

Ian Donenwirth
DNNIAN003

UNIVERSITY OF CAPE TOWN
FACULTY OF LAW

**Freedom, Dignity, and the Spirit of the Revolution:
An Arendtian Perspective on the Future of Human Rights in South Africa**

February 2009

Dissertation submitted in fulfillment of the degree of Master of Philosophy (MPhil)

Supervisors: Jaco Barnard-Naudé

I hereby declare that I have read and understood the regulations governing the submission of dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Date: _____

signed: Ian Donenwirth

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

TABLE OF CONTENTS

Introduction	1
<i>Part One: Arendt's Political Thought</i>	
Chapter I: Action	
1. Introduction: Modern World Alienation and the Human Condition	9
2. The <i>Vita Activa</i>	15
3. The Reversal of the Traditional Hierarchy	23
4. Conclusion	28
Chapter II: The Public Realm and the Rise of the Social	
5. Introduction: The <i>Polis</i>	31
6. The Value of a Distinct Public Realm	34
7. The Rise of the Social	36
8. Modern Society	41
9. Conclusion	43
Chapter III: Revolution	
10. Introduction: The Basic Meaning of Revolution	46
11. The Two Great Modern Revolutions	49
12. Conclusion: Lessons of the Revolutions	57
Chapter IV: The Council System	
13. Introduction: Background	63
14. Features of the Council System	70
15. Advantages of the Council System	75
16. Conclusion	78

Part Two: Hannah Arendt's Politics and the South African Legal Order

Chapter V: Introduction and Preliminary Issues	80
17. Conclusion	93
Chapter VI: Post-Apartheid South Africa: A Product of Successful Revolution?	
18. Introduction: On Novelty	95
19. An Arendtian Revolution in South Africa?	96
20. Conclusion: Arendtian Revolution v Legal Revolution?	102
Chapter VII: The Existence of Freedom	
20. Introduction: The <i>Vita Activa</i> and the Constitution	106
21. The Constitutional Court's Decisions in <i>Matatiele</i> and <i>Doctors For Life</i>	109
22. Public Participation in other Areas of Government	112
23. Persuasion and Justification	114
24. Political Rights	115
25. The Question of the Post-Social: Dignity, Human Rights, and the Public-Private Divide	124
26. The Public-Private and the Post-Social	126
Conclusion	134
Bibliography	142

INTRODUCTION

*The raison d'être of politics is freedom, and its field of experience is action.*¹

*Let us make no mistake: even the best Government, the best Parliament and the best President cannot do much by themselves. Freedom and democracy, after all, mean joint participation and shared responsibility. If we realize this, then all the horrors that the new Czechoslovak democracy inherited cease to be so horrific. If we realize this, then hope will return to our hearts.*²

*By our presence here today, we solemnly honour the pledge we made to ourselves and to the world, that South Africa shall redeem herself and thereby widen the frontiers of human freedom. As we close a chapter of exclusion and open a chapter of heroic struggle, we reaffirm our determination to build a society of which each of us can be proud, as South Africans, as Africans, and as citizens of the world.*³

Fourteen years have passed since the first democratic election in South Africa and twelve since the enactment of the Bill of Rights and the final Constitution.⁴ In that time period, the way South Africa has been perceived both domestically and abroad has fluctuated greatly. Following the demise of the morally defunct apartheid regime, South Africa became a gem of hope throughout the world, giving encouragement to countless other ravaged and ethnically-divided countries that reconciliation could be achieved even after years of division, freedom even after institutionalized oppression. The excitement surrounding South Africa's emancipation still lingers, as the country grows in popularity world-wide, attracting more tourists, more foreign investment, and even the

¹ Hannah Arendt *Between Past and Future: Eight Exercises in Political Thought* (1993) at 146.

² Vaclav Havel, New Year's Day address (Prague, 1 January 1990). Available at <http://query.nytimes.com/gst/fullpage.html?res=9C0CE2D7103AF931A35752C0A966958260&n=Top%2FReference%2FTimes%20Topics%2FPeople%2FH%2FHavel%2C%20Vaclav> [Accessed September 2 2008].

³ Nelson Mandela, Speech at signing of 1996 Constitution (Sharpeville, 10 December 1996). Available at <http://70.84.171.10/~etools/newsbrief/1996/news1211> [Accessed 27 August 2008].

⁴ Constitution of the Republic of South Africa, 1996.

2010 Soccer World Cup. But in the past few years, there is no doubt that the hope and excitement have diminished greatly, even to the point where the holding of the World Cup in South Africa has been called into question.⁵ Over the past few years the vast majority of headlines in and out of South Africa have done anything *but* encourage hope. From having the worst crime rate in the world, to numerous politicians being prosecuted for corruption and rape, from an outbreak of xenophobic attacks against immigrants, to a government that has yet to come to terms with the HIV/AIDS pandemic, South Africa is now causing many to lose hope: the hope that, once an entire populace is liberated from the chains of oppression and free to engage in politics, things must surely get better.

While there is no doubt that the situation in South Africa is preferable to the situation as it existed under apartheid rule, there is also little doubt that much of South African society and its political institutions are in a state of disarray, at best. Disillusionment with the slow pace of transformation has led huge segments of the population to either disengage completely from politics, or to return to the more radical ideas promulgated in the 1980's. While everybody in South Africa is now free to vote in general elections, there is an increasing perception that the transition out of apartheid merely amounted to a power transfer from one elite clique to another.⁶ Thus, despite the attainment of rights for all through a new Constitution, the situation on the ground may not seem very new at all to most South Africans. The reasons for this are complex, involving everything from the economy to disease, and it would be impossible to write a conclusive list of the causes of South Africa's present turmoil. Yet what is unquestionable is the

⁵ 'South Africa quells World Cup safety fears.' Available at <http://www.news.com.au/heraldsun/story/0,21985,20927894-2883,00.html> [Accessed 14 June 2008].

⁶ Jeffrey Herbst 'Prospects for Elite-Driven Democracy in South Africa' (1997) 112/4 *Political Science Quarterly* 595 at 595.

need to re-evaluate the slow pace at which meaningful transformation has taken place, and to find new ways of accelerating and correcting this process. The subject of this dissertation is thus this re-evaluation, with the political sphere being the point of focus.

The question arises, however, as to how one is to re-evaluate the realm of politics in present-day South Africa. What methodology is one to follow? One possibility is to turn to the work of Hannah Arendt, a woman who not only experienced the horrors of oppression in Nazi Germany, but also provided some of the most ground-breaking elucidations on totalitarian regimes and the societies in which they function, such as South Africa in the latter half of the twentieth century. Yet it is not Arendt's work in identifying the features of totalitarian regimes that is most pertinent to a re-consideration of post-apartheid South Africa, but rather her assessment of what constitutes a truly new beginning; that is, a *revolution*. For Arendt, a revolution does not merely exist where there exists a strong desire for change, nor even through a rudimentary transfer of power. Instead, a revolution encompasses much more; it results in the attainment of *freedom* through *action*, and is facilitated by a *public realm*, in which *politics* can be freely exercised so as to keep the spirit of the *revolution* alive.⁷ These italicized terms, as Arendt deploys them, go far beyond their conventional meanings and lie at the heart of her work. As will be demonstrated in this paper, it is in deciphering what Arendt intended by these terms that one discovers a number of key criteria against which a political system can be evaluated. It is in this vein that Arendt's work is analyzed and applied to present-day South Africa in this dissertation.

⁷ Hannah Arendt *On Revolution* (2006) at 18-25.

As opposed to offering a 'perfect political philosophy' or ideology, Arendt simply asks us to, 'think what we are doing,'⁸ to continuously re-evaluate our current systems, and to appreciate that not only are we, as humans, the creators of our systems, but we also have the power to transform them. Arendt vehemently rejects attempts at molding ourselves like a work of art to one single political ideology, whether it be Marxism or representative democracy, ideologies thought to be so persuasive that even generations unborn must accept them.⁹ Rather, we should pay particular respect to the spontaneous results that occur when a plurality of people freely come together to act politically; and in paying this respect, we should realize the need for free public spaces for deliberation and a form of governance that permits participatory political engagement.¹⁰ People are not encouraged to conform to pre-determined social, economic, or political philosophies purported to be the most adequate, but encouraged to appreciate their own individuality and enormous potential for innovation they bear when they congregate and express themselves. In this respect, Arendt identified the *council system* as the structure of governance most suited to protect political freedom, action, and the spirit of the revolution.¹¹

From this discussion so far, it is hoped that the value of considering Arendt's work and applying it to present-day South Africa is clear. Arendt's delineation and thorough explanation of concepts such as *action*, *freedom*, *politics*, the *public realm*, and *revolution* offer an extraordinary springboard into a critical assessment of any society and its political institutions.

⁸ Hannah Arendt *The Human Condition* 2ed (1998) 5.

⁹ Margaret Canovan. 'Introduction' in Hannah Arendt *The Human Condition* (1998) vii at xviii.

¹⁰ Arendt (note 8) at 198.

¹¹ Arendt (note 7) at 256.

particularly one at the precipice of a new era, as South Africa undeniably is. Accordingly, part one of this dissertation will pay considerable attention to elucidating the major focuses of Arendt's work that are relevant to a re-evaluation of current political systems. The first of these is *action*, a concept that lies at the center of Arendt's political thought.¹² Other concepts such as freedom, politics, and revolution, cannot be adequately comprehended without serious engagement with Arendt's theory of action, and for that reason, action is the subject of the first chapter.

Naturally springing from Arendt's theory of action is her discussion of the public and private divide, and the concomitant rise of what she termed the *social*.¹³ This is the focus of the second chapter and it is in this discussion that the appropriate place of action and politics is identified, as well as the articulation of how and why these activities are suppressed. Ultimately, it will be demonstrated that, for Arendt, true politics and action can only occur where there is a protected, distinct public forum in which people can deliberate openly and without the constraints of their private lives. Such a public space is vital because it allows us to perceive our common world from a plurality of perspectives, enabling us to escape our own subjectivity and instead appreciate both our similarities and our differences.

A secure and dynamic public realm is also necessary for the spirit of the revolution to survive, and it is thus in the third chapter that Arendt's unique approach to the idea of revolution is examined. Whereas Arendt laid out the foundations of her political thought, inter alia action

¹² Arendt (note 8) at 7-8.

¹³ Ibid at 28-9.

and the public realm, in *The Human Condition*, it was in *On Revolution* that Arendt extended and qualified her theories by placing them in the context of certain historical developments, principally the French and American Revolutions. Not only did these revolutions provide Arendt with a framework through which she could espouse her theory on what genuinely constitutes a revolution, but they also served as snapshots of what Arendt conceived of as the proper and improper concerns and structures of governance. It is here that Arendt identified the council system as the most likely form of governance able to protect the revolutionary spirit and true freedom; that is, the ability of individuals to be active politically. While this is the closest Arendt comes to offering a prescriptive theory of politics, it will be shown in the fourth chapter that Arendt is careful to distinguish her fondness for the council system from conventional political philosophies aimed at creating a blueprint for the future. Arendt is not proposing an ideal system to which we should conform and in which we all know our proper place so that society and the State can operate smoothly and with minimal disquiet. Rather, Arendt praises the council system as a form of participatory democracy in which people can preserve their freedom, maintain the spirit of the revolution, and act towards creating the type of governance they deem best for themselves; a system in which policies are, 'matters of practical politics, subject to the agreement of many; they can never lie in theoretical considerations or the opinion of one person.'¹⁴

In the second part of this dissertation, the focus will shift from an explanation of Arendt's concepts to an analysis of how Arendt's ideas compare to the post-apartheid order. Part two begins by highlighting certain preliminary issues that must be addressed before applying Arendt's work to a political system of the present-day such as ours. These issues include the fact

¹⁴ Arendt (note 7) at 5.

that Arendt's work is in large part a reaction to the totalitarian experiences that marked the last century, as well as the fact that her work is cemented in Western history, focusing solely on Europe and the United States. Having raised these issues, the sixth chapter moves on to a discussion of whether the South African transition can be classified as revolutionary as defined by Arendt. Despite the drafting of a progressive and internationally exalted constitution, it will be argued that the post-apartheid order does not exhibit the novelty and embrace of civic initiative required to be considered a product of revolution. This does not necessarily mean that there is no freedom in the current constitutional dispensation, and thus the seventh chapter examines the possible extent to which freedom and action might be provided for in the provisions of the Constitution:

Ultimately, however, this dissertation will draw the conclusion that despite the extraordinary achievement of liberation in South Africa, the existence of freedom, action, and the revolutionary spirit are in great peril. The Constitution is a step towards the realization of Arendt's vision, but it must provide for an established public realm in which freedom can be secured. If it does not, the danger is that South Africans will be inhibited from escaping the dehumanizing machinations of modern society, or what Arendt termed the *social*. They will likely fall into the trappings of the social even further, eventually to the point where individuals are so alienated from their own humanity that it is largely unrecoverable. Yet the point of this dissertation is not to present such a pessimistic premonition, nor to bash the post-apartheid order. It is on one hand to point out that Arendt's work is still of great value, particularly to the present South African context, because it can illuminate vital aspects of our democracy that can be improved upon and which might otherwise go unnoticed. On the other hand, the point is to show

through Arendt's work that faith in a better future can be derived from the remembrance and acknowledgment that individuals are eternally unique and full of potential, with each having the ability to act and therefore redirect or disrupt the chain of events initiated by previous actions.¹⁵ In this sense, expecting the unexpected becomes reasonable, and the faith that a better society for all can emerge should never be abandoned, even when the current situation seems to leave little hope for improvement.¹⁶

University of Cape Town

¹⁵ Arendt (note 8) at 246.

¹⁶ Canovan (note 8) at xvii.

PART ONE:

ARENDT'S POLITICAL

THOUGHT

CHAPTER I:

ACTION

1. Introduction: Modern World Alienation and the Human Condition

Published exactly fifty years ago, *The Human Condition* is one of the most seminal, and at the same time controversial, pieces of political philosophy of the twentieth century. Yet Hannah Arendt avidly protested against the categorization of her work as political philosophy, and for good reason. Her work not only rejected the traditional ways in which political philosophy was generally written, instead choosing to write in an original, uninhibited, and often complicated style, but she also dedicated much of her thought to discrediting the entire genre of political philosophy, from Plato to Karl Marx. It is precisely because of her refusal to limit herself to any genre, however, that theorists generally have a hard time categorizing her books for library purposes, or choosing in which course to teach her work. Yet at the end of the day, and simply for convenience sake, *The Human Condition* is most commonly considered a work of political

philosophy because it does indeed engage in a discourse of politics and the western philosophic tradition.

To demonstrate why it is so difficult to categorize *The Human Condition*, one can simply read the first page, in which Arendt launches into a discussion of the first space-bound satellite in 1957, an 'event, second in importance to no other, not even the splitting of the atom,'¹⁷ an event that reflected modern mankind's unyielding desire to escape from earth in favor of another celestial body. She continues on the next page by asking, '[s]hould the emancipation and secularization of the modern age, which began with a turning-away, not necessarily from God, but from a god who was the Father of men in heaven, end with an even more fateful repudiation of an Earth who was the Mother of all living creatures under the sky?'¹⁸ Already, one could easily wonder how and why Arendt would choose such topic to begin her political treatise. What does the search for the possibility of future human existence on other planets have to do with the current state of political philosophy? In Arendt's typical fashion, the crucial answer is revealed slowly and subtly.

The modern human quest to see if we can eventually depart from this earth is reflective of a broader concern, which is modern man's growing alienation from his own habitat. Arendt compares this phenomenon to another endeavor of modern man, which is to research the possibility of creating a superior human being through genetic modification, a 'future man' who, 'seems to be possessed by a rebellion against human existence as it has been given, a free gift

¹⁷ Arendt (note 8) at 1.

¹⁸ Ibid at 2.

from nowhere (secularly speaking), which he wishes to exchange, as it were, for something he has made himself.¹⁹ Similar to modern man's interest in leaving this planet, this habitat to which he was born, modern man seems to express an interest in leaving this human life to which he was born. In other words, there appears to be a fundamental desire to escape the human condition, something which is undoubtedly of philosophical concern.

For Arendt, the desire to escape the human condition is the result of a historical process which has led to 'modern world alienation' in which people have lost a sense of their own humanity.²⁰ Describing this historical process is the subject of *The Human Condition*, and her attempt to articulate this process ranges from antiquity to the twentieth century. Yet before plunging headlong into the initial roots of the historical developments that have resulted in modern world alienation, Arendt offers a few key instances of what has contributed to this process in the modern era. For one, the rise of science, the very discipline that has enabled us to contemplate life on other planets or genetic modification, has led to a diminishment of the importance of speech.²¹ Although initially intended as abbreviations for speech, the science of the present-day is now replete with mathematical symbols which can no longer be communicated through talking. Consequently, speech has lost much of its importance, which for Arendt is problematic due to the fact that men, 'can experience meaningfulness only because they can talk with and make sense to each other and to themselves,'²² meaningfulness that cannot come from mathematical symbology.

¹⁹ Arendt (note 8) at 3.

²⁰ Ibid at 6.

²¹ Ibid at 4.

²² Ibid.

The other disheartening development of the modern era which Arendt points out from the onset of *The Human Condition* is the glorification of labour.²³ Despite man's desire to free himself from the toils of labour, a desire that has existed since the advent of civilization, the modern age has actually produced a society of labourers.²⁴ To use an old adage, modern man lives to work, as opposed to working to live. Whether he be a factory worker, a Prime Minister, or a professor, man largely defines himself by his work, by how he labours.²⁵ According to Arendt, this society of labourers, 'does no longer know of those higher and more meaningful activities for the sake of which freedom would deserve to be won.'²⁶

While Arendt's contentions may sound elitist at first, she by no means blames the individuals of modern society for their limited outlook on the purpose of life, nor does she negate the importance of work as an essential activity of humankind. Rather, Arendt is seeking to expose that over time, men have lost sight of the other possibilities available to them in the human experience. For example, Arendt argues that Marx erroneously identified labour and work as the fundamental aspect of humanity.²⁷ In doing so, Marx was convinced that a better society would eventually emerge when men rose up and created it, as if it were a work of art. Yet for Arendt, to conceive of political action as making something is at best precarious, for making, or working at something, 'is what a craftsman does by forcing raw material to conform to his model. The raw material has no say in the process, and neither do human beings cast as raw

²³ Arendt (note 8) at 5.

²⁴ Ibid at 126.

²⁵ Ibid at 5.

²⁶ Ibid.

²⁷ Majid Yar 'Hannah Arendt.' Available at <http://www.iep.utm.edu/a/arendt.htm> [Accessed 2 March 2008].

material for an attempt to create a new society or make history.²⁸ Arendt was convinced that to understand society as something we should create is to ignore our plurality as humans. Such an understanding is equivalent to coercing ourselves to conform to a pre-determined model, irrespective of our individual capacity for innovation.²⁹

Arendt does not implicate Marx as the culprit of this misunderstanding, but maintains that the idea that we should mould ourselves to a perfect scheme is as ancient as Plato's conception of the ideal city.³⁰ In fact, Arendt views Marx's exaltation of work and labour, and his conception of humankind as a collective species caught up in a cycle of production and consumption, as a reflection of how modern society has come to perceive itself, as a society of labourers in which the other capacities of men as individuals have become subordinated to one central focus, in this case economic considerations. Yet for Arendt, this perception of men as mere labourers working towards the realization of a better society, with each knowing their place and doing their part like bees in a hive, is not only what has corrupted the western philosophical tradition, but what has led man to become alienated from his own humanity. Such a perception negates the fact that men live in a plurality, with each viewing the world in a different way, with each having the potential to act and to begin something entirely new.³¹ This capacity for novelty, which each individual inherently possesses, is lost once man is stripped of his ability to act. Accordingly, Arendt saw the root cause of modern world alienation as being the loss of hope people in modern societies have when they feel that they no longer have any say in the course of

²⁸ Canovan (note 9) at xi-xii.

²⁹ Ibid.

³⁰ Dana Villa 'Introduction: The Development of Arendt's Political Thought' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) 1 at 11.

³¹ Arendt (note 8) at 177.

events. If an individual feels that he has no meaningful influence over the political developments in his society, he will disengage and become alienated from the political process. something that, for Arendt, is equivalent to being alienated from one's own humanity. For being able to act and be political is part and parcel of Arendt's conception of the human condition.³²

This disengagement and the consequent lack of political concern it entails is by no means a purely theoretical construct of Arendt's. It is evident every day throughout South Africa, where even after the hope spawned by the demise of the apartheid order, people commonly feel that there is no more room for faith in a better future, that despite the replacement of a morally defunct, racist regime with one intended to represent all, little has changed and little can be done to stop what seems like an inevitable destiny of perpetual turmoil.³³ The choice many confront is to either allow themselves to become completely disillusioned with the political process, or to turn to more radical ideas that often promote the complete overhaul and destruction of the current system, perhaps even through violent means.³⁴ It is precisely because of this tragic predicament that Arendt proposes in *The Human Condition* that it is time for, 'a reconsideration of the human condition from the vantage point of our newest experiences and our most recent fears... to think what we are doing.'³⁵ She does not pretend to offer a solution to the problem, but seeks to find an understanding of how it came about, so that maybe we can discover how to improve upon it. Arendt proposes that this can be done first by identifying the fundamental features of the human condition that each man bears, and second to trace back modern world

³² Arendt (note 8) at 180.

³³ Celean Peterson 'ANC Rebels challenge South Africa's ruling Party.' Available at http://www.denverpost.com/nationworld/ci_10866165 [Accessed 31 October 2008].

³⁴ Eric Lucas 'ANC War Talk Sets the Tone for Taxi Violence.' Available at <http://www.ifp.org.za/Releases/101208apr.htm> [Accessed 10 December 2008].

³⁵ Arendt (note 8) at 5.

alienation to its origins so as to arrive at a proper understanding of the nature of present-day society.³⁶

2. *The Vita Activa*

In her quest to identify the fundamental features of the human condition so as to eventually discern the historical reasons for modern world alienation, Arendt identifies, 'life itself, natality and mortality, worldliness, plurality, and the earth,'³⁷ as the permanent, inescapable conditions of human existence. According to Arendt, these, 'basic conditions under which life on earth has been given to man,'³⁸ correspond to the three fundamental human activities of labour, work, and action, whose designation as such is as ancient as political thought itself, beginning with Socrates.³⁹ Even Aristotle, with his focus on freedom - which, for Arendt is predicated on the principle of action⁴⁰ - noted that the existence of labour and work were prerequisites to man's ability to live freely.⁴¹ Thus, having established that the tripartite division of human activity has essentially existed ever since western man began to think about the condition of his own humanity, Arendt proceeds to explain the three fundamental human activities and how their traditional hierarchy has become corrupted and reversed overtime.

³⁶ Arendt (note 8) at 6.

³⁷ Ibid at 11.

³⁸ Ibid at 7.

³⁹ Ibid at 12.

⁴⁰ Ibid at 146.

⁴¹ Ibid at 12.

First is labour, 'the activity which corresponds to the biological process of the human body... of life itself.'⁴² The activity of labour is geared towards sustaining our livelihood and nothing more; it is basic and crude, it leaves nothing of any permanence and must therefore be attended to continuously. Like a squirrel that must constantly gather and harvest nuts, labour is an activity that humans share with animals. For this reason, Arendt uses the term *animal laborans* to refer to the mode of human activity that is only concerned with the necessities of life itself.⁴³ In antiquity, the activity of labour was relegated to the domain of the slave, whose only concern in life was to sustain the life of himself and his master. The purpose of slavery in Ancient Greece was precisely so that others, the free men, would not have to sacrifice their time toiling for their own livelihood, but could instead concentrate on the higher virtues of the *vita activa*. Accordingly, Arendt identifies the central characteristic of labour as unfreedom.⁴⁴ Although necessary, labour belongs at the bottom of the tripartite hierarchy of the *vita activa*, a central fact that Arendt argues is at the heart of Marx's misunderstanding of the human condition.⁴⁵

Above the activity of labour in the hierarchy of the *vita activa* is the activity of work, perhaps the most difficult of the human activities to articulate. Work, 'corresponds to the unnaturalness of human existence,'⁴⁶ in that it, 'provides an "artificial" world of things, distinctly different from all natural surroundings.'⁴⁷ The purpose of work is to create something of semi-permanence. something that will last in time for longer than the act of its creation and

⁴² Arendt (note 8) at 7.

⁴³ Margaret Canovan *The Political Thought of Hannah Arendt* (1974) 55.

⁴⁴ Arendt (note 8) at 31; Yar (note 24).

⁴⁵ Arendt (note 8) at 104-5.

⁴⁶ *Ibid* at 7.

⁴⁷ *Ibid*.

which will facilitate, but not sustain, human life. Arendt uses the term *homo faber* to refer to this mode of activity, and the simplest way to conceive of *homo faber* is to think of a builder who constructs an edifice, or the craftsman who carves a sculpture, a work intended to endure for at least some length of time without constant attendance.⁴⁸ Yet the work of *homo faber* is not limited to the manipulation of physical matter, as it also includes the laws enacted by the legislator, or any other artificial, man-made construct designed to enable and guide human life in this world. *Homo faber* is distinguishable from *animal laborans* because he is not limited by the laws of nature and necessity, but is instead concerned with manipulating the world according to the demands of humans. For this reason, the work of *homo faber* bears a certain amount of freedom, in contrast to the unfreedom characteristic of *animal laborans*. This freedom inherent in work, however, is circumscribed by the fact that work is instrumental in nature.⁴⁹ Work is ultimately a means to an end and not an end in itself, in much the same way as law is meant to facilitate order amongst humans, but is not an end in and of itself; in other words, it serves a purpose.

If work and labour are characterized by limited or no freedom, then it is in Arendt's understanding of action that one is to find the true realm of freedom.⁵⁰ Action, 'corresponds to the human condition of plurality,'⁵¹ in the sense that action is reflective of the fact that we do not inhabit this world in solitude. Whereas the work of *animal laborans* and *homo faber* can continue without the presence of others, action is the activity that reflects our juxtaposition as

⁴⁸ Arendt (note 8) at 8; Yar (note 24).

⁴⁹ Shiraz Dossa *The Public Realm and the Public Self: The Political Theory of Hannah Arendt* (1989) 57.

⁵⁰ Arendt (note 1) at 146.

⁵¹ Arendt (note 8) at 7.

individuals within a plural society.⁵² In Arendt's words, 'plurality is the condition of human action because we are all the same, that is, human, in such a way that nobody is ever the same as anyone else who ever lived, lives, or will live.'⁵³ This simultaneous awareness of both our equality and our place as individuals within a collective is how action and plurality correlate to politics; they are, 'not only the *conditio sine qua non*, but the *conditio per quam*... of all political life.'⁵⁴ for politics is the process through which humans interact, debate, and decide how to organize themselves. In acting politically in a plurality, through speech and deed, humans also come to recognize their faculty for beginning something new.⁵⁵ While living in a plurality automatically makes us aware of our uniqueness in terms of bodily existence or as separate physical objects, it is only by way of action through deed and speech that, 'we insert ourselves into the human world,'⁵⁶ and recognize our uniqueness as human beings, each with our own thoughts and potentialities.

Arendt likens action through speech or deed to a second birth,⁵⁷ in which we come to realize our inherent drive to bring about something novel apart from our initial physical entry into the world. While labour and work also involve the creation of something new, action is not prompted by necessity or utility. Rather, action and the impulse to take initiative springs from the central fact of our natality, our status as, 'newcomers and beginners by virtue of our birth.'⁵⁸ As

⁵² Elisabeth Young-Bruehl *Why Arendt Matters* (2006) 81.

⁵³ Arendt (note 8) at 8.

⁵⁴ *Ibid* at 7.

⁵⁵ Maurizio Passerin d'Entreves 'Hannah Arendt.' Available at <http://plato.stanford.edu/entries/arendt/?ref=classshop.com#ActSpeDis> [Accessed 10 March 2008]

⁵⁶ Arendt (note 8) at 176.

⁵⁷ *Ibid*.

⁵⁸ *Ibid* at 177.

newcomers, we are driven to answer the primordial question, 'Who are you?',⁵⁹ and we do this through action.⁶⁰ Because action is driven by human impulse and nothing else, it is equivalent to freedom. This freedom is therefore a simple expression of our humanity. It is not a means to achieve something else, but is an end in itself. In this way, action deters feelings of meaninglessness by providing us with something we value non-instrumentally in our lives.⁶¹ Done for its own sake, political action is valuable experientially and existentially by enriching both our individuality and overall humanity.⁶² There is also a sheer exhilaration that comes by way of action, an basic excitement related to the fundamental experience of being free.⁶³

Jerome Kohn notes that in Arendt's theory of action, '[m]an is not born free, as Rousseau believed, but born *for freedom*;⁶⁴ man is born to act. Yet just as action is linked to the central fact of our natality, so is action bound to our inevitable mortality.⁶⁵ Not only do we reveal ourselves through action and answer the question of who we are, but through our words and deeds we present the stories of ourselves that may be passed on from generation to generation.⁶⁶ By saying that humans are born for freedom means that our actions are the substance of narratives.⁶⁷ In acting, we enable ourselves the possibility of attaining glory or renown,

⁵⁹ Arendt (note 8) at 178.

⁶⁰ Lewis Hinchman and Sandra Hinchman 'Existentialism Politicized: Arendt's Debt to Jaspers' in Lewis Hinchman and Sandra Hinchman (eds) *Hannah Arendt: Critical Essays* (1994) 149-50.

⁶¹ George Kateb 'Political Action: Its Nature and Advantages' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) 130 at 146.

⁶² *Ibid* at 144-5.

⁶³ *Ibid* at 145.

⁶⁴ Jerome Kohn 'Freedom: The Priority of the Political' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) 113 at 115.

⁶⁵ Young-Bruehl (note 52) at 87.

⁶⁶ *Ibid*.

⁶⁷ Kohn (note 64) at 117.

'immortal fame.'⁶⁸ Unlike behaviour, which is repetitive and habitual, merely exposing what we have become, action spurs us to excel, to rise to an occasion and show what we can become.⁶⁹ As opposed to the strength or skill required in labour and work, the performance of action involves an element of risk; 'courage in the face of the unknown.'⁷⁰ The inherent difficulty with action, however, is its uncontrollability and unpredictability,⁷¹ for if we know the exact consequences of what we are doing then we are not free in our action but unfolding a pre-determined plan.⁷² Accordingly, the ultimate meaning of an act cannot be revealed during its performance, but only when it reaches its conclusion and is able to be told in the form of a story.⁷³ For Arendt, the possible, 'calamities of action all arise from the human condition of plurality,'⁷⁴ in that we can never know how our actions will affect others. Yet, 'this is the price [we] pay for freedom; and... for plurality and reality, for the joy of inhabiting together with others a world whose reality is guaranteed for each by the presence of all.'⁷⁵

To address the possible calamities caused by action, Arendt proposes the acts of making promises and forgiving as solutions.⁷⁶ Whereas promises intend to minimize the unpredictability of action, the act of forgiving offers, 'redemption from the predicament of irreversibility- of being unable to undo what one has done though one did not, and could not, have known what he

⁶⁸ Young-Bruehl (note 52) at 87.

⁶⁹ Ibid.

⁷⁰ Ibid at 89.

⁷¹ Arendt (note 8) at 236.

⁷² Kohn (note 64) at 123.

⁷³ Young-Bruehl (note 52) at 89.

⁷⁴ Arendt (note 8) at 220.

⁷⁵ Ibid at 244.

⁷⁶ Ibid at 237.

was doing.⁷⁷ Bonnie Honig points out that what is unique about promising and forgiving is that they are both performatives, a feature that renders the two practices profoundly political.⁷⁸ Like all other forms of action, promising and forgiving require the presence of others to bear meaning. Furthermore, promising and forgiving cannot be judged as right or wrong, true or false.⁷⁹ In contrast to behaviour, actions are not susceptible to moral judgment for Arendt. Rather than being judged by motivation or intent, the sole criterion for judging the performance of an action is its greatness.⁸⁰

It is noteworthy that many theorists have questioned whether Arendt's emphasis on extraordinary achievement comes at the expense of any normative foundation to her theory of action.⁸¹ George Kateb holds that when Arendt says that action, 'is neither under the guidance of the intellect nor under the dictate of the will... but springs from something altogether different (which following Montesquieu's famous analysis of forms of government) I shall call principle,⁸² that Arendt is not referring to *moral* principle.⁸³ Rather, the 'supreme achievement of political action is existential;⁸⁴ 'action does not exist to do justice or fulfill other moral purposes.⁸⁵ As such, Arendt's commitment to moral standards is cursory and inadequate.⁸⁶

⁷⁷ Arendt (note 8) at 237.

⁷⁸ Bonnie Honig 'Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic' (1991) 85 no.1 *American Political Science Review* 96 at 100.

⁷⁹ *Ibid* at 101.

⁸⁰ Young-Bruehl (note 52) at 87.

⁸¹ In a witty defense of the prominence placed on heroic acts in Arendt's theory of action, K.M. McClure remarks that Arendt's, 'use of exemplarity was not... to expect a modern jackass to run like an ancient horse, but to caution modern horses not to act like jackasses.' K.M. McClure 'The Odor of Judgment: Exemplarity, Propriety, and Politics in the Company of Hannah Arendt' in Craig Calhoun and John McGowan (eds) *Hannah Arendt and the Meaning of Politics* (1997) 53 at 54.

⁸² Arendt (note 1) at 152.

⁸³ Kateb (note 61) at 139.

⁸⁴ George Kateb *Hannah Arendt: Politics, Conscience, Evil* (1984) 31.

⁸⁵ *Ibid*.

Margaret Canovan takes a slightly differing approach, arguing that although Arendt's theory denies any foundation in moral rules, it nevertheless provides a foundation for sound human coexistence through the 'fundamental human condition of plurality itself, in acceptance of the fact that we share this earth with others who are both like and unlike ourselves.'⁸⁷

Despite these differences, what becomes evident is that Arendt's theory of action elicits a sort of dualism, in that it wavers between what Seyla Benhabib and Maurizio Passerin d'Entreves refer to as expressive and communicative models of action.⁸⁸ Whereas the former focuses on self-actualization and the uniqueness of individuals, the latter is characterized by reciprocity and the equality of individuals.⁸⁹ Passerin d'Entreves points out that,

[i]nsofar as Arendt's theory of action rests upon an unstable combination of both expressive and communicative models (or action types), it is clear that her account will vary in accordance with the emphasis given to one or the other. When the emphasis falls on the expressive model of action, politics is viewed as the performance of noble deeds by outstanding individuals; conversely, when her stress is on the communicative model of action, politics is seen as the collective process of deliberation and decision-making that rests on equality and solidarity.⁹⁰

Yet regardless of where the emphasis lies at a particular point in Arendt's theory, there is no doubt that action and the exercise of freedom are at the apex of the *vita activa* in the human condition.

⁸⁶ Kateb (note 61) at 143.

⁸⁷ Margaret Canovan *Hannah Arendt: A Reinterpretation of her Political Thought* (1992) at 191.

⁸⁸ Seyla Benhabib *The Reluctant Modernism of Hannah Arendt* (1996) at 125; Maurizio Passerin d'Entreves *The Political Philosophy of Hannah Arendt* (1994) at 85.

⁸⁹ Passerin d'Entreves (note 88) at 85.

⁹⁰ Ibid.

3. *The Reversal of the Traditional Hierarchy*

As noted earlier, one of Arendt's principal motives in writing the *The Human Condition* was to identify the fundamental features of the human condition so as to better understand the roots of modern world alienation. Having discerned these features and their corresponding human activities, Arendt's next goal was to see how our understanding of the *vita activa* changed over time, to the point where the most important human activity, action, was suppressed and subordinated to labour.⁹¹ For Arendt, this reversal of the traditional hierarchy profoundly contributed to modern world alienation because action is the realm of freedom and politics, the activity through which humans come together to interact, distinguish themselves, and ultimately express their own humanity.

In Arendt's view, the corruption of the traditional hierarchy began with the trial of Socrates.⁹² Prior to his condemnation to death, the ancient Athenian *polis* was one in which free men would gather in public spaces and engage in politics. For them, this ability to escape the toils of labour or work in order to think, debate, and express opinions openly constituted true freedom. This action of being openly political was in their estimation the highest of the activities possible to humans. The act of politics was an end in itself, for which the activities of labour and work were mere means towards facilitating that end, and thus often relegated to slaves and

⁹¹ Passerin d'Entreves (note 88) at 44.

⁹² Arendt (note 8) at 12.

merchants. Acting politically was equated with freedom precisely because it was unconstrained by the limitations of survival or instrumentality, and in this way was seen as a complete break from the harsh realities of the private life.⁹³ Accordingly, action and freedom were understood as belonging solely to the public domain. Public spaces existed so that people could engage in politics, that is, in the exchange of ideas and opinions among a plurality of people, without worry about the needs of their own individual lives.⁹⁴ The agreements reached in these public spaces did not represent an amalgamation of various private, household concerns, but rather the result of people spontaneously bouncing their thoughts back and forth and compromising.

The dynamics of the public spaces included equality, persuasion, and freedom, not government, force, or necessity.⁹⁵ It was this pre-Platonic Athenian *polis* to which Arendt would constantly return because it had correctly understood the *vita activa* and the importance of action as an end in itself. However, this very Athens that she praised so much would soon give way to a philosophical tradition that would obscure action for millennia to come.

The initial event that gave way to the corruption of the traditional hierarchy as it was practiced in the *polis* was the trial of Socrates.⁹⁶ As a beloved citizen and thinker, the condemnation of Socrates to death for allegedly being subversive was largely seen by Athens' intelligentsia as a signal that the practice of politics in the *polis* was an unstable, irresponsible

⁹³ Phillip Hansen *Hannah Arendt: Politics, History, and Citizenship* (1993) 53.

⁹⁴ Arendt (note 8) at 198.

⁹⁵ Ibid.

⁹⁶ Dossa (49) at 19.

institution submissive to the whims of humans.⁹⁷ One of those who thought that Athens was in need of a new order was Plato, a student of Socrates, who claimed that he had discovered a 'higher principle' by which human activities should be ordered.⁹⁸ This higher principle was derived from a rejection of the world of appearances in favour of the world of eternal ideas. It involved the, 'conviction that no work of human hands can equal in beauty and truth the physical *kosmos*.'⁹⁹ Through contemplation of what constitutes virtue and the Absolute Good, the philosopher could come to realize how humans could be ordered in a way that corresponded with the eternal, perfect order of the universe. Plato espoused his version of this order by describing the ideally balanced city, one in which each citizen knew their place, and where the 'philosopher-kings' would adjudicate between the conflicting opinions of the citizens.¹⁰⁰ The formulation of this ideal city amounted to a complete rejection of the political experience as it existed in the *polis*, where, 'to be free meant both not to be subject to the necessity of life or to the command of another, and not to be in command oneself. It meant neither to rule nor to be ruled.'¹⁰¹ The idea that the plurality of opinions expressed in the *polis* were equally valid and deserving of merit was cast aside by Plato in favour of the idea that only contemplation could lead to the, 'beholding of truth beyond thought and beyond speech.'¹⁰²

The implications of Plato's new approach were vast. To begin with, the primacy which Plato placed on contemplation over action came to be embraced wholeheartedly within the ancient Greek philosophic tradition and recapitulated by key figures such as Aristotle. Centuries

⁹⁷ Arendt (note 8) at 226.

⁹⁸ Dossa (note 49) at 20.

⁹⁹ Arendt (note 8) at 15.

¹⁰⁰ Plato *The Republic* (1945) at 175-9; Kohn (note 61) at 121.

¹⁰¹ Arendt (note 8) at 32.

¹⁰² *Ibid* at 291.

later, the primacy of contemplation was crystallized with the fall of Rome and the concomitant rise of Christianity. Prior to these developments, the citizens of ancient Greece and Rome believed that in order to gain some lasting importance or remembrance in this world after death, people could perform great acts in imitation of their immortal gods and perhaps gain a certain type of immortality themselves.¹⁰³ This was the impetus behind the creation of great works of art, designed to last far beyond the life-span of their maker, and meant to be judged by worldly standards such as beauty and durability. The idea was that, 'in creating an object, the craftsman defies man's mortality by showing that at any rate the work of human hands is deathless.'¹⁰⁴ The same could be said of the citizen whose political achievements could deliver him a lasting fame in the *polis* that would continue even after his death. And this was also the idea behind the creation of the Roman political system, a political structure thought to be so fine-tuned that it could accommodate generations to come without ever faltering. It did, however, crumble, and with it came the spread of Christianity, a religion which successfully sought to replace the pursuit for earthly immortality with the pursuit of eternal life outside this world.¹⁰⁵ At the time, 'the Christians, proselytizing among the ruins of the ancient world, stressed the frailty of everything worldly, and urged their followers to turn away from the world and all its values to the quest for individual salvation in eternity.'¹⁰⁶ No more were action and the exercise of politics in the *polis* of any concern. For not only could the *polis*, a human construct, be vanquished at any time like Rome, but eternal life as described in the New Testament could never come through

¹⁰³ Arendt (note 8) at 19-21.

¹⁰⁴ Canovan (note 43) at 84.

¹⁰⁵ Arendt (note 8) at 55.

¹⁰⁶ Canovan (note 43) at 84.

acting politically;¹⁰⁷ it could only come through contemplation and adherence to the word of God.

The elevation of contemplation at the expense of action only continued as Christianity strengthened its position as the exclusive religion of Western mankind.¹⁰⁸ In the middle ages, this phenomenon was reinforced by the discovery of Aristotle's writings, which like Plato's, held that labour, work, and action, were only instrumental in nature: they existed merely to facilitate contemplation. Although centuries later the rise of secularization would challenge the value of both contemplation and Christianity, Arendt argues that the damage initially prompted by Plato and extended for over a millennium by Christian theologians was never repaired. The philosophical tradition ceased to concern itself with human activity,¹⁰⁹ with the consequent result that pre-eminent thinkers, from Hegel to Marx to Nietzsche, started off on the wrong foot, so to speak. For Arendt, one cannot try to turn the traditional hierarchy upside-down, as Marx did by trying to place labour at the apex, if one does not fully consider the other activities, the principal one being action.¹¹⁰ Arendt does not necessarily blame Marx for this misstep, but maintains that Marx's misunderstanding was due to the obfuscation of action and the traditional hierarchy originally instigated by Plato. Arendt's point in this historical discussion is not to attack Plato and every philosopher since him, but to delineate how the philosophical tradition has

¹⁰⁷ Arendt (note 8) at 314.

¹⁰⁸ Arendt (note 8) at 21.

¹⁰⁹ Canovan (note 43) at 54.

¹¹⁰ Dossa (note 49) at 23.

misconstrued the importance of action; something extremely pivotal when one considers Arendt's equation of action with freedom.¹¹¹

5. Conclusion

Apart from initiating the movement by which contemplation would trump action, Arendt also argues that Plato's work occasioned the moment at which philosophy and politics, 'parted company',¹¹² when the focus shifted from the doing of politics to the philosophy of politics.¹¹³ In the philosophy of politics, (or political philosophy), guiding models are conceived of according to which humans should organize themselves. Plato's ideal city was the first of these models, and it exhibited the fundamental features of subsequent models; namely, that structures of governance should be superimposed on a populace in order to achieve rule and order. Although Plato could quite correctly be deemed the father of political philosophy, it is ironic that his political philosophy was highly anti-political; the whole purpose of his ideal city was to replace what he considered to be the irresponsibility and immorality of action and politics as they existed in the *polis*.¹¹⁴ Thus, the idea was born that rule and order must take precedence over freedom.¹¹⁵ No more could a society be subjected to the unpredictable and morally irresponsible uncertainty

¹¹¹ Dana Villa *Politics, Philosophy, and Terror: Essays on the Thought of Hannah Arendt* (1999) at 197.

¹¹² Kohn (note 64) at 121.

¹¹³ *Ibid.*

¹¹⁴ Dossa (note 49) at 19.

¹¹⁵ Arendt (note 8) at 222.

of the *polis*, in which all men advance their opinions with equal validity. Rather, a small group of trained leaders is required, and only they should have the authority to govern.¹¹⁶

This focus on the elaboration of models designed for rule and order to which we should conform was one of Plato's greatest legacies, although future models would depart from Plato's original intentions. For Plato, the ideal city was organized for the attainment of moral virtue,¹¹⁷ and as such was a reflection of Plato's high esteem for contemplation. However, by the time of the Renaissance and later, the Enlightenment, the rise of science brought the primacy of contemplation into question. Into its place was not action, but the work of *homo faber*. For it was *homo faber* and his instruments that discovered that the earth rotates around the sun, a discovery that could never have been made through sheer contemplation. Soon, the scientists and mathematicians, as workers and makers, from Galileo to Descartes to Newton, rose to the position previously occupied by the philosophers.¹¹⁸ The importance of this, as Arendt points out, is that the models of governance conceived at this time no longer strove for moral virtue. Instead, they were utilitarian in their outlook and thus reflective of *homo faber*. This preeminence of *homo faber* was short-lived, however, as the rising tide of capitalism and its concomitant dilemma of scarcity soon shifted the focus of political philosophy to the realm of necessity, that is, *animal laborans*. It is at this point in history that we find Hobbes' *Leviathan*,¹¹⁹ the ultimate model of rule and order at all costs. According to Hobbes, in a world infested with wars over limited resources, a political-structure was needed to guarantee security and the

¹¹⁶ Ibid at 224.

¹¹⁷ Dossa (note 49) at 20.

¹¹⁸ Canovan (note 43) at 90.

¹¹⁹ Thomas Hobbes *Leviathan: Parts I and II* (1958).

accumulation of wealth.¹²⁰ At its crux, Hobbes' work operated under the premise that man does not comprehend freedom as the ability to act and engage in politics. Rather, what man wants is to be free from politics so as to pursue his own individual economic interests.¹²¹ As with Plato's model, what we see in Hobbes' *Leviathan*¹²² is a complete suppression of politics and freedom.

Also departing from the perspective of survival, and therefore *animal laborans*, was Marx. In his political philosophy, labour is elevated to the apex of human activities, a fact which Arendt explains as also being reflective of the heavily capitalist times in which Marx wrote. But again, Marx loses sight of action in his work and confuses it with necessity.¹²³ Consequently, Marx's political philosophy becomes yet another model, in this case one in which the Proletariat rises up, assumes power, and redistributes wealth. For Arendt, the problem is not so much that Marx's intentions or even thought-processes were not sound. Instead, the issue with Marx is that he succumbs to the Platonic tradition of subordinating freedom and politics to the idea that we as humans must organize ourselves into a certain, pre-determined mould at the expense of individuality and innovation.¹²⁴ Such a political philosophy is intolerable for Arendt, as it inhibits the one activity through which we find our humanity- action.

Having outlined her conception of action and some of the philosophic trends that have obfuscated action throughout the course of history, Arendt proceeds by asking what the

¹²⁰ Ibid at 262.

¹²¹ Dossa (note 49) at 22.

¹²² Hobbes (note 115).

¹²³ Dossa (note 49) at 23.

¹²⁴ Arendt (note 8) at 17.

necessary conditions for the existence and protection of action are. Returning to the *polis*, a place in which action and freedom flourished, Arendt demonstrates the need for a clearly defined and insulated public space. What such a public space entails and what it does not is the subject of the next chapter.

CHAPTER II: THE PUBLIC REALM AND THE RISE OF THE SOCIAL

6. Introduction: The Polis

Considering Arendt's employment of the ancient Athenian example to explain her understanding of action, it is not surprising that Arendt uses the same historical context to articulate her conception of the public realm. This is not simply because, in Arendt's opinion, ancient Athens successfully exhibited the use of both action and public spaces, but because the ancient Greeks also demonstrated exactly what should and should not be the concerns of the public realm, and how the existence of action itself depends on the proper functioning of a protected public

realm.¹²⁵ It is important to remember that Arendt conceived of action as having a necessarily public character.¹²⁶ Action corresponds to the human condition of plurality, and as such, 'it is only action that cannot even be imagined outside the society of men... action is entirely dependent upon the constant presence of others.'¹²⁷ Action is the activity through which we distinguish ourselves and it consequently relies on the existence of forums for the public recognition of our uniqueness. According to Arendt, the ancient Greeks knew this and manifested it through the creation of the *polis*.¹²⁸ Examining exactly how the *polis* operated is therefore crucial to gaining a better understanding of what Arendt intends by the term 'public realm' and why she considers it so vital.

For the ancient Greeks, the *polis*, 'denoted a very special and freely chosen form of political organization and by no means just any form of action necessary to keep men together in an orderly fashion.'¹²⁹ It was an association of free citizens who emerged from the exigencies of their private homes in order to meet in public forums and discuss common affairs.¹³⁰ In the *polis*, all men were viewed as equals and their opinions equally valid, yet the public arenas of the *polis* were also the venues in which men could seek distinction from one another through excellence. Speech was the principal way in which men did this,¹³¹ as it was only through persuasion that one could induce others to share in this opinion or even perhaps earn some measure of fame.

¹²⁵ Canovan (note 43) at 61.

¹²⁶ Ibid at 60.

¹²⁷ Arendt (note 8) at 22.

¹²⁸ Ibid at 197.

¹²⁹ Arendt (note 8) at 13.

¹³⁰ Canovan (note 43) at 61.

¹³¹ Arendt (note 8) at 176.

This exercise of action through speech, unconcerned with the bare necessities of life and therefore characterized by freedom, is what constituted politics in the *polis*.

Central to life in the *polis* was a very sharp distinction between what was considered public or private. The primary reason for this distinction came from the fact that the rise of the *polis* was preceded by the destruction of all organized units resting on kinship.¹³² In those pre-existing units, the only concerns were the survival needs of the household, or *oikos*. Decision-making was the sole purview of the household-head, who like a despot only communicated his decisions through commands which he enforced with force or violence.¹³³ Gradually, however, these units based on kinship became increasingly centralized in a process that resulted in the city-state.¹³⁴ Apart from the consolidation of human activities that the city-state represented, the city-state also relied on the institution of slavery, a fact that enabled the free men of the city-state to focus on other aspects of life not relating to mere survival. According to Arendt, 'the rise of the city-state meant that man received 'besides his private life a sort of second life, his *bios politikos*,¹³⁵ so that each citizen belonged to two orders of existence; one which was his own and one which was communal.¹³⁶ Having been given this second life so to speak, the ancient Greeks were very careful to insulate the possibilities available to them in the *polis* from the constraints of their private lives. For to them the *polis* was a guard against the futility of life; it was a place, 'reserved for the relative permanence, if not immortality, of mortals,'¹³⁷ where men could gain a respect other than that automatically allotted to them by virtue of their being household heads.

¹³² Ibid at 24.

¹³³ Arendt (note 8) at 28.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.at 24.

¹³⁷ Ibid at 56.

The ancient Greeks were also protective of the freedom that the *polis* engendered. In the *polis*, all men acted as equals, free from the inherent inequality of rulership that pervaded the private sphere.¹³⁸ Government, rule, force, and sovereignty were thus considered pre-political ways of dealing with matters, where the concerns simply revolved around survival. In contradistinction, citizens of the *polis* vehemently rejected the notion that politics should be for the sake of life, instead believing that the, 'household life exists for the sake of the "good life" in the *polis*'.¹³⁹ As such, no activity geared towards the necessities of life was permitted to enter the *polis*. This did not mean that the ancient Greeks had no appreciation for the private realm; they did in fact understand that the mastering of the necessities of life was a pre-condition for the practice of politics in the *polis*. But the point is that once given the opportunity to engage in activities other than labor or work, the ancient Greeks were adamant about protecting their *polis*, their public space, from the limitations and inequality of the private realm- for action and freedom could only be exercised in public.

7. *The Value of a Distinct Public Realm*

Having used the example of the *polis* to help illustrate what she intends by a public realm, Arendt proceeds by discussing exactly why a distinct public realm is so important. The public realm was not something that the Greeks appreciated merely because it was new to them or because it represented a departure from the more tedious lives they once led. Rather, Arendt

¹³⁸ Ibid at 32.

¹³⁹ Ibid at 37.

argues that, just as it did for the Greeks, the public realm bears an enormous amount of inherent value for us as humans, even apart from its significance as the realm of freedom and action.¹⁴⁰

For Arendt, the term 'public' corresponds to two distinct, yet similar phenomena. First, 'public' signifies that, 'everything that appears in public can be seen and heard by everybody and has the widest possible publicity.'¹⁴¹ Reality is constituted by appearance, and the intimate and uncertain experiences of the private are de-individualized when they are brought out for public appearance. We are assured of this reality by the presence of others who see and hear the same things as we do. The second meaning of public is, 'the world itself, in so far as it is common to all of us and distinguished from our privately owned place in it.'¹⁴² Arendt draws an analogy between the world and a table at which men are seated, in that both relate and separate people at the same time.¹⁴³

The existence of a realm dedicated solely to the public is vital for a number of reasons. As our understanding of reality is dependent upon appearance, a public realm is needed to shine light on what can be the unbearable darkness of a sheltered existence.¹⁴⁴ While Arendt suggests that certain private matters, such as love, be kept private, she warns against the desperate privations that come from leading a wholly private life. An existence completely detached from the public, 'means to be deprived of things essential to a truly human life: to be deprived of the

¹⁴⁰ Arendt (note 8) at 50.

¹⁴¹ Ibid.

¹⁴² Arendt (note 8) at 52.

¹⁴³ Ibid.

¹⁴⁴ Ibid at 51.

reality that comes from being seen and heard by others.¹⁴⁵ Such an existence loses its meaning because without appearance, it is as though there is no such existence; it remains without significance or consequence to others.¹⁴⁶

Another vital feature of the public realm is that it provides us with the opportunity to hear the innumerable and differing perspectives of our fellow citizens. Without this opportunity, it is easy to become trapped in our own subjectivity, unable to understand the various angles from which issues can be viewed. Even if our personal views are shared within our families, they will still lack the validation that comes from public scrutiny. As Arendt puts it, worldly reality can only truly and reliably appear, 'where things can be seen by many in a variety of aspects without changing their identity, so that those gathered around them know they see sameness in utter diversity'.¹⁴⁷ Thus, the public realm allows us to escape the subjectivity of our own lives while at the same time increasing our worldliness, or our awareness of the multi-faceted complexities involved in most issues.

7. The Rise of the Social

Having articulated the inherent value of a distinct public realm, Arendt proceeds to explain how, similarly to action, the understanding and appreciation of the public realm demonstrated by the ancient Greeks evaporated over the course of history. Examining this history is important because it has led to the rise and dominance of what Arendt calls 'the social realm,' whereby the

¹⁴⁵ Ibid at 58.

¹⁴⁶ Ibid.

¹⁴⁷ Arendt (note 8) at 58.

very existence of a public sphere has been lost and with it, the possibilities of action, politics, and freedom.¹⁴⁸

Due to a matter that could almost be described as historical coincidence, the first threat to the public realm came from a mere, but fateful mistranslation. Owing to the symbiotic relationship between action and the presence of others, the Roman philosopher Seneca translated Aristotle's term *zoon politikon*, which referred to the politically active man of the *polis*, as *animal socialis*.¹⁴⁹ The implications, although unintentional, were enormous. To begin with, there was no equivalent for the word 'social' in ancient Greek. In Latin, however, the word 'social' had very specific connotations. While 'social' did involve a political meaning, it also indicated an alliance between men for a specific purpose.¹⁵⁰ In contrast to the Greek understanding of politics as an end in itself separate from the necessities of biological life, the use of the word 'social' erroneously advanced the notion that politics was an activity in which men came together solely for the purpose of sustaining life. As a consequence of this confusion of politics with survival, the public realm would gradually lose its position as the only sphere in which men could deliberate freely, meaning without the constraint of household concerns. Centuries later, this problem would only be exacerbated by an even more portentous mistranslation, one which would become a staple of western political philosophy. This was

¹⁴⁸ Ibid at 28.

¹⁴⁹ Ibid at 23.

¹⁵⁰ Arendt (note 8) at 23.

Thomas Aquinas' transposition of Aristotle's claim that 'Man is a political animal' into, 'Man is by nature political, that is, social.'¹⁵¹

While these mistranslations undoubtedly had great effect, increasing over time as they became established and repeated, they did not by any stretch lead to the immediate collapse of the public realm. To a certain extent, the ancient Greek appreciation of the public realm carried over into Rome and found its form in municipal government.¹⁵² However, as previously discussed with regard to action, the ensuing fall of Rome and the concomitant rise of Christianity precipitated a loss of faith in political action and everything worldly.¹⁵³ This development did not completely vanquish the public realm, for the Church remained an entity distinct from the private realm. The Church, much like the *polis*, remained a place in which people could escape the hardship of everyday life in search of some higher pursuit. The fundamental difference, however, was that the pursuit of the Church was salvation, and certainly not human expression through political action. It was at this time that the earlier mistranslations took their true hold, and politics increasingly became viewed as merely functional, a necessary burden undertaken exclusively for the survival-needs of the people.¹⁵⁴

¹⁵¹ Thomas Aquinas *Summa Theologica* (1922) at i.96.4 as referenced by Arendt (note 8) at 23; See also Canovan (note 40) at 67.

¹⁵² Arendt (note 8) at 56.

¹⁵³ Canovan (note 43) at 84.

¹⁵⁴ Arendt (note 8) at 60.

While the Church continued to hold a tenuous but still significant claim to being a public realm, the private realm would grow exponentially over the course of the Middle Ages.¹⁵⁵ Among the main reasons for this was the banishment of political action from the public realm. The result was that the private sphere became the realm in which all matters of collective concern were dealt with. This development corresponded directly with the rise of feudalism, a system which resembled an inflated version of the household.¹⁵⁶ Operating in the private sphere, the feudal system was characterized by the pre-political concepts of inequality, rulership, and order through force. The central focus of the feudal system was the procurement of material needs, and as such, freedom, equality, and political action soon became remnants of the past.¹⁵⁷ The dichotomy of a public and private sphere, with one being the domain of the Church and the other the domain of the feudal system, proceeded in a relatively undisturbed fashion for a number of centuries until a host of historical events finally destroyed both spheres. With regard to the Church, two principal developments accelerated its demise as a protected, undisturbed realm. First, the rise of science, beginning during the Renaissance and flourishing during the Enlightenment, instigated a series of unprecedented and increasingly poignant challenges to orthodox beliefs. Second, the Reformation resulted in the irreparable fracturing of the Catholic Church and its grip over all of Europe.¹⁵⁸ Not only did the Catholic Church consequently lose its place as the singular domain from which people could escape the private and seek salvation, but the rise of secularization would lead many to question whether entering the public, religious domain had any value at all.¹⁵⁹

¹⁵⁵ Ibid at 34.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid at 35.

¹⁵⁸ Arendt (note 8) at 248-9.

¹⁵⁹ Ibid at 320.

As these developments unfolded, the private sphere as it had always existed was also being liquidated. The main catalyst was the expropriation of Church property following the Reformation.¹⁶⁰ This not only deprived the Church of most of its land, but also the peasantry,¹⁶¹ which accounted for the vast majority of Europe's population. This new available land was quickly seized by organizations of property-owners, protected under the claim that by increasing their own wealth, they were also increasing the 'common wealth' of the kingdom.¹⁶² It was at this point that Arendt notes the classic distinction between property and wealth disappeared.¹⁶³ Whereas property had always been the domain of the household, a place of privacy where generations of families lived and died, it had now become a transferable and consumable commodity in which the owners might not have any connection with the land whatsoever. In Arendt's terms, property, 'lost its private use value which was determined by its location and acquired an exclusively social value determined through its ever-changing exchangeability whose fluctuation could itself be fixed only temporarily by relating it to the common denominator of money.'¹⁶⁴ This paralleling of property with money attended the rise of capitalism, in which economic considerations were elevated to the highest order. The belief emerged that if individuals could be left alone in their perpetual pursuit of wealth, then society as a whole would stand to benefit by also becoming wealthier.

¹⁶⁰ Ibid at 66.

¹⁶¹ Ibid.

¹⁶² Ibid at 68.

¹⁶³ Ibid at 61.

¹⁶⁴ Arendt (note 8) at 69.

As the expropriation of land and rise of capitalism increasingly produced wealth for the elite, another historic phenomenon was occurring: the emancipation of the peasantry.¹⁶⁵ Though deprived of their land, the peasantry was now free to choose what they did, so to say. Survival was still of the utmost concern, however, and without land, the only way to meet the necessities of life was to earn money. In this respect, the only method available to the majority of the population was to offer their 'labour-power.'¹⁶⁶ The only property left to them, the only source from which the necessities of life could be met, was their physical bodies. As the Modern Age proceeded and the Industrial Age took hold, these phenomena only continued with greater effect. Gradually, this resulted in a society of labourers.¹⁶⁷ But no longer could the term labourer only be used in reference to the poor, those required to rely on their physical capacities to live. For everybody from the factory worker to the factory owner, and even the Prime Minister, was ultimately involved in the same activities, which were the provision of money and security, activities inherently related to necessity.¹⁶⁸ These expanded categories of persons were also labourers because they inhabited a world devoid of true freedom and political action, a world in which the initial seeds of modern alienation were being planted. Survival, sustenance, economics, order, functionalization, and rule, all concepts originally derived from the household had been thrust into the sphere of public affairs to the point where they replaced the public realm altogether.¹⁶⁹ What emerged was society, and it found its expression in the modern nation-state.¹⁷⁰

¹⁶⁵ Canovan (note 43) at 107.

¹⁶⁶ Ibid at 70.

¹⁶⁷ Ibid at 126.

¹⁶⁸ Arendt (note 8) at 126-7.

¹⁶⁹ Passerin d'Entreves (note 88) at 58.

¹⁷⁰ Arendt (note 8) at 256.

8. *Modern Society*

The principal characteristic of modern society is the complete obfuscation of any meaningful division between the public and private realms.¹⁷¹ With the insertion of economic activities into the public realm, 'all matters formerly pertaining to the private sphere of the family have become a "collective" concern. In the modern world, the two realms indeed constantly flow into each other like waves in the never-resting stream of the life process itself,'¹⁷² something clearly reflected in the modern term 'political economy'.¹⁷³ Matters related to necessity have been elevated to a level of supreme public significance and we have all been transformed into labourers working for the common good, which is to sustain our existence as individuals and as society. Our labour has been divided, and thus we have come to be defined by where we lie on the chain of functions. The modern science of economics corresponds to the rise of 'behavioural' sciences which, 'aim to reduce man as a whole, in all his activities, to the level of a conditioned and behaving animal.'¹⁷⁴ By focusing on behaviour, society excludes action.¹⁷⁵ Indeed, 'society expects from each of its members a certain kind of behaviour, imposing innumerable and various rules, all of which tend to "normalize" its members, to make them behave.'¹⁷⁶ It is expected that people act as, 'members of one enormous family which has only one opinion and one interest.'¹⁷⁷ Those who do not comply are considered deviant or abnormal. While society embraces and controls all equally, this equality is based on conformism and the suppression of spontaneous action, thereby stifling outstanding achievement.

¹⁷¹ Ibid at 38.

¹⁷² Ibid at 33.

¹⁷³ Ibid at 29.

¹⁷⁴ Ibid at 45.

¹⁷⁵ Ibid at 40.

¹⁷⁶ Arendt (note 8) at 40.

¹⁷⁷ Ibid at 39.

With the elevation of economic matters to the highest levels of public concern, society resembles one super-human family, comprised of a collective of families corresponding to various social groups. These families fall under the umbrella term 'nation', and their everyday affairs are taken care of by the State, 'a gigantic, nation-wide administration of housekeeping.'¹⁷⁸ Among the characteristics of society is the modern disintegration of the traditional family, and the absorption of the family unit into the various social groups which make up the nation.¹⁷⁹ Whereas in the household common interest and opinion were determined by the *pater familias*, common interest and opinion in society are the purview of the most populous social groups. This common interest leads to a 'communistic fiction' of rule by an invisible hand; that is, by nobody.¹⁸⁰ In this process, State and government rule give way to the bureaucratic administration of affairs. Yet this, 'rule by nobody is not necessarily no-rule; it may indeed, under certain circumstances, even turn out to be one of its cruellest and most tyrannical versions,'¹⁸¹ with common interest ultimately lying at the mercy of the largest social groups.

It is not surprising that in such a society modern world alienation would emerge.¹⁸² It is a, 'society of men who, without a common world which would at once relate and separate them, either live in desperate lonely separation or are pressed together into a mass.'¹⁸³ Having lost a public realm and all possibility for meaningful action, people are vulnerable to being subdued

¹⁷⁸ Ibid at 28-9.

¹⁷⁹ Ibid at 256.

¹⁸⁰ Ibid at 44-5.

¹⁸¹ Arendt (note 8) at 40.

¹⁸² Ibid at 256.

¹⁸³ Arendt (note 1) at 89-90.

and de-humanized by the pressures of conformity. The central way in which people are defined is by which occupation they are in to make money, to survive. Any pursuit of innovation or excellence only exists at the fringes of society, where they will rarely be noticed or appreciated. If a person does not belong to one of the social groups with sway, he risks being tyrannized. According to Arendt, these are the outcomes that have come to pass with the destruction of the public-private divide and the reversal of the traditional hierarchy.

9. Conclusion

It is noteworthy that while most of the principal theorists on Arendt's work agree that her description of society bears an enormous amount of insight, it is not without its shortcomings and inconsistencies.¹⁸⁴ Among these is the charge that her historical account of the rise of the social realm suffers from gross oversimplification.¹⁸⁵ Seyla Benhabib, for instance, points out that Arendt seems to pass through nearly a millennium's worth of history with general alacrity.¹⁸⁶ Measured against the intense devotion paid to the Classical era and modern history since the industrial revolution, her treatment of the Middle Ages, Renaissance, and Enlightenment is comparatively scant.¹⁸⁷ Benhabib also notes that apart from racing through vast amounts of history in her description of the rise of the social, Arendt's very account of modern society is so overly broad that it cannot sustain its thoroughness. Read on its own, Arendt's description of a homogenized and commodity-driven society lacks the cogency necessary to be taken as

¹⁸⁴ Canovan (note 43) at 109.

¹⁸⁵ Benhabib (note 88) at 23.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid at 23.

authoritative or plausible.¹⁸⁸ Its verity only comes forth when placed against the backdrop of other well-known 19th and 20th century social theories, such as Michel Foucault's study of 'disciplinary institutions,' Max Weber's analysis of the link between instrumental rationality and uniform behaviour, or Karl Polanyi's concept of the 'disembedded economy.'¹⁸⁹

With regard to Arendt's understanding of economics in her account of modern society, Maurizio Passerin d'Entreves argues that it is not so much that Arendt's thought needs to be juxtaposed against that of other dominant economic theories to make sense, but that Arendt's characterization of society as one dominated by an economic model of necessity is inappropriate to begin with.¹⁹⁰ The realities of modern capitalist economies is that high levels of capital accumulation and growth lead to surpluses far beyond the demands of subsistence.¹⁹¹ Additionally, the activities connected with this economic growth are more in line with her description of *homo faber* rather than labour, especially when one considers the fabrication of infrastructures and technologies which make up the artificial environment on which modern society depends.¹⁹² These objections aside, however, d'Entreves is sure to note that it is the value and originality of Arendt's insight into modern society that nourishes criticism of her theory.¹⁹³ Indeed, there is little question that many of Arendt's observations on the dangers of the present age, whether about the pressures of conformity or the central importance of money, continue to ring true. How humans can organize themselves and potentially overcome these problems through revolution is the subject of the next chapter.

¹⁸⁸ Benhabib (note 88) at 24-6.

¹⁸⁹ Ibid at 26.

¹⁹⁰ Passerin d'Entreves (note 88) at 60.

¹⁹¹ Ibid.

¹⁹² Passerin d'Entreves (note 88) at 60..

¹⁹³ Ibid at 50.

CHAPTER III: REVOLUTION

10. Introduction: The Basic Meaning of Revolution

Five years after the completion of *The Human Condition*, Arendt set out to extend and qualify her theories by placing them in the context of the modern phenomenon of revolution. In *On*

Revolution. Arendt describes true revolution as political action *par excellence*.¹⁹⁴ Implicit in the book is the notion that such political action, if understood and applied properly, could actually hold the key to modern society's future. In other words, revolution could provide an answer to modern world alienation by re-instating what has been lost over the centuries with the rise of society; that is, freedom. The trouble for Arendt, however, is that ever since the French Revolution, the term 'revolution' has been misinterpreted and used indiscriminately. Today, revolution is commonly associated with any violent uprising, generally intended to benefit the impoverished masses, but ultimately bound to gloom.¹⁹⁵ Alternatively, revolution may be glamorized and championed by all sorts of groups demanding various political or social changes. Yet, for Arendt, revolution is a term with a very specific meaning, the perversion of which stifles the prospect of true and successful revolution in the present day. For this reason, Arendt's purpose in *On Revolution* is to delineate the precise features of revolutions and to ascertain exactly what distinguishes a successful revolution from a failed one.

According to Arendt, revolution is a strictly modern phenomenon and must be differentiated from the instances of political change found throughout pre-modern history.¹⁹⁶ Arendt notes that political upheaval was certainly not a foreign concept in antiquity as evidenced through the quasi-transformations of the Athenian *polis*. Nor was it unusual for violence and political change to coincide, as seen in the many uprisings against the Roman Empire. Yet however successful, these changes never fundamentally changed the system within which they operated. They did not result in the creation of something altogether new and unforeseen. The

¹⁹⁴ Arendt (note 7) at 18-25; Nemesio Que 'Hannah Arendt on Revolution, Freedom, and the Council System.' Available at http://www.crvp.org/book/Series03/III-15/chapter_xiii.htm [Accessed 10 March 2008].

¹⁹⁵ Arendt (note 7) at 41.

¹⁹⁶ Arendt (note 7) at 11.

changes of pre-modernity, 'did not interrupt the course of what the modern age has called history, which, far from starting with a new beginning, was seen as falling back into a different stage of its cycle, prescribing a course which was preordained by the very nature of human affairs and which therefore itself was unchangeable.'¹⁹⁷

For Arendt, the cyclical nature of pre-modern political history was finally broken in the late 18th century with the American and French Revolutions. Not mere changes, these revolutions shattered the pre-existing power structures and replaced them with entirely novel political institutions. This aspect of novelty is fundamental to Arendt's conception of revolution, for it is precisely what distinguishes revolutions from political changes that alter already existing institutions.¹⁹⁸ On this same basis, the insurrections and *coup d'etats* that permeate modern history are also not revolutions, for they usually involve the mere shifting of power from one elite clique to another. Arendt notes that such insurrections are generally, 'less feared because the change they bring is circumscribed to the sphere of government and carries minimum disquiet to the people at large.'¹⁹⁹

In addition to novelty, another fundamental aspect of revolutions is that their aim is freedom. Arendt is adamant about this point, maintaining that only, 'where novelty is connected with the idea of freedom are we entitled to speak of revolution.'²⁰⁰ To understand exactly what Arendt means by freedom in the revolutionary context, it is imperative to distinguish it from

¹⁹⁷ Ibid.

¹⁹⁸ Ibid at 24.

¹⁹⁹ Arendt (note 7) at 25.

²⁰⁰ Ibid at 24.

liberation. Whereas liberation can and usually does exist where there is freedom, freedom need not necessarily exist where there is liberation, and often does not.²⁰¹ For Arendt, liberty is simply freedom from undue constraint. Accordingly, liberation is most commonly achieved through the entrenchment of civil rights and liberties.²⁰² To Arendt's dismay, however, liberation is often equated with freedom in current political theory. Yet the reasons for this confusion are not unknown; not only has the content of freedom consistently been a point of controversy in philosophic and religious thought for millennia, but the rise of society has gradually eviscerated the very existence of true freedom.²⁰³ Nevertheless, it is imperative to Arendt that we not confuse freedom with liberation if we are to truly understand revolution.

Freedom is participation in public affairs facilitated by admission to the public realm.²⁰⁴ The central concern of revolution is the foundation of freedom, which is achieved through the creation of a body politic that guarantees the establishment of public spaces where freedom can appear.²⁰⁵ Therefore, '[i]f a revolution had aimed only at the guarantee of civil rights, then it would not have aimed at freedom but at liberation from governments which had over-stepped their powers and infringed upon old and well-established rights.'²⁰⁶ This is not to say that liberation is meaningless, for the distance between freedom and liberation is shorter than the distance between liberation and tyranny.²⁰⁷ But for Arendt, this, 'should be no reason for us to mistake civil rights for political freedom, or to equate these preliminaries of civilized

²⁰¹ Albrecht Wellmer 'Arendt on Revolution' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* 220 at 223.

²⁰² Arendt (note 7) at 20.

²⁰³ Ibid at 20.

²⁰⁴ Arendt (note 7) at 22.

²⁰⁵ Ibid at 116.

²⁰⁶ Ibid at 22.

²⁰⁷ Ibid at 210.

government with the very substance of a free republic. For political freedom, generally speaking, means the right 'to be a participator in government, or it means nothing.'²⁰⁸

11. *The Two Great Modern Revolutions*

Having identified novelty and freedom as the two basic features of a revolution, Arendt proceeds to use the great revolutions of the late 18th century to further elaborate on what constitutes a true revolution, and what distinguishes a successful one from a failed one. For while both the American and the French Revolutions were inspired by a desire to create entirely new institutions which would enshrine political freedom, both also veered from their revolutionary paths to varying degrees. It is in identifying what was successfully accomplished, and also what led to their limited achievement that enables a better understanding of how a revolution can succeed.

Although the American Revolution preceded the French Revolution, examining the French Revolution first is practicable for a few reasons. First, by delineating what caused the French Revolution to abandon its original course at a much earlier stage than the American, it becomes possible to identify the primary threat to revolution from the onset, which as we shall see is something Arendt calls 'the social question.'²⁰⁹ Second, because mass poverty and inequality are commonly considered the principal catalysts for modern revolutions, the French

²⁰⁸ Ibid.

²⁰⁹ Hansen (note 93) at 175.

Revolution is often cited as the first true revolution.²¹⁰ Yet it is precisely the French Revolution's pre-occupation with poverty that according to Arendt caused its ultimate failure.

Despite Arendt's ominous take on the French Revolution, she does not hesitate to praise the virtues exhibited in the initial stages of the Revolution. For one, the French Revolution displayed an unprecedented amount of novelty. For the first time in European history, a people were able to unite and topple an absolute monarchy that had reigned uncontested for centuries. In its place they instituted a republic grounded in a constitution. The fundamental revolutionary aim of freedom was realized in the Revolution's early stages through the *societies populaires* and clubs of Paris, which functioned as public organizations for all who sought political engagement.²¹¹ The leaders of these public councils did not act in a representative capacity, but rather, 'to instruct, to enlighten their fellow citizens on the true principles of the constitution; and to spread a light without which the constitution will not be able to survive; for the survival of the constitution depended upon the public spirit, which, in its turn, existed only in the assemblies where the citizens could occupy themselves in common with these public matters.'²¹² Unfortunately, the embrace of political freedom demonstrated by the councils was short-lived, for soon the entirety of the French Revolution would be corrupted by what Arendt calls, 'the social question.'

²¹⁰ Jonathan Schell 'Introduction' in Hannah Arendt *On Revolution* (2006) xi at xv-xvi. Whereas poverty assumed the role of central protagonist in the French Revolution, the plight of the poor was not a driving force behind the American Revolution.

²¹¹ Que (note 194).

²¹² Arendt (note 7) at 232.

Simply put, the social question refers to the existence of poverty.²¹³ The reason poverty is couched in the term 'social question' is because poverty as a public concern reflects the rise of the social realm at the expense of the public realm. In antiquity, where there was a clear divide between the private and public realms, the issue of poverty was linked with necessity and survival and was therefore considered a private, not public, matter. Yet due to the previously discussed dissipation of the public realm and the contingent elevation of private matters to public concern, poverty came to be accepted as a public matter. Nothing demonstrated this more than the French Revolution. In large part, the very success of the French revolutionaries in overthrowing the monarchy was owed to the fact that the impoverished masses immediately lent themselves to the cause. Their condition of poverty, however, soon outweighed any considerations of political freedom.²¹⁴ The councils that initially sought to engender public spirit and knowledge of the constitution became pressure groups of the poor, demanding that, "the republic must assure each individual the means of subsistence," that the primary task of the lawgivers was to legislate misery out of existence.²¹⁵

Apart from the subjugation of freedom to the social question, the insertion of historically private matters into the freshly-created public realm had a number of other dire consequences. First, the pre-political method of violence proceeded to dominate the course of the Revolution. As opposed to deliberation and persuasion, murder and terror became the tools of political change.²¹⁶ Additionally, the leaders of the Revolution cut themselves off from the public and

²¹³ Ibid at 50.

²¹⁴ Hansen (note 93) at 175.

²¹⁵ Arendt (note 7) at 234.

²¹⁶ Hannah Pitkin 'Justice: On Relating Private and Public' in Lewis Hinchman and Sandra Hinchman (eds) *Hannah Arendt: Critical Essays* (1994) 261 at 268-9.

declared themselves a permanent body in the French Assembly. Rule and authority thus replaced political equality. The leaders proceeded to preoccupy themselves with the writing and re-writing of the constitution. Yet because the leaders had detached themselves from the people, 'the act of constitution-making lost its significance, and that very notion of constitution came to be associated with a lack of reality and realism, with an over-emphasis on legalism and formalities.'²¹⁷ According to Arendt, '[w]e today are still under the spell of this historical development,'²¹⁸ whereby constitutions are often sanctimonious and disconnected from the people they purport to protect.

The influence of the French revolutionary experience on constitutions aside, Arendt points out that there was a much more profound and unfortunate legacy left by the Revolution, which is the idea of history as process which unfolds naturally, on its own, and without the requirement of human action.²¹⁹ This idea, concretized by Marx and championed throughout the twentieth century, includes the notion that the poor masses will ultimately and inevitably rise up and take power. And with the French Revolution as its basis, this idea also includes the notion that violence is generally the only way in which the people can usurp power and liberate themselves. Arendt's argument, however, is that this idea is grounded in historical fallacy.²²⁰ The fact of the matter, according to Arendt, is that the downward spiral of the French Revolution was not a result of an uncontrollable historical process, but a result of surrendering political freedom to necessity. Once the features of the private realm are allowed to take precedence, the rulership,

²¹⁷ Arendt (note 7) at 117.

²¹⁸ Ibid.

²¹⁹ Arendt (note 7) at 45.

²²⁰ Ibid at 47-8.

immediacy of suffering,²²⁴ the 'American Revolution remained committed to the foundation of freedom and lasting institutions.'²²⁵ Another difference was that the leaders of the American Revolution avoided the tendency to think of 'the people' and 'the common good' in a singular, generalized way. For the Americans, the word 'people' retained a meaning of manyness,

of the endless variety of multitude whose majesty resided in its very plurality. Opposition to public opinion, namely to the unanimity of all, was therefore one of the many things upon which the men of the American Revolution were in complete agreement; they knew that the public realm in a republic was constituted by an exchange of opinion between equals, and that this realm would simply disappear the very moment an exchange became superfluous because all equals happened to be of the same opinion.²²⁶

The absence of the social question combined with the Americans' great appreciation for the political, the plural, and the public realm resulted in an exemplary approach to the Revolution according to Arendt. The result was the founding of an entirely new body politic committed to the enshrinement of political freedom. Through active public participation and the establishment of Constitutional Assemblies, the Americans sought to mark this new beginning with the ultimate act of foundation; a constitution. As compared to the futile experience with constitution-making during the French Revolution, the American constitution fared better in two crucial aspects. First, by providing for a federal system of government, the American Constitution decentralized authority, which in turn, gave some semblance of the self-government that characterized pre-revolutionary America.²²⁷ Second, the constitution proved durable over time. For Arendt, the act of foundation through constitution, which is the fostering of a public realm in which freedom can appear,²²⁸ is meaningless unless it is durable, something clearly demonstrated

²²⁴ Arendt (note 7) at 82.

²²⁵ *Ibid* at 82.

²²⁶ *Ibid* at 83.

²²⁷ Wellmer (note 201) at 221.

²²⁸ *Ibid* at 220.

during the French Revolution. Yet the Americans, with their history of joint action and mutual trust dating back to the Mayflower Compact, were able to devise a constitution that, though amendable, was final and enduring.

The tremendous achievement of creating a new, constitutionally-enshrined body politic, while commendable, was in Arendt's view compromised by the founding fathers' abandonment of the revolutionary spirit. For Arendt, the task of the revolutionary is twofold.²²⁹ On the one hand, novelty must be manifested, something generally accomplished by the foundation of a new body politic. On the other hand, freedom must be engendered through the provision of open, deliberative public spaces. While the aspect of foundation was undoubtedly achieved, the newly created American political structure was one in which, 'there was no space reserved, no room left for the exercise of precisely those qualities which had been instrumental in building it';²³⁰ namely, participatory political action. Arendt identifies a number of key reasons why the fostering of a public realm was neglected. To begin with, the decision to use the words 'pursuit of happiness' instead of 'public happiness' in the constitution led to the notion that citizens had a right to pursue their private self-interest, as opposed to the intended meaning that citizens also had a right to enjoy 'public happiness' through participatory political engagement.²³¹ Second, Arendt notes that while the Americans initially understood action as a continuous political activity as occurred in pre-revolutionary America, their experiences with violently revolting against the English and erecting something new caused action to be viewed as a process of

²²⁹ Arendt (note 7) at 117.

²³⁰ Arendt (note 7) at 224.

²³¹ Ibid at 126.

tearing down and building up.²³² The idea of nurturing action and the revolutionary spirit as an ongoing task was thus overlooked. Third, and perhaps most importantly, was that the Founding Fathers became apprehensive about handing over too much power to the people. Having successfully fought for the foundation of a new republic, the leaders of the revolution were not only keen to preserve their accomplishments, but also their positions of power, and so, 'the founders had become rulers, so that the end of the revolution did not spell the end of their public happiness.'²³³

Coupled together, these factors led to the drafting of a constitution that failed to provide for a public realm in which freedom and the revolutionary spirit could be protected. While drafting,

the emphasis shifted almost at once from the contents of the Constitution, that is, the creation and partition of power, and the rise of a new realm... to the Bill of rights, which contained the necessary constitutional restraints upon government; it shifted, in other words, from public freedom to civil liberty, or from a share in public affairs for the sake of public happiness to a guarantee that the pursuit of private happiness would be protected and furthered by public power.²³⁴

In consequence, the only available forum for the citizens to express themselves politically was the voting booth, and, 'only the representatives of the people, not the people themselves, had an opportunity to engage in those activities of expressing, discussing, and deciding, which in a positive sense are the activities of freedom.'²³⁵ Despite having fought a revolution on the basis of freedom, the Americans had created a system in which there was less opportunity for public

²³² Ibid at 225.

²³³ Ibid at 126.

²³⁴ Arendt (note 7) at 126.

²³⁵ Ibid at 227.

freedom than had existed prior to the Revolution.²³⁶ Unfortunately, 'it was the Constitution itself, this greatest achievement of the American people, which eventually cheated them out of their proudest possession.'²³⁷

12. Conclusion: Lessons of the Revolutions

Having detailed the experiences of the French and American Revolutions, a number of lessons emerge with regard to how a revolution could succeed. Without question, among the most important of these lessons for Arendt is that the connotations of historical necessity, violence, and poverty need to be detached from the idea of revolution. Not only do these connotations cause freedom to be overlooked as the true revolutionary aim, but these connotations often lead to the actual suppression of freedom. Arendt's point is that when poverty is introduced as the main impetus of a revolution, Arendt's point is that the pre-political methods of the household (rulership, violence, and inequality) infiltrate and corrupt the revolution. While this criticism is mostly directed at Marxist interpretations of revolution, Arendt also cautions against revolutions motivated by liberal-democratic aspirations. For whether the goal is the protection of private rights or the realization of social justice, both the liberal-democratic and Marxist visions see the final goal of politics as something *beyond* politics; not as a corollary to freedom as an end in itself.²³⁸

²³⁶ Ibid.

²³⁷ Ibid at 231.

²³⁸ Wellmer (note 201) at 220.

It is imperative to note at this point that Arendt is often accused of displaying a certain amount of elitism in her descriptions of how revolutions tend to succumb to the issues of poverty and oppression.²³⁹ This critique turns on the premise that in her impassioned argument for the importance of political freedom, she overlooks and underestimates the gravity of the social question. Whereas she describes the 'will to freedom' characteristic of true revolutionaries as courageous and admirable, she views the 'longing for liberation' from distress and the burdens of poverty as negative and pre-political.²⁴⁰ While Arendt does not intend to diminish or trivialize the hardship of impoverishment, it is certainly arguable that Arendt's tone could be interpreted as displaying a lack of sympathy for socio-economic concerns. In this regard, Hanna Pitkin points out that notions of social justice are conspicuously absent from Arendt's work. This is not so much because Arendt is indifferent towards matters of justice, but because she is adamant about safeguarding the public realm from any possible destructive tendencies that may arise out of the social realm. Yet as Passerin d'Entreves notes, the result of Arendt's insistence on separating the public from the private is that Arendt is, 'unable to give justice the central place it ought to occupy in any political theory.'²⁴¹ She fails to comprehend that issues or problems do not arrive conveniently labeled as either 'economic,' 'private,' 'social,' or, 'political.' In fact, the question of whether an issue is itself 'political' or 'social' is often a paramount political issue in itself.²⁴² Perhaps the best summation of the various criticisms directed at Arendt's treatment of the social question in the revolutionary context is offered by Richard Bernstein, who argues that,

Arendt is right in seeing that the demand for social liberation is not to be identified with the demand for political freedom; and that social liberation does not automatically lead to

²³⁹ Hauke Brunkhorst 'Equality and Elitism in Arendt' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) 178 at 192.

²⁴⁰ Ibid at 192.

²⁴¹ Passerin d'Entreves (note 88) at 61.

²⁴² Ibid.

positive political freedom. But it is just as true to assert that any attempt to found political freedom in the modern age that neglects or forgets its origin in fighting and eliminating social justice is in danger of betraying itself.²⁴³

Leaving the issue of whether Arendt's exclusion of social issues from true revolution is just or not, another key lesson Arendt sees as emerging from the French and American Revolutions is that revolutionaries usually become conservative once the initial task of foundation is achieved. As opposed to fostering a durable public realm and encouraging political participation, revolutionary leaders become, 'eager to preserve what has been done and to assure its stability rather than open to new things, new developments, new ideas.'²⁴⁴ This was evident when, after constituting their new body politics, both the leaders of the French and American Revolutions declared themselves representatives of the people and drafted constitutions which effectively precluded the very public political activism that prompted their revolutions. As opposed to appreciating the plurality of the people, the leaders increasingly viewed their relationship with the people as a dichotomous one of 'us' and 'them.'

Drawing from these accounts of the constitutional processes in France and America, one might be inclined to presume that another revolutionary lesson is the dangers of constitutionalism. This presumption appears to be strengthened when one considers Arendt's conception of action as spontaneous and the revolutionary spirit as continuous. Yet a closer reading of Arendt's work shows that it is not constitutions *per se* that are the problem, but the

²⁴³ Richard Bernstein *Philosophical Profiles: Essays in Pragmatic Mode* (1986) at 255-6.

²⁴⁴ Arendt (note 7) at 31.

fact that constitutions generally fail in carrying out the second task of the revolution, which is to create a robust public realm in which political freedom can be enjoyed. In reality, Arendt embraced the act of inaugurating foundation through the drafting of a constitution and called this process a 'hallmark of revolution.'²⁴⁵ For among the virtues of constitutions identified by Arendt is their capacity to create and bind political communities through the act of an initial promise. In drafting a constitution, people bind themselves in the presence of others and publicly commit themselves, against the unknown exigencies of future circumstances, to play one's part in an agreed upon scheme.²⁴⁶ In other words, everybody promises to act in accordance with the new 'rules of the game' as encompassed in the constitution, and for the sake of stability, not to change these rules capriciously as conditions evolve.

Another virtue of constitutions relates to Arendt's frequent assertion that politics needs housing. Jeremy Waldron notes that throughout *On Revolution*, Arendt invokes the imagery of houses, walls, or any artificial structures intended to be more rigid and durable than the actions they accommodate.²⁴⁷ Similarly, properly-devised constitutions provide housing for politics by circumscribing clearly-defined public spaces, something which the French and American constitutions failed to do. Yet despite Arendt's housing metaphors, it would be misleading to read Arendt as viewing constitutions as mere artificial constructions with instrumental purposes only. For it is also vital that constitutions be consistently invoked in political discourse. In this regard, Arendt refers to the rules of grammar. Though these rules regulate usage, they are not distinct from usage. Instead, they present themselves as something implicit in an ongoing

²⁴⁵ Arendt (note 7) at 116.

²⁴⁶ Waldron (note 223) at 212.

²⁴⁷ Waldron (note 223) at 203.

activity.²⁴⁸ Without such reference and constant application, Arendt warns that a constitution becomes, 'a piece of paper, of more interest to the learned and the experts than to the people.'²⁴⁹

In Arendt's vision of a constitution as something regularly applied in political discourse, another lesson to be drawn from the French and American revolutionary experiences emerges: that is, the need for constitutions to go beyond mere liberation. A constitution that only aims at the guarantee of civil liberties is, 'by no means revolutionary in contents or origin; it means nothing more or less than government limited by law.'²⁵⁰ Such a constitution does nothing to foster active political participation and consequently reflects the notion that the constitution is not of and for the people. Again, we are reminded that a successful revolution for Arendt is one that manifests novelty and freedom through the foundation of a new body politic and the creation of a secure public space where the revolutionary spirit can continue. A constitution has enormous potential for facilitating these revolutionary aims, not only through its function as a symbol of foundation or initial promise, but also through its capacity to designate a political system in which freedom is realized through active political participation. Thus, the question emerges as to how exactly a constitution can protect freedom and the revolutionary spirit. What type of political system does Arendt have in mind when she faults the American constitution and the political structure it devised? The answer is the council system, a system of governance in which there is a properly defined public sphere open to active political participation. The next chapter details the features of this council system.

²⁴⁸ Ibid at 204.

²⁴⁹ Arendt (note 7) at 116.

²⁵⁰ Ibid at 134.

CHAPTER IV:
THE COUNCIL SYSTEM

13. Introduction: Background of the Council System

In any reading of Arendt, it is abundantly clear that she saw a tremendous amount of value in the political life of the Ancient Greeks. She admired their conception of the citizen as a person who embraces a life of action in the *polis* and who understands the benefit of plural opinion and joint deliberation. While this conception of the citizen is often deemed idealistic or outdated, Arendt's re-reading of certain epochal events is one in which men have on numerous occasions exhibited the qualities of the ancient Greek citizen. Arendt contends that a closer examination of the political lives of the early revolutionaries in France and America reveals a group of people who grasped the importance of political freedom and joint action, and who manifested this in what Arendt calls 'councils.'²⁵¹ These councils essentially functioned as a public realm in the same way the *polis* had, yet unlike the *polis*, the councils that emerged throughout history tended to be spontaneously conceived, and usually for the purpose of uniting people for the sake of political freedom.²⁵² In other words, Arendt saw the councils as the precursors, or the breeding grounds, of true revolutionary action. To validate her point historically, Arendt not only points to the municipal communes and township councils of pre-revolutionary France and America, but also to the *soviets* of 1917 Russia, the *rate* of 1918 Germany, and the councils of the 1956 Hungarian Revolution.²⁵³ The common-thread between these councils was that they were spontaneously-conceived and self-governing. Equally important, they shared political freedom as their 'secret center of gravity';²⁵⁴ secret because political freedom was generally overlooked by subsequent theorists and historians as the real pulse behind these movements.²⁵⁵ Arendt laments, for instance, that Marx and Lenin never thought of the councils, 'as possible germs of a new form of government but had regarded them as mere instruments to be dispensed with once the revolution

²⁵¹ Arendt (note 7) at 253.

²⁵² Ibid at 254.

²⁵³ Arendt (note 7) at 253.

²⁵⁴ Wellmer (note 201) at 221.

²⁵⁵ Ibid at 222.

came to an end.²⁵⁶ This was unfortunate for Arendt, because according to her historical analysis, a council system did indeed lay the germs of a new form of government which could secure freedom.

Before delving into Arendt's vision of a council system, it is first useful to describe the historical context from which Arendt drew her inspiration. More than any other instance, the American experience with the council system was most demonstrative of how successful and fulfilling councils could be. While the American councils eventually disappeared with the drafting of the constitution, 'the political life of early America- without which the urge to declare independence and fight a war to secure it would have been unthinkable- was then, the realization of the best political life.'²⁵⁷ Why was it the best? To answer this question, Arendt points to the Mayflower Compact, a sort of covenant or symbol of mutual trust created by the first American settlers as they approached the unknown that was the New World. With the Compact as their basis, the settlers proceeded to found a new body politic. The inspiration behind the body politic did not come from any particular ideology, but from the understanding that true power is only generated by reciprocity and mutual trust.²⁵⁸ According to Arendt, 'power comes into being only if and when men join themselves together for the purpose of action, and it will disappear when, for whatever reason, they disperse and desert one another. Hence, binding and promising, combining and covenanting are the means by which power is kept in existence.'²⁵⁹ It was this

²⁵⁶ Arendt (note 7) at 248.

²⁵⁷ George Kateb 'Arendt and Representative Democracy' (1983) 60 *Salmagundi* 20 at 37.

²⁵⁸ Arendt (note 7) at 173-4.

²⁵⁹ *Ibid* at 166.

understanding of power that ultimately led the Americans to view the power of the throne as illegitimate and ineffectual- and also defeatable.²⁶⁰

The settlers' initial compact and early experiences also taught them the importance of joint action. Confronted with the difficulties of survival, the Americans quickly learned that, 'action, though it may be started in isolation and decided upon by single individuals for very different motives, can be accomplished only by some joint effort.'²⁶¹ This appreciation for joint action was not, however, limited to matters of necessity. By fostering a political community based on open participation, mutual trust, and cohesive decision-making, the Americans formed small islands of security in an ocean of contingency.²⁶² The settlers' commitment to acting in concert also had the benefit of minimizing any possible divisions among them. According to Arendt, joint action creates a situation in which, 'homogeneity of past and origin, the decisive principle of the nation-state, is not required. The joint effort equalizes the differences in origin as well as in quality.'²⁶³ Thus, without being preoccupied with any differences that might exist between them, the settlers came to value their plurality. Diverging opinions were not grounds for conflict, but rather an opportunity for more voices to be heard, more options presented. The opinions of one were given no preference to those of another, as everybody was equal in the political realm.

²⁶⁰ Ibid at 173-4.

²⁶¹ Ibid at 165.

²⁶² Honig (note 78) at 108.

²⁶³ Arendt (note 7) at 165.

evident,²⁷⁰ the Americans successfully confronted the fundamental problem of any foundation, which is that those who constitute a new government have no authority to do so and are themselves unconstitutional.²⁷¹ According to Arendt, the words 'We hold' are representative of the American's awareness that true and legitimate power comes not through violence or appeals to deities, but only from mutuality and reciprocity.²⁷² In this way, the speech-act of 'We hold' was the source of power in the act of foundation, and the act of foundation the source of its own authority- an authority derived from the free action of equals acting in concert, bound by mutual promises for the sake of bringing something entirely novel into being.²⁷³

In Honig's view, Arendt's theory of how joint action legitimizes the problem of foundation is prompted by Arendt's observation that most revolutions fail largely because they tend to fall back on the same pre-political and untenable sources of authority that were revolted against in the first place.²⁷⁴ Arendt thus proposes an alternative conception of authority that is not based in shared beliefs or common myths, but is solely sustained by the very act of reconstitution through mutually adhered to promises, something exemplified by the American experience. According to Honig, however, Arendt glorifies the American experience in order to fulfil her fable of non-violent politics as foundational.²⁷⁵ As Jacques Derrida points out, every system involves an initial moment that cannot be accounted for.²⁷⁶ Every, 'system is secured by

²⁷⁰ *The United States Declaration of Independence* (1776). Available at <http://www.ushistory.org/Declaration/document/index.htm> [Accessed October 13 2008].

²⁷¹ Arendt (note 7) at 176.

²⁷² *Ibid* at 173.

²⁷³ *Ibid* at 184-6; See also Honig (note 74) at 101.

²⁷⁴ *Ibid* at 102.

²⁷⁵ Honig (note 78) at 107.

²⁷⁶ Jacques Derrida 'Declarations of Independence' (1986) 15:7 *New Political Science* 7 at 9-10; See also Honig (note 74) at 106.

placeholders that are irrevocably, structurally arbitrary and pre-legitimate. They enable the system but are illegitimate from its vantage point.²⁷⁷ What Arendt does not see is that the American experience was paradigmatic of politics because of this undecidability, not in spite of it.²⁷⁸ In other words, there will always be an element of uncertainty in the political process, and as such the problem of legitimizing foundation will always be present. But whereas this uncertainty is actually quintessential of Arendtian politics, Arendt mistakenly tries to solve this dilemma by lionizing the American experience with joint action in foundation. For Honig, Arendt's oversight in this regard is explainable by Arendt's genuine belief that, '[p]olitics is more important than ever because it is the only alternative to violent domination, the only source in modernity of legitimate rules possessed of authority and capable of addressing "the elementary problem of human-living together."²⁷⁹ It is mainly for this reason that Arendt praises the American council system, a system Arendt sees as the only viable, non-violent option to continuously recurring revolution.²⁸⁰

Although the American experience with the council system was the most established, having lasted from the arrival of the settlers to the drafting of the constitution, Arendt refers to certain instances from the twentieth century in order to illustrate the viability of councils in more modern settings. In her account of the days leading up to both the 1917 February Revolution in Russia and the 1956 Hungarian Revolution, she describes how councils,

sprung up everywhere, completely independent of one another, workers', soldiers', and peasants' councils in the case of Russia, the most disparate kinds of councils in the case of

²⁷⁷ Honig (note 78) at 107.

²⁷⁸ Ibid.

²⁷⁹ Ibid at 103.

²⁸⁰ Ibid at 109.

Hungary: neighborhood councils that emerged in all residential districts, so-called revolutionary councils that grew out of fighting together in the streets, councils of writers and artists, born in the coffee houses of Budapest, students' and youth's councils in the universities, workers' councils in the factories, councils in the army, among the civil servants, and so on.²⁸¹

What is evident is that the American experience with councils was not a singular occasion or a historical coincidence. Rather, councils have been created in all sorts of settings and conditions that still exist today. Arendt is particularly fascinated by the fact that all the councils throughout history have been remarkably similar despite their general unawareness of each other; not only has their cause always been political freedom and the foundation of a new body politic, but they all operated according to open and equal participation. As the councils expanded, there was also a universal tendency for the councils to incorporate federal principles, whereby a hierarchy of councils would be created.²⁸² Arendt marvels that all these councils, from the American to the Hungarian, resulted in incredibly sophisticated political institutions despite not having any blueprint or model.²⁸³ These councils were not just forums in which the revolutionary spirit could be sparked, but were institutions that could be applied permanently on a national level. While unfortunately none of the council systems ever survived their revolutions, for Arendt they exhibited a viable political structure in which the revolutionary spirit and freedom can thrive.²⁸⁴

14. Features of the Council System

²⁸¹ Arendt (note 7) at 258-9.

²⁸² Ibid at 259.

²⁸³ Ibid at 258.

²⁸⁴ Arendt (note 7) at 256.

Having given examples of various council systems throughout history, Arendt proceeds to define the precise features of a modern council system. To begin with, it is helpful to envisage a pyramidal structure in which there is a hierarchy of councils. Yet in this hierarchy, authority is, 'generated neither at the top nor at the bottom, but on each of the pyramid's layers,'²⁸⁵ thus reflecting the fact that real power only comes through joint action and mutual trust, and not by virtue of one's position relative to another's. Similarly to Hanna Pitkin's account of Machiavelli's republicanism, authority in the councils is to be, 'exercised in a way that further politicizes the people rather than rendering them quiescent. Its function is precisely to keep a political movement or action that the people have initiated... from disintegrating into riot, apathy, or privatization.'²⁸⁶ At the most grass-roots level, local councils are open to all and comprised of anybody who wished to partake. The members of the local councils then select a group of deputies to be sent to the next higher council, presumably a regional or provincial council.²⁸⁷ This process is repeated in the higher councils, with each selecting a few deputies until finally a group of leaders is selected for the national assembly. It is imperative, however to distinguish the relationships between the councils from a hierarchical system of representation. The dynamic between the councils is one of mutual trust, and the opinions elicited from each council are therefore generally accepted, if not simply out of respect, then also for the sake of expedient action.²⁸⁸

²⁸⁵ Ibid at 270.

²⁸⁶ Hanna Pitkin *Fortune is a Woman: Gender and Politics in the Thought of Niccollo Machiavelli* (1984) 88.

²⁸⁷ Ibid.

²⁸⁸ John Sitton 'Hannah Arendt's Argument for Council Democracy' (1997) *XXI Polity* 80 at 87.

Knowing that the councils are open to all, the question remains as to who exactly comprises the councils. The answer is that council-members are self-chosen. They are people whose taste for public freedom outweighs their private concerns; they have *amor mundi*.²⁸⁹ Yet Arendt understood that an appetite for political engagement is not universal, especially considering the modern rise of society. Those who choose not to join the councils, however, are not considered 'unfree,' but are viewed as exercising their freedom to join or not join. In this regard, Arendt states that,

[b]y no means [does] every resident of a country need to be a member of such councils. Not everyone wants to or has to concern himself with public affairs. In this fashion, a self-selective process is possible that would draw together a true political elite in a country. Anyone who is not interested in public affairs will simply have to be satisfied with their being decided without him. But each person must be given the opportunity.²⁹⁰

In terms of what specific issues the councils' deliberate and decide upon, different arguments are advanced by theorists as to what Arendt intends by political matters. Kateb understands Arendt's vision of political content to include questions regarding form of government, the preservation and maintenance of political bodies, and '[c]onstitutional questions, questions concerning the spirit of the laws or the interpretation of the laws or (especially in modern times) changes in the political ground rules- all these are the stuff of authentic politics.'²⁹¹ Yet in keeping with the above criticisms of Arendt's depiction of the social question, Kateb notes that for Arendt, 'the content of political speech cannot be social or economic policies.'²⁹² Whereas political speech thrives where there is diversity of opinion, socio-economic issues are on the one hand seemingly amenable to conclusively right answers; or, on

²⁸⁹ Ibid at 87.

²⁹⁰ Hannah Arendt *Crises of the Republic* (1972) 233.

²⁹¹ Kateb (note 61) at 134.

²⁹² Ibid at 133.

the other hand, to the simple expression of popular will.²⁹³ In Kateb's view, Arendt's vision of what constitutes the properly political inevitably leads to a theory of politics that is devoid of compassion, pity, or conscience due to its, 'single-minded adherence to the unique and supreme existential achievement of political action as revelatory speech.'²⁹⁴

In contrast, Benhabib argues that while speech and action are undoubtedly at the heart of what constitutes the political, they are, 'characterized by the willingness to give reasons in public, to entertain others' points of view and interests, even when they contradict one's own, and by the attempt to transform the dictates of self-interest into a common public goal.'²⁹⁵

According to this vision of Arendt's theory,

[e]ngaging in politics does not mean abandoning the economic or social issues; it means fighting for them in the name of principles, interests, values that have a generalizable basis, and that concern us as members of a collectivity. The political for Arendt involves the transformation of the partial and limited perspective of each class, group, or individual into a broader vision of the "enlarged mentality."²⁹⁶

For Benhabib, Arendt's conception of politics is not limited to a pre-determined set of issues or institutions. Such an understanding of the political would negate its principal content, which is talking and acting in common with diverse individuals who are one's equals.²⁹⁷

²⁹³ Ibid at 133-4.

²⁹⁴ Kateb (note 84) at 29.

²⁹⁵ Benhabib (note 88) at 146.

²⁹⁶ Ibid at 145.

²⁹⁷ Benhabib (note 88) at 146.

Taking a similar approach to Benhabib's analysis of the political, Pitkin describes how Arendt's construction of politics ultimately has the effect of actually heightening our awareness of social issues. Pitkin argues that when we as individuals initially engage with the political process, we come with our private interests firmly in hand, attempting to get as much out of the system for ourselves as possible.²⁹⁸ Yet as we continually participate in the political arena, we are, 'forced to acknowledge the power of others and appeal to their standards, even as we try to get them to acknowledge our power and standards... In the process, we learn to think about the standards themselves, about our stake in the existence of standards, of justice, of our community; so that afterwards we are changed. Economic man becomes a citizen.'²⁹⁹ The idea is that, '[o]nly in public life can we jointly, as a community, exercise the human capacity, 'to think what we are doing,' and take charge of the history in which we are all constantly engaged by drift and inadvertence.'³⁰⁰

While the arguments of Benhabib and Pitkin clearly render Arendt's theory more congruent with notions of social justice, Arendt's own submissions on the political nature of the councils tend to reinforce Kateb's analysis. Arendt points out that, 'councils have always been primarily political, with social and economic concerns playing a very minor role.'³⁰¹ In other words, councils almost exclusively concern themselves with public affairs. The affairs of the private realm, such as the social question, are to be managed by administrators with a

²⁹⁸ Pitkin (note 216) at 347.

²⁹⁹ Ibid.

³⁰⁰ Ibid at 344.

³⁰¹ Arendt (note 7) at 266.

demonstrated expertise in economics and similar disciplines.³⁰² This is not just because of the need for a strict separation between the public and private realms, but also because,

the qualities of the statesman or the political man and the qualities of a manager or administrator are not only not the same, they very seldom are to be found in the same individual; the one is supposed to know how to deal with men in a field of human relations, whose principle is freedom, and the other must know how to manage things and people in a sphere of life whose principle is necessity.³⁰³

In this regard, Arendt notes that councils have often made the fatal mistake of not distinguishing, 'clearly between participation in public affairs and administration or management of things in the public interest.'³⁰⁴ When this mistake occurs, an element of action and spontaneity is injected into management, and the result is nothing short of chaos. According to Arendt, this mistake has earned councils their bad name, but it is a mistake that is avoidable once the potential consequences are foreseen.³⁰⁵

15. *Advantages of the Council System*

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid at 267.

In order to further explicate her vision of the council system and its benefits. Arendt goes to great lengths to differentiate councils from political parties.³⁰⁶ She explains that the origins of councils and parties are intertwined, both having been products of the modern revolutionary tenet that everyone should be entitled to engage in the public, political realm.³⁰⁷ But whereas councils have always been spontaneously conceived organs of action separate from the government, parties have existed for the sake of providing, 'government with the required support of the people, whereby it was always understood that the people, through voting, did the supporting, while action remained the prerogative of government.'³⁰⁸ As opposed to the councils' emphasis on the citizen's right to action, parties operate on the assumption that either civic participation is guaranteed by other public organs, that representation is more than sufficient and participation not necessary, or that all political questions are ultimately administrative in nature and should be managed by 'expert' representatives.³⁰⁹ But ultimately, the dichotomy that emerges between councils and parties is one of action and representation. Even where councils and parties have coexisted, such as in the early days of the Russian Revolution, the political action exhibited by the councils was seen as instrumental, transitory, and dispensable, for the parties always saw the purpose of government as providing welfare for the people, and the substance of politics as administration.³¹⁰

Another problem with parties as compared to councils is that, 'it is indeed in the very nature of the party system to replace the formula "government of the people by the people" by

³⁰⁶ Canovan (note 87) at 235.

³⁰⁷ Arendt (note 7) at 263.

³⁰⁸ Ibid.

³⁰⁹ Ibid at 264.

³¹⁰ Ibid at 265.

The only possible justification for this democratic system, which Arendt calls the 'welfare state system',³¹⁵ is the presupposition that politics is a burden from which the people could derive no public happiness; a notion that runs directly counter to Arendt's theory of action and politics as ends in themselves and essential for humanity.³¹⁶

At best, however, Arendt is willing to admit that representative government has given the 'ruled' a certain control over their rulers.³¹⁷ But as opposed to having a participatory stake in public affairs, the most a citizen can hope for is to be represented.³¹⁸ This is problematic for the simple fact that, as James Madison noted over two centuries ago, 'no member of the convention could say what the opinions of his constituents were at this time; much less could he say what they would think if possessed of the information and lights possessed of the members here.'³¹⁹ In other words, it is impossible for representatives to truly know the opinions of the people they represent. This is not only due to limitations of distance or proximity, but also because opinions are non-existent in representative democracy.³²⁰ For Arendt, opinions can only be formed where there is a public sphere for open discussion and public debate, but where there is no such opportunity, there can only be moods.³²¹ Hence, the best a representative can do is to act according to what they might think their voter's best interests are, in which case representatives become, 'glorified messenger boys or hired experts who, like lawyers, are specialists in

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid at 260.

³¹⁸ Ibid.

³¹⁹ Ibid at 228.

³²⁰ Ibid at 260.

³²¹ Ibid at 261.

representing the interests of their clients.³²² Alternatively, representatives can respond to pressure groups and lobbies, which are the only vehicles for voters to influence the course of public affairs outside of the voting booth. But confronted with this situation, the representative must either choose to execute the wishes of one interest group at the expense of another, or succumb to corruption. Ultimately, 'in all these instances the voter acts out of concern with his private life and well-being, and the residue of power he still holds in his hand resembles rather the reckless coercion with which a blackmailer forces his victim into obedience than the power that arises out of joint action and joint deliberation.'³²³

16. Conclusion

From this, it is abundantly clear that Arendt was severely distrustful of modern representative democracy. In its best light, it is a system which affirms the adage that, 'although power is derived from the people, they possess it only on the days of their elections. After this, it is the property of their rulers.'³²⁴ In reality, however, representative democracy is a system in which the elite either act in their own interests, the interests of lobbyists, or the perceived interests of an uninformed public- but it is not possible for them to truly represent the opinions of their constituents as they are intended to. For political freedom is the domain of only the few, and as such the people, 'sink into lethargy, the forerunner of death to public liberty.'³²⁵ While some may continue to see some benefit in politics, mainly as a means to push their private agenda, most simply disengage, as they know that their input in the political process is for the most part

³²² Arendt (note 7) at 229.

³²³ Ibid at 261.

³²⁴ Ibid at 228.

³²⁵ Ibid at 229.

meaningless. In the words of John Adams, 'To be wholly overlooked, and to know it, are intolerable. If Crusoe on his island had the library of Alexandria, and a certainty that he should never again see the face of man, would he ever open a volume?'³²⁶

It is in the face of this predicament that Hannah Arendt presents her vision of the council system. But this vision is not one that Arendt views as a 'perfect political philosophy' to which we should conform, and she is hesitant to provide too many details as to how councils should function. For councils are the forums for action, spontaneity, and innovation; they are the public realm in which people can politically engage and ultimately decide what is best for them. In the end, however, councils do more than just preserve the revolutionary spirit- they are also the best instruments, 'for breaking up the modern mass society.'³²⁷ How the councils and the political action they embody might apply to post-apartheid South Africa is thus the focus of the remainder of this dissertation.

³²⁶ John Adams as quoted by Arendt (note 7) at 59.

³²⁷ Arendt (note 7) at 271.

PART TWO:

HANNAH ARENDT'S POLITICS AND THE SOUTH AFRICAN LEGAL ORDER

CHAPTER V:

INTRODUCTION AND PRELIMINARY ISSUES

Having covered the key themes of Arendt's political thought, it is now possible to apply it to post-apartheid South Africa. What is readily apparent, however, is that an application of Arendt's thought is inherently difficult due to her abstract and unorthodox approach. She does not limit her subject-matter to any specific area of focus, such as representative democracy, but engages with the entirety of western history and philosophy in an attempt to decipher how modern society has emerged. This is not to say that her work is so over-reaching that it cannot be applied to any single area of interest, but rather to point out that a certain amount of sifting and creativity is required to extract what is relevant to a particular area of focus, in this case the post-apartheid political/legal order. For example, Arendt's lengthy discussions on the influence of science on

speech, while important, are not as applicable as her distinction between a constitution that protects the revolutionary spirit and one that merely aims at liberation. Likewise, it is also necessary to highlight elements of Arendt's work that are potentially problematic for any attempt at applying her work in a practicable way. As was noted from the outset of this study, Arendt is not only one of the most seminal political theorists of the last century, but also one of the most controversial.³²⁸ Volumes have been written criticizing almost every aspect of her work, many with valid points, and many without.³²⁹ Thus, prior to endeavouring to apply her thought directly to present-day South Africa, it is necessary to delineate a few key preliminary issues not yet referred to herein. The purpose is not to engage in a full-scale critique of Arendt's thought, but to simply acknowledge certain basic issues so that the process of applying her work to post-apartheid South Africa can begin.

The first question which could be asked with regard to an application of Arendt's work to South Africa is whether it is possible to utilize a political piece so entrenched in western history when analyzing a country in Africa. Indeed, apart from her discussions on American history, the formation of Israel, and the relation between imperialism and totalitarianism, Arendt's work can be described as wholly Eurocentric.³³⁰ While she does write specifically about South Africa in *The Origins of Totalitarianism*,³³¹ Arendt contains her thought to the subject of race and bureaucracy and how the former was employed as a means to justify the exploitative practices of the Boers. Her purpose in relating this piece of South African history is to show the link between

³²⁸ Canovan (note 43) at 105.

³²⁹ Dana Villa (note 30) at 1.

³³⁰ Canovan (87) at 37; See also Dossa (note 49) at 35.

³³¹ Hannah Arendt *The Origins of Totalitarianism* (1973) at 185-221.

the use of racism by early white settlers in southern Africa and the Nazis during the Holocaust.³³² However, the fact that she does not intimate as to the effect imperialism might have had on the peoples of Africa has led some theorists to assert that, 'Arendt denies history and politics to the Africans.'³³³ With regard to Arendt's writing on South African history, Anne Norton writes that, 'Arendt put herself in the mind and circumstances of the Boer. She did not attempt to enter the minds and circumstances of the African. Arendt gave voice to the Boer. She left the African silent.'³³⁴

A number of Arendt's passages in *The Origins of Totalitarianism* appear to lend credence to Norton's assertions. In writing of the first Europeans to venture into sub-Saharan Africa, Arendt remarks that,

[t]he world of native savages was a perfect setting for men who had escaped the reality of civilization. Under a merciless sun, surrounded by an entirely hostile nature, they were confronted with human beings who, living without the future of a purpose and the past of an accomplishment, were as incomprehensible as the inmates of a madhouse.³³⁵

Arendt goes on to describe how some of the more adventurous Europeans, 'drifted into the interior of the Dark Continent where the savages were numerous enough to constitute a world of their own, a world of folly.'³³⁶ That these statements exhibit remarkable bigotry is undoubted, but what is unclear is the extent to which Arendt's derogatory tone is her own or simply a literary device meant to convey the attitudes of Europeans at the time. Benhabib argues that, 'Norton

³³² Ibid at 38.

³³³ Anne Norton 'Heart of Darkness: Africa and African-Americans in the Writings of Hannah Arendt' in Barbara Honig (ed) *Feminist Interpretations of Hannah Arendt* (1995) 247 at 253; See also Kateb (note 84) at 61-2.

³³⁴ Norton (note 333) at 253.

³³⁵ Arendt (note 331) at 190.

³³⁶ Ibid at 191.

completely misses these distinctions and takes Arendt's characterization of the innermost peoples and tribes of Central Africa, as experienced by European settlers, fortune seekers and crooks, to be descriptions in Arendt's own voice.³³⁷ Benhabib points to Arendt's differentiation of North Africa, Southern Africa, and Central Africa as evidence that Arendt did not herself think of Africa 'en bloc.'³³⁸ But most importantly for Benhabib is Arendt's intention of using the European standpoint to reveal, 'how the experience of lawlessness, of civilizational regression, the threat to identity posed by otherness, all return[ed] back home from the "Dark Continent" to create the heart of darkness within Europe itself.'³³⁹ Similarly, Canovan maintains that Arendt,

intends a deliberate parallel between this lack of settled civilization and the later European racist movements that attacked the civilized world. Her analysis of racism is part of the story of civilization destroyed by neo-barbarism... Once South Africa became part of an imperially extended Europe, its lessons were rapidly learned everywhere... South Africa showed that it is possible for a modern society to be organized on quite uneconomic principles along racial lines.³⁴⁰

While there is no doubt that Benhabib and Canovan are correct in highlighting that Arendt's primary purpose in discussing Africa is to explain the origins of totalitarianism, the question still remains as to Arendt's own perception of the peoples and cultures of sub-Saharan Africa. Indeed, certain passages that are clearly not written from the perspective of the European settler are, at best, a result of antiquated terminology and thought. For instance, while arguing that the word 'race' only carries a specific meaning when people are confronted with tribes that have no historical record of their own, Arendt writes that, '[w]hether these represent "prehistoric man," the accidentally surviving specimens of the first forms of human life on earth, or the "posthistoric" survivors of some unknown disaster which ended a civilization we do not

³³⁷ Benhabib (note 88) at 85.

³³⁸ Benhabib (note 88) at 85.

³³⁹ *Ibid* at 86.

³⁴⁰ Canovan (note 87) at 38-9.

know.³⁴¹ From this, it is difficult to imagine Arendt having any genuine interest or respect for the varied and plural histories of the diverse people of the African continent. Other generalizing statements also tend to discredit the depth of her familiarity with South African history. With regard to the Boers, Arendt writes that, '[t]he natives, at any rate, recognized them as a higher form of tribal leadership, a kind of natural deity to which one has to submit; so that the divine role of the Boers was as much imposed by their black slaves as assumed freely by themselves.'³⁴² Furthermore, Arendt holds that, 'the senseless massacre of native tribes on the Dark Continent was quite in keeping with the traditions of these tribes themselves. Extermination of hostile tribes had been the rule in all African native wars.'³⁴³ While these statements are at the very least problematic due to their overgeneralizations, it is important to reiterate that they do not necessarily impinge upon Arendt's political theory. This is because they do not detract from her main points, which in the case of her writings on Africa, have to do with the profound connection between the advent of modern racism and the rise of totalitarianism.³⁴⁴ Furthermore, Arendt's language must be read in the context of the mid-twentieth century, a time when words such as 'natives' were still part of popular usage.

Apart from the subject of Arendt's scant and controversial treatment of Africa, another issue to be considered is that her political theory remains deeply cemented in Western history only. Her very explanation of how modern world alienation has emerged is derived from her understanding that since Plato, the human capacity for political action has been increasingly

³⁴¹ Arendt (note 331) at 192.

³⁴² Arendt (note 331) at 193.

³⁴³ *Ibid* at 192.

³⁴⁴ Benhabib (note 88) at 86.

obfuscated. Consequently, it is only fair to ask whether Arendt herself would consider her work applicable outside the Western context. For instance, accepting that on numerous occasions throughout history people in the West have spontaneously conceived councils whose aim was freedom to participate in politics, can the same be said about Africa, Asia, South America, or elsewhere? One might say that the African National Congress (ANC) was initially one such example, but was the ANC not formed as a response to a political system inherited from Europe? And in that regard, there is the ever-present question of whether political models developed in one part of the world at a certain time are applicable outside that context. These questions can go on forever, and there can be no correct answer, especially considering Arendt is not here for us to ask her. What must at least be acknowledged, however, is that there may be certain complexities that arise in applying a political thought based in the entirety of Western history to a country such as South Africa. Despite this troubling question, a number of South African academics who write on the relationship between law and politics, have explicitly supported aspects of Arendt's political theory in their arguments for a radicalisation of what is nowadays referred to in common parlance as 'transformative constitutionalism.'³⁴⁵ This support for Arendt's work in relation to post-apartheid South Africa indicates that, despite the difficulties raised here, there is much resonance between Arendt's work and the concern for radical democracy in South Africa.

³⁴⁵ See, for instance, JWG van der Walt *Law and Sacrifice* (2005) at 8-9, 151, 175, 216; K van Marle 'Lives of Action, Thinking and Revolt: A Feminist Call for Politics and Becoming in Post-Apartheid South Africa' in W le Roux and K van Marle (eds) *Post-Apartheid Fragments: Law, Politics and Critique* (2007) at 34 and H Botha 'Democracy and rights: Constitutional Interpretation in a Postrealist World' 2000 *THRHR* 561; WB Le Roux *The Aesthetic Republic. Art, Law and Post-Liberal Politics in Nietzsche, Arendt and Lyotard* Unpublished LLD dissertation, University of Pretoria (2003) and AJ Barnard 'Totalitarianism, (Same-Sex) Marriage and Democratic Politics in Post-Apartheid South Africa' (2007) 23 *SAJHR* 500.

While on the subject of difficulties, it would be necessary to acknowledge, at the very least, a difficulty in this context which is linked to Arendt's use of antiquated terms such as 'natives;' namely, that the world we live in today is a very different place than the one in which Arendt wrote. Self-evident in Arendt's thought is the fact that she lived in a time of great historical consequence- totalitarianism throughout much of Europe, the holocaust, the atomic bomb, the uprisings of 1950's and 1960's Europe, and the Cold War, just to name a few. While the present-day can by no means be described as ideal, there have been no outbreaks of global war on the scales witnessed by Arendt and there has been a decrease in the number of authoritarian regimes proportional to democratic ones. Interestingly, many of Arendt's commentators have suggested that a number of developments occurring after her death validated her views, with some even calling her a prophet.³⁴⁶ They point to the demise of dictatorships in Greece, Portugal, Spain, Chile, and Brazil as some of the many examples illustrating how complete political suppression cannot persist indefinitely.³⁴⁷ And perhaps more pertinently to Arendt, they highlight the revolutionary mass movements of Poland and Czechoslovakia and their role in the ultimate collapse of the Soviet Union.³⁴⁸ Yet if there is one country that pervades the recent literature about Arendt's foresight more than any other, it is, in my opinion, South Africa.³⁴⁹ The more optimistic among Arendtian theorists see South Africa as validating a whole host of Arendt's arguments; they see South Africa as the prime example of a mass movement, driven by political freedom, and able to overcome the dismal deprivations of apartheid through persuasion and reconciliation in order to bring about an entirely novel political system grounded in a Constitution- in other words, an example of a successful Arendtian revolution. Whether this

³⁴⁶ Schell (note 210) at xi.

³⁴⁷ Ibid at xi-xiii.

³⁴⁸ Ibid at xiii.

³⁴⁹ Ibid at xi-xiii: See also Young-Bruehl (note 52) at 112-22. Ibid at xi-xiii.

is true or not will be dealt with in the next chapter, but what is important to note here is that like South Africa, all the countries that are championed as having proven Arendt correct are deemed as such mainly on the basis that they are now democratic. What this means is that Arendt's writings are indeed extremely relevant in the present-day, at a time when the spread of democracy is undoubtedly near the top of the global agenda. For without question, Arendt is one of the most insightful and challenging theorists on democratic politics of the past century.

Before moving on to applying Arendt's work, it is still necessary to point out some of the more well-known criticisms of Arendt's work not yet mentioned. As previously discussed, Arendt's insistence that the social question be detached from revolution has caused many theorists to question Arendt's dedication to social justice.³⁵⁰ Following a similar line of thought, some theorists also charge Arendt with a severe naïveté for her simplistic view of how complex social issues should be dealt with in modern society.³⁵¹ They point to her proposition that matters of the private realm, such as poverty, should be left to administrators who, 'know how to manage things and people in a sphere of life whose principal is necessity,'³⁵² while politics should be the domain of those who, 'know how to deal with men in a field of human relations, whose principle is freedom.'³⁵³ Even if this were the ideal situation, it is certainly arguable that Arendt's statement assumes that people are readily identifiable as either administrators or politicians, an assumption that negates the ability of people to either be multi-talented or to perhaps change their career paths. In addition, Arendt's statement does not adequately acknowledge that at

³⁵⁰ Passerin d'Entreves (note 88) at 61; Pitkin (216) at 338-42; Bernstein (note 243) at 255-6.

³⁵¹ Bernstein (note 243) at 238-59; Canovan (note 87) at 122.

³⁵² Arendt (note 7) at 266.

³⁵³ Ibid.

present, the fields of human relations and necessity are intricately intertwined.³⁵⁴ While it may be preferable that they are not, Arendt does not explain what can be done in the meantime until the private and public realms are sufficiently separated. One can only imagine the uproar, for instance, if elected representatives were forbidden to make decisions on matters of economics, health, and housing, matters that are vital to the majority of South Africans.

With regards to Arendt's insistence on a strictly protected public realm, another common critique of Arendt's thought arises; namely, that Arendt offers no solid description of what a public space would look like in modernity and what setting it would be in.³⁵⁵ Phillip Hansen addresses this problem by juxtaposing Arendt's notion of public space with the realities of modern urbanization. Hansen questions, 'the capacity of urban forms to provide public access to common sites within which people could assemble as equals enjoying each other's company as competent actors- in short, as a plurality of citizens joined in solidarity by a common world.'³⁵⁶ Hansen points out that the contemporary urban environment has come to be viewed by urban social theorists as inimical to democratic community participation,³⁵⁷ noting that, '[i]ts rhythms express and reproduce the pattern of production, distribution and consumption integral to modern capitalism, processes which require disciplined subordination to mechanistic, organizational purposes- what Arendt calls behavior.'³⁵⁸

³⁵⁴ Bernstein (note 243) at 252.

³⁵⁵ Benhabib (note 88) at 198.

³⁵⁶ Hansen (note 93) at 72.

³⁵⁷ Ibid at 72.

³⁵⁸ Ibid.

In a slightly contrasting argument, Canovan maintains that in her fundamental focus on totalitarian regimes, Arendt blinds herself to the flexibility and pluralism of modern society.³⁵⁹ By concentrating on the monolithic uniformity of the West, Arendt looks past the notion of 'civil society' and its role as a space between people and facilitator of public discourse.³⁶⁰ Canovan argues that although the term 'civil society' initially pertained to matters of the market economy, it today refers, 'to the realm of free associations in which citizens join to form all kinds of organizations from trade unions to Gay Rights Groups;³⁶¹ associations whose value as forums of plurality and public deliberation should not be overlooked. Yet apart from whether it is possible to envision an Arendtian public space in a modern setting or whether such spaces already exist in the form of civil society, there is still the difficulty presented by the fact that Arendt never articulates the exact features of a public space outside of the Greek *polis* and pre-revolutionary American township council contexts. Benhabib encapsulates this criticism particularly well when she writes that, '[i]t remains one of [Arendt's] central contributions to political philosophy that she made us aware of the centrality of the concept of the public sphere for any egalitarian and participatory democratic project. Yet her neglect, particularly in *The Human Condition* of the alternative genealogy of modernity... leaves her concept of public space institutionally unanchored, floating as it were a nostalgic chimera in the horizon of politics.'³⁶²

³⁵⁹ Canovan (note 87) at 122-3.

³⁶⁰ Canovan (note 7) at 122.

³⁶¹ *Ibid* at 123.

³⁶² Benhabib (note 88) at 198.

the “impartiality of justice and laws”? Impartiality! Justice! Where were these principles when that immense majority was relegated to shame and misery?³⁶⁷

In concluding her scathing critique, Pitkin questions, ‘[w]hy should [Arendt] so undermine her own efforts to save public, political life?’³⁶⁸ While this query cannot be answered authoritatively, it is doubtful that Arendt would deem the success of the women’s movement as pessimistically as the above passage suggests. At the same time, it is also clear that Arendt’s strict adherence to a public-private divide requires some reconfiguration in order to accommodate the ever-changing nature of our societies. To illustrate, a common issue in the modern age is how to balance the right of both parents to work with the demands of raising children. Surely the answer cannot lie in restricting the right of women to exit the household, and it is unlikely that Arendt would entertain such a notion considering her position as a political theorist, thinker, and professor who stood at the forefront when it came to challenging the male dominated discipline that was philosophy during her time. These dilemmas are succinctly addressed by Nancy Fraser when she asks,

if, as Arendt contended, the institution of the political in the West, depended upon, indeed was a flipside of, the institution of the familial; and if the familial, as a sphere of inequality and exploitation, can no longer be immune from critique or transformation; then how must and ought the political sphere change as well?... How might an equitable reorganization of childbearing, one which put it at the center of public concern, help to revitalize and transform the political?... How might the political be transformed in case women’s cultures were liberated from domesticity and permitted to enter public life?³⁶⁹

³⁶⁷ Pitkin (note 216) at 336.

³⁶⁸ Ibid at 338-9.

³⁶⁹ Nancy Fraser ‘The French Derrideans: Politicizing Deconstruction or Deconstructing Politics?’ (1983) Fall, 33 *New German Critique* 127 at 150.

It is in a similar vein to these critiques that some theorists attack Arendt on the grounds that she exhibits an elitist perspective by virtue of her often obscure and esoteric approach.³⁷⁰ They maintain that in her insistent focus on the importance of language, such as with the root of the term 'social,' and her purported glamorization of ancient Greece, she detaches herself from the mainstream of political thought to the point that her work is more self-gratifying than presently relevant. While contentions that Arendt's work is mere intellectual jargon are certainly exaggerated and unwarranted, it might not be unfair to ask whether Arendt's arguments were slightly conditioned by her areas of expertise. For instance, Arendt begins the first chapter of *The Human Condition* by asserting that action, work, and labour are the three fundamental activities. Her only justification for this assertion is that these activities have been identified as such since Aristotle.³⁷¹ Similarly, one might ask whether Arendt's hierarchy of action over work and labour has any grounding other than in the Greek *polis*. Indeed, it is common for the reader unfamiliar with political philosophy to ask whether action and political participation are really so essential to our humanity to begin with. Is it possible that while political engagement might bring extraordinary happiness to people such as Arendt and the ancient Greeks, it might not be so for the majority of people? Are people really so miserable in modern society? Is it completely true that people, 'either live in desperate lonely separation or are pressed together into a mass?'³⁷² And if they are, is it really due to a fundamental lack of political participation? Arendt was sure to note that not everyone has a taste for public affairs,³⁷³ and she was also adamant that the rise of society gradually suppressed our inner-need for public expression, but it is certainly arguable

³⁷⁰ Waldron (note 223) at 213.

³⁷¹ Arendt (note 8) at 12-3.

³⁷² Arendt (note 1) at 89-90.

³⁷³ Arendt (note 290) at 233.

that in her passion for the political, she overly attributed this same passion to the majority of people.

To her credit, however, Arendt does confront the very issue that most adherents of political participation shy away from; that representative democracy adequately accommodates those of us who do not want to engage as active citizens, that many of us want to proceed in our lives undisturbed, safely knowing that our material desires will be attended to by politicians hungry for our votes.³⁷⁴ Arendt's answers this by squarely stating that, '[a]nyone who is not interested in public affairs will simply have to be satisfied with their being decided without him.'³⁷⁵ Yet as Canovan points out, Arendt is ultimately saying that there is no need for universal suffrage, nor general elections for that matter.³⁷⁶ While the political process should be open to all according to Arendt, those who choose not to actively participate must endure the decisions made without their input. Canovan aptly reminds enthusiasts of political participation who champion Arendt that her goal is not to discard 'elitism', but to replace the professional politicians of the modern era with a genuinely political and self-chosen elite.³⁷⁷ Again, a strain of elitism is detected in Arendt's work.

17. Conclusion

³⁷⁴ Canovan (note 87) at 237.

³⁷⁵ Arendt (note 290) at 233.

³⁷⁶ Canovan (note 87) at 238.

³⁷⁷ Ibid.

The purpose of raising some of these issues is by no means to discredit the value of Arendt's thought. It is simply to acknowledge that elements of her work elicit a number of potentially valid questions whose answers are up for debate. There can be no right or wrong answers, especially considering Arendt is not here to respond. What is undeniable, however, is the originality of her thought and approach to politics. While it is inconceivable to even think about returning to the *polis* life as it existed for the ancient Greeks, something which Arendt would readily testify to, there can be no harm in re-evaluating our current political systems from a broader historical perspective. In many ways, the post-apartheid political order adopted the representative democratic model because over the past three centuries it has shown itself to be the most durable and the most correlative with peace and prosperity. Be that as it may, there is no reason to simply accept the status quo- and this is Arendt's point, 'to think what we are doing.'³⁷⁸ Arendt offers an unquestionably thought-provoking and challenging argument from which South Africa and its nascent democracy might derive crucial lessons. Arendt's work is not to be taken in a strictly literal sense, such that we think she is calling for the immediate switch to a council system.³⁷⁹ Rather, her work is to be read metaphorically, in a way that we understand the need for greater political openness and public involvement.³⁸⁰ Recognizing the limitations of her work, it is now possible to apply it to post-apartheid South Africa so as to possibly discover shortcomings in our political system which might otherwise be overlooked.

³⁷⁸ Arendt (note 8) at 5.

³⁷⁹ Wellmer (note 201) at 238.

³⁸⁰ Ibid.

CHAPTER VI:

POST-APARTHEID SOUTH AFRICA: A PRODUCT OF SUCCESSFUL REVOLUTION?

18. Introduction: On Novelty

In the years leading up to the demise of the apartheid government, there is no doubt that a huge segment of South African society was thirsty for a revolution. After years of oppression by a morally-defunct government, it was commonly thought that the total destruction of the existing regime was required and that a radically new form of governance needed to emerge. For most in the 1970's and 1980's, the idea that future change would be accomplished through diplomatic agreements was largely unthinkable. The 'freedom-fighters' most certainly did not envision a

smooth, peaceful transition built on compromise and enabled through a handing-over of power. The point here is that there is little doubt that revolution was in the air in South Africa for many years leading up to 1994. Yet, as Arendt aptly points out, revolutions must be assessed and distinguished not by how they began, but by what they ultimately achieved. Due to the popularity of the American and French Revolutions, the term revolution became fashionable and championed by all sorts of groups demanding social or political change. However, Arendt shows that it is a common mistake in modern society to confuse a mere eagerness for something new with a true revolutionary spirit.³⁸¹ The revolutionary spirit requires more than a desire for change. A revolutionary does not stop with the attainment of rights as revolution is much more than simple liberation. Thus, despite the fact that the notion of revolution was an inspiring force prior to 1994, whether or not a revolution actually occurred is a separate matter.³⁸² One must look at the precise distinguishing features of revolution. In the case of South Africa, the first question to ask is whether the transition to the post-apartheid order resulted in something entirely novel.

19. An Arendtian Revolution in South Africa?

Without question, the end of apartheid rule represented the dawn of a new era. Though the change did not occur all at once, the differences between 1976, for example, and 1996, cannot be underestimated. No more was South Africa a country characterized by legally justified segregation and institutionalized inequality. Universal suffrage replaced minority rule and the

³⁸¹ Arendt (note 7) at 31.

³⁸² See in this regard D Cornell 'Bridging the Span toward Justice: Laurie Ackermann and the Ongoing Architectonic of Dignity Jurisprudence' (2008) *Acta Juridica* 18 at 19-20.

parliamentary sovereignty of the Westminster system was abandoned in favour of constitutional democracy. To symbolize this change, a new flag and national anthem were created. Yet from an Arendtian perspective, these changes are by no means evidence of a revolution. What needs to be deciphered is whether freedom was established through the creation of a new body politic. In the case of South Africa, there was no creation of an entirely new state. Instead, there was an almost wholesale adoption of the apartheid state's institutions and structures, and in many arenas, its personnel as well. In the words of Iain Currie and Johan de Waal, 'All that was solid did not melt into air.'³⁸³ A new body politic did not entirely replace the pre-existing one, as in the American and French Revolutions, but rather power was transferred from one group to another; in this case, from one representing the minority of the country to one representing the majority. And while constitutional supremacy replaced parliamentary sovereignty, the fundamental commitment to representative democracy remained intact. The only, albeit hugely significant, difference being that now the democratic system was open to all equally.

How did this change come about? While it is arguable that groups such as the ANC may have initially resembled the politically-charged councils described by Arendt, the South African transition cannot be said to have been the sole product of the people spontaneously coming together, bound together by their desire for political freedom, and strong enough in their unity to deprive the ruling government of its power or claim to legitimacy. Undoubtedly, the liberation movements demonstrated a remarkable amount of courage, political determination, and organization admired by the world and worthy of being called revolutionary, but any reading of the years leading up to the power-transfer reveals that the situation was much more complex. As

³⁸³ Iain Currie and Johan de Waal *The New Constitutional and Administrative Law* vol 1 (2001) v.

described by the Deputy Judge President of the Constitutional Court of South Africa at the time, Ismael Mahomed, South Africa was characterized by,

a debilitating war of internal political dissension and confrontation, massive expressions of labour militancy, perennial student unrest, punishing international economic isolation, widespread dislocation in crucial areas of national endeavor, accelerated levels of armed conflict and a dangerous combination of anxiety, frustration, and anger among expanding proportions of the populace.³⁸⁴

The result was a largely incapacitated apartheid government, which despite having an overwhelmingly sophisticated military and security force, could not quash the liberation movements and their preparations for armed struggle. Increasingly, all out warfare presented itself as an inevitability, and the expectation of a cataclysmic showdown only worsened as fighting amongst the liberation groups and various South African communities continued to claim hundreds of lives every year. Faced with this bloody predicament, leaders of both sides began secret talks that ultimately led to the release of Nelson Mandela in 1990, the lifting of all restrictions aimed at the principal liberation groups, and the signing of a National Peace Accord in 1991.³⁸⁵

To the delight of most South Africans and the world, it became increasingly clear that South Africa's fate would not be decided by violent means, but by negotiation and compromise. Indeed, negotiations involving all the major political parties began in 1991 under the auspices of the Conference for a Democratic South Africa (CODESA).³⁸⁶ The parties agreed to the joint

³⁸⁴ *Azanian Peoples Organisation (AZAPO) v President of the Republic of South Africa* 1996 (4) SA 671 (CC) para 1 at 1.

³⁸⁵ Iain Currie and Johan de Waal *The Bill of Rights Handbook* 5ed (2005) 4.

³⁸⁶ Currie (note 383) at 59.

drafting of an interim constitution which would govern the country while a 'national legislature (elected directly and indirectly) by universal suffrage, would double as the constitution-making body and would draft the new constitution within a given time.'³⁸⁷ The agreement reached at CODESA eventually collapsed, however, and the process of negotiation was then consigned to a secret channel of communication between Cyril Ramaphosa of the ANC and Roelf Meyer of the National Party government.³⁸⁸ Through the resumption of the negotiating process, an interim constitution was finally adopted in 1994. Apart from entrenching universal suffrage, human rights and constitutional supremacy, the interim Constitution³⁸⁹ ensured the legal continuity of the South African State.³⁹⁰ Two years later, these elements were permanently concretized with the adoption of the 1996 Constitution. Unlike the interim Constitution, the final Constitution was the product of a Constitutional Assembly whose members were elected in the 1994 elections. Yet despite this difference, the Constitutional Assembly was cognizant of the fact that it might be susceptible to the same charges levelled at the interim constitution; namely, that it was an elite pact.³⁹¹ Consequently, efforts were made to encourage public involvement in the constitution-making process. These included public meetings and workshops, as well as the publication of a first draft of the Constitution designed to facilitate public comment, in response to which several million submissions were made.³⁹² In spite of these publicity exercises, however, it has become evident that the influence of the public on the constitutional process was minimal. The contents of the Constitution remained the purview of the major political parties, and the publicity exercises revealed themselves to be aimed at garnering legitimacy and encouraging favourable

³⁸⁷ *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa 1996 (First Certification judgment)* 1996 (4) SA 744 (CC) para 13 at 10.

³⁸⁸ Currie (note 385) at 5.

³⁸⁹ Constitution of the Republic of South Africa Act 200 of 1993.

³⁹⁰ Currie (note 385) at 5.

³⁹¹ *Ibid* at 6.

³⁹² *Ibid*.

public opinion.³⁹³ Nonetheless, the Constitution was ultimately approved by the Constitutional Court and signed into law by President Mandela on the 10th of December 1996.

From what has been described, it is clear that the transition from the old order to the new does not exhibit the novelty necessary to be considered a revolution in the Arendtian sense. While the ultimate act of foundation was achieved through the framing of a Constitution, something which Arendt deemed the, 'hallmark of revolution,'³⁹⁴ the South African transition did not result in the creation of a new body politic. Rather, the transition was negotiated in such a fashion that the institutions and structures of the pre-existing regime remained largely intact. While the transition technically involved the extension of voting rights to all South Africans, it was understood from the beginning that what was actually occurring was the transfer of power from one political party to another; namely, the National Party to the ANC. A little more than a decade later, many would even argue that the transition was in large part a mere transfer of power from one elite clique to another.³⁹⁵ As Arendt points out, political changes such as these are typically, 'less feared because the change they bring is circumscribed to the sphere of government and carries minimum disquiet to the people at large.'³⁹⁶ Indeed, minimal disquiet was unquestionably, (and understandably at the time), a major goal of the negotiating parties. In the secret backrooms where the crux of the negotiations took place, concessions were repeatedly made so that the task of transferring power could progress without too much delay.³⁹⁷

³⁹³ Currie (note 383) at 66.

³⁹⁴ Arendt (note 7) at 116.

³⁹⁵ Patrick Bond *Elite Transition: From Apartheid to Neoliberalism in South Africa* (2000) at 1-15.

³⁹⁶ Arendt (note 7) at 25.

³⁹⁷ See in this regard 'The History of the Constitution' on the website of the Constitutional Court of South Africa. Available at <http://www.constitutionalcourt.org.za/site/theconstitution/history.htm#1992> [Accessed 15 October 2008].

Compromise was the name of the game, and one of the main bargaining chips of the purportedly revolutionary ANC was the promise that there would be no change too radical for the oppressors to swallow. In the backroom, the focus was on maintaining stability while at the same time liberating the populace through the entrenchment of civil rights and democracy in the Constitution.

From a present-day perspective, one might argue that in order to appease those who expected the dawn of a radically new society, the new government has taken steps to create the appearance of a new society; apart from a new flag and national anthem, the names of various locations have been changed, and some politicians still cherish the moment when they can publicly sing 'Bring me my Machine Gun.'³⁹⁸ Nonetheless, it cannot be said that any significant changes have been made to the political structure in order to foster a truly plural political system in which public involvement is meaningful and opposition encouraged. Instead, we have seen the manifestation of Arendt's warning that those who fight for political change often become conservative once the change is achieved.³⁹⁹ Today, many of the ANC's actions are commonly seen as attempts to maintain power on the basis that they liberated the South African people from oppressive minority rule. To a large extent, this is understandable. After decades, if not centuries of oppression, the entirety of the South African populace has been liberated, an accomplishment that, given our history, cannot be undervalued. Yet if we critically employ an Arendtian lens, what we may be witnessing is the falling back into a different stage of a well-known cycle, one seemingly natural to human affairs, whereby change simply involves a power shift among elite

³⁹⁸ Angela Quintal 'Zuma Calls for Gun-Free South Africa.' Available at http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20070418093130316C618443 [Accessed 22 May 2008].

³⁹⁹ Arendt (note 7) at 31.

groups. Whether or not this is true, what is clear is that without the creation of a new body politic, novelty has not been satisfactorily achieved to merit calling the South African transition revolutionary in the Arendtian sense.

20. Conclusion: Arendtian Revolution v Legal Revolution?

Some commentators have suggested that the best way to understand the South African transition is to view it as a 'legal revolution,' or conversely, a 'constitutional revolution.'⁴⁰⁰ They point to the extension of political enfranchisement to all citizens, the division of the national and provincial spheres of government, and the adoption of a democratic system based on proportional representation.⁴⁰¹ Yet the main impetus behind the use of the term legal revolution is the advent of a supreme and binding constitution entailing a Bill of Rights. In this respect, it is true that legally speaking, the Constitution represented an enormous amount of novelty and freedom as the words are colloquially understood. The Constitution marked the first time in the entire history of South Africa in which human rights were entrenched and applicable to all people equally. Given South Africa's long history of racially-based division and oppression, there is no question that the Bill of Rights therefore introduced a novel element of freedom. Even

⁴⁰⁰ Currie (note 383) at 5; Currie (note 385) at 6.

⁴⁰¹ Currie (note 373) at 40.

if this freedom did not amount to Arendt's notion of participatory politics, (a subject that will be discussed in more depth below), it is undeniable that the sudden ability for all to vote and assemble freely was not just a new development, but a substantial step towards freedom in any sense. That being said, we should not hesitate in casting a critical eye on the constitution-making process now often described with revolutionary language, for there is rarely any benefit in making a political subject taboo and beyond legitimate criticism.

For one, the constitution-making process was starkly different from that which Arendt describes as having occurred in the early stages of the American and French Revolutions. There was no effort to engage the public from the onset,⁴⁰² but rather the focus was on finding agreement between the various political parties present at CODESA. Consequently, anybody in South Africa not involved with these political parties had no say in the deliberations. Perhaps more importantly, the process fell into the trap illustrated by Arendt whereby, 'only the representatives of the people, not the people themselves, had an opportunity to engage in those activities of 'expressing, discussing', and deciding,' which, in a positive sense are the activities of freedom.⁴⁰³ This problem was only aggravated once the CODESA negotiations collapsed and the survival of the constitution-making process was relegated to highly restricted communications between the government and the ANC. Reminiscent of the French Revolution, the leaders effectively, 'cut themselves adrift from their constituent powers.'⁴⁰⁴ In France, the result was that, 'the act of constitution-making lost its significance, and that very notion of

⁴⁰² Although there were the aforementioned publicity exercises and public submissions during the process of drafting the final Constitution, it is noted again that these had little bearing on the actual contents of the Constitution and were primarily aimed at gaining legitimacy. See Currie (note 383) at 67.

⁴⁰³ Arendt (note 7) at 227.

⁴⁰⁴ Ibid at 117.

constitution came to be associated with a lack of reality and realism, with an over-emphasis on legalism and formalities.⁴⁰⁵ While it cannot be said that the process of constitution-making completely lost its significance in South Africa- it has, in fact, already proven itself to have produced a more successful and durable constitution than those of the French Revolution- it is likely that the lack of civic participation in the constitution-making process led to significant amount of public detachment from the final product that still persists today. Such disconnectedness from a constitution has crucial consequences in Arendt's view, for she believed that like the rules of grammar, a sound constitution not only sets rules, but is repeatedly applied and referenced; it presents itself as something implicit in an ongoing activity.⁴⁰⁶ Where it does not, a constitution becomes, 'a piece of paper, of more interest to the learned and the experts than to the people,'⁴⁰⁷ a charge that could easily be levelled at the South African constitution. For these reasons, it might be reasonable to ask whether the use of the terms 'constitutional revolution' or 'legal revolution' might have more to do with literary effect than with fact.

While the Constitution undoubtedly reshaped the South African legal framework in new and formidable ways, Arendt's point is that the word revolution is often used haphazardly in modern times, such that revolution is deprived of any meaningful and precise designation; in this case, revolution's inherent association with high levels of active public engagement.

⁴⁰⁵ Ibid.

⁴⁰⁶ Waldron (note 223) at 204.

⁴⁰⁷ Arendt (note 7) at 116.

To illustrate further why Arendt would hesitate from describing the South African constitution-making process as revolutionary, one simply needs to recall her adamant insistence on distinguishing liberation from revolution. Though certainly not inconsequential, liberation for Arendt occurs with the establishment of, 'those liberties which we today associate with constitutional government and which are properly called civil rights.'⁴⁰⁸ In this regard, there is no question that post-apartheid South Africa is a result of liberation. In fact, the South African Bill of Rights is commonly viewed as one of the most progressive and protective of any in the world, and likely more sophisticated than any Bill of Rights Arendt would have seen in her time. Nonetheless, it is probable that Arendt would have accused the framers of the South African Constitution with the same charge she directed at the American framers; that their emphasis shifted from engaging the people with the political future of the country, 'to the Bill of rights, which contained the necessary constitutional restraints upon government; it shifted, in other words, from public freedom to civil liberty.'⁴⁰⁹ As a result, both the South African and American Constitutions failed in establishing a public realm in which true freedom could be manifested. In Arendt's view, this constitutes definitive evidence that a revolution has not occurred, for only, 'where novelty is connected with freedom are we entitled to speak of revolution.'⁴¹⁰ This is not to say that liberation in South Africa is meaningless or unwelcome, especially in a country with an oppressive history such as ours, but only that the advent of constitutional supremacy is not necessarily indicative of a revolution. Arendt is clear on this point, stating that, 'the notion of constitutional government is of course by no means revolutionary in contents or origin; it means

⁴⁰⁸ Ibid at 22.

⁴⁰⁹ Arendt (note 7) at 126.

⁴¹⁰ Ibid at 24.

nothing more or less than government limited by law, and the safeguard of civil liberties through constitutional guarantees.⁴¹¹

CHAPTER VII: THE EXISTENCE OF FREEDOM

20. Introduction: The Vita Activa and the Constitution

While the South African transition cannot be considered revolutionary, it is still possible that through liberation at least certain elements of freedom were augmented. Indeed, even a cursory look at the first few pages of the Constitution reveals that freedom was unquestionably a central focus of the drafters. The first section, for instance, lists the advancement of freedom as one of the South African state's founding values (s1a). Section 7 states that the Bill of Rights 'affirms the democratic values of human dignity, equality, and freedom'. The question thus arises as to

⁴¹¹ Ibid at 134.

what exactly is meant by freedom in the constitutional context. How does it compare with Arendt's notion of freedom?

To begin with, it is helpful to recall that freedom according to Arendt means, 'to be a "participator in government" or it means nothing.'⁴¹² Such drastic language is not used arbitrarily. Arendt believes that among the root causes of modern world alienation is the loss of hope people engender when they have no meaningful influence over the course of affairs. Political participation, or action, however, is not important solely as a means to ensure that our opinions will be counted. Rather, action through speech and public expression is a fundamental aspect of the human condition. It has an inherent value and is an end in itself. Through action, 'we insert ourselves into the world.'⁴¹³ We recognize that not only do we live in a plurality, but that we are all unique as individuals capable of starting something new. In recognition of this fact, we experience the unconstrained freedom inherent in action and are able to enjoy a public happiness devoid of the mundane hardships and self-interest of the private life. With this in mind, the question is: Does the Constitution realize Arendt's notion of freedom through action? A reading of the preamble suggests that there might be some congruence. It states that the Constitution is adopted as the supreme law of the Republic so as to, 'free the potential of each person,' and lay the foundations for a society in which government is based, 'on the will of the people.' To delineate exactly how the Constitution portends to fulfil these aspirations, it is necessary to look at the actual provisions of the Constitution.

⁴¹² Arendt (note 7) at 210.

⁴¹³ Arendt (note 7) at 176.

The very first mention of either public involvement or public participation in the Constitution is at s57(1)(b). It provides that, 'the National Assembly may make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency, and public involvement.'⁴¹⁴ Sections 70(1)(b) and 116(1)(b) respectively grant the National Council of Provinces and the provincial legislatures the same powers. While these sections are not necessarily to be interpreted so that the named legislative bodies may decide to make rules and orders without due regard to participatory democracy and public involvement, the language of the provisions does not reflect the type of commitment to public participation argued for by Arendt. Whereas the drafters could have provided that the legislative bodies *must* consider participatory democracy and public involvement when making rules and orders concerning their business, the use of permissive language was opted for instead.

In contrast, sections 59(1)(a)-(b) stipulate that, 'The National Assembly must facilitate public involvement in the legislative and other process of the Assembly and its committees; and conduct its business in an open manner, and hold its sittings, and those of its committees, in public...' These same obligations are placed on the National Council of Provinces, provincial legislatures, and municipal councils in sections 72(1)(a)-(b), 118(1)(a)-(b), and 160(7), respectively. Additionally, section 42 requires both the National Assembly and the National Council of Provinces to provide national forums for public consideration of issues. While these sections appear to be more in line with the public engagement envisioned by Arendt, there is no assurance as to the impact the public's input has on the legislative process. The same is true of the public comments that are occasionally sought when formulating policy or the public

⁴¹⁴ Section 57(1)(b).

submissions made to legislative committees when drafting bills. In effect, this is representative of the fact that the primary aim of public involvement is not to give citizens a substantial role in the legislative process, but to increase the legitimacy of the legislative bodies.⁴¹⁵ The purpose is to make the people feel that government institutions are accountable and transparent, two undoubtedly vital aspects of a properly-functioning democracy. To illustrate, Hlophe J stated in *University of Western Cape v Member of Executive Committee for Health and Social Services*⁴¹⁶ that accountability and transparency demand that the obligation to advertise available posts in the public service cannot be curbed in such a way that the public is unaware.⁴¹⁷ The idea is that, 'government institutions must be accessible and that government officials must respond to the people they govern.'⁴¹⁸ From an Arendtian perspective, however, the notion that democracy is fulfilled by encouraging accessibility and accountability is severely inadequate. Public involvement should not be limited to allowing occasional public submissions or requiring that legislative bodies be open to the public. Rather, the public should at the very least have a substantial influence over the course of deliberations and the expectation that their voices truly matter. If they do not, there is a likelihood that the majority of the public will feel detached from the legislative process and view laws more as an imposition they must accept than as a product of their own creation.⁴¹⁹

21. *The Constitutional Court's Decisions in Matatiele and Doctors For*

⁴¹⁵ Currie (note 383) at 159.

⁴¹⁶ 1998 (3) SA 124 (C).

⁴¹⁷ *University of Western Cape* (note 416) at 137B-C.

⁴¹⁸ Currie (note 385) at 16-7.

⁴¹⁹ *Doctors For Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC) at para 115.

Life

Two judgments delivered by the Constitutional Court in recent years attempt to explicate the role of public involvement in the legislative process. In *Matatiele and Others v President of the Republic of South Africa and Others*,⁴²⁰ the Court stated that, '[t]he Constitution contemplates that the people will have a voice in the legislative organs of the State not only through elected representatives but also through participation in the law-making process.'⁴²¹ The goal is to, 'produce a dialogue between the elected representatives of the people and the people themselves.'⁴²² This sentiment was echoed by the Court in *Doctors For Life*,⁴²³ with Ngcobo J holding that, 'the duty to facilitate public involvement must be construed in the context of our constitutional democracy, which embraces the principle of participation and consultation.'⁴²⁴ In terms of the exact content of the duty to facilitate public involvement, the Court noted that, 'there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.'⁴²⁵ Overall, however,

Parliament and the provincial legislatures have broad discretion to determine how best to fulfill their constitutional obligation to facilitate public involvement in a given case, so long as it is reasonable to do so. Undoubtedly, this obligation may be fulfilled in different ways and is open to innovation on the part of the legislatures. In the end, however, the duty to facilitate public involvement will often require Parliament and the provincial legislatures to

⁴²⁰ 2006 (5) BCLR 622 (CC).

⁴²¹ At para 60.

⁴²² *Matatiele* (note 420) at para 58.

⁴²³ *Doctors For Life* (note 419).

⁴²⁴ *Ibid* at para 145.

⁴²⁵ *Ibid* at para 126.

provide citizens with a meaningful opportunity to be heard in the making of the laws that will govern them.⁴²⁶

In determining whether public involvement was facilitated in a reasonable manner, the Court will look at the, 'rules, if any, adopted by Parliament to facilitate public participation, the nature of the legislation under consideration, and whether the legislation needed to be enacted urgently.'⁴²⁷ In some cases, it would even be appropriate to look at whether transportation to and from the hearings was provided for, whether multiple languages were used in the radio broadcast concerning an important bill, and other factors going beyond any formulaic requirement of notice or hearing.⁴²⁸

While the judgments in *Matatiele* and *Doctors For Life* demonstrate a clear commitment to upholding the constitutional provisions for public participation in the legislative process, they fall short when viewed from an Arendtian perspective. As opposed to emphasizing the importance of the public's views and the extent to which they should govern the creation of laws, the Court likened participation to consultation, focusing instead on issues related to the accessibility of legislative forums. In this light, the impetus behind constitutionally mandating public involvement does not appear to be a desire to actively engage or incorporate the public's views in law-making, but rather to increase accountability and heighten the public's perception that it does indeed play some role in the legislative process. In other words, the reasons for which public participation is championed by Arendt, on the one hand, and the South African Constitution on the other, are markedly divergent. Whereas for Arendt public participation is

⁴²⁶ Ibid at para 145.

⁴²⁷ Ibid.

⁴²⁸ *Doctors For Life* (note 419) at para 132.

necessary to ensure that there is truly a, 'government of the people by the people,'⁴²⁹ the constitutional entrenchment of public involvement in the legislative process is primarily aimed at ensuring good government. This paralleling of public participation with notions of a properly functioning representative democracy is reflected, albeit subtly, in the Court's pronouncement that, 'our Constitution calls for open and transparent government and requires legislative organs to facilitate public participation in the making of laws by all legislative organs of the State.'⁴³⁰

22. Public Participation in Other Areas of Government

Outside of the legislative branch, openness to public involvement is even less extensive. With regard to the judicial branch, very little opportunity exists for individuals or groups to participate in proceedings which affect them. Rule 9 of the Constitutional Court Rules provides that any person interested in a matter before the Court may, '...be admitted therein as an amicus curiae...'⁴³¹ Initially, this rule was not only actively utilized on a common basis by public interest groups, but on occasion the Court even solicited the views of those it deemed as being potentially affected by the case at hand.⁴³² In *Ferreira v Levin NO*,⁴³³ '[w]ritten memoranda were invited and accepted...'⁴³⁴ from various professional bodies, and the Court enthusiastically praised the amicus curiae procedures of rule 9, adding that, '[w]e wish to acknowledge the valuable assistance derived by this Court from the argument on behalf of the amici curiae... as

⁴²⁹ Arendt (note 7) at 269.

⁴³⁰ *Doctors For Life* (note 419) at para 121.

⁴³¹ GN R 757 of 29 May 1998.

⁴³² Currie (note 383) at 88.

⁴³³ 1996 (1) SA 984 (CC).

⁴³⁴ At para 4.

well as from the memoranda filed by the above mentioned professional bodies.⁴³⁵ The openness to participation reflected in *Ferriera*, however, was short-lived. In the following year, the court declared in *Fose v Minister of Safety and Security*⁴³⁶ that apart from having an interest in the matter, the allowance of an amicus also depends on, ‘...whether the submissions to be advanced by the amicus are relevant to the proceedings and raise new contentions which may be useful to the Court.’⁴³⁷ As opposed to fostering public participation, the Court effectively chose to further shelter itself from public engagement, even though the Court’s understanding of the potential consequences of its decision on the public could be diminished.

With regard to the executive branch, there is an equally inadequate approach to public involvement. Besides the stipulation in section 33(2) that, ‘Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons’, there is no constitutional requirement that the executive consult affected parties before it makes a decision.⁴³⁸ The executive is therefore almost completely unaccountable to the public in terms of the Constitution, and even where it is, only in an *ex post facto* manner, in the form of a letter.

The situation is slightly more favourable when it comes to public administration. With respect to the ‘[b]asic values and principles governing public administration’, section 195(1) maintains that, ‘... the public must be encouraged to participate in policy-making,’⁴³⁹ and,

⁴³⁵ *Ibid.*

⁴³⁶ 1997 (3) SA 786 (CC).

⁴³⁷ *Fose* (note 425) at para 9.

⁴³⁸ Currie (note 385) at 15.

⁴³⁹ Section 195(1)(e).

'transparency must be fostered by providing the public with timely, accessible and accurate information.'⁴⁴⁰ Yet similarly to the provisions regarding the legislative bodies, it is unclear to what extent public participation will have any meaningful influence. Furthermore, the involvement of the public appears to be viewed more as a method of achieving greater transparency as opposed to being something that should be valued in its own right. These same concerns may also be directed at the provisions regarding local government, the only remaining provisions in the Constitution with any mention of public involvement. Listed among the objects of local government in section 152(1) are, 'to provide democratic and accountable government for local communities,'⁴⁴¹ and, 'to encourage involvement of the communities and community organizations in the matters of local government.'⁴⁴² It should be noted that from an Arendtian perspective, it is worrisome that the emphasis here is overtly on communities and civic organizations instead of the general public. This may advance the tendency of people to think that government is strictly a forum for organized groups and parties and not for individuals; that politics is a means by which the largest and most organized groups further their agendas through volume and pressure, and not a forum for individuals to deliberate openly.

23. Persuasion and Justification

In sum, it is clear that the Constitution does very little to encourage the type of political participation advanced by Arendt in her discussions of the *vita activa*. The focus of the Constitution is unquestionably geared more towards providing the public with accessibility,

⁴⁴⁰ Section 195(1)(g).

⁴⁴¹ Section 152(1)(a).

⁴⁴² Section 152(1)(e).

accountability, and transparency than it is towards involving the public. While section 1 includes democratic government as a foundational value so as to, 'ensure accountability, responsiveness and openness,'⁴⁴³ no regard is had to democratic government's capacity to include the public in the governance of its own affairs. To a certain extent, this may be explainable by the fact that public participation seems to be an overlooked and oft-forgotten aspect of political life as democracy has spread throughout the world in recent years. Furthermore, the enormous attention paid to transparency in the Constitution is understandable given South Africa's history of unaccountable and irresponsible government. This is reflected in Etienne Mureinik's seminal article regarding the new 'culture of justification.' In it, he writes,

If the new Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification- a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion.⁴⁴⁴

Though laudable for its articulate description of the post-apartheid order's aspirations, Mureinik's description of a 'culture of justification' is problematic when viewed from an Arendtian standpoint. It leads to the notion that democracy is healthy as long as government explains what it does, but completely ignores the idea that people should have an active role in politics. While Arendt clearly champions persuasion as a fundamental aspect of the proper political life as exhibited in the *polis* and the councils, she certainly would have protested against the idea that government, as an entity separate from the populace, should attempt in persuading the people like a judge in defence of her decisions. Accountability and transparency should not

⁴⁴³ Section 1(d).

⁴⁴⁴ Etienne Mureinik 'A Bridge to Where? Introducing the Interim Constitution' (1994) 10 *SAJHR* 31 at 32.

be ensured by simply requiring government to justify itself. Rather, accountability and transparency should largely be ensured by letting people participate, engage, deliberate, and take part in the very political processes which determine their future.

24. Political Rights

Despite the scant constitutional provisions specifically allotting for active public involvement and participation, the Constitution contemplates a number of other ways through which citizens may express themselves politically. Section 17 provides that, '[e]veryone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.' Where there is no distinct public realm open to all citizens, this right may become of crucial importance. Especially when coupled with the right to freedom of association found in s18, the right to assemble carries the potential of realizing the type of spontaneous group action that Arendt admired in the councils of 1956 Hungary. In essence, the streets become the public realm and the action of the participants, 'stimulates public attention and discussion of the opinion expressed. The public is brought into direct contact with those expressing the opinion.'⁴⁴⁵ Unfortunately, the very existence of this right is indicative of the fact that there is no protected public realm for open political engagement. Furthermore, one of the principal rationales behind the right to assemble in modern democracies is that the exercise of the right, 'has the effect of preventing a feeling of impotence and dangerous tendencies of general dissatisfaction with the state.'⁴⁴⁶ Clearly then, if the purpose of allowing assembly is to minimize dissatisfaction with the state, then what is actually taking place is a concerted effort to suppress the kind of revolutionary spirit

⁴⁴⁵ *In re Muthumeso* 1995 (1) SA 551 (ZS) at 557.

⁴⁴⁶ BVerfGE 315 (1985) 315 at 345 *Brokdorf*.

found in Arendt's councils. This dichotomy of control and action is particularly evident in the Regulation of Gatherings Act,⁴⁴⁷ in which most of the provisions are aimed at creating consensus between the demonstrators, local government, and the police regarding the location, time, and manner of demonstrations before they take place.⁴⁴⁸ In this respect, it is interesting to note that an assembly may be banned, 'when there is credible information on oath that the gathering will seriously disrupt traffic.'⁴⁴⁹ Again, there can be no mistaking this type of assembly with the spontaneous and purposively disruptive collective action championed by Arendt.

Another right through which the Constitution contemplates political action is through the right to freedom of expression. Section 16 maintains that the right to freedom of expression includes the, 'freedom of the press and other media', and the, 'freedom to receive or impart information or ideas.' The importance of this right was articulated in *South African National Defence Force Union v Minister of Defence*,⁴⁵⁰ in which the Constitutional Court stated that the, '[f]reedom of expression lies at the heart of a democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally.'⁴⁵¹ Although this statement does not conflict with Arendt's theory, the right to freedom of expression is by no means revolutionary. Like the right to privacy and freedom of religion, the right to freedom of expression is a component of 'those liberties which we today associate with constitutional government and which are properly called

⁴⁴⁷ 205 of 1993.

⁴⁴⁸ Currie (note 383) at 377.

⁴⁴⁹ Ibid.

⁴⁵⁰ 1999 (4) SA 469 (CC).

⁴⁵¹ *South African National Defence Force Union* (note 439) at para 7.

civil rights.⁴⁵² It does not lead to freedom in the sense of participation in government, but is simply a welcomed aspect of liberation.

The constitutional provisions which probably give citizens the most influence over public affairs are those relating to voting. Sections 84(2)(g) and 127(2)(f) respectively provide for national and provincial referendums. The calling of referendums is rare, however, as they require the authorization of an Act of Parliament. Furthermore, it is commonly thought that it is dangerous to allow the public to vote directly on contentious issues or those in which individuals' fundamental rights may be affected.⁴⁵³ Although Arendt was certainly an advocate of letting citizens participate in the determination of public matters, she was also cognizant of the fact that if citizens had no public realm in which they could openly deliberate and persuade one another, their views would be devoid of the public discourse necessary to form valid opinions. Their views would therefore likely be governed by uninformed moods susceptible to being corrupted by self-interest and private concerns. Thus, from an Arendtian perspective, it is understandable and yet lamentable that because there is no established public realm in post-apartheid South Africa, referendums should only be utilized in a limited fashion.

Apart from referendums, voting is also provided for in s19 regarding political rights. Section 19(3)(a) provides that every adult citizen has the right, 'to vote in elections for any legislative body established in terms of this Constitution, and to do so in secret...'. It should be

⁴⁵² Arendt (note 7) at 22.

⁴⁵³ Currie (note 385) at 16.

noted that citizens are therefore only entitled to vote for legislators and not for members of the executive or judicial branches. Section 19 also provides for the right to stand for public office, the right to free, fair, and regular elections, and the freedom to make political choices, which includes the right to form, participate in, and campaign for a political party. Although there is no definition of democracy in the Constitution, the political rights provided for in s19 are obviously reflective of the fact that the Constitution is primarily aimed at establishing a political system in which people should participate through their representatives; that is, a representative democracy.⁴⁵⁴ From the discussions above, it is clear that Arendt is extremely critical of representative democracy for a number of reasons, some of which bear repeating. First and foremost, representative democracy negates the value of political participation, to the point that the representative system, 'can be called oligarchic in the sense that public happiness and public freedom have again become the privilege of the few.'⁴⁵⁵ Second, representative democracy affirms the adage that, 'although power is derived from the people, they possess it only on the days of their elections. After this, it is the property of their rulers.'⁴⁵⁶ The small residue of power which the people retain, which is to threaten to vote for a different candidate in the subsequent election, 'resembles rather the reckless coercion with which a blackmailer forces his victim into obedience than the power that arises out of joint action and joint deliberation.'⁴⁵⁷ On top of this, it is virtually impossible for representatives to truly know the views of their constituents.⁴⁵⁸ Not only are there problems of proximity and numbers, but the representative system is one in which either the parties or the individual candidates, depending on the model, set out a platform and the people subsequently choose which of the choices is most in accordance with their views. It

⁴⁵⁴ Ibid at 14-5.

⁴⁵⁵ Arendt (note 7) at 261.

⁴⁵⁶ Ibid at 228.

⁴⁵⁷ Ibid at 261.

⁴⁵⁸ Ibid at 260.

would be naïve to assume that when candidates are circulating their constituent areas prior to an election that the intention is to canvass the opinions of the people more than it is to campaign for victory.

It is noteworthy that despite the apparent dominance of the representative model in South Africa's democratic structure, the Constitutional Court has on certain occasions felt inclined to depict the role of participatory democracy as equal to that of representative democracy. In *Matatiele*,⁴⁵⁹ the Court held that, '[o]ur constitutional democracy has essential elements which constitute its foundation; it is partly representative and partly participative. These two elements reflect the basic and fundamental objective of our constitutional democracy.'⁴⁶⁰ Similarly, the Court stated in *Doctors For Life*⁴⁶¹ that,

the representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive. General elections, the foundation of representative democracy, would be meaningless without massive participation by the voters. The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and to become familiar with the laws as they are made.

While laudable for its articulation of the benefits of public participation, the Court's statements appear to take for granted the ability of citizens to actively participate in public affairs. Apart from its mention of voting, the Court does not elaborate on how citizens are meant to participate politically. As discussed above, not only are the constitutional provisions allotting for public involvement very limited, but those that do exist fail to ensure that the public's input is

⁴⁵⁹ *Matatiele* (note 420).

⁴⁶⁰ *Ibid* at para 40.

⁴⁶¹ *Doctors For Life* (note 419) at para 115.

accounted for. Furthermore, where public involvement is required, the content of the duty is primarily aimed at increasing transparency and accessibility as opposed to active political engagement. Thus, while there may be an intention to create an equilibrium between participatory and representative politics, it is apparent that the representative model of democracy is dominant. For without question, voting is the primary, if not the only, method through which most South Africans express themselves politically; a situation which for Arendt is unacceptable.

Apart from the problems associated with the general embrace of representative democracy, the political rights encompassed in s19 pose another set of more specific difficulties that relate to the immense focus paid to political parties. Section 19(1) states that the freedom to make political choices includes the right to, 'form a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause'. It is abundantly clear therefore that the crux of political decision-making is understood as being the ability to be active in a political party. For Arendt, the fundamental problem with this understanding is that parties serve to provide the government with the required support while action in the sense of political deliberation remains the prerogative of government.⁴⁶² Political participation is not provided for by simply being a member of a political party. Rather, by joining a party, a person enters an organization whose aim is to build up as much support as possible so as to further the party's agenda. In this way, parties are by their very nature instrumental. Being involved with a political party is by no means an end itself.

⁴⁶² Arendt (note 7) at 263.

The problem is further complicated by the fact that, although every adult citizen has the right to stand for public office, the reality is that an individual must be a member of a party to be elected. This is reinforced by South Africa's adherence to the closed-list system of proportional representation in which voters are limited to choosing between lists of candidates drawn up by a political party. The result is that the leaders of the various parties wield an enormous amount of power as they can determine who the potential leaders of country are. In an era where, 'politics has become a profession and a career,'⁴⁶³ loyalty to party elites becomes essential and divergence of opinion can be devastating. According to Arendt, 'the "elite" therefore is being chosen according to standards and criteria which are themselves profoundly unpolitical.'⁴⁶⁴ When combined, these factors precipitate Arendt's assertion that the party system replaces the notion of 'government of the people by the people,'⁴⁶⁵ with the formula, 'government of the people by an *elite sprung from the people*.'⁴⁶⁶

Another issue surrounding the system of proportional representation is that voters are limited to choosing between lists compiled by parties which are highly unregulated. There is no duty on parties to act in a democratic manner, and as such, applicants are not able to challenge the admissions criteria of parties. This is especially problematic when one considers that party membership is a prerequisite to running for office at the national and provincial levels. The situation thus presents itself as completely antithetical to Arendt's notion of a public realm open

⁴⁶³ Arendt (note 7) at 269.

⁴⁶⁴ Ibid at 269-70.

⁴⁶⁵ Ibid at 269.

⁴⁶⁶ Ibid.

to all. In addition, the lack of an obligation on parties to act democratically means that parties may construct their internal decision-making mechanisms and disciplinary procedures in any way they see fit.⁴⁶⁷ This is not only consequential because a party member may be expelled from a party for arbitrary or unscrupulous reasons, but also because expulsion can lead to a representative losing their seat. As a result, a person who voted for a party on the basis of a certain candidate being on a list can be deprived of the representation they expected and thus lose the little political influence they had to begin with. This same argument also applies to floor-crossing, by which a member of a legislature can change parties without losing their membership, albeit in very limited circumstances.

At this point, it should be reiterated that from an Arenditan perspective, the various dilemmas arising from representatives either being expelled from their parties or choosing to defect are symptomatic of the fact that the Constitution places the political party at the centre of the democratic system instead of the individual. As such, the political sphere is not one in which an individual can openly deliberate, question, persuade, and possibly change one's mind. Rather, the political sphere is dominated by political parties seeking to further their pre-determined agendas. At best, '[a] Multi-party democracy contemplates a political order in which it is permissible for political groups to organize, promote their views through public debate and participate in free and fair elections.'⁴⁶⁸ In reality, however, the political order increasingly exhibits itself to be highly exclusive and confrontational. Party leaders, public officials, and lobbyists alike avidly compete with one another to further a variety of interests, often self-

⁴⁶⁷ Currie (note 385) at 448.

⁴⁶⁸ *United Democratic Movement v President of the Republic of South Africa* (No 2) 2003 (1) SA 495 (CC) para 26 at 16.

motivated, but certainly not always for the benefit of the public as a whole. The division stoked in this antagonistic environment is not limited to the political sphere but carries over into the public, frequently falling along ethnic and racial lines. This is particularly unfortunate in South Africa considering that where there is mutual trust and cooperation, 'homogeneity of past and origin... is not required. The joint effort equalizes the differences in origin'.⁴⁶⁹ Yet where political rights entrench the supremacy of parties and equate political freedom with voting, hostility and resentment are likely consequences.

25. The Question of the Post-Social: Dignity, Human Rights, and the Public-Private Divide

Section 10 of the Constitution provides that, '[e]veryone has inherent dignity and the right to have their dignity respected and protected.' Without question, respect for human dignity plays a decisively central role in the post-apartheid order. This point was made clear in the seminal case of *S v Makwanyane*,⁴⁷⁰ in which Chaskalson P stated that, 'The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in the Bill of Rights. By committing ourselves to a society founded on human rights we are required to value these two rights above all others.'⁴⁷¹ It follows that dignity is foundational to the political and civil rights detailed above.⁴⁷² Yet the focus on dignity does far more in the current constitutional dispensation than to merely inform the rights to vote, assemble, form political parties, and so

⁴⁶⁹ Arendt (note 7) at 165.

⁴⁷⁰ 1995 (3) SA 391 (CC).

⁴⁷¹ At para 144.

⁴⁷² *Matatiele* (note 420) at para 66.

forth. It also informs the quality of life which is to be achieved and protected in the post-apartheid order. Together, the right to have one's dignity respected and the right to life⁴⁷³ amount to a right to an existence consonant with human dignity.⁴⁷⁴ As illustrated in O'Regan J's analysis of the right to life in *Makwanyane*, 'the right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as mere organic matter that the Constitution cherishes, but the right to human life: the right to share in the experience of humanity.'⁴⁷⁵ She continued by pointing out that, '[t]he right to life, thus understood, incorporates the right to dignity. So the rights to human dignity and life are entwined. The right to life is more than existence, it is a right to be treated as a human being with dignity: without dignity, human life is substantially diminished. Without life, there cannot be dignity.'⁴⁷⁶

It is largely on the basis of this understanding as articulated by O'Regan J that socio-economic rights are protected in the Constitution. Due to decades, if not centuries, of complete neglect, the restriction of South Africa's development from most of the population resulted in a denial of the basic necessities required for a dignified life in the modern world. Not only do these problems persist today, but they are amplified by the rampant capitalism and globalization in which corporations wield unforeseen amounts of power, generally with little regard to the social consequences. It is in the face of this predicament, one attributable to what Arendt identifies as the rise of society, that the state realizes its position as the only guarantor of individual interests

⁴⁷³ Section 11.

⁴⁷⁴ Currie (note 385) at 289.

⁴⁷⁵ *Makwanyane* (note 470) at para 326.

⁴⁷⁶ *Makwanyane* (note 470) at para 327.

against oppression from private bodies.⁴⁷⁷ The state does this by attempting to redistribute goods and services on an equitable basis, but more importantly, by constitutionally entrenching socio-economic rights. Indeed, the Constitution provides for the right to have access to housing, health care, food, water, social security, and education.⁴⁷⁸ According to former Chief Justice Chaskalson, '[t]hese rights are rooted in respect for human dignity, for how can there be dignity in a life lived without access to housing, health care, food, water, or in the case of persons unable to support themselves, without appropriate assistance?'.⁴⁷⁹ We see, therefore, that while dignity plays an enormous role in the South African approach to socio-economic rights, it also entails a double meaning. On the one hand, dignity is inherent in everyone as stated in s10, but on the other hand, protecting the right of access to socio-economic services is seen as vital to the existence of human dignity. From an Arendtian perspective, this conception of dignity sheds light on a number of crucial aspects of the post-apartheid order, one of which is its approach to the public-private divide.

26. *The Public-Private and the Post-Social*

With political rights and socio-economic rights both receiving the same constitutional protection, it is self-evident that there is no division between the public and private realms as there was in the *polis*. This is explainable by the fact that the gradual rise of the social realm over the centuries subsumed the very existence of a public realm. Private matters were elevated to the

⁴⁷⁷ Currie (note 383) at 6.

⁴⁷⁸ Sections 26, 27, and 29.

⁴⁷⁹ Arthur Chaskalson 'Human Dignity as a Foundational Value of our Constitutional Order' (2000) 16 *SAJHR* 193 at 204.

level of national, and now global interest, and the result is modern world alienation. But Arendt is not so shortsighted so as to think that the solution is the complete and immediate exclusion of all private matters from public concern. Again, the world today is one in which government services are often the only source of sustenance for millions around the globe. In post-apartheid South Africa, because poverty is largely a result of the institutionalized oppression indicative of the rise of society, we are now dealing with what may be called 'post-social' problems. For Arendt, the totalitarianism of Nazi Germany and the Soviet Union were, like apartheid South Africa, representative of the complete victory of the social realm; a victory which itself was logically dependent on the complete destruction of politics and the public realm wrought by the rise of totalitarianism. Having turned the page on this chapter in history, however, we must now address the myriad problems which still linger heavily. It is according to this understanding that the constitutional acknowledgment of socio-economic rights should be read. The question, therefore, is not whether there are distinct public and private realms, but how the post-apartheid order balances the two. In this respect, the case-law of recent years provides key insights into the current approach to the public-private divide.

In the case of *Soobramoney v Minister of Health (KwaZulu-Natal)*,⁴⁸⁰ the Constitutional Court had to consider whether a person suffering from chronic renal failure had the right to be admitted to the state hospital's dialysis program. In the course of the judgment, it was noted that the obligations imposed on the state by the constitutional provisions regarding socio-economic rights, 'are dependent upon the resources available for such purposes, and that the corresponding

⁴⁸⁰ 1998 (1) SA 765 (CC).

rights themselves are limited by reason of the lack of resources.⁴⁸¹ Whether such resources existed in the present case, the Court held, was ultimately a decision which belonged to the provincial administration responsible for health services in KwaZulu-Natal. On this basis, '[a] court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters.'⁴⁸² From an Arendtian standpoint, the Court's judgment resonates with Arendt's call for a strict division between politics and administration.⁴⁸³ Similar to her belief that politicians and administrators should recognize that they have different areas of expertise, the Court acknowledged that the fixing of budgets and allocating of resources was not the task of judges.

In the cases of *Minister of Health v Treatment Action Campaign*⁴⁸⁴ and *Government of the Republic of South Africa v Grootboom*,⁴⁸⁵ however, the Constitutional Court elaborated on certain circumstances where it would deliver judgments affecting government objectives and fiscal plans.⁴⁸⁶ If it is found that the state has not fulfilled its constitutional obligations diligently and without delay, '... courts may-- and if need be must-- use their wide powers to make orders that affect policy as well as legislation.'⁴⁸⁷ Accordingly, the Court in the *Treatment Action Campaign* case issued an order that government permit and facilitate the use of nevirapine for the purpose of reducing the risk of mother-to-child transmission of HIV. In *Grootboom*, the Court noted that the *First Certification*⁴⁸⁸ judgment had already made clear that the question is

⁴⁸¹ At para 11.

⁴⁸² At para 29.

⁴⁸³ Arendt (note 7) at 266.

⁴⁸⁴ (2) 2002 (5) SA 721 (CC).

⁴⁸⁵ 2000 (11) BCLR 1169 (CC).

⁴⁸⁶ Marius Pieterse 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights' (2004) 20 *SAJHR* 383 at 404-5; See also Keith Syrett *Law, Legitimacy, and the Rationing of Healthcare* (2007) 217-18.

⁴⁸⁷ *Treatment Action Campaign* (note 484) at para 113.

⁴⁸⁸ *Ex parte Chairperson of the Constitutional Assembly* (note 387) at para 78.

not whether socio-economic rights are justiciable, but how to enforce them.⁴⁸⁹ The Court therefore determined that the appropriate order in the case was a declaration stating that the Constitution requires the State to devise and implement a comprehensive program within its available resources to progressively realise the right of access to adequate housing- something that the State had failed to do thus far.⁴⁹⁰ Central to the Court's decision was the idea that, 'There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter.'⁴⁹¹ In a similar vein, the Court held in *Soobramoney* that socio-economic discrepancies must be addressed in order, '... to transform our society into one in which there will be human dignity... For as long as these conditions exist that aspiration will have a hollow ring.'⁴⁹² Again, the idea is expressed that human dignity is dependent on external factors such as one's socio-economic status. While this notion might be contradictory to the inherent dignity provided for in s10, it certainly explains both the Constitution's express acknowledgment of socio-economic rights as well as the Court's willingness to enter the private domain when necessary. Yet what is interesting to note from an Arendtian perspective is not only the obfuscation of the public-private divide that the decisions in *TRC* and *Grootboom* represent, but also the insertion of 'political' ideals of fairness into the private realm.

To recall, Arendt deems coercion, force, and inequality as pre-political methods whose origins are found in the household. Fairness, persuasion, and equality, on the other hand, are features of the public and the political. Although we have seen that the courts are willing (and at

⁴⁸⁹ *Grootboom* (note 485) at para 20.

⁴⁹⁰ At para 98.

⁴⁹¹ At para 23.

⁴⁹² *Soobramoney* (note 480) at para 8.

times constitutionally mandated) to ensure the state's adherence to principles of fairness and equality in socio-economic matters, it is important to recognize that the Constitution also imposes political considerations onto traditionally private matters even where the state is not involved. One area where this is readily evident is with issues concerning labour. Section 9, for example, which provides that measures may be taken to promote the achievement of equality, is the principal basis for affirmative action in the private workplace. Similarly, the equality clause's prohibition of unfair discrimination⁴⁹³ led the Court in *Hoffman v South African Airways*⁴⁹⁴ to declare that a blanket policy of refusing employment to people with HIV was unjustifiable.⁴⁹⁵ Yet s9 is not the only basis on which principles of fairness and equality are inserted into labour matters. In accordance with the provision in section s 23(1), that, 'everyone has the right to fair labour practices,' the Labour Relations Act⁴⁹⁶ seeks to protect employees from having to toe a certain political line in the course of their employment.⁴⁹⁷ Section 187 of the Act provides that a dismissal is deemed as automatically unfair if the employer discriminated against an employee due to the employee's political opinion. Similarly, s5 of the Act maintains that a person seeking employment may not be discriminated against because of past, present, or anticipated membership with a trade union.

It is thus abundantly clear that according to Arendt's definitions of the public and private realms there is, in post-apartheid South Africa, an immense amount of overlap between the two. While socio-economic matters are constitutionally elevated to public concern, the fairness and equality atypical of the public realm are imposed upon matters of the private realm. While this is

⁴⁹³ Section 9(4).

⁴⁹⁴ 2001 (1) SA 1 (CC).

⁴⁹⁵ At para 37.

⁴⁹⁶ 66 of 1995.

⁴⁹⁷ Currie (note 385) at 448.

understandable given the fact that we are still dealing with problems inflicted by the rise of society, the question that arises from an Arendtian perspective is why the principles of fairness and equality are not imposed on political parties, especially considering their paramount role in our democracy. The problem this question highlights is accentuated when one considers that dignity, as the foundation of all rights, is also the foundation of political rights. The answer to this question might lie in the fact that the relation between dignity and political action has either been overlooked due to a focus on other rights, or because the thought prevails that voting adequately satisfies dignity as it relates to our need to be politically active. This latter thought was to a certain extent echoed by Sachs J in *August v Electoral Commission*,⁴⁹⁸ in which he stated that, '[t]he universality of the right to vote is not only important for nationhood and democracy. The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts.'⁴⁹⁹

It can thus be interpreted that apart from voting, active political participation does not appear to be viewed as a component of the dignified life in South Africa; and it is precisely in this regard that the fundamental difference with Arendt is exposed. For in response to Chaskalson's asking how there can be dignity in a life lived without access to housing, health care, food, and water,⁵⁰⁰ Arendt would ask how there can be dignity in a life lived without access to the public realm. To Arendt, it is a given that the bare necessities of life are a prerequisite to political action- this point was made evident over two millennia ago when the *polis* was first established. Yet for Arendt, to view food and shelter as sufficient to bestow dignity is severely

⁴⁹⁸ 1999 (3) SA 1 (CC).

⁴⁹⁹ *August* (note 498) at para 17.

⁵⁰⁰ Chaskalson (note 479) at 204.

misleading. It is reflective of what she termed the politically most pernicious doctrine of the modern age, that life itself is the highest good.⁵⁰¹

While Arendt is inclined to agree with the Constitution that every person possesses an inherent dignity, she is adamant that weighty constitutional declarations are not enough, nor are judicial pronouncements stating that, 'recognising a right to dignity is an acknowledgment of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern.'⁵⁰² In effect, Arendt's main point is that history has shown that rights do not speak for themselves. Despite the articulation of the 'Rights of Man' over two hundred years ago, the twentieth century experiences of genocide and vast rightlessness laid bare the futility of grounding human rights in words.⁵⁰³ Arendt therefore rejects conceptions of human rights grounded in moral speculation or legal philosophy.⁵⁰⁴ Instead, she argues that in order for human rights of any kind to be protected, '[h]uman dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity.'⁵⁰⁵

What exactly does Arendt intend by a 'new guarantee which can be found only in a new political principle?' Essentially, that only through active political participation and civic initiative can human rights be ensured,⁵⁰⁶ that our efforts alone can protect our dignity. The praxis of action then is the fundamental guarantee of human dignity in modern times. Arendt's

⁵⁰¹ George Kateb 'Death and Politics: Hannah Arendt's Reflections on the American Constitution' (1987) 54 *Social Research* 605 at 612-3; See also Arendt (note 8) at 313.

⁵⁰² *Malwanyane* (note 470) at para 144.

⁵⁰³ Arendt (note 331) at 293.

⁵⁰⁴ Jeffrey Isaac 'A New Guarantee on Earth: Hannah Arendt on Dignity and the Politics of Human Rights' (1996) 90, (1) *American Political Science Review* 61 at 61.

⁵⁰⁵ Arendt (note 331) at ix.

⁵⁰⁶ Honig (note 78) at 103.

can only *achieve* their dignity *by doing something about it*.⁵⁰⁹ If not, there is always the chance that they will be deprived of their rights, with the only dignity left to them either coming from a legal document or by basic virtue of their being human. Surely, that is not enough.

CONCLUSION

The point of this dissertation is not to devalue the South African transition initiated almost two decades ago. There is no doubt that the emancipation of the South African people from apartheid rule was one of the greatest achievements of the last century. Its foundation, the 1996 Constitution, 'is a beacon of hope in a world plagued by conflict, poverty, and the failure of governments. The Constitution is a monument to the determination of a society to overcome the burden of history- the evils of colonialism, racism and apartheid and the manifold social problems that are the legacy of centuries of inequality.'⁵¹⁰ The success of the transformation into a constitutional democracy has led many to use the word 'revolutionary'⁵¹¹, to say the 'that the

⁵⁰⁹ Isaac (note 504) at 65.

⁵¹⁰ Currie (note 373) at 2.

⁵¹¹ Ibid at 5.

new Constitution establishes a fundamentally different order,⁵¹² and even to suggest that the South African transition has been a validation of Arendt's work and foresight.⁵¹³

The central argument of this dissertation, however, has been that the overwhelming success attributed to the South African transition can be counter-productive to the extent that it stifles the continual, critical re-assessment of the transition and its achievements up to date. This paper argues that the South African transition was not in fact revolutionary when viewed from an Arendtian perspective. Though the distance between revolution and liberation is shorter than the distance between liberation and tyranny,⁵¹⁴ there has not been the creation of a new body politic in which a positive conception of freedom has been embraced. In essence, the revolutionary spirit has not been given housing. Largely as a result, we have seen the beginning of Arendt's warning that once change is achieved, the leaders of the country rest on the laurels of their past accomplishments to stay in power. Power effectively transfers from one elite group to another, while the situation on the ground remains largely unchanged. Despite the expansion of rights and their application to all, the old power dynamics that exclude the masses from involvement remain fixed.

For these reasons we should not hesitate to question the South African transition and the constitutional order that it implemented. Challenges to the status quo should be embraced along with the notion that the current situation can always be bettered, especially at a time when tension is on the rise and many feel that the kettle is about to boil over. Yet as opposed to the

⁵¹² *Executive Council of the Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) at para 62.

⁵¹³ See Schell (note 206) at xi-xiii; Young-Bruhl (note 48) at 112-22.

⁵¹⁴ Arendt (note 10) at 210.

bloody showdown many anticipated in the 1980's, the doom that many feel is impending today does not seem to be based in any clear rationale. The exceedingly violent turmoil of today does not appear to be primarily rooted in any ideology, ethnic conflict, or struggle against the actions of the state. Everybody may now vote, have someone represent them, and even plan a march in coordination with the police. The incidences of today's violence rather appear to be based more in rampant anger, frustration, disillusionment, and the hopeless feeling that nothing will change; that one might as well fend for himself lest he be left behind.

Without question, many of today's ills are attributable to the poverty and inequality that still persist in unfathomable proportions. The social question consequently appears to play an increasingly important role on the political stage. While the alleviation of poverty is unquestionably of the utmost importance, the danger is that we may see the fruition of Arendt's premonition that when the social question becomes the main political issue to the exclusion of others, the pre-political methods of violence, force, and coercion come to be relied on; something that was thankfully avoided by the transition's key protagonists.

Overall, these problems are from an Arendtian standpoint the unfortunate byproducts of a historical process by which the public realm has been subordinated to the household with the result being the rise of society. Our society is not one replete with public spaces in which we people distinguish themselves through their actions, but one where conformity is praised and deviation discouraged. Life itself is the highest good and we are still ultimately a society of labourers in which the satisfaction of economic and material concerns is the preeminent focus of both the individual and the collective. Our labour has been divided, and thus we have become

functionalized. And as labour denotes the toil of maintaining life, it is antithetical to the pursuit of excellence.⁵¹⁵ We are therefore less likely to be defined by how we excel in our actions than by where we lie on the chain of functions.

Even using the everyday meaning ascribed to 'labourer', the majority of South Africans engage in very menial, poorly paid labour which suffocates any chance to engage in true action. The Constitution reflects this dire situation through the entrenchment of socio-economic rights. Clearly then, the concerns of the household have exploded out of the private realm to become of vital public concern. Yet this should not be seen as a misguided understanding of the public and private so much as an attempt to deal with the reality that is today's society. Likewise, it would be mistaken to view the equality clause in s9 as reflective of the conformism of society. Instead, s9, as well as sections 30 and 31, which deal with language, culture, and religion, should be seen as attempts to negate the horrid social science on which apartheid operated. On its crudest level, apartheid was merely a society in which one social group imposed its will on other social groups and forced them to conform to the system of inequality and segregation.⁵¹⁶ Each group had its corresponding place on the chain of functions, and over time this became normalized. Thus, when equality and socio-economic rights are elevated to constitutional status, it is more of an acknowledgment that the rise of society and the destruction of the public and private have already occurred. The Constitution is an effort to protect people from the terrible tendencies of society and reverse the damage already inflicted by a perverse administration.

⁵¹⁵ Arendt (note 7) at 40.

⁵¹⁶ JWG Van der Walt (note 18) at 75-6.

Yet where the Constitution has succeeded in its efforts to redress the past, the post-apartheid order has fallen short in its efforts to inaugurate a truly new beginning. From an Arendtian perspective, this is largely attributable to the initial exclusion of the public from the transition process. As opposed to fostering active civic engagement and truly considering the 'will of the people,' the framers isolated themselves in their attempt to create a new South Africa. This is reflected in the Preamble's statements that the Constitution is adopted so as to '[i]ay the foundations' and '[b]uild a united and democratic South Africa.' For Arendt, to conceive of political action as making something is reflective of, 'what a craftsman does by forcing raw material to conform to his model. The raw material has no say in the process, and neither do human beings cast as raw material for an attempt to create a new society or make history.'⁵¹⁷

In their efforts to create a new society without public deliberation, the framers opted for a predominantly representative model of democracy. Freedom is only provided for in the negative sense and voting is the primary way through which the will of the people is given effect. While this is perhaps explainable by the fact that the representative model of democracy is the most common variation, it does not dispel the problems articulated by Arendt, particularly that, '[t]he booth in which we deposit our ballots is unquestionably too small, for this booth has room for only one.'⁵¹⁸ The result is an affirmation of the dangerous doctrine that although, 'all power is derived from the people, they possess it only on the days of their elections. After this, it is the property of their rulers.'⁵¹⁹

⁵¹⁷ Arendt (note 7) at xi-xii.

⁵¹⁸ Arendt (note 283) at 232.

⁵¹⁹ Arendt (note 10) at 228.

In South Africa's democracy, the 'rulers' are determined by the major political parties. They represent an in-between, a barrier between the government and the people. Their main purpose is to further their agenda similarly to a lobbying organization, only that parties purport to advance public interests and lobbyists represent special interests. Despite their central position in the political framework, parties are not required to operate along democratic principles. According to Arendt, this ultimately results in a modern form of oligarchy, whereby public freedom remains the purview of the few; in this case, the leaders of the principal parties.

With such a distance between the citizenry and their governance, and with little opportunity to partake in the democratic process outside of the booth, the people, 'sink into lethargy,'⁵²⁰ and become depoliticized. Without constant public political engagement, opinions are hindered from becoming informed and the views of the people are increasingly guided by personal interests rather than those of society as a whole. Much for this reason, Arendt does not advocate the immediate and complete instalment of direct democracy. She also recognized that practically speaking, 'the room will not hold all,'⁵²¹ in the sense that a political system cannot function effectively if every individual's consent is needed before any political decision is made.

In Arendt's view, political participation does not necessitate every person's admission to the National Assembly. Federal structures could be put in place to connect larger polities with smaller ones where direct participation is accommodated. Like the council system, authority would be generated on a grass-roots level and progressively move upwards until it finally reached Parliament. In this way, the democratic structure could do more than just provide a

⁵²⁰ Ibid at 229.

⁵²¹ Arendt (note 10) at 228.

'culture of justification' by way of which government is required to explain its actions. A structure open to all creates accountability from the ground up. It seeks to foster, 'a strategy of dialogue, an attempt to change society through the actions of citizens rather than governments... in short, to create a new political culture.'⁵²² The details of such a system, however, are less important than its embrace of civic initiative and the revolutionary spirit. The insistent challenge to the status quo that such a system elicits invigorates formal politics and prevents the powerful associational impulses of the revolutionary spirit from being co-opted by more official forms of politics.⁵²³

A constitutional framework is not absent from Arendt's vision. Apart from being the greatest emblem of foundation, constitutions are needed to articulate rights in a legally recognizable fashion and to coordinate the proper functioning of the political system. Arendt's view is consistent with the notion that constitutional democracy is not simply, 'the rule of the people but always the rule of the people within certain pre-determined channels, according to certain prearranged procedures.'⁵²⁴ Yet Arendt is adamant that a constitution cannot be so detached from popular usage that it becomes static and of interest only to the learned. Above all else, a constitution must permit citizens to enter an established public realm where freedom is secured.

The benefits of a constitutionally expanded form of political participation are twofold. First, in order for human rights and dignity to be guaranteed, more than just legal recognition is

⁵²² Mary Kaldor 'Introduction' in Mary Kaldor (ed) *The New Détente* (1989) 1 at 15.

⁵²³ Isaac (note 474) at 71.

⁵²⁴ Stephen Holmes 'Precommitment and the Paradox of Democracy' in Jon Elster and Rune Slagstad (eds) *Constitutionalism and Democracy* (1988) 231.

required. By allowing public involvement in the political sphere, people will be able to actualize their dignity and at the same time ensure that they are not seen as mere subjects of the state. With increased levels of participation in government, the distance between the state and the citizenry is minimized to the point that the state is impeded from denying people their rights. Just as a respectable standard of living is essential to the realization of one's dignity, active participation in government is critical to the clear manifestation of human rights protection.

The second clear benefit of constitutionally providing for greater access to the public realm is that effect can be given to the aspiration contained in the Preamble that, 'South Africa belongs to all who live in it, united in our diversity.' The public realm is, 'where things can be seen by many in a variety of aspects without changing their identity, so that those who are gathered around them know they see sameness in utter diversity.'⁵²⁵ It is a forum in which we can appreciate our differences while recognizing our inherent sameness. By working together towards a common purpose, or by at least listening to a plurality of people voice their opinions fully, there is no doubt that unity and understanding can only be augmented; something desperately needed in a highly divided country such as ours.

Yet should true political action not be embraced by the constitutional dispensation, the South African people will be forced to act outside the state apparatus just as they did for much of the last century. Despite the setbacks of poor socio-economic conditions, and largely because of them, people will have to initiate dialogue in their communities, to engage civically, acting in concert, asserting their dignity. A new political culture will have to be created whereby ordinary people gradually develop a taste for action and its potential for both change and self-fulfilment.

⁵²⁵ Arendt (note 7) at 57.

This new political culture will have to be one in which people value the opinions of others, embrace diversity, cherish the idea that their voice is heard by someone outside their home, and in which the seeds of revolution can be planted. Not necessarily so that the government can be 'overthrown'- such a conception would fall into the misleading connotations of revolution that Arendt cautions against- but so that the people can demand in a unified voice, one bestowed with the power of numbers and joint cause, that their diverse voices must be incorporated, not just responded to- that they too must be allowed admission to the public realm.

BIBLIOGRAPHY

Primary Sources

Works by Arendt

Arendt, Hannah *Between Past and Future- Eight Exercises in Political Thought* (1993) Penguin Books.
New York.

Arendt *Crises of the Republic* (1972) Harcourt Brace Jovanovich, New York.

Arendt, Hannah *Eichmann in Jerusalem: A Report on the Banality of Evil* (1968) Viking, New York.

Arendt, Hannah *On Revolution* (2006) Penguin Books, New York.

Arendt, Hannah *Responsibility and Judgment* (ed) Jerome Kohn Schocken Books, New York.

Arendt, Hannah *The Human Condition* (1998) The University of Chicago Press, Chicago.

Arendt, Hannah *The Life of the Mind* (1977) Harcourt Brace Jovanovich, New York.

Arendt, Hannah *The Origins of Totalitarianism* (1973) Harcourt Brace Jovanovich, New York.

Arendt, Hannah *The Promise of Politics* (ed) Jerome Kohn (2005) Schocken Books, New York.

South African Cases

August v Electoral Commission 1999 (3) SA 1 (CC).

Azanian Peoples Organisation (AZAPO) v President of the Republic of South Africa 1996 (4) SA 671 (CC).

Carmichele v Minister of Safety and Security and Another (Center for Applied Legal Studies Intervening) 2001 (4) SA 938 (CC).

Doctors For Life International v Speaker of the National Assembly and Others 2006 (12) BCLR 1399 (CC).

Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa 1996 (First Certification judgment) 1996 (4) SA 744 (CC).

Executive Council of the Western Cape Legislature v President of the Republic of South Africa 1995 (4) SA 877 (CC).

Ferreira v Levin NO 1996 (1) SA 984 (CC).

Fose v Minister of Safety and Security 1997 (3) SA 786 (CC).

Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169 (CC).

Hoffman v South African Airways 2001 (1) SA 1 (CC).

Matatiele and Others v President of the Republic of South Africa and Others 2006 (5) BCLR 622 (CC).

Minister of Health v Treatment Action Campaign (2) 2002 (5) SA 721 (CC).

S v Makwanyane 1995 (3) SA 391 (CC).

Soobramoney v Minister of Health (KwaZulu-Natal) 1998 (1) SA 765 (CC).

South African National Defence Force Union v Minister of Defence 1999 (4) SA 469 (CC).

United Democratic Movement v President of the Republic of South Africa (No 2) 2003 (1) SA 495 (CC).

University of Western Cape v Member of Executive Committee for Health and Social Services 1998 (3) SA 124 (C).

Foreign Cases

BVerfGE 315 (1985) 315 *Brokdorf*.

In re Munhumeso 1995 (1) SA 551 (ZS).

Statutes

Constitution of the Republic of South Africa, 1996.

Constitution of the Republic of South Africa Act 200 of 1993.

Labour Relations Act 66 of 1995.

Regulation of Gatherings Act 205 of 1993.

Secondary Sources

Alden, John *A History of the American Revolution* (1981) Da Capo, New York.

Barnard-Naudé, AJ 'Totalitarianism, (Same-Sex) Marriage and Democratic Politics in Post-Apartheid South Africa' (2007) 23 *SAJHR* 500.

Benhabib, Seyla *The Reluctant Modernism of Hannah Arendt* (1996) Sage Publications, London.

Bernstein, Richard *Philosophical Profiles: Essays in Pragmatic Mode* (1986) Polity Press, Cambridge.

Birmingham, Peg *Hannah Arendt and Human Rights* (2006) Indiana University Press, Bloomington.

Bond, Patrick *Elite Transition: From Apartheid to Neoliberalism in South Africa* (2000) Pluto Press, London.

Botha, Henk 'Democracy and Rights: Constitutional Interpretation in a Postrealist World' (2000) *THRHR* 561.

Brunkhorst, Hauke 'Equality and Elitism in Arendt' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Canovan, Margaret *Hannah Arendt: A Reinterpretation of Her Political Thought* (1992) Cambridge University Press, New York.

Canovan. 'Introduction' in Hannah Arendt *The Human Condition* (1998) The University of Chicago Press, Chicago.

Canovan, Margaret 'The Leader and the Masses: Hannah Arendt on Totalitarianism and Dictatorship' in Melvin Richter and Peter Baehr (eds) *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism* (2004) Cambridge University Press, Cape Town.

Canovan, Margaret *The Political Thought of Hannah Arendt* (1974) Harcourt Brace Jovanovich, New York.

Chaskalson, Arthur 'Human Dignity as a Foundational Value of our Constitutional Order' (2000) 16 *SAJHR*.

Cornell, Druscilla 'Bridging the Span toward Justice: Laurie Ackermann and the Ongoing Architectonic of Dignity Jurisprudence' (2008) *Acta Juridica* 18.

Currie, Iain and de Waal, Johan *The Bill of Rights Handbook* 5ed (2005) Juta, Lansdowne.

Currie, Iain and de Waal, Johan *The New Constitutional and Administrative Law* vol. 1 (2001) Juta, Lansdowne.

Dolan, Frederick 'Arendt on Philosophy and Politics' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Derrida, Jacques 'Declarations of Independence' (1986) 15:7 *New Political Science* 7.

Dossa, Shiraz *The Public Realm and the Public Self: The Political Theory of Hannah Arendt* (1989) Wilfrid Laurier University Press, Waterloo.

Elshtain, Jean Bethke *Public Man, Private Woman* (1993) Princeton University Press, Princeton.

Fraser, Nancy 'The French Derrideans: Politicizing Deconstruction or Deconstructing the Political?' (1984) Fall, 33 *New German Critique* 127.

Hansen, Phillip *Hannah Arendt: Politics, History, and Citizenship* (1993) Stanford University Press, Stanford.

Herbst, Jeffrey 'Prospects for Elite-Driven Democracy in South Africa' (1997) 112/4 *Political Science Quarterly* 595.

Hinchman, Lewis and Hinchman, Sandra 'Existentialism Politicized: Arendt's Debt to Jaspers' in Lewis Hinchman and Sandra Hinchman (eds) *Hannah Arendt: Critical Essays* (1994) State University of New York Press, Albany.

Hobbes, Thomas *Leviathan: Parts I and II* (1958) The Liberal Arts Press, New York.

Holmes, Stephen 'Precommitment and the Paradox of Democracy' in Jon Elster and Rune Slagstad (eds) *Constitutionalism and Democracy* (1988) Cambridge University Press, Paris.

Honig, Barbara 'Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic' (1991) 85, no.1 *American Political Science Review* 96.

Isaac, Jeffrey 'A New Guarantee on Earth: Hannah Arendt on Dignity and the Politics of Human Rights' (1996) 90, no.1 *American Political Science Review* 61.

Isaac, Jeffrey *Arendt, Camus, and Modern Rebellion* (1992) Yale University Press, New Haven.

Kaldor, Mary 'Introduction' in Mary Kaldor (ed) *The New Détente* (1989) Verso, New York.

Kateb 'Arendt and Representative Democracy' (1983) 60 *Salmagundi* 20.

Kateb, George 'Death and Politics: Hannah Arendt's Reflections on the American Constitution' (1987) 54 *Social Research* 605.

Kateb, George 'Political Action: Its Nature and Advantages' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Kateb, George *Hannah Arendt: Politics, Conscience, Evil* (1984) Martin Robertson, Oxford.

Kohn, Jerome 'Freedom: The Priority of the Political' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Kristeva, Julia *Hannah Arendt* (2001) Columbia University Press, New York.

Le Roux, WB *The Aesthetic Republic. Art, Law and Post-Liberal Politics in Nietzsche, Arendt and Lyotard*
Unpublished LLD dissertation, University of Pretoria (2003)

Lucas, Eric 'ANC War Talk Sets the Tone for Taxi Violence.' Available at
<http://www.ifp.org.za/Releases/101208apr.htm> [Accessed 10 December 2008].

McClure, K.M. 'The Odor of Judgment: Exemplarity, Propriety, and Politics in the Company of Hannah Arendt' in Craig Calhoun and John McGowan (eds) *Hannah Arendt and the Meaning of Politics* (1997) University of Minnesota Press, Minneapolis.

Moruzzi, Norma Claire *Speaking through the Mask: Hannah Arendt and the Politics of Social Identity* (2000) Cornell, University Press, Ithaca.

Mureinik, Etienne 'A Bridge to Where? Introducing the Interim Constitution' (1994) 10 *SAJHR* 31.

- Norton, Anne 'Heart of Darkness: Africa and African-Americans in the Writings of Hannah Arendt' in Barbara Honig (ed) *Feminist Interpretations of Hannah Arendt* (1995) Pennsylvania University Press, University Park 247.
- Parekh, Bikhu *Hannah Arendt and the Search for a New Political Philosophy* (1981) Macmillan, London.
- Passerin d'Entreves, Maurizio 'Hannah Arendt.' available at <http://plato.stanford.edu/entries/arendt/?ref=klasshop.com#ActSpeDis>.
- Passerin d'Entreves, Maurizio *The Political Philosophy of Hannah Arendt* (1994) Routledge, New York.
- Peterson, Celean 'ANC Rebels challenge South Africa's ruling Party.' available at http://www.denverpost.com/nationworld/ci_10866165.
- Pieterse, Marius 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights' (2004) 20 *SAJHR* 383.
- Pirro, Robert *Hannah Arendt and the Tragedy of Politics* (2001) Northern Illinois University Press, DeKalb.
- Pitkin, Hanna *Fortune is a Woman: Gender and Politics in the Thought of Niccollo Machiavelli* (1984) University of California Press, Berkely.
- Pitkin, Hanna 'Justice: On Relating Private and Public' in Lewis Hinchman and Sandra Hinchman (eds) *Hannah Arendt: Critical Essays* (1994) State University of New York Press, Albany.
- Que, Nemesio 'Hannah Arendt on Revolution, Freedom, and the Council System.' Available at http://www.crvp.org/book/Series03/III-15/chapter_xiii.htm [Accessed 10 March 2008].
- Schell, Jonathan 'Introduction' in Hannah Arendt *Or Revolution* (2006) Penguin Books, New York.
- Sitton, John 'Hannah Arendt's Argument for Council Democracy' (1997) XX1 *Polity* 80.
- Syrett, Keith. *Law, Legitimacy, and the Rationing of Health Care* (2007) Cambridge University Press, Cape Town.
- Van der Walt, JWG *Law and Sacrifice* (2005) Wits University Press, Johannesburg.

Van Marle K 'Lives of Action, Thinking and Revolt: A Feminist Call for Politics and Becoming in Post-Apartheid South Africa' in Van Marle K and Le Roux WB W *Post-Apartheid Fragments: Law, Politics, and Critique* (2007) UNISA Press, Pretoria.

Van Marle K and Le Roux WB *Post-Apartheid Fragments: Law, Politics, and Critique* (2007) UNISA Press, Pretoria.

Villa, Dana 'Introduction: The Development of Arendt's Political Thought' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Villa, Dana *Politics, Philosophy, and Terror: Essays on the Thought of Hannah Arendt* (1999) Princeton University Press, Princeton.

Waldron, Jeremy 'Arendt's Constitutional Politics' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Wellmer 'Arendt on Revolution' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2000) Cambridge University Press, New York.

Yar, Majid 'Hannah Arendt.' available at <http://www.iep.utm.edu/a/arendt.htm>.

Young-Bruehl, Elisabeth *Hannah Arendt: For Love of the World* (1982) Yale University Press, New Haven.

Young-Bruehl, Elisabeth *Why Arendt Matters* (2006) Yale University Press, New Haven.