

# Beyond Human Rights

## Giorgio Agamben

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**Giorgio Agamben** (1942) is one of the leading figures in Italian philosophy and radical political theory, and in recent years, his work has had a deep impact on contemporary scholarship in a number of disciplines in the Anglo-American intellectual world. Born in Rome in 1942, Agamben completed studies in Law and Philosophy with a doctoral thesis on the political thought of Simone Weil, and participated in Martin Heidegger's seminars on Hegel and Heraclitus as a postdoctoral scholar. He has taught at various universities, including the Universities of Macerata and Verona and was Director of Programmes at the Collège Internationale de Paris. He has been a Visiting Professor at various universities in the United States of America, and was a Distinguished Professor at the New School, University in New York. He caused a controversy when he refused to submit to the "biopolitical tattooing" requested by the United States Immigration Department for entry to the USA in the wake of the September 11, 2001 attacks.

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## Beyond Human Rights

In 1943, Hannah Arendt published an article titled 'We Refugees' in a small English-language Jewish publication, the *Menorah journal*. At the end of this brief but significant piece of writing, after having polemically sketched the portrait of Mr. Cohn, the assimilated Jew who, after having been 150 percent German, 150 percent Viennese, 150 percent French, must bitterly realize in the end that 'on ne parvient pas deux fois,' she turns the condition of countryless refugee – a condition she herself was living – upside down in order to present it as the paradigm of a new historical consciousness. The refugees who have lost all rights and who, however, no longer want to be assimilated at all costs in a new national identity, but want instead to contemplate lucidly their condition, receive in exchange for assured unpopularity a priceless advantage: 'History is no longer a closed book to them and politics is no longer the privilege of Gentiles. They know that the outlawing of the Jewish people of Europe has been followed closely by the outlawing of most European nations. Refugees driven from country to country represent the vanguard of their peoples.'<sup>1</sup>

One ought to reflect on the meaning of this analysis, which after

fifty years has lost none of its relevance. It is not only the case that the problem presents itself inside and outside of Europe with just as much urgency as then. It is also the case that, given the by now unstoppable decline of the nation-state and the general corrosion of traditional political-juridical categories, the refugee is perhaps the only thinkable figure for the people of our time and the only category in which one may see today – at least until the process of dissolution of the nation-state and of its sovereignty has achieved full completion – the forms and limits of a coming political community. It is even possible that, if we want to be equal to the absolutely new tasks ahead, we will have to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and its rights, but also the sovereign people, the worker, and so forth) and build our political philosophy anew starting from the one and only figure of the refugee.

The first appearance of refugees as a mass phenomenon took place at the end of World War I, when the fall of the Russian, Austro-Hungarian, and Ottoman empires, along with the new order created by the peace treaties,

1. Hannah Arendt, 'We Refugees', *Menorah Journal*, no.1 (1943), 77.

upset profoundly the demographic and territorial constitution of Central Eastern Europe. In a short period, 1.5 million White Russians, seven hundred thousand Armenians, five hundred thousand Bulgarians, a million Greeks, and hundreds of thousands of Germans, Hungarians, and Romanians left their countries. To these moving masses, one needs to add the explosive situation determined by the fact that about 30 percent of the population in the new states created by the peace treaties on the model of the nation-state (Yugoslavia and Czechoslovakia, for example), was constituted by minorities that had to be safeguarded by a series of international treaties – the so-called Minority Treaties – which very often were not enforced. A few years later, the racial laws in Germany and the civil war in Spain dispersed throughout Europe a new and important contingent of refugees.

We are used to distinguishing between refugees and stateless people, but this distinction was not then as simple as it may seem at first glance, nor is it even today. From the beginning, many refugees, who were not technically stateless, preferred to become such rather than return to their country. (This was the case with the Polish and Romanian Jews who were in France or Germany at the end of the war, and today it is the case with those who are politically persecuted or for whom returning to their countries would mean putting their own survival at risk.) On the other hand, Russian, Armenian, and Hungarian refugees were promptly denationalized by the

new Turkish and Soviet governments. It is important to note how, starting with World War I, many European states began to pass laws allowing the denaturalization and denationalization of their own citizens: France was first, in 1915, with regard to naturalized citizens of ‘enemy origin’; in 1922, Belgium followed this example by revoking the naturalization of those citizens who had committed ‘antinational’ acts during the war; in 1926, the Italian Fascist regime passed an analogous law with regard to citizens who had shown themselves ‘undeserving of Italian citizenship’; in 1933, it was Austria’s turn; and so on, until in 1935 the Nuremberg Laws divided German citizens into citizens with full rights and citizens without political rights. Such laws – and the mass statelessness resulting from them – mark a decisive turn in the life of the modern nation-state as well as its definitive emancipation from naive notions of the citizen and a people.

This is not the place to retrace the history of the various international organizations through which single states, the League of Nations, and later, the United Nations have tried to face the refugee problem, from the Nansen Bureau for the Russian and Armenian refugees (1921) to the High Commission for Refugees from Germany (1936) to the Intergovernmental Committee for Refugees (1938) to the UN’s International Refugee Organization (1946) to the present Office of the High Commissioner for Refugees (1951), whose activity, according to its statute, does not have a political character but rather only a ‘social and

humanitarian' one. What is essential is that each and every time refugees no longer represent individual cases but rather a mass phenomenon (as was the case between the two world wars and is now once again), these organizations as well as the single states – all the solemn evocations of the inalienable rights of human beings notwithstanding – have proved to be absolutely incapable not only of solving the problem but also of facing it in an adequate manner. The whole question, therefore, was handed over to humanitarian organizations and to the police.

The reasons for such impotence lie not only in the selfishness and blindness of bureaucratic apparatuses, but also in the very ambiguity of the fundamental notions regulating the inscription of the *native* (that is, of life) in the juridical order of the nation-state. Hannah Arendt titled the chapter of her book *Imperialism* that concerns the refugee problem 'The Decline of the Nation-State and the End of the Rights of Man'.<sup>2</sup> One should try to take seriously this formulation, which indissolubly links the fate of the Rights of Man with the fate of the modern nation-state in such a way that the waning of the latter necessarily implies the obsolescence of the former. Here the paradox is that precisely the figure that should have embodied human rights more than any other – namely, the refugee – marked instead the radical crisis of the concept. The conception of human rights based on the supposed existence of a human

2. Hannah Arendt, *Imperialism*, Part II of *The Origins of Totalitarianism* (New York: Harcourt Brace, 1951), 266-298.

being as such, Arendt tells us, proves to be untenable as soon as those who profess it find themselves confronted for the first time with people who have really lost every quality and every specific relation except for the pure fact of being human.<sup>3</sup> In the system of the nation-state, so-called sacred and inalienable human rights are revealed to be without any protection precisely when it is no longer possible to conceive of them as rights of the citizens of a state. This is implicit, after all, in the ambiguity of the very title of the 1789 *Déclaration des droits de l'homme et du citoyen*, in which it is unclear whether the two terms are to name two distinct realities or whether they are to form, instead, a hendiadys in which the first term is actually always already contained in the second.

That there is no autonomous space in the political order of the nation-state for something like the pure human in itself is evident at the very least from the fact that, even in the best of cases, the status of refugee has always been considered a temporary condition that ought to lead either to naturalization or to repatriation. A stable statute for the human in itself is inconceivable in the law of the nation-state.

It is time to cease to look at all the declarations of rights from 1789 to the present day as proclamations of eternal metajuridical values aimed at binding the legislator to the respect of such values; it is time, rather, to understand them according to their real function in the modern state. Human rights, in fact, represent first of all the originary

3. *Ibid.*, 290-295.

figure for the inscription of natural naked life in the political-judicial order of the nation-state. Naked life (the human being), which in antiquity belonged to God and in the classical world was clearly distinct (*as zoe*) from political life (*bios*), comes to the forefront in the management of the state and becomes, so to speak, its earthly foundation. Nation-state means a state that makes nativity or birth [*nascita*] (that is, naked human life) the foundation of its own sovereignty. This is the meaning (and it is not even a hidden one) of the first three articles of the 1789 Declaration: it is only because this declaration inscribed (in articles 1 and 2) the native element in the heart of any political organization that it can firmly bind (in article 3) the principle of sovereignty to the nation (in conformity with its etymon, *native* [*natío*] originally meant simply 'birth' [*nascita*]). The fiction that is implicit here is that *birth* [*nascita*] comes into being immediately as *nation*, so that there may not be any difference between the two moments. Rights, in other words, are attributed to the human being only to the degree to which he or she is the immediately vanishing presupposition (and, in fact, the presupposition that must never come to light as such) of the citizen.

If the refugee represents such a disquieting element in the order of the nation-state, this is so primarily because, by breaking the identity between the human and the citizen and that between nativity and nationality, it brings the originary fiction of

sovereignty to crisis. Single exceptions to such a principle, of course, have always existed. What is new in our time is that growing sections of humankind are no longer representable inside the nation-state – and this novelty threatens the very foundations of the latter. Inasmuch as the refugee, an apparently marginal figure, unhinges the old trinity of state-nation-territory, it deserves instead to be regarded as the central figure of our political history. We should not forget that the first camps were built in Europe as spaces for controlling refugees, and that the succession of internment camps-concentration camps-extermination camps represents a perfectly real filiation. One of the few rules the Nazis constantly obeyed throughout the course of the 'final solution' was that Jews and Gypsies could be sent to extermination camps only after having been fully denationalized (that is, after they had been stripped of even that second-class citizenship to which they had been relegated after the Nuremberg Laws). When their rights are no longer the rights of the citizen, that is when human beings are truly *sacred*, in the sense that this term used to have in the Roman law of the archaic period: doomed to death.

The concept of refugee must be resolutely separated from the concept of the 'human rights', and the right of asylum (which in any case is by now in the process of being drastically restricted in the legislation of the European states) must no longer be considered as the conceptual category

in which to inscribe the phenomenon of refugees. (One needs only to look at Agnes Heller's recent *Theses on the Right of Asylum* to realize that this cannot but lead today to awkward confusions.) The refugee should be considered for what it is, namely, nothing less than a limit-concept that at once brings a radical crisis to the principles of the nation-state and clears the way for a renewal of categories that can no longer be delayed.

Meanwhile, in fact, the phenomenon of so-called illegal immigration into the countries of the European Union has reached (and shall increasingly reach in the coming years, given the estimated twenty million immigrants from Central European countries) characteristics and proportions such that this reversal of perspective is fully justified. What industrialized countries face today is a permanently resident mass of noncitizens that do not want to be and cannot be either naturalized or repatriated. These noncitizens often have nationalities of origin, but, inasmuch as they prefer not to benefit from their own states' protection, they find themselves, as refugees, in a condition of de facto statelessness. Tomas Hammar has created the neologism of 'denizens' for these noncitizen residents, a neologism that has the merit of showing how the concept of 'citizen' is no longer adequate for describing the social-political reality of modern states.<sup>4</sup> On the other hand, the citizens of advanced industrial states (in the United States as well as Europe)

4. Tomas Hammar, *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration* (Brookfield, Vt.: Gower, 1990).

demonstrate, through an increasing desertion of the codified instances of political participation, an evident propensity to turn into denizens, into noncitizen permanent residents, so that citizens and denizens – at least in certain social strata – are entering an area of potential indistinction. In a parallel way, xenophobic reactions and defensive mobilizations are on the rise, in conformity with the well-known principle according to which substantial assimilation in the presence of formal differences exacerbates hatred and intolerance.

Before extermination camps are reopened in Europe (something that is already starting to happen), it is necessary that the nation-states find the courage to question the very principle of the inscription of nativity as well as the trinity of state-nation-territory that is founded on that principle. It is not easy to indicate right now the ways in which all this may concretely happen. One of the options taken into consideration for solving the problem of Jerusalem is that it become – simultaneously and without any territorial partition – the capital of two different states. The paradoxical condition of reciprocal extraterritoriality (or, better yet, aterritoriality) that would thus be implied could be generalized as a model of new international relations. Instead of two national states separated by uncertain and threatening boundaries, it might be possible to imagine two political communities existing on the same region and in a condition of exodus from each other – communities

that would articulate each other via a series of reciprocal extraterritorialities in which the guiding concept would no longer be the *ius* (right) of the citizen but rather the *refugium* (refuge) of the singular. In an analogous way, we could conceive of Europe not as an impossible 'Europe of the nations', whose catastrophe one can already foresee in the short run, but rather as an aterritorial or extraterritorial space in which all the (citizen and noncitizen) residents of the European states would be in a position of exodus or refuge; the status of European would then mean the being-in-exodus of the citizen (a condition that obviously could also be one of immobility). European space would thus mark an irreducible difference between birth [*nascita*] and nation in which the old concept of people (which, as is well known, is always a minority) could again find a political meaning, thus decidedly opposing itself to the concept of nation (which has so far unduly usurped it).

This space would coincide neither with any of the homogeneous national territories nor with their *topographical* sum, but would rather act on them by articulating and perforating them *topologically* as in the Klein bottle or in the Möbius strip, where exterior and interior in-determine each other. In this new space, European cities would rediscover their ancient vocation of cities of the world by entering into a relation of reciprocal extraterritoriality.

As I write this essay, 425 Palestinians expelled by the state of Israel find themselves in a sort of no-man's-land. These men certainly constitute, accord-

ing to Hannah Arendt's suggestion, 'the vanguard of their people'. But that is so not necessarily or not merely in the sense that they might form the original nucleus of a future national state, or in the sense that they might solve the Palestinian question in a way just as insufficient as the way in which Israel has solved the Jewish question. Rather, the no-man's-land in which they are refugees has already started from this very moment to act back onto the territory of the state of Israel by perforating it and altering it in such a way that the image of that snowy mountain has become more internal to it than any other region of Eretz Israel. Only in a world in which the spaces of states have been thus perforated and topologically deformed and in which the citizen has been able to recognize the refugee that he or she is – only in such a world is the political survival of humankind today thinkable.

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