² Yet, what differentiates his theory of human rights from arguments of other authors who follow the Arendtian remark is his effort to find a place for political possibility in the perplexities of human rights. In this way, he re-evaluates human rights in the condition of stateless people by showing the problematic sides of Arendtian diagnosis and by considering human rights in terms of his understanding of politics.

Rancière begins his famous article on human rights named as "Who is the subject of rights of man" by underlining the failure of human rights in the time period when they are the most popular. In this respect, he claims that in contrast to main promise of Universal Declaration of Human Rights which is that recognition

²²According to Chambers, "re-definition" of phenomena and ideas that his readers already have a clear sense and of those they can easily name is Rancière's preparatory work (2000:58).

of human rights will provide freedom, justice and peace to exist in the world²³ the world were subjected to barbarous events. In this context, he claims that: “The new landscape of humanity, freed from utopian totalitarianism, became the stage of new outbursts of ethnic conflicts and slaughters, religious fundamentalisms, or racial and xenophobic movements” (Rancière, 2004: 297). As a result of such events, the world faced the existence of people who are displaced from their homes and threatened by ethnic slaughter, which are called the stateless people whose rights are not protected by their country of origin. This means that people are drawn into the inhuman condition. For these people, the last hope is to approach human rights. This condition resulted in the transformation of the perception of the subject of human rights. Since then, in the eyes of world, human rights have “appeared more and more as the rights of the victims, the rights of those who were unable to enact any rights or even any claim in their name” (Rancière, 2004:297). In this context, Rancière shows Arendtian discussion as a proof of his evaluation. He claims that:

Arendt found there the "body" fitting the abstractedness of the rights and she stated the paradox as follows: the Rights of Man are the rights of those who are only human beings, who have no more property left than the property of being human. Put another way, they are the rights of those who have no rights, the mere derision of right. (2004:298)

Indeed, for Rancière, Arendt’s general conclusion on human rights in contemporary world is that “they were the paradoxical rights of the private, poor, unpoliticized individual” (Rancière, 2004: 298). Recall that, it is also the main

²³In the preamble of the Universal Declaration of Human Rights, it is written 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.

reason why Agamben rejects human rights as a political vehicle. Yet Rancière adds that what is behind the equation by Arendt is her consideration of political sphere as a sphere separated from the realm of necessity. This means that the sphere where human rights are located is not the political sphere. On the contrary it is the private sphere in which the abstract life, in other words, deprived life is entrapped.

Although Rancière believes that the analysis of Arendt seems to fit the new perplexities of the Rights of Man in the "humanitarian" stage, he tries to find what allows it to fit. This means that he tries to show in which condition or from which perspective this analysis seems to fit contemporary problems of human rights, one of which is human rights of stateless people. According to Rancière, it is the archipolitical perspective of Arendt on which her analysis of human rights of stateless people is based. In other words, her analysis is based on the distinction between "world-poor refugees" and "world-forming citizen" (Schaap, 2011: 36). Moreover, Rancière argues that such analysis articulated on the archipolitical statement is turned into a depoliticizing approach which is the most significant feature of the contemporary discussion on the Rights of Man. As we discussed earlier, for Rancière, this discussion is clearly illustrated by Giorgio Agamben's theorization of biopolitics (Rancière, 2004: 299). The common point of these approaches is the will to preserve the realm of pure politics. Yet, this will is what to reduce the realm of politics to "the sheer relation of state power and individual life",

which is called as “overwhelming historico-ontological destiny” by Rancière (Rancière, 2004: 299).

What we need is to re-evaluate human rights to see the real picture behind them in the stateless condition free from such kind of ontological trap. In this context, he chooses to reset the question of the Rights of Man—more precisely, the question of their subject—which is the subject of politics as well. Indeed, Rancière believes that there is a need to re-evaluate human rights for the situation of stateless people (what is called as perplexities of human rights by Arendt) in the context of the question; who is the subject of the rights of man?

Therefore, in the following part, I will discuss Rancière’s views on human rights in terms of the subject of human rights to understand his analysis of human rights of stateless people. In this way, firstly I will focus on the political subject from which the subject of human rights is deduced. Then, I will try to re-read human rights of the stateless people (which are named as perplexity of rights of man) in the light of understanding subject of human rights.

4.2. The Subject of Human Rights/Political Subject

For defining the subject of human rights, Rancière begins by a quandary on the subject of Rights of Man by Arendt. He summarizes Arendtian quandary as follows:

either the rights of the citizen are the rights of man—but the rights of man are the rights of the unpoliticized person; they are the rights of those who have no rights, which amounts to nothing—or the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen of such or such constitutional state. This means that they are the rights of those who have rights, which amounts to a tautology (2004: 302).

This means that we should decide whether the human rights belong to those who have no rights (for example stateless people) or those who have already had rights (for example citizens). In this context, one might argue that human rights are the rights of citizens or the rights of human (mere life) (Rancière, 2004: 302). At that point, Rancière argues that in the latter equation human rights seem to be a tautology since citizens have already had rights in their country. On the other hand, in the former equation human rights are void since those who have not rights are deprived of their political standings; they were also unable to use their human rights. In short, it means deciding whether the human rights are a void or a tautology (Rancière, 2004).

Rancière rejects both equations of the subject of human rights since they are just tricks. In contrast to choosing one of them, he questions the effort to define the subject of human rights. This means that the aim of Rancière is not to find alternative concrete subject of human rights. If we think so, it would be one of biggest mistake in the way of understanding Rancière. Rather than defining a subject, Rancière tries to show us that how problematic it is to define a subject for human rights is. In this context, he declares that:

If you presuppose that the rights belong to definite or permanent subjects that you must state, as Arendt did, that the only real rights are the rights given to the citizens of a nation by their belonging to that nation, and guaranteed by the protection of their state. If you do this, of course, you must deny the reality of the struggles led outside of the frame of the national constitutional state and assume that the situation of the "merely" human person deprived of national rights is the implementation of the abstractedness of those rights. The conclusion is in fact a vicious circle. It merely reasserts the division between those who are worthy or not worthy of doing politics that was presupposed at the very beginning (2004: 306).

In general, to cope with such a trick Rancière offers a new way of understanding for the subject of human rights: "the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not" (2004: 302). This means that the subject of rights of man is not the single subject who uses the rights that s/he possesses but the process of the subjectivization (Rancière, 2004: 302).

We may claim that such definition of the subject of the rights of man is deduced from understanding of political subject in the theory of Rancière. In contrast to Arendt, he claims that "they are surplus names, names that set out a question or a dispute (*litige*) about who is included in their count" (Rancière, 2004: 303). He argues that political subject is not definite subject who have reached to freedom and equality. Rather, political subject is a process of political subjectivization. It is the process in which surplus names brings the question about who reaches to freedom and equality and who do not. According to Rancière equality are not something defined in a specific place for specific people, but are open predicates as political predicates. Thus, they create dispute about whom they

concern and in which condition. The political predicate in the Declaration of Rights of Man is that all men are born free and equal. Here the question is about for whom and under which sphere these predicates are relevant.

He names this definition as political subjectivization which is the third way to understand subjects of the rights of man. Yet, Rancière warns us to realize the difficulty in understanding of the subjectivization in terms of a simple equation between rights and their subjects. For him, the subjectivization is not simple equation. Rather, it is something that we may figure out by focusing on the complex relation between rights and their “subjects” (Rancière, 2004: 302). Therefore, let me focus on the political subjectivization which is a major theme in Rancière’s theory by making a brief summary about background of the subjectivization, and his understanding of politics.

4.2.1. Political Subjectivization

Understanding of politics on which the political subjectivization is based in the theory of Rancière is completely different from Arendtian perspective called as archipolitical perspective²⁴. As I have already mentioned, for Arendt while the politics is “the form of life of those who are already destined for it, i.e. public man

²⁴In the book of *Dis-agreement*, Rancière talks about three political perspectives. They are archi-politics, para-politics, and meta-politics. In the context of archi-politics based on thought of Plato politics is defined on the basis of the strict and closed distribution of parts. Para-politics based on thought of Plato defines political antagonism as competition, negotiation of interest. Meta politics represented by Marx is structured on socio-economic antagonism. Based on these definitions, he describes Arendtian approach as archi-politics

(who usually turns out to be property-owning males) who is taken to be world constituting the way of life of those subject to economic necessity (workers, women, etc.) is by definition un-political; it is a deprived form of existence since they are world-poor” (Schaap, 2011: 35). Rancière rejects to define the subject of human rights from such point of view since he sees such understanding as vicious circle. It is vicious circle since it is based on the rigid opposition of the public and private sphere. To be clearer, it is circular since to participate in politics one must first be recognized as being able to speak in public sphere. Yet, in order to be recognized as qualified to participate in public sphere, one must be a participant in politics, acting and speaking within a community of equals. It is vicious since “it tends to naturalize a social division between those who are qualified for political life and those who are not, those who have time for politics and those who do not” (Schaap, 2011: 34).

We may claim that because of her archipolitical perspective of politics, Arendt argues, the subject of human rights is trapped into the private sphere which is outside of the politics. Thus, we should evaluate human rights, more specifically, the subject of human rights in a different perspective on politics. It is the perspective which considers the political not sphere separated by a boundary between private and public but the sphere in which the disputes over the boundary is held.

For Rancière, political is “the field for the encounter between process of equality and policy in the handling of a wrong” (Rancière, 1992: 59). He defines this sphere as the political subjectivization. To understand what the political means, we need to have a close look on what the police order and process of equality means in the view of Rancière.

According to Rancière, what we define as the politics in contemporary world is the police order²⁵ not the politics. Indeed, what Arendt talks about politics as the structured sphere in which everything has its place as distinct and equal is also police order in the view of Rancière. Police order means generating community consent relied on the distribution of shares, places and functions. It regulates the distribution of the roles and speaking positions in terms of assigning those who can participate into the public discourse (Rancière 2001: 20). The police determines who has part in society since it defines “the allocation of ways of doing, ways of being, and ways of saying” (Rancière, 1999: 29). Rancière claims in an interview that “there is therefore an underlying division that dictates what can and cannot be said, shown, or done. This creates permanent sets of norms which in turn establish a community that decides who is included or excluded, whose words are significant

²⁵At that point, Rancière claims that “the term of police no doubt poses a few problems” since “the word police normally evokes what is known as the petty police, the truncheon blows of the forces of law and order and the inquisitions of the secret police”(1999:28). Yet he claims that he uses the term of police “to refer to the organization of society, the dividing up and distribution of the various parts that make up the social whole” (Chamber, 2000:61). To see why Rancière uses the term of police, please see the book of Rancière, *Disagreement*.

or insignificant, who is entitled to govern others and who is not” (Ranciere&Truls, 2007).

Moreover, the logic of police order is being “an order of the visible and the sayable” (Rancière, 1999: 29). This means that the police order decides not only who counts but also who do not count at all. According to Chamber, this notion of those who "do not count", those who have "no part" in the given police order, connects Rancière’s concept of "police" to his novel understanding of politics (2000: 63). It is because the politic challenges the police order to assign equality for those who are outside the police order. (Chamber, 2000: 67). This challenge is actualized through the method of equality since the equality is the basis of the process of emancipation from the police order. This emancipation process includes attempts to redistribute what can be said, shown, or done. Thus, the term of equality takes an important place in Rancière’s theory of politics²⁶. Yet, the understanding of equality by Rancière is quite different from traditional political theories. While in the most political theories from right to left²⁷ equality is not something people creates or guides people but something to be received by people

²⁶Let me clarify understanding of equality in Rancière: although the traditional political theorists are divided into between those who supports liberty or those who supports the equality, in the view of Rancière, there is no need to draw line between equality and liberty since liberty is within the equality. “If we put matters this way, then the question for most traditional political theories is not: liberty or equality? Rather, it is: equality in what? What is it that everyone is to be equal in? What should be the central value? Should we be equal in liberty, in opportunity, in income, in access to goods (and what goods?), in some combination of these, or in something else altogether?” (Deranty, 2000:7).

²⁷ “For libertarians, the state protects liberty and does nothing more. For liberals, it both protects liberty and ensures (and sometimes creates) opportunity. For most socialists, the state ensures and creates access to goods and/or income equality”(Deranty, 2000: 6).

from a source outside themselves, for Rancière the equality is something created by people (May, 2000: 69). Rancière argues that “equality is not a given that politics then presses into service, an essence embodied in the law or a goal politics sets itself the task of attaining. It is a mere assumption that needs to be discerned within the practices implementing it” (Rancière, 1999: 33). Then, “equality is not a value to which one appeals; it is a universal that must be supposed, verified, and demonstrated in each case” (Rancière, 1992: 60). Moreover, equality is not pre-condition for politics or an end to be pursued by politics. Rather, it is the axiom of the politics. In general, Rancière’s understanding of equality is based on the assumption of an equality of anyone with everyone, which gives rise to politics (Schaap, 2011: 39).

When the equality is verified, demonstrated by those who are not included in the hierarchical social order, “a conflict between those who act in the name of their equality (and those in solidarity with them) and the social order that presupposes their inequality” occurs (Rancière, 1992: 73). This is called as disagreement by Rancière. In his view, disagreement is related to a kind of speech situation in which interlocutors at once understands each other but they do not understand what the other is saying (Rancière, 1999). At that point, it should be claimed that a disagreement Rancière talks about is not related to competing views over an issue but it is about who has voices. It is not about demanding something but it is about having a voice to demand. It is because demanding is unavailing effort without

having voice. Indeed, “worker’s demand, women's demands, the demands of those who are marginalized by race, class, immigration status and so on are not recognized as demands because they are not recognized as people capable of making real demands.” (May, 2000: 74) Thus, “a disagreement, then, does not centre primarily on any set of demands that are made, but rather on who gets to speak and make demands”. (May, 2000: 74)

Another important point in the process of equality which is the emancipation tool from the police order is about to the method of such disagreement. According to Rancière, rather than announcing demands, people who are not counted by the police order as equal act as if they are also counted, in other word, as if they are equal. This is important point of the characteristic of political subjectivization which we will discuss later.

Moreover, in the definition of political (subjectivization), Rancière defines the wrong as the failure of police order which appears with the emancipation process. For him, “by expressing their equality, those who have not part display for all to see that the police order has all along denied their equality. This means that “the wrongness lies precisely in the failure of the police order to recognize this equality” (May, 2000: 75). In general, for him, the police wrongs the equality by a miscount in the count of parts of society²⁸. In this context, the process of equality is

²⁸ According to Rancière, there are several ways of summing up of the parts of the whole. “It may be made up of individuals, social groups having their interests, communities, each endowed with its recognition of its identity” (Rancière, 1999, 123)

about handling the wrong. According to Rancière, when the wrong is displayed by the group who express their equality, “what Rancière calls a single or polemical universal emerges”²⁹ (May, 2000: 76).

As we mentioned above, a police order is based on the division between those who have a part from those who do not. It is established by common distinction between men and women, blacks and whites, gays and straights, immigrants and citizens. While the police order is based on such descriptive distinction, the equality is an empty term for Rancière. “In this sense, the term equality has no content. It serves instead to mark the refusal of a particular content posited by the police order.” (May, 2000: 77) Thus, in the process of encounter between the police order and those who are excluded by the police order, which is called disagreement, the failure of the police order based on the defined particular distinction is handled by the empty universal equality. Here the importance of universality in the view of Rancière comes to scene. For him, equality is only universality in politics. Here the universality is an important logical operator, because the universality is not related to the place of ideal but the place of subjectivization. In this context, he believes in the importance of role of universality in handling wrong, by social protest. For Rancière, universality may develop through the mediation of legal and political declarations of equality. They are powerful sources in the struggle for more just society. Yet, he argues that the human

²⁹ “It is a singular universal because it is the equality of a particular group in a particular set of social circumstances” (May, 2010: 76).

rights declarations can be a source only “if they are taken up confidently with a view to verifying them rather than regarded as overly optimistic aspirations or illusory misdescriptions of reality” (Davis, 2010: 84). It what differentiates Rancière from liberal theories that see human rights as universal aspiration and focus on its normative power but neglects its political power. While liberal theories is based on logic of procurement of human rights for stateless people, in the theory of Rancière the power of human rights comes from dispute of stateless people to reach their rights by themselves. While today human rights are given to those who are dismissed from the police order by those who are included, in the theory of political subjectivization human rights takes its power from its role in the process of inclusion of those who are outside the police order.

At that point, the example given by May to explain the political subjectivization might be helpful for us to understand how the declarations of human rights are important in the process of political subjectivization as a form of universal. May talks about the lunch-counter sit-in as tactic of US civil rights movement of the 1960s. He defines this movement as follows:

As a protest, integrated groups of three or four people would go to a discriminatory lunch counter, sit together, and wait to order lunch. They did not carry placards or shout slogans. They acted like customers, asking for menus and seeking to order a meal. They were usually followed into the restaurant by segregationists who taunted and sometimes beat them, and then by police who arrested them. But they did not fight back. They made it clear that they were there to order lunch like other people, and that they expected to be served (May, 2010: 72).

What participants in the sit-in movement did is to express their equality and to stage of wrong; the police order denied their equality. It is clear that people acted out of the presupposition of equality. The way to express their equality is not to call authority to hear them but to act as if they are equal. What they do is to verify the universality. At that point, we may argue that the Declaration of Human Rights can be the one of the main source for people who are ignored by the police to use in their emancipation process. If we adopt the human rights in this example, we can say that what the workers realize is that they have rights they have not and they have not rights that they have. What they do is to verify the universality. They do not accept the power of the human rights as a value. Rather, they use it as power tool in their subjectivization by verifying the political predicates such as equality, freedom, etc. For Rancière, when people who have no voice in the police order stage the wrong of the social order and disturb it by acting as if they have voice on the basis of the equality presumption, they are the political subject. In other words, they are in the process of political subjectivization.

If we sum up what we discuss until now, we can reach that the police (the distribution of roles and places) is interrupted by the verification of equality. This means that it is interrupted by a struggle of those who are invisible part in the society, who are not able for politically speaking, and for recognition of their political existence (Davis, 2010: 84). The struggle shows the wrong (miscount of parts by the police). At that point, “the aim of handling the failure of the police is to

supplement the police with a part of the no-part identified with the community as a whole” (Rancière, 2001: 21). In the light of this, we can say that the sphere where the political subjectivization exists is the sphere of struggle. We may claim that subjectivization is the struggle to “re-count to redress the wrong of the miscount” (Davis, 2010: 84). While the police decides which subject thinks and in which structure they think and act, politics is something that breaks ongoing order, in other word, police by disagreement. For Rancière, in the disagreement we observe that the order is not able to totalize the situation. It is the moment when the political subjectivization comes about. Therefore, the moment of dissensus forces the totality to create harbor for supernumerary. The place which supernumerary had is “the part of those who have no part” (Rancière 1999: 14). For Ernst van den Hemel, “it is included in a situation, but it does not belong to the situation” (2008: 22). Therefore, political moment consists of acting of supplementary subject who is included into the situation but does not belong to the situation. This means that “politics always involves the subjectivization of an agent who makes a claim to participate in an order in which it has no part” (Schaap, 2011: 39).

In the light of above, we might sum up the political subjectivization under three main characteristic defined by Davis: “an argumentative demonstration”, “a theatrical dramatization”, and “a heterologic disidentification” (Davis, 2010: 84). First, in his book of *On the Shores of Politics*, Rancière emphasizes on the political subjectivization in terms of its characteristic of logical and argumentative

demonstration. He describes the argumentative demonstration by referring to the 'syllogism' of emancipation (Davis, 2010: 84). With the example of a strike by Paris tailors in 1833 (which I mentioned above), he shows us that the major premises of syllogism (everyone is equal before the law) has been understood as a mere aspiration. Thus, there are subjects whose existences and capacities to participate in debate are ignored, and whose arguments are not considered as rational arguments by other parties. In this context, he supports that there is a need to verify the major premise with demonstration in the current condition. It is argumentative demonstration since it challenges the current situation in which some subjects are excluded by referring to the mere aspiration. It is one of the main characteristics of the political including demonstration of those who are invisible part in society for their recognition of their political existence by referring to the universal principle of equality³⁰. In this regard, Rancière believes in the power of political and legal declaration of equality if they are taken up confidently with a view to verifying them through the argumentative demonstration.

Yet, for Rancière, since it is clear that these groups are disadvantageous they need a trick to support their demonstration based on rational arguments (Davis, 2010: 85). Davis calls it as the ruse of theatrical³¹ which is the second characteristic

³⁰It should be noted that Rancière rejects to conceive the politics as debate between subjects who disagree but able to negotiate over specific issues.

³¹Davis claims that Rancière's politics is defined as 'theatocracy' by referring to Plato. He claims that Plato excluded theatre from his ideal city in Republic. It is because "the theatre was dangerous as a place of semblance in which actors are doing two things and being two people at the same time.

of political subjectivization (Davis, 2010: 86). This characteristic is visible in Rancière's eight theses of ten theses on politics in which the police's anti-political characteristic is defined by the denial that there is nothing to see (Davis, 2010: 86). While the police denies seeing, politics transforms the space where a subject's existence is denied into a space for the appearance of a subject.³² Political subjectivization involves pretending as if you are something you are not in order to become it. In this respect, Davis states that "for the sans-part this means pretending you are already equal participants in the political process from which in fact, by virtue of the 'wrong' of the miscount, you are excluded" (Davis, 2010: 86). Generally speaking, this characteristic means that the subjectivization is theatrical process in which those who do not belong to the political sphere because of lack of expertise in politics have political existence to be included in politics by pretending as if they are equal participants in the political process to become it.

Third characteristic of the subjectivization is "heterologic disidentification". (Davis, 2010: 87). It is "being together to the extent that we are in between - between names, identities, cultures, and so on" (Rancière, 1992: 62). Rancière defines the process of subjectivization as "a process of disidentification or declassification" (1992: 61). This is because subjectivization is not a formation of

Thus theatre challenges the ongoing organization of the society, hierarchical state" (Davis, 2010: 86).

³²Here, Davis states that while developing this argument, Rancière reinterprets Althusser's famous characterization of ideology as interpellation. "For Rancière, by contrast, the paradigm of the police order is provided not by the interpellative act of the officer who calls out 'Hey, you there!' but rather by another familiar gesture of ordinary policing, the instruction 'Move along now, there is nothing to see.'" (Davis, 2010: 86)

self but the relation of self to another. He defines the name as the name of outcast. It means “a name of those who are denied an identity in a given order of police” (Rancière, 1992: 61). Thus, this subject is an outsider or an in-between for Rancière. They are “between several names, statuses, and identities; between humanity and inhumanity, citizenship and its denial; between the status of a man of tools and the status of a speaking and thinking being” (Rancière, 1992: 61). Thus they do not have a definite identity or name, on the contrary it is a crossing identity and name which link a being to a not-yet-being (Rancière, 1992: 61).

In short, political subjectivation is neither the assertion of an identity nor an identity imposed by others. On the contrary, it is an impossible identification which places the subject between given identities (Davis, 2010: 88). Now, we can evaluate the human rights in the light of the political subjectivization we have already discussed. In this context, I will discuss Rancière’s view on human rights in terms of the possibility of political by referring their role in the process of political subjectivization.

4.2.2. Human Rights in the Context of Political Subjectivization

One of the most powerful roles of human rights in the political subjectivization is deduced from the term of human in the view of Rancière. It is because the human represents one of the components of political subjectivization;

the universality³³. According to Rancière, the analysis of the perplexity of the rights of man is deduced from the conception of human. As Schaap mentions, Arendtian conception of human is based on the Aristotelian understanding of the relation between human and the speech (Schaap, 2011: 26). Arendt defines the concept of human by referring to famous Aristotelian identification of humans with animals possessing speech. To be clear, she defines human nature as speaking animals. Based on this definition, being political animal is a potential which can only be realized in constituted political community (Arendt, 1958: 22-28). This means that “it is only within political community that human beings can realize a fully human life by distinguishing themselves through public action” (Arendt, 1958: 28). Yet, for Rancière, it is a mistake to deduce human from an understanding of human as speaking animal (Schaap, 2011: 2).

For Rancière, the definition of human in Arendt’s discussion is based on the distinction between those who are defined as speaking animals and those who do not possess language. Yet, he points out that although the capacity for speech might be naturally given, recognition of capacity depends on society. Thus, he argues that while possession of language is, in the first place, an element to distinguish those who own speech and those who do not, he does not see this enough to define a

³³ Firstly, I need to say that the universality of human rights, in other words, human rights as representative of universality in Rancière’s argument is completely different from the popular discussion on the problem of universality of human rights. As I mentioned earlier, the universality is not ideal. He sees the universality as the tool of the subjectivization. We may argue that one of the representatives of such kind of universality in the reality is the declaration/charters of equality, and of human rights.

human (Rancière, 2001: 23). In this context, he reminds us that while “sonorous emission is understood as speech, capable of enunciating what is just, whereas some other emission is merely perceived as a noise signaling pleasure or pain, consent or revolt” (Rancière, 1999: 3). Thus, he urges us to keep in mind that as a result of political exclusion, while particular categories of people are recognized as subjects qualified to speak; some other categories of people are not recognized as being able to have understandable speech.

If we accept such an understanding of human which is at the basis of the perplexity of human rights, we can reach the idea that the relation between human and politics is restricted with a closed political sphere. Thus, he criticizes Arendtian understanding of human since it has a dilemma: on the one hand, we do not become human beings (political subjects) independently of political institutions. On the other hand, “the legitimacy of law relies on the human potential for speech and action which is prior to political institutions” (Schaap, 2011: 29). By rejecting such understanding, Rancière claims that humans are political animals because they are literary animals. Human are political animals because “we are confounded by the excess of words in relation to things” (Rancière, 2000: 115). In this context, Rancière claims that “the modern political animal is first a literary animal, caught in the circuit of a literariness that undoes the relationships between the order of words and the order of bodies that determine the place of each” (1999: 37). According to Rancière, human as literary animals are political because of the fact that there is

always an excess of words. As a result of the excess of words on which the social struggle based on, those who are not recognized as being able to have speech in society are seen and heard as speaking subjects within a social order that denies that they are qualified to participate in politics. Thus the relation between politics and the human is not drawn in the political sphere but is drawn in the sphere where the policy and politic encounter to verify the wrong. Human are between identities, between spaces and places. According to Chambers, it is Rancière's anthropocentrism which distinguishes his conception of human from definition of human as speaking animal (2005: 32).

Therefore, the discourse of human is powerful tool in the political subjectivization since "it was the name given to beings situated between several names, several identities, several statuses: between the condition of noisy tool-wielder and the condition of speaking human being, between the condition of citizen and the condition of non citizenship, between a definable social figure and the faceless figure of the uncounted" (Rancière, 1999: 125). Political intervals are created by "drawing a line between identities and places defined in a set place in a given world, and identities and places defined in other places and identities and places that have no place there" (Rancière, 1999: 126). Thus, we may argue that the human is powerful element in the political interval. Moreover, the human as an empty term is what prevents the politics to be reduced to the police order. Since the political in the sense of Rancière is not consisted of the definite identities but the

identities between visible and invisible, the human is necessary for the existence of politics. This also explains why excluded people appeal to Man or Human Being when they try to cope with the failure of the police order. In this context, they question whether they belong or not category of man (Rancière, 1992: 60).

Moreover, for Rancière, the human is not related to form of life; such bare life, public life, etc but it is a litigious name that can be used to verify the fundamental equality. This also demonstrates that a political community which is based on the formal equality is not the pre-condition of the existence of human as political being. This approach clearly excludes the human rights from the political sphere since it defines the rights with political community (police) not the politics.

In short, in contrast to Arendt, abstraction or emptiness of the human is not something that makes human rights useless in contemporary world. Rather, it is what to provide the continuity of the political. As long as the human continues its existence, there would be an excess of word which protects the transformation of the politic into the police order. Thus, in Rancière, the human is powerful since it is undefined. We do not need to decide which definite and permanent subject to which human rights belong; we do not need to try to match the human with the citizen or the stateless people. In contrast to attempts, the human is “representative of the dismissal of any difference between those who are qualified to participate in politics and those who are not” (Schaap, 2011: 23); between citizen and the stateless. It is the reference point in the disagreement process. The human of the human rights can

also be defined as the costume of those who are not qualified while they are acting as if they are. Thus, because of its emptiness, the human rights declarations constitute an important component of the process of political subjectivization.

At that point, we may question if the human rights have political power stemming from the abstractness of human, why Rancière also talks about the failure of human rights. In other words, why does Rancière present human rights as solution for people who are dismissed and accept the failure of human rights at the same time? The reason behind Rancière's explanation of the landscape of the humanity as the landscape of ethnic wars, genocides, which is the corner-stone at the transformation of the subject of human rights, is the consensus system. The contemporary world is the landscape of such barbarian events because of the articulation of the dream of the consensus system: "a world cleansed of surplus identities, peopled by real bodies endowed with properties expressed by their name" (Rancière, 1999: 124). Moreover, what happened after the destruction of totalitarianism is the construction of consensus system which represent itself as "the world of law as opposed to the world of non-law or the world of barbaric identity, religion, or ethnicity" (Rancière, 1999: 124). Yet, it does not only mean the freedom from the totalitarianism and the utopias but also it is equal to the fundamentalisms of identity (Rancière, 1999: 124). This is the reduction of politic to police order. For Rancière, we will face the end of politics when we encounter the fusion of policy and politics: "the whole of the community is reduced to the sum of its parts with

nothing left over” (Rancière, 1999: 123). He defines this as the aim of consensus. He claims that “by eliminating the parasitical entities of political subjectivization, little by little the identity of the whole with the all is obtained, which is the identity of the principle of the whole with that of each of its parts, beneficiaries of the whole” (Rancière, 1999: 123). It is also the system which eliminates all empty powerful universal terms by identifying the human with concrete individual and groups whose interests are contrasting but who reach the consensus. For Rancière, this is where the trouble starts. It is reason behind the perplexity of rights. It is why human rights seem inaccessible for stateless people.

To be clear, the perplexity of rights of man is a result of the process of consensus which is called as the process of depoliticization by Rancière. He defines consensus as “reasonable idea and practice of settling political conflicts by forms of negotiation and agreement, and by allotting to each party the best share compatible with the interests of other parties” (Rancière, 2004: 306). In the view of Rancière’s political understanding, it means turning the surplus subject (which is real political subject for Rancière) into the real subject such as social groups, identity groups. They are turned into a definite subject in this way. Then conflict on which the politics exists is transformed into problems which can be solved by qualified expertise or negotiating on the adjustment of interests. It is because he defines the consensus as closing “the spaces of dissensus by plugging the intervals and patching over the possible gaps between appearance and reality or law and fact” (Rancière,

2004: 306).

Moreover, for Rancière, the aim of consensus is to equate the law with the fact. This means that the law becomes same with the way of life of society (the police). In this context, he claims:

The political dissensus about the part-taking in the common of the community is boiled down to a distribution within which each part of the social body would obtain the best share that it can obtain. In this logic, positive laws and rights must cling increasingly to the diversity of social groups and to the speed of the changes in social life and individual ways of being” (Rancière, 2004: 306).

As a consequence, the gap between police and the politic turns out to be diminished. Since the abstract rights of man turned into real rights belonging to real groups, the political space between abstract literalness of the rights and the polemic about their verification is getting closed. This initiates the beginning of the humanitarian period. In other words, when the rights of man are turned into the real rights, the period of human rights end and the humanitarian period starts. It is because “the reign of the ‘humanitarian’ begins, on the other hand, wherever human rights are cut off from any capacity for polemical particularization of their universality, where the egalitarian phrase ceases to be phrased, interpreted in the arguing of a wrong that manifests its litigious effectiveness” (Rancière, 1999: 125). To be clear, in the consensual system “predicate human and human rights are simply attributed, without any phrasing, without any mediation, to their eligible party, the subject man.” (Rancière, 1999: 125). Thus, we no longer experience the human rights as political capacities. They are transformed as personal estate. They

completely lost their liberating character.

In contrast to understanding of human rights in the age of humanitarianism, in the logic of human rights, we have various subject and names who try to use the litigious power of human rights. This means that they test the inscription of equality. It means asking whether the human rights are more or less than rights of citizens, or whether they are rights of woman, refugees, and so on. Thus,

“we have given human rights all the power they could possibly have: the power of the inscription of equality amplified by the power of its rationale and its expression in the construction of litigious cases, in the linking of a world where the inscription of equality is valid and the world where it is not valid” (Rancière, 1999: 125).

Yet, since the abstract rights of man turned into the real man and human attributed to eligible parties, the eligible parties become the wordless victim which is outside the plenitude of the definite subject of human rights. Therefore, “the ‘humanitarian’ regime of the ‘international community’ then exercises the administration of human rights in their regard, by sending supplies and medicine to the one and airborne divisions, more rarely, to the other” (Rancière, 1999: 126). This moves us to our starting point which is the basis of the perplexity of rights of man; since the human rights are void concepts for those who have not rights and constitutes a tautology for those who have already rights, the only real rights are rights which belong to a concrete subjects; citizens. It should be noted that unlike what Arendt underlines in her remarks on the perplexity of rights of man, human rights do not just become void for Rancière. The void is filled by those who have

already right to use human rights on the behalf of those who have not rights. In this context, he argues that “the rights of man do not become void by becoming the rights of those who cannot actualize them. If they are not truly ‘their’ rights, they can become the rights of others” (Rancière, 2004: 307). He describes this transformation as follows:

When they are of no use, you do the same as charitable persons do with their old clothes. You give them to the poor. Those rights that appear to be useless in their place are sent abroad, along with medicine and clothes, to people deprived of medicine, clothes, and rights. It is in this way, as the result of this process, that the Rights of Man become the rights of those who have no rights, the rights of bare human beings subjected to inhuman repression and inhuman conditions of existence. They become humanitarian rights, the rights of those who cannot enact them, the victims of the absolute denial of right (Rancière, 2004: 307).

As we discussed earlier, what Rancière sees as one of the key concepts in the political is the disagreement. Thus, we might claim that he offers disagreement instead of consensus. This means that rather than making the politics equal to police order, in other words, making police order a norm of equality, the current police order should be interrupted by the process of equality. In this context, the human rights declarations are one of the main universal weapons for those who have no voice in the police order to handle the wrong by verifying the equality. For example, we might claim that the protester in sit-in movement acts in accordance with the declaration of human rights. Indeed, we may claim that the human rights are important in the creation of the disagreement which is at the core of political (subjectivization).

Generally speaking, there is a dissensus stage at which the inscribed rights are verified or enacted through process of subjectivization. This stage is located between two forms of human rights, where the political space lies. For Rancière, the subject of rights is the process of subjectivization which bridges the interval between two forms of the existence of human rights. First, they are written form of community as equal and free. This means that they are not only abstract ideal but also part of the current situation. Although the situation of rightlessness may show that they are abstract, for Rancière, they are not situated far from the given situation. It is because “what is given is not only a situation of inequality (but) it is also an inscription, a form of visibility of equality” (Rancière, 2004: 303). Second, “the Rights of Man are the rights of those who make something of that inscription, who decide not only to "use" their rights but also to build such and such a case for the verification of the power of the inscription” (Rancière, 2004: 303). For him, rights of man are not only for use of definite subjects rather it is important element of the dispute about who is defined as being included in the definite subject and who is not. Thus, human rights provide its subjects with capacity to question given political names provide additional name.

To make it clear, it would be better to focus on the example of the subjectivization by Rancière. As an example of the subject of human rights which exists on the scene of dissensus, he refers to the movement of women who were defined as beings in the private sphere for long time. In this sense, women exist at

the scene of dissensus by making twofold demonstration. “They could demonstrate that they were deprived of the rights that they had, thanks to the Declaration of Rights. And they could demonstrate, through their public action, that they had the rights that the constitution denied to them, that they could enact those rights” (Rancière, 2004: 304). It is what Rancière calls as subjects “that did not have the rights that they had and had the rights that they had not” (Rancière, 2004: 304).

4.3. Re-reading Perplexity of Human Rights

To evaluate the perplexity of human rights in the context of the stateless people, it would be better to define how the condition of stateless people fits into the argument of Rancière over the political subjectivization. Rancière accepts that stateless people are not included into the political community. In other words, “they have no part since, lacking documents, they have no right to reside within the country; they are a part since their designation as undocumented migrants establishes the terms according to which they are subject to regulation as a population within the state” (Schaap, 2011: 39). Yet, this does not mean that they are completely outside the political community. Rather, for Rancière, they are the part that has no part within the political community. Thus, they are the political actor *par excellence* since it is through their struggle for appearance that they emerge as an entity which cannot be accommodated within the prevailing social order and yet demands to be. As such it fundamentally challenges the terms of police order. Through enacting their human rights, the stateless people “who have

no right to be counted as speaking beings make themselves of some account” (Schaap, 2011: 39).

At that point, we should not confuse Rancière analysis with an analysis which is constructed completely on Arendtian theory. One of them belongs to Krause who see hope for the human rights in Arendtian understanding. According to him, undocumented migrants who are vulnerable because of being deprived of legal and political status have actualized the potentiality of being political actors by the movements that transform them into the political actors (Krause 2008: 335). Yet, “In Rancière’s (2004: 306) view, this act of transformation is a conceptual impossibility within the problematic that Arendt establishes the dichotomy according to which the *sans papiers* would either be reduced to mere life or else realize their humanity through acting in concert does not correspond to reality” (Schaap, 2011: 31). In this context, we may repeat the question of Schaap:

If statelessness corresponds not only to a situation of rightlessness but also to a life deprived of public appearance, how could those excluded from politics publicly claim the right to have rights, the right to politics?” (Schaap, 2011: 36).

We need to understand the struggle of stateless in the perspective of Rancière: the process of subjectivization. On the one hand, the struggles of stateless all around the world show that they are deprived of their rights guaranteed by the international human rights treaties. Indeed, they do not enjoy the rights that they are supposed to have according to the various human rights treaties. Yet, they also show that they have the rights which are not recognized by the state, in other words,

the police order. In general, they demonstrate their equality as speaking beings despite being deprived of legal personhood (Schaap, 2011: 38). Rancière argues that thanks to the Declaration of Rights, stateless people show that they were deprived of their rights which are entailed to them by the declaration. On the other hand, by acting in the public they perform rights which the constitution denied to them. Therefore, the subject of human rights is defined as subjects that did not have the rights that they had and had the rights that they had not (Rancière, 2004: 304). For Rancière, movement of the stateless peoples arises from the presupposition of equality which is inscribed in the written form of the human rights. By approaching their human rights, they became to be included in the count. Similar to women movements, when the stateless people approach to the human rights they become those who have rights that they do not and have not rights that they have. In this way, they try to verify the predicates of human rights in reality. This is what keeps the politics open. Rather than trapping in the private sphere, the human rights are driving force for the opening of the political subjectivization because of their power of equality.

Here the question can be related to the outcome of approaching the human rights. Many can argue that if we look at the condition of the stateless people including refugees, asylum seekers, human trafficker survivors, etc, all around the world, we can realize that these movements are based on human rights but they are not successful. Human rights do not seem to be imposing the condition of these

people. At that point, May claims that this approach is contradictory with the spirit of the political subjectivization in Rancière's thought. He claims that:

...the fact of the movement itself probably introduces changes into the lives of those who participate in it (and those who may come later and refer to it as a touchstone in their own struggle), even where they fall short of their goals. To count a movement as failed because it does not achieve its goals is often to view the effects of that movement in overly simplistic terms (May, 2010: 77).

In short, we may argue that in the view of Rancière, what the condition of the stateless people tells us is not the fact that there is wrong with the nature or philosophy of the human rights. It is not that the human rights are mere abstraction, thus useless or partner of the sovereign. Yet, Rancière rejects both theory of Agamben and Arendt. He rejects that "instead of providing rights to rightless, the Universal Declaration of Human Rights leads to opposite result: the refugee are more and more submitted to total control of the police and other organs of power of the nation state" (Hemel, 2008: 17). He also rejects that human rights are useless for stateless because of their inner nature. Rather, for him, human rights are evaluated as an empty or collaborator of the power since they are depoliticized. For him, what we see about the human rights in the stateless people might be failure. Yet, this failure is about the wrong use of the human rights. Rancière does not mean that it is because the state disregards the human rights. With the term of use, he means that, the human rights are reduced to rights of concrete peoples; they are used as value not as something that should be verified. In other words, the failure lies in the reduction of human rights to humanitarianism.

Until now, I elaborated human rights of the stateless people in two different perspectives by referring to the theory of Arendt as the starting point. I tried to do this with two representative of these groups; Agamben (representative of the radical groups) and Rancière (representative of the moderate group). In this way, their popular theory in which their perspective on human rights is based was the ground to understand their approach. Now, to evaluate whether the human rights in the condition of stateless people is an indicator of the perplexity of rights of man, or the mechanism of the sovereign power, or the powerful source for the politicization (if it is used in correct manner), there is need to evaluate the human rights in the condition of stateless by comparing and contrasting these two theories constructed on the Arendtian diagnosis. We should consider that the Arendtian theory as starting point may be important facilitator in the following part while we are trying to compare and contrast these theories in the light of the perplexity of rights of man.

CHAPTER FIVE

5. CONCLUSION

In this thesis, I attempted to evaluate human rights of stateless people in the light of approaches of Hannah Arendt, Giorgio Agamben and Jacques Rancière. Until now, I tried to define theories of each of three authors under the three chapters. Now, I want to make a conclusion remark regarding human rights of stateless people by comparing and contrasting three important figures on the subject.

The discussion over human rights of stateless people was firstly voiced by Arendt. For Arendt, the plight of stateless people revealed the hidden truth of human rights. The plight does not mean that these people were deprived of some fundamental rights. Rather, the plight of stateless people is being under the rightlessness condition. She defines the rightlessness condition with loss of political community in the world. Thus, what the stateless people lost is being member of political community. Although human rights promise that each person has inalienable human rights by virtue of birth regardless of being member of community, what we observe in the condition of stateless people is that human

rights are out of reach of stateless people since these people lost political membership as consequence of loss of their membership to any nation states. Yet, if people who are nothing more than human cannot enjoy their human rights and the international human rights declaration cannot present such people opportunity to live in human condition, how can we evaluate the human rights? For Arendt, this is an indicator of the perplexity of rights of man caused by its abstract nature.

As it is known, the basis of human rights is human dignity which comes by birth. This means that we have human rights since we are human by birth. Yet, for Arendt, being human is not only related to being born as human. Rather, to be human we need to be part of a political community. At the basis of this understanding, there is the distinction of *bios* and *zoe*. While *zoe* represents the private sphere, givenness, the state of nature, *bios* represents a politically organized community. We can argue that for Arendt being part of *bios* is requirement of being human. Moreover, we do not talk about having rights in *zoe* in the view of Arendt. Rights are related to the sphere of the *bios*, in other words, the sphere of public. Thus the human rights which take their power from the sphere of private are useless. In the public sphere, they are also needless since as being member of a political community we have already had citizen rights. This demonstrates that for Arendt the only real rights are the rights of citizen not human rights.

In fact, by being outside of political community, the stateless people lost their rights and even humanness also. What they need is to belong to any political

community. In this context, human rights do not promise anything for stateless to belong to humanity again since they do not have any power in the *bios*. In this atmosphere, what the stateless people and all people need is not human rights but right to have rights. This means that the cure of stateless people is to belong to a political community since it brings us ability to have rights.

Arendt also demonstrates the inner problematic link of human rights with the nation states. The ground on which human rights are constructed is the logic of nation state. In the logic of nation state, a person becomes a part of the political community by his/her birth in a specific nation. When s/he lost his/her tie with nation state, s/he also lost the opportunity of being a political community. As long as the nation state remains its existence, the human rights are enforceable for people of the nation states. What about people outside the nation states: those who are forced to live outside the nation state? Can we talk about their human rights? Can we talk about the human rights of stateless people? Arendt's answer is absolutely negative.

Yet, what Arendt did not answer is how can we solve the plight of stateless? Can we solve it within the perspective of human rights or not? Although she seems focusing on such kind of question by her effort to define the right to have rights as fundamental right, in my view, it is not clear enough to offer a solution for the plight of stateless people in reality. It is not clear how the stateless people use right to have rights. Does the right to have rights are safeguard to prevent people from

being excluded from *bios*? If so, it is not political system of nation states where such kind of right can operate. Thus we can argue that there is a close link between her offer of right to have rights and her dream of cosmopolitan world since right to have rights seems as safeguard or necessary principle of cosmopolitan world. Yet, in the world of today, it is clear that it is not possible to speak right to have rights.

In general, since human rights in conventional manner are constructed on the logic of *zoe*, human rights does not give the stateless people what they need: being member of political community. Indeed, although human rights are based on the fiction of human similar with the stateless people, they do not heal the stateless which shows that the logic of human rights is problematic. Since the plight of stateless is about being outside politics, thus humanity, it is impossible task for human rights to deal with their plight since their concerns are outside politics also. When I am reading Arendt's theory, I am very impressed by her diagnosis until I ask myself what she offers for stateless people in the world of today. Do we need to develop new understanding of human rights or are we left completely human rights? Or what the stateless people need is to be a citizen of the state where they fled to? Or do we need a new political system: new world?

To clarify the current or possible role of human rights of the stateless people and to clarify whether the role is positive or negative, I tried to present and discuss two different reflections on human rights of stateless people which belong to

Agamben and Rancière who begin with Arendt's problematization but reach different points.

By following footsteps of Arendt regarding the human rights, Agamben reached a quite radical approach. Although they develop their theory of human rights on the idea of inner truth of human rights which is revealed by the stateless people, they reached different conclusion. While Arendt sees impossibility of politics of human rights in conventional manner, Agamben argues that the stateless people unveil the hidden mission of human rights; being biopolitical tool of the sovereign.

For Agamben, human rights are not check power but an instrument of sovereignty to inscribe the natural life of its subjects within the juridico-political order. That is to say, human rights are taking the role producing bare life as biopolitical tool of sovereignty. He defines bare life as life which is outside both *zoe* and *bios* but remains at the threshold between them. It is politicized natural life. At the first instance, it seems that there is a similarity between understanding of rightlessness and bare life since they both delineate how different categories of people can be excluded from political life. Yet, in my view, when we have a closer look to Agamben's work we can easily realize that bare life is not equal to natural life or life excluded from *bios*. Rather, it is life which exists at the threshold between natural and public life: *zoe* and *bios*. Moreover, Arendt evaluates rightlessness as historically produced human condition which is subject to change.

This is based on her understanding of human condition in terms of the contingency and unpredictability of human nature. Human condition can be reshaped through human intervention. Rightlessness is also created by human being and it is open to possibility of change through human action. Yet, for Agamben, the bare life is inevitable result of hidden continuous logic of sovereignty.

The main idea of analysis of Agamben on human rights is that human rights have served as biopolitical tool of the sovereign throughout history but we realized this truth with the existence of the stateless people. It is because human rights put natural life under the control of sovereign by putting juridical person and his biological life under the same title. We can see this mission if we look at the subject of human rights. While re-emphasizing quandary of Arendt on the subject of human right (whether the subject is man or citizen) Agamben reaches the point that neither man (which represent biological life) nor citizen (politically qualified life) is the subject but the creature who is both of them nor at the same time neither of them in full manner. This subject fits under the definition of *homo sacer* who is politicized-biological life. In general, since human rights confuse distinction between *zoe* and *bios*, bare life exists as result of politicization of natural life. Being biopolitical tool also results from confusion between distinction between *zoe* and *bios*. Even such confusion does not give birth to new subject but it causes ontological change of human condition.

We may argue that Agamben in similar way with Arendt evaluates human rights on the distinction between *zoe* and *bios*. Yet, on the one hand in Arendt, human rights do not have any effects on the distinction but they just belong to *zoe*, which make politics of human rights impossible. On the other hand, in Agamben, human rights take the role in the creation of people (homo sacers) whose lives are politicized natural life. This means that human rights take the role of blurring the distinction between two spheres which result in the creation of homo sacer.

Moreover, for Agamben, the human rights declaration based on the natural unalienable and sacred rights of man trap people unintentionally in the sovereign web of biopolitics. Thus it feeds sovereign power which it sought to diminish. It brings the human life under the control of law to exercise mastery over it. Thus, they are tightening our bond to sovereignty. We might argue that in similar way with Arendt, Agamben believes that human rights act in contrast to their promises. Yet, while Arendt criticizes human rights since they are enforceable for those who are just human beings, for Agamben they do not actualize their promises of freeing us from the central power. Indeed, while in Arendt reading human rights is an unenforceable in the logic of sovereign, in Agamben, they constitute the major components of the sovereign power.

In general, we may argue that Agamben exclusively negates the juridical and institutional aspects of politics. He is critical of rights and law. For him, to think politics in terms of law and rights is destined to reproduce the logic of sovereignty

since it empowers biopolitics. Therefore, he dismisses any political struggle developed around human rights. He believes that any attempt to challenge the judicial order (social domination/sovereignty) through law (human rights) ensnares us in the river of biopolitics. As a result, to search the solution of stateless people within the juridical framework is to stay entrapped within the sphere of sovereignty which is the responsible agent for the stateless people. In contrast to Agamben, for Arendt, there are conditions under which certain institutions have positive effects for political action. Judicial institutions can enable us as political actors. She does not see law and rights as collaborator of power and as having dangerous effects which hinder the capacity for political action. For her, thanks to law, we have artificial persona in public stage presenting us equals for politics not being we naturally are. She clearly shows that how certain categories of human beings who are denied legal persona are outside of the law. She shows the political conclusion of suspension of humanness with the denial of rights to action and to become political.

Based on their writings we can say that both writers somehow criticize and reject human rights. Yet, while Arendt rejects human rights in conventional manner and calls for a reconceptualization of human rights in terms of “right to have rights”, Agamben urges us to think politics beyond human rights as well as the rights of citizens: nonstatal and non-juridical politics. For Agamben, human rights, and civil liberties both grant human autonomy and political agency and at the same

time reduce them to the state of nature. It does so by creating new body as locus of sovereign power. Non-judicial politics is at odds with Arendt's understanding of politics in which judicial institution provide us with political actors. She emphasizes rethinking of human rights in the context of rightlessness. Rethinking is not for or against human rights but for reconceptualizing them in contemporary world as the solution for the problems as stateless people. While she rejects to think human rights in the conventional manner (natural rights by birth) since it can cause the false unquestioning image of human rights as guarantee or trumps which underestimate the human action required to actualize them, she emphasizes reconceptualization of human rights since it can give a starting point for us to think politics of human rights.

What the question of human rights of stateless people whispers to Agamben and Arendt seems quite different from each other. While the stateless people show us the inner paradox of human rights in Arendtian reading and necessity of right to belong a political community, they show the necessity for politics beyond human rights in Agamben's reading. Suggestion of Agamben regarding the condition of stateless people is total rejection of use of human rights by political struggles, movements, and actors. It is clear that he totally rejects use of human rights by any group including human rights. Yet, here the question is: what is his solution for the stateless people? Here, he believes that what we need is to recognize the fact that current practice of politics is based on biopolitics and to do more important task

than political struggle and approaching human rights. It is to invent completely new politics which is not based on biopolitics. For him, such politics have a political community based on collective displacement, of which the subject would rely on the vision of stateless people. In my view, with such offer Agamben make us to wait for new politics about which we will have no idea until its arrivals.

Agamben is so as radical that he completely rejects anything compromised with current political practice based biopolitics, including human rights. On the other hand, since he just waits new politics to come, he seems as if he is passive about the solution and condones to injustices in reality at the same time. It is clear that Agamben does not give any clue for new politics and even any tool existed in current politics to invite new one. Thus, new politics seems as if messianic politics which will come to us and we have not any influence on it. In my view, waiting for new politics can easily turn into an attitude of waiting regardless of what we are waiting.

While we are waiting new politics based on rejection of all practice of current politics, in the real world thousand million of stateless people face inhumane treatment, forced to live in human condition, are violated or ill-treated. In this atmosphere, in my view, Agamben abandons mechanism that seems to be solution: human rights. Also, he does not suggest anything to fill this gap. We have unanswered question; what is the solution of stateless people? Does it have any relation to human rights? Also is there any hope in the struggle of stateless people

approaching human rights? Since there is not any clue in neither Arendt nor Agamben, I attempted to focus on a different reflection of human rights of stateless people in Rancière's theory.

Apart from the reading of human rights of the stateless people by Arendt and Agamben, Rancière develops a different approach to human rights. Rancière, in similar way with Agamben, begins by referring to Arendt's reading. Unlike Agamben, Rancière develops a more critical approach to Arendt's reading. For him, although the perplexity of Rights of Man seems well-fitted into explanation of recent problems the world faces, it is not because of the inner nature of human rights but current understanding of politics.

For Rancière, Arendt and Agamben's theories about human rights are based on their own understandings of politics. While they are preserving a pure politics, they reduce politics to relation between state power and individual. In the view of Rancière, what the lens of politics through which Agamben and Arendt evaluate the politics of human rights is not politics but the police order. Thus, he develops his evaluation on the basis of the question what the politics is. In contrast to Arendt and Agamben, Rancière argues that we cannot define politics on the basis of the distinction between *zoe* or *bios*. Rather, politics is about the border between them. This means that politics is not structured sphere where everything has its place but the process of injection of those who have no place in the structured sphere; the police order. Rancière calls this process as political subjectivization.

Although in similar with Agamben and Arendt, he defines the stateless people “being outside”, it is not the politics where stateless people are outside but it is the police order where they are. Politics is not the sphere where definite subject live but it is the process of re-regulating the sphere of police as if ones who are excluded can include into it. Thus, to define the plight of stateless people as being without political community is not correct evaluation. Rather, he evaluates condition of stateless in terms of political subjectivization since they are those outside the police order starts to challenge definite police order to be part of it

As we see, all three authors evaluate the plight of stateless in different manners. Arendt defines the plight of stateless as being under rightlessness condition on the basis of her understanding of politics: well-defined political community constructed on the distinction between public and private. Agamben defines the plight of stateless as *being homo sacer* on the basis of his own understanding of biopolitics: inscription of politics into the biological life Rancière defines the plight of stateless people as consequence of reduction of politics into the police. For him, since rights lost their abstractness and were transformed to entity of definite people living in the definite sphere of police order, for those who are outside the police order seems having not any rights. In the light of definition of the plight of stateless people both Agamben and Arendt evaluate the condition of stateless people as place what we see fake/dark side. Yet for Rancière it is the condition where we criticize our understanding of depoliticized human rights and realize their political power.

Based on this understanding of politics, Rancière questions where the predicates of the declaration of rights of man (all men are free and equal) are implemented. For him, Arendt's evaluation of human rights results from her assumption that is the sphere of political life separated from the private sphere. Moreover, Agamben evaluates the place of human rights as the threshold between private and political sphere; the sphere of bare life. In contrast this, Rancière claims that these predicates are the ones the political subjectivization is based on. In other words, through these predicates we ask where we draw the border. As a result of this process of questioning, political can continue.

We may argue that three authors base their theories of human rights on a vision of the subjects of human rights. It may seem that three authors emphasize similar characteristic of the subject of human rights: being abstractness and indefinite. In this context, Arendt claims that subject of human rights is not definite and it is not clear whether s/he is man or citizen. For her, it is one of reason behind unenforceability of human rights in the contemporary world. On the other hand, Agamben defines the subject of human rights as the subject who is both citizen and human being in biological sense: *homo sacer*. Based on this argument, he claims that human rights are biopolitical tool of the sovereign. In similar way with them, Rancière describes the subject of human rights as empty, indefinite and in-between subject. In contrast to Arendt and Agamben, for him, it is not reason behind problem of human rights but it is the political power of human rights. As we

discuss, he rejects to define the subject with a definite subject since this results in reduction of depoliticization of human rights and even reduction of politics to police order. For Rancière, the effort to find a subject is one of the biggest failures. For him, the subject of human rights refers not to a definite subject, but the political subjectivization as process. That is to say, it is process in which those whose voice is not heard in the *bios* get voices. The role of human rights in the process is being a reference point for the political subjectivization.

While Arendt reached the idea that human rights are abstract since they are not working in the reality by examining the stateless people, Rancière believes that the refutation of human rights in the actual situation of the stateless does not mean that they are abstract ideals. On the contrary, they as inscription of equality are also part of the given in the form of visibility of equality. When they are denied or confirmed by stateless people, they provide those who build cases for verification of the inscription with a political subject.

In the view of Rancière, the power of human rights arises from being a political predicate which is open to dispute. While Arendt tries to define subjects who have such predicates, Rancière believes in power of indefinite political subject. For him, neither men nor citizens are political subjects. Political subjects are indefinite names who build dispute over who is included in the count of politics through verifying or denying human rights predicates. Indeed, human rights take an important role in the construction of such dispute, indirectly the political

subjectivization. We may argue that for Rancière the point from which Agamben rejects human rights and Arendt defines the paradox of human rights is the source of the power of human rights. It is the subject of human rights. While ambiguity of the subject disturbs both Arendt and Agamben, albeit in different manners, Rancière celebrates this characteristic of the subject of human rights.

To sum up, we may argue that Arendt, Agamben, and Rancière read what the existence of stateless people tells about human rights in relation to politics. It is clear that stateless tell each of them quite different stories. Arendt depoliticizes human rights since she claims that the struggle of the stateless based on human rights lacks political action due to the fact that they are not related to taking part in politics but to private sphere. Agamben, by radicalizing Arendt's discussion argues that the struggle of stateless on their human rights leads to being trapped in the gap of sovereign. For him, if we talk about politics, first we should abandon human rights. As it is seen, human rights are something that should be abandoned in the modern world by both Arendt and Agamben. What they offer in the place of human rights seems similar. While Arendt believes in the necessity of replacement of human rights in conventional manner with "right to have rights", she projects a new future. It is because only having right to have rights can be safeguard for the cosmopolitan world. In the current world, we do not have so many tools for the solution of the problems faced by the stateless people. Like Arendt, Agamben also has dreams of a new world. Yet he does not show any address to go this new world.

It seems that Agamben believes in the necessity of a messianic politics. What we need to create (to enable such politics and new political community) is nothing but waiting. Yet, it is clear that waiting for new political community also means accepting what happens in reality. In my view, in contrast to Arendt and Agamben Rancière's analysis of human rights seems more hopeful for the current world. Rancière rejects any effort to find the real function of human rights based on the assumption that human rights declarations are definite objects with fixed meaning. He believes in its power for integrating two realities into one. Rather than projecting a new world to come, Rancière believes that we can put two worlds under one world. This means that if we see human rights as something to be verified or denied in reality (rather than a universal value to be given) we may put the world of human rights where every person is equal and free into the world where there are people who are deprived of their all rights; stateless people. Moreover, Rancière believes that thanks to human rights political may continue its existence.

Although both Arendt and Agamben seems powerful on the critique of human rights, Rancière seems more convincing to me since he is only one who does not neglect political struggle on human rights, and their meaning for contemporary world, specifically victims of contemporary world one of whom is stateless people.

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