

Climate Change and Statelessness: Informing a Response to Statelessness due to Sea Level Rise in Dialogue with Hannah Arendt

Master's Thesis in Applied Ethics

Abstract

In this thesis, I aim to inform a response to the harms of statelessness facing those who live in coral atoll states by using and extending Arendt's analysis of statelessness. I examine the general harms of statelessness as identified by Arendt, and extend her analysis in light of the specific conditions facing those at risk of statelessness due to sea level rise to identify specific harms arising in this context. Though I go beyond Arendt's analysis, I demonstrate that my reconstruction is supported her analysis. I then demonstrate that self-determination, rather than the provision of citizenship or the substantive right to asylum, is the appropriate way to protect the 'right to have rights' in this context. Finally, I examine two proposals for actualising self-determination, demonstrating that they stress different aspects of it, and that they face unique challenges. I do not claim that one proposal will be more successful than another; rather it is up to self-determining populations to determine the most appropriate responses for their own communities, according to the aspects of self-determination that they themselves value most.

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“The threats posed to the Maldives from climate change are well-known; weather events will make it harder and harder to govern our country, until a point reaches where we must consider abandoning our homeland. We in the Maldives desperately want to believe that one day our words will have an effect, and so we continue to shout them, even though, deep down, we know that you’re not really listening”

- President Mohamed Nasheed, The Maldives¹

¹ Mohamed Nasheed, in Shenk, *The Island President*.

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Introduction

The human displacement effects of climate change are likely to be varied, but one subset of those faced with displacement face a distinctive challenge: “state extinction”². This is to say that, according to the Intergovernmental Panel on Climate Change, “the very existence of some atoll nations is threatened by rising sea levels associated with global warming”³. The possibility of the displacement of the entire population and government faced by such states is “entirely novel”⁴, and “could potentially lead to statelessness for some of the populations affected”⁵. Though there is no determinate list of states threatened with extinction due to sea level rise (SLR), those at risk are primarily the coral atoll island states in the Pacific: Kiribati, Tuvalu, the Marshall Islands and the Maldives. Those that do not ‘sink’ completely are nonetheless likely to be rendered uninhabitable⁶. Politically, the fate of such states was all but confirmed at the 2009 Copenhagen Accords; Bedford and Bedford write:

“[F]ailure to reach agreement on significant cuts in greenhouse gas emissions in the next few years, with an objective of containing the rate of global warming to less than 2°C [above pre-industrial levels], was effectively agreement by default to the eventual destruction of their island ecosystems.”⁷

If the governments of such states do cease to function or exist as a result of SLR, their populations could be rendered *de jure* stateless, where they would no longer have a nationality under international law⁸, and if their governments continue to exist but are unable to guarantee their rights, they would be considered *de facto* stateless. If an effective response to their plight can be put in place, then populations in states at risk will be protected against statelessness. Without the protection of the state, however, stateless persons face a distinctive kind of harm. Their future is uncertain: in order to inform a response to their plight, it is useful to examine the kind of harm that they might face.

² Vaha, ‘Drowning under’, 207.

³ Nurse et al., ‘Small Islands’, 1618.

⁴ Park, ‘Climate Change and the Risk of Statelessness’, 3.

⁵ Ibid.

⁶ Ibid., 1–2.

⁷ Bedford and Bedford, ‘International Migration and Climate Change’, 89.

⁸ *Convention Relating to the Status of Stateless Persons*, sec. 1.

In her seminal analysis, Hannah Arendt examined the precarious situation of Europe's stateless persons in the 1930s and 1940s⁹, which challenged the predominant narrative of the 'universal' nature of human rights, as well as highlighting the particular alienation faced by those at the margins of political communities. In this thesis, I undertake to work 'in dialogue' with Arendt's framework to examine the potential harm faced by those at risk of statelessness due to SLR, and to examine possible responses to their plight.

The central question I aim to tackle is: what are the harms faced by those at risk of statelessness due to SLR, and given those harms, what is the appropriate way of protecting their "right to have rights"¹⁰? I use Arendt's classic analysis to help to identify the harms, and to help to inform a response. Her analysis is reconstructed in light of the specific situation of those facing statelessness due to SLR. Firstly, I examine the aspects of the harm of statelessness as explicated by Arendt, which include (i) the lack of human rights protection, and (ii) alienation from the political community, and examine the coherence and relevance of the right to have rights, which is postulated as the proper response to these harms. I argue that these harms have enduring relevance for those facing statelessness due to SLR, as does the idea of the right to have rights. I then examine the further specific harms facing those at risk of statelessness due to SLR, which include (iii) the loss of one's own political community, and (iv) risks to cultural integrity. I argue that, whilst these harms are not explicitly identified by Arendt, my reconstruction is supported by her account. In the third chapter, I examine different possible ways of protecting the right to have rights in light of the more specific harms identified in the second chapter. I assess the prospects of protecting the right to have rights through the (substantive) right to asylum, the right to citizenship, and self-determination, arguing that self-determination best responds to the harms identified. Traditionally, the right to have rights is understood as the right to citizenship; I argue that in the case of those facing statelessness due to SLR, citizenship is insufficient, and that self-determination is more responsive to the harms they face. Finally, I examine two plausible ways of actualising the self-determination for those at risk of statelessness due to SLR: the cession of territory by another state, and the "de-

⁹ Arendt, *The Origins of Totalitarianism*.

¹⁰ *Ibid.*, 296.

territorialised state”¹¹ proposal. Ultimately, the response must be chosen by the self-determining populations at risk. However, I examine the potential advantages and drawbacks of these proposals, as well as what they mean for self-determination, in order to illuminate each response.

Methodology and Scope

The analysis I undertake in this thesis proceeds by, in the first two chapters, examining the kind of harm faced by those at risk of statelessness, firstly in more general terms, and secondly in the context of SLR. Identifying the nature of this harm then allows me to demonstrate that the provision of citizenship or asylum is insufficient in protecting the right to have rights, which I undertake in the third chapter. My assessment of the responses is guided by the nature of the harm; a potential response is more successful if it better protects against the harms identified. This is a useful metric of success, because it demonstrates clearly the implications of the Arendtian framework, which identifies the harms in the context of this thesis. I undertake my analysis primarily by reviewing academic literature, but I also draw upon the perspectives of those facing statelessness as well as documentation provided by organisations such as the United Nations High Commissioner for Refugees (UNHCR), in order to ensure that my analysis is informed by considerations from practice. I use Arendt’s account of statelessness to guide my own, both because of its prominence and influence as an account of the harm faced by stateless persons, and because, as I argue, it accurately captures at least some of the harm faced by those at risk of statelessness due to SLR. The other aspects of the harms they face, though not identified explicitly by Arendt, are nonetheless implied by with the framework that she constructs in her analysis. As such, it is useful to examine how the Arendtian framework can be reconstructed to inform a response to the current challenges facing those at risk of statelessness due to SLR; it will need to be augmented in light of the specific conditions of the case at hand.

I do not attempt to answer the *distributive* question of who bears responsibility for enacting a response. Though this question is clearly important, it is beyond the scope of my analysis. There is, however, a wealth of literature which attempts to answer

¹¹ Ödalen, ‘Underwater Self-Determination’, 226.

distributive questions, which could be usefully applied to the issue of forced migration or statelessness¹². Similarly, I do not attempt a sustained defence of Arendt's work, beyond arguing that her analysis of statelessness and her presentation of the right to have rights accurately captures at least some of the harm facing those at risk of statelessness due to SLR. Though her analysis is embedded within her broader political philosophy, I only examine and defend it to the extent that is necessary to demonstrate its coherence and relevance to the case at hand. A sustained defence of her work would go beyond the scope of this thesis. Rather, Arendt's analysis provides a useful point of entry into our understandings of the harm faced by those at risk of statelessness due to SLR, and the potential responses to their plight. A separate argument concerning the plausibility of the Arendtian framework could be made, but this thesis does not aim to tackle this question; it should be possible to agree with my argumentation without being committed to using an Arendtian analysis in the first instance. My analysis, as such, is valuable not as a defence of Arendt's account, but as an examination of the implications of such an account for the specific case at hand.

1. The Distinctive Harms of Statelessness

In this chapter, I identify the distinctive harms that those at risk of statelessness face, through an Arendtian analysis. Firstly, I examine the harm of statelessness by reference to the ability to claim other fundamental rights. I then examine harm of the alienation from the political community. I argue that the kind of harm those at risk of statelessness face necessitates what is termed the "right to have rights"¹³ by Arendt. Two important critiques are then raised, against which I defend the coherence and relevance of the right to have rights.

1.1 The Arendtian Understanding of the Harms of Statelessness

The human rights regime is the normative standard in international law and politics. Though understandings of the basis of human rights vary, it is uncontroversial

¹² See, for example: Gardiner et al., *Climate Ethics*; Gardiner, *A Perfect Moral Storm*; Gardiner, 'Ethics and Global Climate Change'; Shue, 'Subsistence Emissions and Luxury Emissions'; Shue, 'Global Environment and International Inequality'; Caney, 'Cosmopolitan Justice, Responsibility, and Global Climate Change'; Caney, 'Just Emissions'; Caney and Shalit, 'Climate Change Refugees, Compensation, and Rectification'; Jamieson, 'Responsibility and Climate Change'; Bell, 'Environmental Refugees'; Cripps, *Climate Change and the Moral Agent*; Cripps, 'Climate Change, Collective Harm and Legitimate Coercion'; Moellendorf, *The Moral Challenge of Dangerous Climate Change*.

¹³ Arendt, *The Origins of Totalitarianism*, 296.

that human rights are supposed to be assigned to people *qua* humans; that is to say that that if one is a human, then one is supposed to receive human rights. This is stressed in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights”¹⁴, the foundation of international law. The proposed grounds for such rights vary¹⁵; unifying such accounts, however, is the notion that such rights are said to be *inalienable*, in that there is no situation in which they do not apply to human beings: “one cannot stop being human, no matter how barbarously one is treated”¹⁶. Arendt’s analysis of the plight of stateless persons, however, aims to demonstrate that such rights are alienable, at least in practice, despite proclamations to the contrary, in that they are in fact ascribed to *citizens*, rather than to human beings *qua* human beings. We can distinguish here between the *theoretical* and *practical* alienability of human rights; Arendt’s concern lies in the practical, which is relevant in that it highlights the actual harm faced by those at risk of statelessness¹⁷. In *The Origins of Totalitarianism*, Arendt highlights the process of dehumanization faced by stateless persons through their reduction to ‘mere’ humans:

“Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth”¹⁸

Normatively speaking, the harm that Arendt identifies here is two-fold; first, she identifies how purportedly universal¹⁹ rights do not apply to those outside of state protection (their rightlessness), and, second, she identifies the alienation from the community faced by stateless persons (that they are the ‘scum of the earth’). For Arendt, the practice of human rights, insofar as it functions through the system of nation-states, is not universal, but rather excludes those left out of the nation-state system. Arendt’s analysis proceeds not from an examination of the conceptual nature of human rights,

¹⁴ *The Universal Declaration of Human Rights*, sec. 1.

¹⁵ Examples include theistic grounds as in *The Declaration of Independence*, dialectical necessity as in Gewirth, ‘The Basis and Content of Human Rights’, and contingent political agreement, as in Beitz, ‘What Human Rights Mean’.

¹⁶ Donnelly, *Universal Human Rights*, 10.

¹⁷ Arendt’s conception of human rights understands the practice of human rights and their theoretical nature to be interconnected, but I do not explore this further as her (and our) central concern here is in what the practical enactment of human rights means for those facing statelessness.

¹⁸ Arendt, *The Origins of Totalitarianism*, 267.

¹⁹ By universal, I refer to the universal ascription of human rights (i.e. that human rights are ascribed to all humans), not that human rights are purported to be eternal or timeless.

but by highlighting that it was very clearly possible for human rights to be comprehensively removed for stateless persons. She demonstrates that in actuality, the human rights are predicated on the assumption that human rights are protected through the system of nation-states:

“the moment that human beings lacked their own government and had to fall back upon their minimum human rights, no authority was left to protect them and no institution as willing to guarantee them”²⁰.

Citizenship is the mechanism through which other fundamental human rights can be protected; Weissbrodt and Collins write that “nationality is a practical prerequisite for accessing political and juridical processes and for obtaining economic, social and cultural rights”²¹. To demonstrate the precarious situation of the stateless, rightless person, Arendt points out that it is often the case that stateless persons benefit from being treated as criminals, as in those cases, they actually have legal standing²². In committing a crime, the stateless person at least gains a status before the law, whereas as a ‘mere’ human, she has no political community prepared to take responsibility for guaranteeing her human rights. The fact that human rights protections are guaranteed through the system of nation-states has been characterised by Arendt as the “aporia”²³ of human rights. This aporia consists in the fact that in the practice of human rights, the rights of man are not recognised as rights of man at all, rather they are recognised as the rights of *citizens*. Whilst the normative significance of human rights might be universal, its practice is dependent on nation-states, and so those outside of this system are practically excluded from them. The first harm faced the stateless, then, is (i) the lack of human rights protection.

The harm of statelessness, however, does not only consist in the lack of practical recognition of one’s human rights. The stateless person is also faced with the denial of their status within the political and social community as a person worthy of partaking in public life. Krause explicates Arendt’s understanding of the loss faced by stateless persons: “the stateless person loses a freedom that can only be realized by acting

²⁰ Arendt, *The Origins of Totalitarianism*, 292.

²¹ Weissbrodt and Collins, ‘The Human Rights of Stateless Persons’, 265.

²² Arendt, *The Origins of Totalitarianism*, 286.

²³ The term ‘aporia’ is taken from the German text: Arendt, *Elemente und Ursprünge totaler Herrschaft*, chap. 9.

together in the public realm”²⁴. In *We Refugees*, Arendt writes that “passports or birth certificates, and sometimes even income tax receipts, are no longer formal papers but matters of social distinction”²⁵. The alienation from the community faced by stateless persons is not only in their lack of access to civic rights such as the right to vote, it is a deeper exclusion from the public sphere. Through their exclusion from the political community, stateless persons can be marginalised and mistreated. Arendt’s concern with those excluded from the body politic stems from the background of the ‘scramble for Africa’ and the Nazi regime, where those considered to be outside of the bounds of political community could be drastically mistreated. In the case of the Nazi regime, “denationalization became a powerful weapon of totalitarian politics”²⁶. The “sovereign right to denationalisation”²⁷ can be used to marginalise minority populations, and to induce paradoxes of political bureaucracy, wherein the denial of the citizenship is a tool of exclusion. Part of Arendt’s suspicion of claims to universal human rights instituted through nation-states stems from the legalistic nature of the political experience of denationalisation. It is not simply that the human rights of the affected are routinely made legally inaccessible to them, but moreover that “international power politics – and their extralegal ends – often hide behind seemingly neutral legalisms and the rhetoric of human rights”²⁸. It is in this way that we can make sense of Arendt’s claim:

“The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.”²⁹

Though some of Arendt’s critics have taken issue with the end of this quotation³⁰, it should be clear that ‘nobody wants even to oppress them’ is written in a tone “of bitter irony rather than contempt”³¹. Stateless persons, pushed outside of the bounds of the political community, can be victimised and neglected, but it is important to

²⁴ Krause, ‘Undocumented Migrants: An Arendtian Perspective’, 336.

²⁵ Arendt, ‘We Refugees’, 119.

²⁶ Arendt, *The Origins of Totalitarianism*, 269.

²⁷ *Ibid.*, 278.

²⁸ Rensmann, ‘Grounding Cosmopolitics’, 136.

²⁹ Arendt, *The Origins of Totalitarianism*, 295–6.

³⁰ See, for example, Rancière, ‘Who Is the Subject of the Rights of Man?’, 64.

³¹ Schaap, ‘Enacting the Right to Have Rights’, 13.

recognise that they suffer in this way precisely because of their marginalisation from the community. For Arendt, such an exclusion amounts to the denial of the capacity to act meaningfully³²; the deprivation they face is the loss of “the ability to act, to initiate and to form opinions on a shared, common world” which is a “basic presupposition of becoming a citizen”³³. In this Arendtian sense, citizenship is not only a status but an activity, of participating in the construction of a shared world. It is “based on the presumption of equality and the need to appear and relate to others”³⁴, and so when one is not a citizen, one is excluded from the possibility of participating on equal terms with others. More fundamentally, however, in the context of a world organised in terms of nation-states, “the loss of a polity itself expels him from humanity”³⁵. This second harm faced by the stateless, then, is (ii) the alienation from the political community.

1.2 *The Enduring Relevance of the Arendtian Analysis*

One might imagine that the proliferation of international law since Arendt wrote *The Origins of Totalitarianism* might have rendered her analysis out-of-date. In fact, however, in spite of the right to a nationality itself being inscribed as a human right in the Universal Declaration³⁶, and in spite of the institution of two important international legal instruments, the 1954 Convention Relating to the Status of Stateless Persons³⁷ and the 1961 Convention on the Reduction of Statelessness³⁸, citizenship is nonetheless ultimately determined by the state. Volker Türk, Director of International Protection at UNHCR, has described the situation thus:

“There is a fundamental contradiction in a world of nation-states in which millions of individuals are not recognised as belonging to any state.... Yet the scourge of statelessness persists, affecting the lives of individuals and communities the world over.... The fate of the stateless is harmful for the individuals concerned since they do not exist for the State, are invisible and deprived of the fundamental rights associated with nationality”³⁹

³² I use ‘meaningfully’ here because to act in the Arendtian sense is not simply to perform an action: meaningful action is between people. Action “corresponds to the human condition of plurality, to the fact that men, not Man, live on the earth” Arendt, *The Human Condition*, 7.

³³ Bernstein, ‘Hannah Arendt on the Stateless’, 55.

³⁴ Topolski, ‘Creating Citizens in the Classroom’, 264.

³⁵ Arendt, *The Origins of Totalitarianism*, 297.

³⁶ *The Universal Declaration of Human Rights*, sec. 15.

³⁷ *Convention Relating to the Status of Stateless Persons*.

³⁸ *Convention on the Reduction of Statelessness*.

³⁹ UNHCR, ‘Remarks by Volker Türk, Director of International Protection’.

Few countries have ratified the 1954 Convention, and the situation of stateless persons remains precarious⁴⁰. Although the Convention defines the stateless person as “a person who is not considered as a national by any State under the operation of its law”⁴¹, this definition captures only those considered to be *de jure* stateless. Batchelor notes that this does not capture the reality of those who are *de facto* stateless⁴². *De facto* stateless persons often face equally precarious situations; those who are unable to produce proof of identity or nationality often face indefinite detention. “Unnecessary imprisonment is one of the most pervasive and most difficult problems faced by stateless persons”⁴³, since without identity documentation, or a ‘home state’, states do not know to *where* stateless persons can be deported. We can see the enduring relevance of Arendt’s analysis in the fact that stateless persons are still routinely denied access to fundamental human rights, which are protected through the system of nation-states. In the case of ‘state extinction’ due to SLR, there is a clear risk that those rendered stateless will suffer from the lack of access to human rights, in that they will no longer have an effective state which can guarantee their human rights⁴⁴.

The alienation from the political community identified by Arendt also has enduring relevance for the stateless today. Whilst Arendt was primarily concerned with stateless Jews, whose marginalisation in Europe was bound up with their historical persecution, stateless persons are often marginalised in the communities in which they live⁴⁵. The Institute on Statelessness and Inclusion explicates their plight:

“Being slated as outsiders, not just by *their* country but by *all* countries, may indeed make the stateless easy targets for victimisation within society as they may be seen as less deserving of compassion, protection and support.”⁴⁶

A striking example of the marginalisation of stateless persons can be found in the plight of the Bidun in Kuwait, who have been systematically denied claims to nationality

⁴⁰ UNHCR, ‘Protecting the Rights of Stateless Persons’.

⁴¹ *Convention Relating to the Status of Stateless Persons*, sec. 1.

⁴² Batchelor, ‘Statelessness and the Problem of Resolving Nationality Status’, 172.

⁴³ Weissbrodt and Collins, ‘The Human Rights of Stateless Persons’.

⁴⁴ Park, ‘Climate Change and the Risk of Statelessness’, 13–4.

⁴⁵ Though marginalisation will take different forms and be more or less severe in different cases (e.g. Stateless Jews in the 1930s and 1940s faced a very different kind of marginalisation), what is important here is that *through* their alienation from the community, stateless persons are vulnerable to marginalisation.

⁴⁶ van Waas, de Chickera, and Albarazi, ‘The World’s Stateless’.

since the mid-1980s⁴⁷, and where cases of denationalisation seem to have been politically motivated⁴⁸. Stateless persons are not only unable to participate in public life because they lack of legal status within the community, but also because they often live in precarious situations which leave them unable to effectively participate. Batchelor points out that statelessness is “not merely a legal problem, it is a human problem”⁴⁹, since it affects many aspects of life, and Tucker points out that stateless persons are often “undocumented, invisible, under researched and living on the margins of society”⁵⁰. In Myanmar, for example, “systematic discrimination renders the Rohingya stateless, while their status as a stateless population acts as validation for further discrimination and persecution”⁵¹. This is of continuing relevance for those facing statelessness due to SLR. If such populations are left stateless and find themselves in another community, it seems likely that they will be unable to participate in public life, both because they will lack legal status in the community, and because they are especially vulnerable as ‘outsiders’ to the host society. The harm suffered by the stateless amounts to their alienation from the political community, and it is clear that this is a harm facing those at risk of statelessness due to SLR.

1.3 *The Right to Have Rights and its critiques*

For Arendt, the plight of the stateless highlighted the existence of the right to have rights. She writes:

“We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation”⁵²

Though this is expressed as *two* rights in the above quote, they have generally been understood to be *one* fundamental right; indeed, the later title of this section was ‘There Is Only One Human Right’⁵³. They can be identified as one right because, for

⁴⁷ Bencomo, ‘Kuwait - Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression’.

⁴⁸ ‘Kuwait Urged to Stop Stripping Citizenship’.

⁴⁹ Batchelor, ‘Statelessness and the Problem of Resolving Nationality Status’, 159.

⁵⁰ Tucker, ‘The Humanitarian Side of Statelessness; Statelessness within the Framework of the Millennium Development Goals’, 12.

⁵¹ Zawacki, ‘Defining Myanmar’s “Rohingya Problem”’, 19.

⁵² Arendt, *The Origins of Totalitarianism*, 297.

⁵³ This is in the German version of the text, as ‘*Es gibt nur ein einziges Menschenrecht*’, as is noted in Menke, ‘The “Aporias of Human Rights” and the “One Human Right”’, 741.

Arendt, speech and action (one's 'actions and opinions') are only meaningfully possible in the political community. Action "corresponds to the human condition of plurality", and plurality itself is the "conditio per quam"⁵⁴ (sufficient condition) of political life. As such, the exclusion of the individual from political life renders one's actions meaningless, so that one cannot be judged by one's actions and opinions. It is important to recognise that Arendt does not argue that one literally cannot *act* outside of the political community, but rather that *action*, as distinct from labour and work in the Arendtian framework, itself takes place between people; it is the "political activity par excellence"⁵⁵.

The framework in which actions can have meaning must then be the 'organised community' to which Arendt refers. The right not to be excluded from the political community, as the right to have status as a human who can meaningfully act in the public sphere, is then the right which is denied to stateless persons. The protection of this right is for Arendt the solution to the 'aporia' of human rights; it functions as a precondition for the inclusion into the political sphere. Menke expresses it thus: "only a right which does not already presuppose the status of membership in a political community, but has this very status as its object, is a real human right"⁵⁶. The right to have rights is a right belonging to the individual which targets the core of the harm of statelessness; it ought to be protected by our response to those faced with statelessness due to SLR. Such a response will need to be informed by the specific conditions faced by those at risk of statelessness in this context. Firstly, however, it is important to defend the concept of the right to have rights against two critiques.

The first of these critiques is regarding the coherence of the right to have rights, and asks how rights can be grounded for those outside of the political community. Michelman has said of the right to have rights: "it's a nice expression. When you think about it, though, what possible sense can it make?"⁵⁷ Since rights function within political communities, according to Menke "any declaration of human rights, therefore, implicitly presupposes that human beings are already members of a community"⁵⁸. So,

⁵⁴ Arendt, *The Human Condition*, 7.

⁵⁵ *Ibid.*, 9.

⁵⁶ Menke, "The 'Aporias of Human Rights' and the 'One Human Right'".

⁵⁷ Michelman, 'Parsing "a Right to Have Rights"', 200.

⁵⁸ Menke, "The 'Aporias of Human Rights' and the 'One Human Right'", 745.

the crux of this first critique (1) is: if human rights can only function within political communities, how can there be a human right to inclusion in the political community?

The second, related, critique focuses upon the distinction between the public and private sphere that is presupposed by the right to have rights. Rancière accuses Arendt of “extolling the brightness of the political sphere of appearance against the ‘dark background of mere givenness’”⁵⁹. For Arendt, “it is only by virtue of participating in politics that a shared reality is constituted”⁶⁰. For Rancière, the idea that there is a sphere outside of politics is inconceivable; the idea of such a realm “relates less to reality and more to Arendt’s rigid opposition between the realm of the political and the realm of private life”⁶¹. Rather, for Rancière, “politics concerns that border, an activity which continually places it in question”⁶². So, the crux of the second critique (2) is: does the presupposed public/private divide undermine the right to have rights?

To effectively respond to both of these critiques it is important to understand the relation between the subject, action, and the public sphere in Arendt’s thought, for the grounds for the right to have rights is found in what Birmingham terms “the anarchic event of natality”⁶³. With regards to critique (1), it seems clear that there are two senses of ‘right’ at work in the ‘right to have rights’: the first of these, as Benhabib argues, “evokes a moral imperative”⁶⁴. Whereas rights within a political community have correlate duty-bearers, the addressee of the claim to membership in the political community “remains open and indeterminate”⁶⁵. The grounds for such a right, however, cannot be found in human nature; we have seen this in Arendt’s understanding of the failure of the human rights as ascribed to human beings *in abstracto*. Instead, “humanity itself must guarantee the right to have rights”⁶⁶.

Whilst the harm of alienation from the political community echoes the notion that “man is by nature a political animal”⁶⁷, Arendt’s understanding does claim that man is *by nature* a political animal; her claim is about the human *experience*. Action, for

⁵⁹ Rancière, ‘Does Democracy Mean Something’, 55.

⁶⁰ Schaap, ‘Enacting the Right to Have Rights’, 14.

⁶¹ Rancière, ‘Who Is the Subject of the Rights of Man?’, 64.

⁶² *Ibid.*, 68.

⁶³ Birmingham, ‘The An-Archic Event of Natality and the “Right to Have Rights.”’, 766.

⁶⁴ Benhabib, *The Rights of Others*, 56.

⁶⁵ *Ibid.*, 57.

⁶⁶ Birmingham, ‘The An-Archic Event of Natality and the “Right to Have Rights.”’, 765.

⁶⁷ Aristotle, *Politics*, 9 sec. 1253a.

Arendt, “is never possible in isolation; to be isolated is to be deprived of the capacity to act”⁶⁸. Meaningful human action, then, must be in the public space. Human action in concert can bring about a public space: this is what is captured in the notion of *natality*. Benhabib distinguishes usefully between the ‘agonistic’ and ‘associational’ public space⁶⁹; the former “presupposes strong criteria of belonging”⁷⁰, whereas the latter emerges “wherever and whenever, in Arendt’s words, ‘men act in concert together’”⁷¹. So, the possibility of the existence of the right to have rights in critique (1) can be found in the notion of natality: by acting together, humans can bring about the associational public sphere, where they can claim their *moral* right to political life.

This distinction between the public and private sphere in critique (2), far from undermining the right to have rights, is necessary for its coherence. Arendt writes that we “become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights”⁷², and it is through action in concert with each other that we can produce such equality, which is the foundation for political life. Rather than undermining it, the public/private divide is foundational for the right to have rights; if the public sphere were all-encompassing, being outside of such a sphere would be impossible. Whilst it is clear that the public/private distinction in Arendtian thought does not undermine the concept of right to have rights, this does not itself provide us with a justification for taking Arendt’s conception of politics rather than Rancière’s. Whilst interesting and valuable, such a discussion is beyond the scope of this thesis⁷³.

Thus far, we have examined the harm of statelessness through an Arendtian analysis. We have seen that the stateless suffer not only (i) the lack of access to human rights, but further that they suffer (ii) alienation from the political community. Such harms motivate the right to have rights, as the right to be included in the political community, rendering ‘action’ in the Arendtian sense meaningful. We have seen that this notion of the right to have rights is, despite its critiques, coherent within the

⁶⁸ Arendt, *The Human Condition*, 188.

⁶⁹ Benhabib, ‘Feminist Theory and Hannah Arendt’s Concept of Public Space’, 102.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Arendt, *The Origins of Totalitarianism*, 301.

⁷³ It is nonetheless worth noting that the motivation for such a distinction is that, for Arendt, “maintaining some boundaries between the public and private sphere is essential to preserving human freedom” (Benhabib, ‘Feminist Theory and Hannah Arendt’s Concept of Public Space’, 99). For Arendt, the totalising nature of a world without such a distinction does not allow for the ‘home’, the space that “protects, nurtures and makes the individual fit to appear in the public realm” (*Ibid.*, 107).

Arendtian framework, and it is as such a useful project to determine how the right to have rights might be protected for those at risk of statelessness because of SLR. In the next chapter, I examine the distinctive harms of statelessness for those in such a context. Such a project will inform a response on how the right to have rights can be best protected for them.

2. Statelessness in the Context of Sea Level Rise in Small-Island States

Having explored the harms of statelessness in general, through the Arendtian analysis, it is now important to explore the specific harms faced by those at risk of statelessness due to SLR in atoll island states. Doing so will enable us to understand how the right to have rights can be best protected, since it will allow us to see which responses best address the harms. In this chapter, I demonstrate that such populations face a further two distinctive harms: (iii) the loss of one's entire political community, and (iv) the risk to cultural integrity. Whilst both of these considerations are not identified in the analysis originally presented by Arendt, I demonstrate they are supported by the Arendtian framework. Arendt's analysis of the situation of the stateless was situated in the context of totalitarianism in the 1930s and 1940s, it is unsurprising that she did not consider the specific harms faced in our context. It is also worth noting one difference between Arendt's case and the one at hand: anthropogenic climate change, in which we are all implicated, has created the risk of statelessness, whereas at least some people were innocent of the plight of stateless Jews in the 1930s and 1940s⁷⁴. Though this will primarily be of importance in terms of the distributive question, which I do not aim to tackle, it will also have some bearing on the harms we can identify. Given that my analysis is situated within the Arendtian framework, however, I only examine this insofar as it impacts on the harms identifiable through my reconstructed Arendtian analysis. Nonetheless, working 'in dialogue' with Arendt, we can build upon her analysis to accommodate the harms faced by those in this context. Firstly, however, I examine the anticipated scenario upon which my analysis builds, and demonstrate that some of the more general harms of statelessness facing those in some atoll states will be aggravated by the conditions in which they live.

⁷⁴ This is an oversimplification, but examining the extent to which different parties are responsible for anthropogenic climate change, or the treatment of Europe's stateless Jews, is beyond the scope of this thesis.

2.1 *The Anticipated Scenario*

In order to clearly examine the harms faced by the populations of concern in this thesis, it is important to understand the likely future scenario that they face. Such populations certainly face displacement, but furthermore, they face a scenario wherein their entire states will be submerged by rising sea levels, and hence the possibility of statelessness. The likely scenario facing the set of states under consideration is that they will become uninhabitable due to climate-induced problems in advance of submersion, including:

“sea-water incursion into arable land and freshwater supplies, frequent and extreme weather events and increases in diseases borne by insects, food and water such as malaria, dengue and diarrhoea”⁷⁵.

Though it is not certain that all such states will be completely submersed, the atoll states of Kiribati, Tuvalu, the Maldives and the Marshall Islands are particularly susceptible given their low elevation (one to two metres above sea level), and the fact that they are made of coral atolls, which are vulnerable not only to SLR, but also to bleaching and crumbling away due to increased sea-surface temperature⁷⁶. There is a confluence of climate-exacerbated problems, and the limited adaptive capacity of such states, for example in having monoculture economies⁷⁷, mean that in-situ adaptation is unlikely to be viable in the long term for such states. Even where in-situ adaption is successful in protecting land from ‘sinking’, it is unlikely to address the other climate-exacerbated problems which will render land uninhabitable.

Indeed, in-situ projects have been attempted, such as the artificial island Hulhamalé created in the Maldives, or the sea-wall that has been built around its capital city Malé, but such projects are unlikely to be viable in the long term. The sea-wall constructed around Malé cost \$60 million, which was donated by the Japanese government⁷⁸, but the island is only one mile in length, and it will not be possible to build such walls around all 200 inhabited islands. Furthermore, Barnett and Adger point out that the construction of sea walls “undermines the ecological functions on which

⁷⁵ Park, ‘Climate Change and the Risk of Statelessness’, 2.

⁷⁶ Barnett and Adger, ‘Climate Dangers and Atoll Countries’.

⁷⁷ Nurse et al., ‘Small Islands’, 1640.

⁷⁸ ‘Maldives Builds Barriers to Global Warming’.

these island systems depend”⁷⁹. The artificial island of Hulhamalé has likewise been criticised as being an ineffective temporary solution, which is itself vulnerable to submersion⁸⁰. Doig further points out that there are serious legal obstacles to the recognition of artificial islands under international law⁸¹. Barnett and Adger write that even with only moderate future climate change, it is likely that atoll states will be “unable to sustain human habitation”⁸². As such, the harms I consider are predicated on the reasonable assumption that it will not be possible for populations to remain on their islands. It would clearly be preferable if large-scale migration were unnecessary, and it may indeed be the case that some mitigation and adaptation strategies will delay migration. Nonetheless, it is important to consider in advance the harms faced by these populations in the event of their displacement from their homelands.

2.2 Specific Vulnerabilities in Small-Island States

Some atoll states have specific vulnerabilities which are likely to aggravate the harms of statelessness identified in the previous chapter. Poverty and lack of infrastructure are widespread in such states; UNHCR notes that:

“the small island States most vulnerable to extinction are members of the group of Small Island Developing States (SIDS), and Kiribati and Tuvalu, amongst others, belong to the group of Least Developed Countries (LDCs)”⁸³

Both the economies of such states, based on tourism, and their food security, based on subsistence agriculture and fisheries, are threatened by SLR⁸⁴. The drastic conditions faced by such states make it unlikely that they will be able to protect the human rights of their citizens; where the government could be forced to abandon the territory, even if it was to function from abroad, “it is unclear that they would be able to ensure the rights which flow from citizenship”⁸⁵. Their relatively small economies and populations means that small island states have little clout at international conferences where they might advocate for their populations; the Prime Minister of Samoa has

⁷⁹ Barnett and Adger, ‘Climate Dangers and Atoll Countries’, 322.

⁸⁰ ‘Apathy Sinks Maldives Island’.

⁸¹ Doig, ‘What Possibilities and Obstacles Does International Law Present for Preserving the Sovereignty of Island States?’, 83–5.

⁸² Barnett and Adger, ‘Climate Dangers and Atoll Countries’, 326.

⁸³ Park, ‘Climate Change and the Risk of Statelessness’, 11.

⁸⁴ UNFCCC (Climate Change Secretariat), ‘Climate Change, Small Island Developing States’, 19–23.

⁸⁵ UNHCR, ‘Climate Change, Natural Disasters and Human Displacement’, 5.

written that “countries like mine have played second fiddle to the agenda of the large powers in the world”⁸⁶. There is also no established international protection mechanism to deal with those made stateless by climate change⁸⁷. The 1961 Convention on the Reduction of Statelessness primarily concerns the obligations states have not to render their own citizens stateless, and the 1951 Convention and Protocol Relating to the Status of Refugees⁸⁸ does not cover those displaced by environmental factors. UNHCR argues that environmental factors “are not grounds, in and of themselves, for the grant of refugee status under international law”⁸⁹. The legal gap facing those at risk of statelessness due to SLR is likely to exacerbate the difficulties they will face in accessing their fundamental rights. Furthermore, those rendered stateless by SLR would be “at the mercy of developed states that are responsible for causing the problem in the first place”⁹⁰. It seems likely that, given their broad failure to respect commitments to climate change agreements, such a situation would only aggravate the marginalisation faced by the affected populations.

2.3 *The Loss of one’s Entire Political Community*

Those facing statelessness due to SLR face the loss of their *entire* political community, rather than simply exclusion from it, in that the inhabitability or submersion of their islands will make it impossible to remain in situ as a functioning state. Such a scenario is without precedent and, as such, the harm identified in this section is not identified by Arendt. Nonetheless, I argue that it is supported by her analysis.

Whilst it is true that there is “a strong presumption against the extinction of states once firmly established”⁹¹, it is important to seriously consider the loss of the state as a potential harm to be faced by those at risk of statelessness due to SLR. The requirements of statehood as they are traditionally conceived of are fundamentally threatened by SLR. The 1933 Montevideo Convention on the Rights and Duties of States sets out the criteria for statehood as follows:

⁸⁶ Malielegaoi, ‘The Pacific Islands Are Drowning, We Need the World’s Help’.

⁸⁷ Skillington, ‘Climate Justice without Freedom Assessing Legal and Political Responses to Climate Change and Forced Migration’, 293.

⁸⁸ *Convention and Protocol Relating to the Status of Refugees*.

⁸⁹ UNHCR, ‘Climate Change, Natural Disasters and Human Displacement’, 9.

⁹⁰ Atapattu, ‘[4WJELP001] Climate Change’, 12.

⁹¹ Crawford, *The Creation of States in International Law*, 715.

“The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States”⁹²

‘Sinking’ pacific island atoll states will be unable to meet at least the first two of these conditions in the event that sea levels rise to subsume their territories or render them uninhabitable. Even where a state continues to exist despite the loss of its territory, “given that the bulk of the population will be residing in other sovereign states, they will be subject to the laws and jurisdiction of those states”⁹³. As such, the ability of the population, as a distinct political community, to decide its own laws and future will clearly be under threat. Anote Tong, then President of Kiribati, told the United Nations General Assembly that “it is our overwhelming desire to maintain our *homeland* and our *sovereignty*”⁹⁴ (emphasis added). In the event that the state ceases to exist, those displaced by SLR face an important loss: the loss of their ability as a people to build a common future together, and this a clear harm.

In the Arendtian sense, those at risk face the loss of their “place in the world”⁹⁵. This is to say that they are not only excluded by the political community, but that they have no “site from which to form a distinctive opinion on a common, shared world”⁹⁶. The idea that a people can come together through action to create a shared world, in which political equality can be instantiated, is of fundamental importance in the Arendtian framework. In *The Jew as Pariah*, she writes:

“For only within the framework of a people can a man live as a man among men, without exhausting himself. And only when a people lives and functions in consort with other peoples can it contribute to the establishment upon earth of a commonly conditioned and commonly controlled humanity”⁹⁷

Those at risk of statelessness due to SLR will be unable to live ‘within the framework of a people’ in the sense of being able to meaningfully belong to a political community that they can call their own. The Arendtian concept of citizenship is also relevant here; citizenship is not merely legal status, but is an active process whereby

⁹² *Montevideo Convention on the Rights and Duties of States*, sec. 1.

⁹³ McAdam, “Disappearing States”, *Statelessness and the Boundaries of International Law*, 117.

⁹⁴ Tong, ‘Address to General Assembly 64th Meeting’.

⁹⁵ Arendt, *The Origins of Totalitarianism*, 296.

⁹⁶ Bernstein, ‘Hannah Arendt on the Stateless’, 55.

⁹⁷ Arendt, ‘The Jew as Pariah’, 122.

citizens can, through speech and action, “assert their agency in the common world of public affairs”⁹⁸. We can see, therefore, how (iii) the loss of one’s entire political community, whilst not identified as a harm of statelessness by Arendt, is nonetheless implied by her analysis and broader political philosophy.

2.4 Risks to Cultural Integrity

A further harm is highlighted in the above quote from Anote Tong: the loss of one’s *homeland*. The dual notion of ‘homeland’ points towards the importance of *land* in pacific island communities⁹⁹, and to the loss of a *home*, both of which are tied up with notions of cultural identity. The importance of land in pacific island communities ought to be recognised. Campbell points out that for such communities, land “tends to have meanings to those who ‘belong’ to or are ‘part of’ it that are often difficult to encapsulate in English or other colonial languages”¹⁰⁰. One clear expression of this is in the fact that vast majority of land in pacific communities is not owned through freehold, but through customary forms of tenure or public ownership¹⁰¹. Though the cultural meanings associated with land are by no means homogenous, Campbell emphasis the cultural harms for relocated communities:

“Community relocation means that an important aspect of rootedness, having at least some people (kinfolk) there, sustaining the relationship with the land, or ‘keeping the home fires burning’ is lost.”¹⁰²

As pacific island states are rendered uninhabitable due to SLR, the disconnection from the specific land which may have to be abandoned will likely constitute a harm for those connected to it. However, land is only one aspect of the harm facing those at risk of statelessness due to SLR. Their ability to live as a distinct cultural community may be compromised. These states have distinct cultures which are valuable to their inhabitants; according to UNHCR, we must think “in terms of the protection of the rights of a people with a specific social and cultural identity, history and traditions”¹⁰³.

⁹⁸ Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law*, 78.

⁹⁹ The land concerned in atoll island states will often be coastal land, given the importance of fisheries to many pacific island communities highlighted in section 2.2 of this thesis.

¹⁰⁰ Campbell, ‘Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land’, 60.

¹⁰¹ *Ibid.*, 60–2.

¹⁰² *Ibid.*, 64.

¹⁰³ Park, ‘Climate Change and the Risk of Statelessness’, 15.

Campbell writes that the situation of those facing relocation “is not just about severing people from the land. It is about drastic changes in lifestyle, economy, politics, legal systems and cultural norms”¹⁰⁴. The dangers of failing to take identity and culture into account is highlighted by McAdam, in the case of the proposed relocation of population of Nauru to Australia due to environmental destruction from phosphate mining in the 1960s¹⁰⁵. The Nauru Local Government Council rejected the proposal, arguing that “anything which did not preserve and maintain [their] separate identity was quite unacceptable”¹⁰⁶. Maria Tiimon Chi-Fang, a climate activist from Kiribati, has argued:

“Some of us might think climate change is just about moving people to a safer place. But it's about equity, identity and human rights”¹⁰⁷

Culture need not have intrinsic value for the risk to cultural integrity might constitute a harm for those facing statelessness due to SLR. Zellentin argues that “extreme cases of climate migration might lead to the complete loss of particular communities as communities and thus of particular cultures as instituted entities”¹⁰⁸, highlighting the fact that it is entire communities which are at risk, not simply individuals. She argues that “assimilation must be considered particularly threatening because these communities cannot rely on anyone else to preserve what they consider valuable about their culture”¹⁰⁹. Whilst this is true, it does not fully capture the value of cultural membership, which lies not in preserving traditions in and of themselves, but rather in the value of the cultural structure for its individual participants. Kymlicka’s account of the value of cultural membership is insightful and useful here; he argues that the cultural structure is a “context of choice”¹¹⁰ which serves to offer us points of orientation by reference to which we can develop ourselves and our life plans. Furthermore, membership in one’s *own* cultural community is important because of our cultural contexts are constitutive of our identities. He writes:

¹⁰⁴ Campbell, ‘Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land’, 78.

¹⁰⁵ McAdam, “Disappearing States”, *Statelessness and the Boundaries of International Law*, 124–6.

¹⁰⁶ Hammer Deroburt, Head Chief, Nauru Local Government Council, cited in *ibid.*, 125.

¹⁰⁷ Maria Tiimon Chi-Fang, cited in Farbotko and Lazrus, ‘The First Climate Refugees?’, 383.

¹⁰⁸ Zellentin, ‘Climate Migration. Cultural Aspects of Climate Change’, 69.

¹⁰⁹ *Ibid.*, 81.

¹¹⁰ Kymlicka, *Liberalism, Community and Culture*, 166.

“Someone’s upbringing isn’t something that can just be erased; it is, and will remain, a constitutive part of who that person is”¹¹¹

However, we ought not to take an over-simplistic understanding of culture as a static phenomenon; indeed, Kymlicka is keen to point out that his understanding of ‘culture’ concerns the structure itself, rather than its character¹¹². Scheffler points out that “culture and cultures are always in flux”¹¹³, and it important not to conflate unwanted assimilation into other communities at the expense of self-directed cultural adaption with an essentialising understanding of the cultures of those living in the atoll states most at risk. To reduce the harm faced by those at risk of statelessness to a one-dimensional account of ‘loss of culture’ would be misleading. For example, Farbotko and Lazrus stress that in Tuvalu, “migration and cultural change are not necessarily crises, as they are currently ordinary practices of everyday life”¹¹⁴. Maier conceives of collective identity as being built out of “a synchronistic web of affiliations and sentiments”¹¹⁵ which, whilst connected with space and shared history, is not necessarily bound by it. It is not cultural change *per se* which constitutes a harm faced by those at risk of statelessness due to SLR, but rather the potential for change to be *imposed upon* those who are at risk, rather than being self-directed.

This account of the risks to cultural integrity identified above is not identified in Arendt’s original analysis of the harms of statelessness, but can in fact be expressed in Arendtian terms. A one-dimensional account of culture would be decidedly un-Arendtian. Arendt “takes an expressivist conception of the subject”¹¹⁶, which is to say that for her, the individual’s identity “does not precede its actions but rather is disclosed in its act”¹¹⁷. For Arendt, this disclosure takes places in speech and action, which is between people, under the condition of plurality. Culture cannot outline the ‘essential features’ of any person, but rather the *process* of human interrelations creates the conditions that allow for the constitution of peoples’ identities. In *The Human Condition*, she writes:

¹¹¹ Ibid., 175.

¹¹² Ibid., 166–7.

¹¹³ Scheffler, ‘Immigration and the Significance of Culture’, 105.

¹¹⁴ Farbotko and Lazrus, ‘The First Climate Refugees?’, 388.

¹¹⁵ Maier, ‘Being There: Place, Territory and Identity’, 67.

¹¹⁶ Schaap, ‘Enacting the Right to Have Rights’, 11.

¹¹⁷ Ibid.

“Although everybody started his life by inserting himself into the human world through action and speech, nobody is the author or producer of his own life story. In other words, the stories, the results of action and speech, reveal an agent, but this agent is not an author or producer”¹¹⁸

The reduction of an individual to the essential features of her culture runs contrary to the Arendtian conception of the subject. Nonetheless, it is certainly true that the attempt to forcibly separate the individual from her culture would constitute a harm for Arendt. Though her writings are primarily concerned with political society rather than culture, in *We Refugees*, she reflects on her experiences of assimilation: “under the cover of our “optimism”, you can easily detect the hopeless sadness of assimilationists”¹¹⁹. She writes that “the mere fact of being a refugee has prevented our mingling with native Jewish society.... Man is a social animal and life is not easy for him when social ties are cut off”¹²⁰. For Arendt, the separation of European Jews from their cultural milieu and their forced assimilation constituted a grave harm. Similarly, we can see that the risk of the individual’s dislocation from her culture, through forced assimilation or conditions which render an individual’s contact with her culture impossible, constitutes one aspect of the grave harms faced by those at risk of statelessness due to SLR.

Beyond the harms of statelessness identified in chapter one, of (i) the lack of human rights protection, and (ii) the alienation from the political community, the context of SLR in small-island states brings about additional risks which ought to be mitigated. The specific conditions of such small-island states serve to aggravate the more general harms of statelessness. Beyond this, small-island states face the unique threat of ‘state extinction’, which will involve (iii) the loss of one’s own political community. They also face (iv) risks to cultural integrity, not in the sense that their culture will be ‘lost’, but rather in the sense that they may be put in situations where it is no longer possible for them to access their culture and direct its future. These are the considerations that we ought to bear in mind when, in the next chapter, potential ways of protecting the right to have rights as a response to such threats are examined.

¹¹⁸ Arendt, *The Human Condition*, 184.

¹¹⁹ Arendt, ‘We Refugees’, 117.

¹²⁰ *Ibid.*, 116.

3. Protecting the Right to Have Rights

In order to safeguard the right to have rights, different possible avenues could be pursued. Traditionally, the right to have rights has been understood as the right to citizenship, as citizenship enables one to participate in the political community, and provides the mechanism by which rights can be protected. However, it is important to consider the extent to which responses address the distinctive harms of statelessness in the context of SLR, which have been identified in the previous two chapters: (i) lack of human rights protection, (ii) alienation from the political community, (iii) loss of one's entire political community, and (iv) risks to cultural integrity. In this chapter, I examine three possible options for protecting the right to have rights in terms of how well they address these harms. The first is the (substantive) right to asylum. The second is the right to citizenship in another state. Though these options are not mutually exclusive (and indeed, citizenship will entail asylum), I consider them on their own terms. The third is through self-determination. I argue that if protection of the right to have rights is to effectively address the harms outlined in the previous two chapters, then it must be protected through self-determination.

3.1 The Right to Asylum

One possible response to 'state extinction' is a substantive right to be granted asylum in another state for the populations at risk. Though her argument focuses on refugees, Oudejans' argument for a substantive right to asylum proposes that we understand the right to have rights in such a way. She identifies the plight of stateless persons with the plight of refugees; for her, the fundamental question is the same: "having lost a place of their own, where do they have the right to live?"¹²¹. Oudejans focuses on the spatial nature of law, arguing that "rights, in short, require the legal emplacement of the individual"¹²². Following Lindahl's claim that "to ascribe rights and obligations is also always to assign a legal place to persons"¹²³, Oudejans argues that the right to have rights reflects

¹²¹ Oudejans, 'The Right to Have Rights as the Right to Asylum', 9.

¹²² *Ibid.*, 19.

¹²³ Lindahl, 'Finding Place for Freedom, Security and Justice', 22.

“a status that (1) identifies the individual in terms of rights and duties and (2) allocates the individual to a state responsible for granting those rights and duties”¹²⁴

For those at risk of statelessness due to SLR, this would amount to a substantive right to asylum in another state, providing rights to residence and status under the law. The right to asylum has been referred to as a “paper tiger”¹²⁵ in national legal systems, since it is generally a procedural right to *seek* asylum. Oudejans rightly points out that, despite the prohibition of refoulement, states have deployed “creative asylum policies that seek to keep refugees at bay”¹²⁶. The implicit assumption that the refugees will be able to return ‘home’ is deeply problematic in the case of those facing statelessness due to SLR. A substantive right to asylum would go a long way in establishing legal status and protection of rights for such people who would otherwise find themselves outside of the bounds of political communities. Indeed, when granted a right of residence, those displaced by SLR would likely be able to better access their fundamental human rights. Oudejans claims that the refugee can claim “a place of his own where protection [of rights] can be enjoyed again”¹²⁷.

However, it is unlikely that the substantive right to asylum will be sufficient to redress the harms identified in the first two chapters. Whilst such a right might go some way towards assuring that human rights are protected, it does not satisfy the condition of being included within the political community. The identification of the individual in terms of rights and duties, whilst bringing about a situation where rights can be protected, falls short of full citizenship, without which the affected persons will not be fully included in the political community. Walzer’s seminal analysis of the situation of guest workers demonstrates that “no democratic state can tolerate the establishment of a fixed status between citizen and foreigner”¹²⁸. The fact that those displaced by SLR would be subject to the laws of the host country, without being able to affect them means that they are outside of the political community. Walzer points out that the subjects of political power “include every man and woman who lives in the territory over which the decisions are enforced”¹²⁹. Without the ability to fully participate in the

¹²⁴ Oudejans, ‘The Right to Have Rights as the Right to Asylum’, 19.

¹²⁵ Heuser, ‘Is There a Right to Have Rights?’, 7.

¹²⁶ Oudejans, ‘The Right to Have Rights as the Right to Asylum’, 24.

¹²⁷ *Ibid.*, 25.

¹²⁸ Walzer, *Spheres of Justice*, 61.

¹²⁹ *Ibid.*, 58.

life of the political community, those affected would constitute a political underclass, unable to exercise their political rights. Whilst granting asylum might at first sight seem like the correct humanitarian response, it is important to recognise that it does not successfully account for the entirety of the harms faced by those at risk.

Some considerations usually raised against Walzer's argument, such as the permissibility of restricted entitlements for those such as foreign students¹³⁰, cannot apply here. In this case, admittance to the country would not be on a temporary basis, since it would be impossible for relocatees to return home. For the same reason, those affected could not have consented to live under such a status; their 'consent' would be predicated on their lack of alternatives.

The provision of asylum, whilst beneficial, should not be taken as equivalent to political equality, without which the harm of alienation from the political community will not be addressed. Arendt herself notes in her discussion of the status of statelessness that "without this legal equality, which was originally destined to replace the orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals"¹³¹. Thus, providing *only* asylum to those faced with statelessness due to SLR will be insufficient in responding to the harm that they face, since it fails to ensure that those affected will be fully included in political society. It is also worth recognising that the right to asylum in and of itself also makes no provisions to ensure the continuing cultural ties of those facing statelessness due to climate change. This importance of this will be examined more fully in the next section, but it should be clear that it applies to the right to asylum as much as it applies to the right to citizenship. As such, we can say that whilst the right to asylum addresses (i) the lack of human rights protection, it fails to address (ii) alienation from the political community, (iii) the loss of one's entire political community, and (iv) the risks to cultural integrity.

3.2 *The Right to Citizenship*

One might assume that the solution to problems of statelessness will inevitably be the provision of citizenship. Indeed, the right to have rights is generally understood to mean the right to a nationality. UNHCR has stated that "[o]nce they acquire an

¹³⁰ Hidalgo, 'An Argument for Guest Worker Programmes', 31.

¹³¹ Arendt, *The Origins of Totalitarianism*, 290.

effective nationality, stateless persons are no longer stateless: their plight has come to an end”¹³². Whilst it is trivially true that stateless persons are no longer stateless once they are citizens of a state, it is important to consider the extent to which the provision of citizenship adequately responds to the harm faced by those facing statelessness in the context of SLR.

Though his account is based on different considerations¹³³, Risse argues for a right to relocation for those threatened by SLR, which he argues must include a right to citizenship:

“One might wonder whether obligations toward the people of Kiribati would not be fully discharged if they were received as environmental refugees, rather than offered membership in their countries of destination upon arrival.... Accepting these people merely as refugees would be impermissible at least in light of the first condition: again, presuming sea level rise is inevitable, the inhabitants of Kiribati do not have a viable alternative to emigrating”¹³⁴

Risse’s account considers partial citizenship to be unjust, whilst full citizenship and legal equality are considered necessary for those faced with statelessness due to SLR. However, citizenship is not only necessary because of the injustice of partial citizenship. Batchelor argues that “there is no replacement for citizenship itself”¹³⁵, since it is “representative of a type of identity”¹³⁶. This is to say that citizenship identifies the individual with the political community of the state. This is true in the legal sense, in that nationality is the “primary link between the individual and international law”¹³⁷, which is important in guaranteeing the rights of citizens. However, it also allows for the individual to play an equal role in the public society of the state. Indeed, Arendt writes that “the loss of citizenship deprived people not only of protection, but also of all clearly established, officially recognized identity”¹³⁸, and the identification of the individual with the political community will go some way towards enabling their meaningful public participation. Parekh writes that in Arendtian thought:

¹³² UNHCR, ‘Protecting the Rights of Stateless Persons’, 5.

¹³³ Risse’s account is based on the notion of common ownership of the earth. See Risse, ‘The Right to Relocation’.

¹³⁴ *Ibid.*, 294.

¹³⁵ Batchelor, ‘Statelessness and the Problem of Resolving Nationality Status’, 179.

¹³⁶ *Ibid.*, 160.

¹³⁷ *Ibid.*

¹³⁸ Arendt, *The Origins of Totalitarianism*, 287.

“[A] person can affect political change ‘together with his equals and only with his equals’ Without other political equals, there is no possibility for genuine action and speech”¹³⁹

It would seem, then, that citizenship would provide for the political equality stressed by Arendt in the idea of the right to have rights, which allows for the individual to participate meaningfully. Inclusion in the political community is provided by citizenship, at least formally.

However, the provision of citizenship in another state is not sufficient to meaningfully address the harm of (iii) the loss of one’s *own* political community, nor (iv) the risks to cultural integrity. In our context, these responses function as ways to *protect* the right to have rights, rather than to provide it. Whilst it is true that citizenship functions to represent identity with the political community, in the case of those facing statelessness due to SLR, the political identity with which they have grown up would not match the new political identity they would be ascribed if citizenship was given to them in another country. The extent to which this identity is appropriate is therefore questionable. As we have seen, the Arendtian conception of citizenship is an active one, where citizens contribute to the establishment of a common world and future. Her conception of politics is based on, according to Parekh, “an active political community, with more than just political institutions”¹⁴⁰. Whilst new citizens would have the legal capacity to contribute in such a way, we might question the extent to which their citizenship would allow them to contribute to a *common* world. ‘Identity’, in the sense of formal identification with a political community, is not equivalent with one’s own *sense* of identity as a member of a body politic. Arendt writes that “refugees driven from country to country represent the vanguard of their peoples – if they keep their identity”¹⁴¹, and it is in this sense that we can see that the new legal identity provided in the case of the right to citizenship is not equivalent with the sense of identity as members of a people that is an important part of the harm of the loss of one’s *own* political community.

McAdam further argues that “a protection-like response may not necessarily respond to communities’ human rights concerns, especially those relating to cultural

¹³⁹ Parekh, ‘A Meaningful Place in the World’, 49.

¹⁴⁰ *Ibid.*, 51.

¹⁴¹ Arendt, ‘We Refugees’, 119.

integrity, self-determination and statehood”¹⁴². For example, the provision of citizenship coupled with the assumption of assimilation would exacerbate the difficulties in retaining ties to cultural structures. McAdam highlights the importance of continuing cultural ties in Kiribati: “the President hopes that ‘pockets’ of i-Kiribati communities will build up abroad and i-Kiribati culture and traditions will be kept alive”¹⁴³. Even where citizenship was not coupled with policies requiring assimilation from incoming migrants, however, the difficulty of retaining cultural ties will remain. Whilst it may be valuable for migrants to be provided with citizenship, especially in terms of facilitating their participation in public life and in accessing their fundamental rights, it nonetheless remains the case that the affected communities will be uprooted and separated from the cultures and communities that are identifiably theirs. Kolers expresses this concern:

“When the state as a whole disappears, the individual’s political identity, political community, status in that community, currency, civil-society institutions, and perhaps even her language of political participation and culture disappear as well.... Unaddressed, these effects constitute frontal assaults on individual and communal autonomy and portend losses of equality as the victims start over as refugees in unfamiliar political communities”¹⁴⁴

Without facing the issues that affect the *communities* displaced by climate change, it is unlikely that citizenship alone will be able to redress these harms. Arendt writes that the loss of their homes meant, for Europe’s stateless, “the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world”¹⁴⁵. The ‘social texture’ to which she refers seems to remain a concern for those displaced by SLR, even where they are afforded full citizenship in other states. As such, whilst the right to citizenship addresses (i) the lack of human rights protection, and (ii) the alienation from the political community, it fails to address (iii) the loss of one’s entire political community, and (iv) the risks to cultural integrity.

These considerations concern groups of potential stateless persons, rather than individuals. Whilst the right to have rights is the right of an *individual* to meaningfully participate in the political community, the individual in Arendtian thought is constituted in her relations to others. Whilst the right to citizenship provides for individuals, it does

¹⁴² McAdam, ‘Swimming against the Tide’, 17.

¹⁴³ *Ibid.*, 20.

¹⁴⁴ Kolers, ‘Floating Provisos and Sinking Islands’, 334.

¹⁴⁵ Arendt, *The Origins of Totalitarianism*, 293.

not consider the individual in the context of her meaningful relations to others, the importance of which is captured in harms (iii) and (iv) identified in the previous chapter. In order to meaningfully protect the rights to have rights for individuals in this context, then, it is important to identify such individuals in terms of their considerations as a group. This goes beyond the traditional understanding of the right to have rights as the right to citizenship, but it is supported by Arendtian thought. We can see that it has been important to reconstruct Arendt's analysis of the harm of statelessness in this context, in order that a response to the plight of those facing statelessness due to SLR is not misinformed by the common understanding the right to citizenship is necessarily sufficient to protect against the harms of statelessness.

3.3 *Self-Determination*

Another way of protecting the right to have rights is in terms of self-determination. This may seem initially counter-intuitive, in that the right to have rights is a right which belongs to each individual to participate in communities, whereas self-determination is concerned with collectives. As has been noted, however, we are examining potential responses in advance, rather than redressing harms that have already occurred. McAdam points out that "movement is likely to be pre-emptive and planned"¹⁴⁶ in the case of states such as Kiribati and Tuvalu. Pre-emptive strategies which address the community can serve to better protect the right to have rights for the individuals within the community. This is especially true in an extension of the Arendtian analysis, since, as we have seen, the individual in Arendtian thought is constituted in her relations with others. Self-determination is one such collective response.

Self-determination is stressed by several proposals for responses to the plight of those facing statelessness due to SLR; in the next chapter, I examine two of these in greater depth. Uniting them, however, is the idea that self-determination is the appropriate goal, in that it allows for individuals within communities to decide their collective future, rather than being subject to domination by outside influences. The motivating ideal of self-determination, according to Abulof, is that it entails the "moral double helix of duality and mutuality"¹⁴⁷. 'Duality' here refers to the right of the

¹⁴⁶ McAdam, 'Swimming against the Tide', 8.

¹⁴⁷ Abulof, 'The Confused Compass', 489.

individual to align with a culture and “determine his/her identity”¹⁴⁸, and of the collective to “determine its polity”¹⁴⁹. These correspond to the harms identified previously: the individual can suffer a distinctive harm if she is unable to determine her identity, likewise if the individuals within a collective are unable to determine their collective future.

The concept of self-determination can be interpreted in different ways. For Nine, as well as for Dietrich and Wündisch, self-determination is a community’s collective *right* to establish justice for its citizens through its own sovereignty; Nine writes: “If a group is to be self-determining, it must rule itself”¹⁵⁰. We can call this the *political* conception of self-determination. This understanding coheres with the 1966 International Covenant on Economic, Social and Cultural Rights:

“All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”¹⁵¹.

Dietrich and Wündisch argue that self-determination “protects a group from being subject to rules which are hostile to its particular culture”¹⁵². For Nine, this “doesn’t presuppose nationalist or cultural homogeneity within the group itself”¹⁵³. She argues:

“All I mean to capture in this assertion is that it is more natural for us to say that the Pacific Islanders have lost something of value in the loss of their unique self-determining status, even if they are granted immigration into a state that treats them justly”¹⁵⁴.

An alternate understanding of self-determination, however, distinguishes it from political autonomy. Buchanan, whose motivation is that the idea of each ‘people’ having a right to a sovereign state is “not plausible, either morally or practically”¹⁵⁵, argues:

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, 363.

¹⁵¹ *International Covenant on Economic, Social and Cultural Rights*, sec. 1.

¹⁵² Dietrich and Wündisch, ‘Territory Lost - Climate Change and the Violation of Self-Determination Rights’, 95.

¹⁵³ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, 363.

¹⁵⁴ Ibid.

¹⁵⁵ Buchanan, ‘Right to Self-Determination’, 46.

“Self-determination, most simply, is the freedom of the group to lead its own distinctive common life, to express its constitutive values through its own social practices and cultural forms”¹⁵⁶.

According to this understanding, rights concerning political autonomy can be instrumental in achieving self-determination, which is not itself a right, but rather a guiding normative principle. Self-determination here emphasises the ability of a group to determine its future in terms of its cultural and social practices rather than its political status. Buchanan stresses that this does not require a static understanding of culture; self-determination does not protect against cultural change, but rather against “domination consisting of the nonconsensual destruction of the group’s cultural practices and the values those practices express”¹⁵⁷. We can call this the *cultural* conception of self-determination.

One consideration raised against self-determination is not applicable to the case at hand. Pavković and Radan note that “it is the concept of the ‘self’ that does the governing that has been the key problem for any theory attempting to elucidate the notion of self-governance”¹⁵⁸. This consideration generally arises where the membership conditions of the polity have yet to be established. In the case of the states facing extinction, however, the polity is already in existence. As such, the difficulty of determining *who* the people are who may or may not be entitled to determine themselves collectively does not apply¹⁵⁹.

Self-determination is supported by Arendt’s understanding of the harms of statelessness and of the right to have rights. Though she does not envisage the right to have rights as being threatened in this context, the right to have rights concerns the individual’s right to public life. For Arendt, freedom and equality come about through action in the public sphere; we can see this in her idea that political freedom means “to be a participator in government”¹⁶⁰. To act meaningfully is for Arendt to come together in the public sphere to create a shared conception of the world and the common future.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., 46–7.

¹⁵⁸ Pavković and Radan, ‘In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order’, 2.

¹⁵⁹ This is not to say that there are no issues of the legitimacy of the composition of polities in Pacific Island States. However, if there are such issues, they have not arisen out of the climate change context, and so are beyond the scope of this paper.

¹⁶⁰ Arendt, *On Revolution*, 210.

Those faced with statelessness due to SLR risk the loss of their ability to come together to create a shared future, which is central to the notion of self-determination.

If self-determination can be actualised, it will be a more successful way of protecting the right to have rights than either the substantive right to asylum, or the right to citizenship, as is demonstrated schematically in Figure 1 (below). Whereas neither of these approaches tackle the harms of (iii) the loss of one's political community, nor (iv) the risks to cultural integrity, self-determination does in fact target these harms, since it identifies the individual in terms of her relations to the community. As we be demonstrated in the next chapter, whilst different proposals for self-determination choose different strategies, they do protect against (i) the lack of human rights protection and (ii) alienation from the political community. It has been necessary to work 'in dialogue' with Arendt; the harms identified in her analysis do not fully capture the plight faced by those at risk of statelessness due to SLR, and it has been necessary to reconstruct her analysis in light of the context in order to understand that self-determination is a more appropriate way to protect the right to have rights in this case. Nonetheless, we have seen that the more specific analysis that I have presented in this context is supported by Arendt's analysis of the harm facing stateless persons.

	<u>The Right to Asylum</u>	<u>The Right to Citizenship</u>	<u>Self Determination</u>
<u>(i) Lack of human rights protection</u>	Addressed	Addressed	Addressed
<u>(ii) Alienation from the political community</u>	Unaddressed	Addressed	Addressed
<u>(iii) Loss of one's entire political community</u>	Unaddressed	Unaddressed	Addressed
<u>(iv) Risks to cultural integrity</u>	Unaddressed	Unaddressed	Addressed

Figure 1: The harms addressed by different proposals.

Self-determination will, at the least, mean that those populations faced with statelessness due to SLR ought to be able to determine *how* they are to live out their

futures as self-determining peoples. Whilst atoll islands face similar challenges, they are by no means homogenous. The IPCC points out that “the local lenses through which they [adaption and mitigation options] are viewed differ from one island to the next, given the diverse cultural, socio-economic, ecological, and political values”¹⁶¹. For example, whilst the (previous) President of the Maldives announced plans to buy up land abroad in order to resettle the population¹⁶², the President of Kiribati preferred establishing labour migration schemes in order to enable the population to migrate “on merit and with dignity”¹⁶³.

There will not be a ‘one size fits all’ method of ensuring continuing self-determination for those at risk of statelessness due to SLR. Rather, political communities themselves must decide the most appropriate way to continue their future as self-determining peoples; the response should be guided by the considerations that are most important to their populations. In the next chapter, I examine two proposals for how self-determination might be actualised for those facing statelessness due to SLR, which largely take us beyond the Arendtian analysis. The purpose of doing so is not to decide that one will be more appropriate than the other, but to demonstrate that they emphasise different conceptions of self-determination. Each proposal faces unique challenges, and it will become clear that neither are ‘ideal’ solutions, but different conceptions of self-determination may be important to different communities, and as such it is useful to examine these proposals to highlight the differences.

4. Actualising Self-Determination in the Context of Statelessness due to Sea Level Rise

Having determined that self-determination most effectively responds to the harms faced by those at risk of statelessness due to SLR, it is important to examine what this could mean in terms of practical responses. In this chapter, I examine two possibilities: the cession of territory by another state, and the idea of a ‘de-territorialised state’. Each of these responses stresses a different aspect of the concept of self-determination, and has unique advantages and disadvantages.

¹⁶¹ Nurse et al., ‘Small Islands’, 1616.

¹⁶² Ramesh, ‘Paradise Almost Lost’.

¹⁶³ Tong, ‘Address to General Assembly 63rd Meeting’.

4.1 *Cession of Territory for Populations Facing Statelessness Due to Sea Level Rise*

One response to the plight of those facing statelessness due to SLR is the cession of territory by another state. The affected state would be able to move its population and government to another territory, where they would enjoy sovereign control. This is advocated by both Nine¹⁶⁴ and Dietrich and Wündisch¹⁶⁵, though their arguments are based on different considerations. For Nine, territorial rights are justified insofar as they promote self-determination. Her argument is based on a modified Lockean proviso; according to Nine, “the establishment of justice through the preservation of self-determining groups’ is a foundational moral mandate for territorial rights”¹⁶⁶. As such, in conditions of scarcity, such as where “there is no inhabitable land which is not a territory”¹⁶⁷, territorial rights can be ‘reconfigured’ in order to promote the goal of self-determination.

Dietrich and Wündisch’s account examines what is owed to those at risk of losing their territory¹⁶⁸; they argue that compensation ought to allow for the group’s self-determination. For them, this requires territorial sovereignty: “the only way to restore the self-determining capacity of a group which has irrevocably lost its territory due to rising sea levels is to provide it with a surrogate territory”¹⁶⁹. They propose a “negative auction”¹⁷⁰, wherein local communities in appropriate areas may, through referenda, propose to sell their territory; the lowest priced appropriate territory is selected, and the process is paid for through a central fund established by the “culprit states”¹⁷¹. In the case of no territory being volunteered, the central fund selects the most appropriate territory, based on price and criteria conformity, “with criteria conformity having lexical priority over price”¹⁷². Financial compensation is provided for outgoing communities in order for territory to be given over to the relocatees from ‘sinking’ states.

¹⁶⁴ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’.

¹⁶⁵ Dietrich and Wündisch, ‘Territory Lost - Climate Change and the Violation of Self-Determination Rights’.

¹⁶⁶ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, 362.

¹⁶⁷ *Ibid.*, 366.

¹⁶⁸ Dietrich and Wündisch, ‘Territory Lost - Climate Change and the Violation of Self-Determination Rights’, 87.

¹⁶⁹ *Ibid.*, 88.

¹⁷⁰ *Ibid.*, 97.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

Both Nine¹⁷³ and Dietrich and Wündisch recognise that not just *any* territory is sufficient, the territory must enable the affected population to continue with cultural practices that they value, taking into account that cultures are, to at least some degree, shaped by their particular environments. In Dietrich and Wündisch's account, this is termed the "cultural identity condition"¹⁷⁴.

Such a proposal takes a political conception of self-determination; it emphasises the importance of political autonomy. Protection of the right to have rights comes through enabling the political community to exist in its present form, in a new location. As such, it primarily targets the harm of (iii) the loss of one's own political community. Relocated populations would be able to continue living under their current governments. This would mean that (i) the lack human rights protection would be protected against by their own governments; they would be unlikely to 'fall through the cracks' of human rights protection. Similarly, (ii) alienation from the political community is less likely to come about if this proposal is successful; instead of being vulnerable 'outsiders' in a new political community, those affected would belong to a political community which is meaningfully 'theirs'. They would no longer face the (iii) loss of the entire political community; if successful, the cession of territory would simply allow for the government to be 'transplanted' to a new location, with the political community intact.

The protection against (iv) risks to cultural integrity under this proposal has both drawbacks and advantages. Risks to cultural integrity will undoubtedly arise in the event of relocation; we have seen that in many Pacific Island states at risk, specific land takes on cultural meanings. Furthermore, Dietrich and Wündisch are correct in identifying that, at least to an extent, "the culture of a population is typically shaped by the particularities of the area it traditionally occupies"¹⁷⁵. However, both formulations make attempts to mitigate this harm in the selection of territories. Whilst it is true that this will likely fail to address *some* of the risk to cultural integrity, this will be inevitable where SLR subsumes certain islands or renders them uninhabitable. However, much of the harm comes from it being changed by others, rather than being self-directed.

¹⁷³ Nine, 'Ecological Refugees, States Borders, and the Lockean Proviso', 371.

¹⁷⁴ Dietrich and Wündisch, 'Territory Lost - Climate Change and the Violation of Self-Determination Rights', 95.

¹⁷⁵ Ibid.

Furthermore, much of the value of cultural integrity comes from the ‘cultural structure’. The relocatees would at least be able to direct the future of their own cultures, rather than having change imposed upon them from the outside.

The viability and potential costs of such a proposal, however, should be examined. Given that, as Nine points out, “there is no inhabitable land that is not a territory”¹⁷⁶, providing new land for the relocation of entire states at risk of extinction due to SLR will inevitably require other states to give over valued areas of land. If such land is to be suitable, it will not only need to sustain the population, but, given the ‘cultural identity condition’, it will need to be suitable for the specific communities being relocated. Politically, this seems unpromising. Rayfuse writes:

“[I]t is difficult to envisage any state now agreeing, no matter what the price, to cede a portion of its territory to another state unless that territory is uninhabited, uninhabitable, not subject to any property, personal, cultural or other claims, and devoid of all resources and any value whatsoever to the ceding state.”¹⁷⁷

To demonstrate the problem of political will, consider the current position of New Zealand, which, given its ties with Pacific island states and its status as a developed state, might reasonably expect migrants if planned responses are unsuccessful. New Zealand has agreed to accept 75 migrants from Kiribati and from Tuvalu per year for a duration of 30 years, subject to their having a job offer, basic English skills and being under 45 years of age¹⁷⁸. Those selected through the ballot scheme “often find it difficult to meet the employment-related criteria for permanent residence in New Zealand, so cannot take up the possibility of moving to New Zealand”¹⁷⁹. Rayfuse points out that for Tuvalu alone, the smallest state facing extinction, “this still leaves nearly 9,000 people to find resettlement elsewhere or drown”¹⁸⁰. Rive has written that New Zealand’s policy “is not substantively more than a vague commitment to ‘wait and see’”¹⁸¹.

This small commitment is emblematic of the political will of developed countries to engage with radical solutions to climate change. Cession of territory by a state is

¹⁷⁶ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, 366.

¹⁷⁷ Rayfuse, ‘International Law and Disappearing States’, 9.

¹⁷⁸ Ibid.

¹⁷⁹ Bedford and Bedford, ‘International Migration and Climate Change’, 126.

¹⁸⁰ Rayfuse, ‘International Law and Disappearing States’, 9.

¹⁸¹ Rive, ‘Safe Harbours, Closed Borders?’, 13.

highly likely to require relocating existing communities within the state ceding territory in order to create space for migrants. Given the lack of commitment on behalf of developed states to accept migrants into their communities in general, it seems highly unlikely that states relocate their own citizens and cede territory to create space for a politically sovereign state within their current borders. Indeed, Dietrich and Wündisch concede that they “do not expect that the industrialized states which are to blame for climate change will be inclined to implement our proposal”¹⁸².

The limited availability of territory will make it substantially more difficult to attain *appropriate* territory for those states that value similar environmental conditions. Other pacific island states which are most environmentally and culturally similar to the coral atoll states at risk are generally small, with high population density and limited natural resources¹⁸³. Such states are unlikely to be able to furnish territory for those populations at risk of statelessness, especially for larger atoll states such as the Maldives. Populations may therefore be required to adapt to very different circumstances. Whilst the cultural change may be self-directed, it is also likely to be more severe, given the limited availability of appropriate land.

A further issue with this proposal is its potential moral costs. Whilst both Dietrich and Wündisch and Nine accept that their proposals will require the relocation of existing communities, they do not ascribe this great moral significance. In order to relocate entire states, giving them sovereign control over territory, areas where entire communities live will likely need to be moved. Dietrich and Wündisch argue that such costs can be justified, comparing the relocation to cases where communities are relocated for infrastructure construction. They argue that “if one is willing to accept displacements under these circumstances, one should be considerably more inclined to do so in cases where climate refugees are in need of territorial compensation”¹⁸⁴.

There are, however, important disanalogies between these cases. The first important difference is size: whilst in cases of relocation due to infrastructure construction the number of those affected is likely to be small, relocation to create

¹⁸² Dietrich and Wündisch, ‘Territory Lost - Climate Change and the Violation of Self-Determination Rights’, 103.

¹⁸³ UNFCCC (Climate Change Secretariat), ‘Climate Change, Small Island Developing States’, 12.

¹⁸⁴ Dietrich and Wündisch, ‘Territory Lost - Climate Change and the Violation of Self-Determination Rights’, 102.

sovereign territory for 'sinking' states will likely require large numbers of people to be relocated. Where infrastructure construction requires the relocation of large numbers of people, we are generally less inclined to think that it is an acceptable option. Consider, for example, the widespread condemnation of forced evictions in the preparations for the 2008 Olympic Games in Beijing, where the Centre on Housing Rights and Evictions estimates that 1.5 million people were displaced¹⁸⁵. Another discrepancy between the cases lies in *who* receives the benefit of the infrastructure created. Whilst compensation might be adequate for some of those relocated, in cases of infrastructure construction, the political community (should) benefit overall. In contrast, the original political community does not benefit from cession, and, as such, its citizens might feel that they are shouldering an undue burden. The purpose of relocation is habitation in the area which is cleared for new arrivals. Given that the area would likely *already* be used for habitation, the relocatees would likely feel that they have a legitimate grievance against those who replace them. Whilst it is true that the harm faced by those moving within their own country would likely be less severe than those forced to abandon their islands, it nonetheless constitutes a harm which ought to be mitigated or avoided. Furthermore, in the case of infrastructure improvements, it is generally accepted that relocation should be avoided where there are alternative options available. In the case of cession of territory, there are alternate proposals, as is explored below. One reason to worry about proposals to cede territory is that they might disproportionately affect those most vulnerable. UNHABITAT and OHCHR have pointed out that "[d]iscrimination is frequently a factor in forced evictions"¹⁸⁶, which disproportionately affect the poor: "It is often their very poverty that subjects the poor to displacement and resettlement and being perceived as targets of least resistance"¹⁸⁷. For example, residents have claimed that displacement in the lead up to the 2014 World Cup and the 2016 Olympics in Rio de Janeiro has been used as a pre-text for social cleansing¹⁸⁸.

Arendt also highlighted the harm of this kind of forced displacement. Despite the significant harms faced by stateless Jews that she identifies, she highlights the plight of

¹⁸⁵ 'Olympics-Forced Evictions Dull Games Spirit for Some in Beijing'.

¹⁸⁶ OHCHR and UNHABITAT, 'Forced Evictions', 7.

¹⁸⁷ *Ibid.*

¹⁸⁸ Watts and Gibson, 'World Cup'.

those displaced during the establishment of the state of Israel, and during the Partition of India¹⁸⁹. Though there are clearly important distinctions between these cases and the case at hand, it is worth noting that they can both involve the forced displacement of one community to make way for another. This, however, need not undermine the importance of self-determination for those facing state extinction. Benhabib points out that “Arendt’s critique of Zionism was never a critique of aspirations for Jewish self-determination”¹⁹⁰.

Avoiding moral costs will require delicate political negotiation, if it is possible, and will likely further narrow the list of possible territories available for relocation. If such moral costs can be adequately avoided or compensated, however, this proposal does take seriously the *political* self-determination of those facing statelessness due to SLR. The cession of territory has some potential drawbacks: in terms of (iv) the risks to cultural integrity, it may require more severe cultural change, even if it is self-directed. It has potential moral costs which ought to be taken seriously, as well as difficulties of viability. It does, however, robustly provide for self-determination in the sense of political sovereignty, protecting against the harm of (iii) the loss of the political community.

4.2 ‘De-territorialised’ States and Self-Determination

Both Nine’s and Dietrich and Wündisch’s accounts presuppose a political conception of self-determination, requiring sovereignty; either a populace is self-determining (in which case it has sovereign control over some territory), or it is not (in which case it does not have sovereign control over any territory). They stress territorial rights as a precondition for sovereignty. For Nine, territorial rights are “instrumentally and (possibly) intrinsically necessary”¹⁹¹ for self-determination, though she concedes that “the possibilities of degrees of self-determination should be explored further”¹⁹². With a cultural conception of self-determination, however, it is plausible that there might be a response which does not require territorial sovereignty. Vaha encourages us to think of the state as a “*political authority* over the people and set of political

¹⁸⁹ Arendt, *The Origins of Totalitarianism*, 290.

¹⁹⁰ Benhabib, ‘Hannah Arendt’s Political Engagements’, 58.

¹⁹¹ Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, 363.

¹⁹² *Ibid.*, 372.

institutions”¹⁹³. Whilst the Westphalian understanding of the state conceives of it as being necessarily spatially limited, the case of ‘sinking’ states gives us good reason to consider non-territorially bounded states.

One proposal which conceives of the state in a post-Westphalian way, is that of the ‘de-territorialised state’, as set out by Rayfuse¹⁹⁴ and Ödalen¹⁹⁵. Rayfuse explicates the proposal as follows:

“[T]he deterritorialised state entity would therefore consist of a ‘government’ or ‘authority’ elected by the registered voters of the deterritorialised state. In essence, this ‘authority’ would act as a trustee of the assets of the state for the benefit of its citizens wherever they might now be located. The maritime zones of the disappearing state would continue to inure and be managed by that ‘authority’ such that the resource rents from their exploitation could be used to fund the relocation and continued livelihood of the displaced population – whether diasporic or wholly located within one other ‘host’ state. The ‘authority’ would continue to represent the deterritorialised state at the international level and the rights and interests of its citizens vis-à-vis their new ‘host’ state or states. These rights could include the right to maintain their original personal, property, cultural, linguistic and nationality rights for themselves and their descendants while simultaneously being granted full citizenship rights in the new ‘host’ state or states.”¹⁹⁶

Practically, this would involve a ‘government-in-exile’ operating from abroad, whilst citizens of the de-territorialised state would have dual citizenship with the host state. It is important to examine how far this proposal provides for self-determination and addresses the harms identified in the first two chapters. Firstly, however, I examine the extent to which it is viable.

One might imagine that it will not be possible for a state to continue to exist where it has lost its territory; indeed, we have seen that territory is one of the defining features of a state, hence the risk of statelessness for those living in states facing extinction. However, as previously noted, there is a strong presumption of continuing statehood in international law. McAdam points out that governments-in-exile have

¹⁹³ Vaha, ‘Drowning under’, 214.

¹⁹⁴ Rayfuse, ‘International Law and Disappearing States’.

¹⁹⁵ Ödalen, ‘Underwater Self-Determination’.

¹⁹⁶ Rayfuse, ‘International Law and Disappearing States’, 11.

functioned historically, subject to their *recognition* by the international community, rather than their meeting formal criteria¹⁹⁷.

There are multiple examples of ‘irregular’ states which continue to function internationally, despite their not meeting the criteria set out in the Montevideo Convention. The Sovereign Military Order of Malta is an oft-cited example of a sovereign international body without territory, and which has not held sovereignty over territory since 1798, and has permanent observer status at the United Nations¹⁹⁸. The Order, according to Constantinou, “exposes international law as a writing practice, not as an already written text with clear and fixed rules awaiting application”¹⁹⁹. Rayfuse points to the examples of Taiwan and the European Union to demonstrate the importance of recognition, writing that “international law is thus fully capable of responding to the problem of disappearing states in a way that positively recognizes their sovereign rights”²⁰⁰. It would seem that under international law, the proposal does indeed show promising signs of being viable, despite the criteria set out in the Montevideo Convention. Vaha points out that ‘sinking’ island states have strong claims to continuing recognition, since they have not lost the ‘self’, constituted by effective governance:

“[I]f one compares the quasi- or failed state, let say Somalia, to a sinking island state like Tuvalu, one can make a case that Tuvalu’s claim to (sovereign) statehood is stronger than that of Somalia merely because Tuvalu has not lost its ‘self’ in the form of effective governance and identity but only as something *instrumental* and contingent like territory.”²⁰¹

Given that it is possible under international law, subject to recognition by the international community, and given that ‘sinking’ island states have strong claims to their continuing statehood, there is indeed potential for the deterritorialised state proposal to function.

This proposal appeals to both the new host state and to the deterritorialised state in order to protect the right to have rights for those at risk. It would effectively respond to (i) the lack of human rights protection; if the populations affected are granted dual citizenship, then their host government will be required to protect their

¹⁹⁷ McAdam, “Disappearing States”, *Statelessness and the Boundaries of International Law*, 116–8.

¹⁹⁸ See ‘Malta - Permanent Mission to the United Nations’.

¹⁹⁹ Constantinou, ‘Irregular States or the Semiotics of Knight-Errantry’, 244.

²⁰⁰ Rayfuse, ‘International Law and Disappearing States’, 11.

²⁰¹ Vaha, ‘Drowning under’, 216.

rights in the same way that they do for their own citizens²⁰². Additionally, the government of the de-territorialised state would be able to advocate for their citizens at the international level, and to hold the host government accountable for the effective human rights protection of its citizens. In terms of (ii) alienation from the political community, there is certainly a risk that new citizens from ‘sinking’ states would be at risk of marginalisation as ‘outsiders’, but their dual nationality would preclude institutional marginalisation. Furthermore, the government-in-exile might be able to mitigate at least some marginalisation by exerting pressure on the host state to ensure that it does not tacitly accept it, but instead actively makes efforts to combat it.

However, one might rightfully ask what will be left of the state under such a proposal, given that it would not be able to establish or enforce laws where its citizens live. Citizens of de-territorialised states would undoubtedly be subject to the local laws of the host state. Indeed, Ödalen recognises that “by becoming deterritorialized these people have lost a valuable part of what self-determination ordinarily entails, namely independence from other political units”²⁰³. This is an important compromise to political autonomy; in terms of the harm of (iii) the loss of one’s own political community, there are clear disadvantages in this proposal. The political community *would* continue to exist according to this proposal, though it’s effective power would be greatly diminished. As such, this proposal stresses the importance of *cultural* self-determination, not of political self-determination: it understands the individual in terms of her community, and the importance of the state in terms of its function as a vehicle for the particular community’s continuity.

The de-territorialised state would, however, “promise more than merely providing the people of vanishing states with opportunities to uphold an abstract connection to the native land”²⁰⁴. The proposal made by Rayfuse, that governments-in-exile would still be able to exercise control over resources in its territorial waters, would be of great importance for some states. In Kiribati and Tuvalu, for example,

²⁰² Whilst it is clearly the case that some states do not have good track records in protecting the human rights of their citizens, this is not a problem related to the challenges facing those at risk of statelessness due to SLR. It will be clearly problematic for a state to fail to provide human rights protections, but this will be a problem of governance in the particular host state, rather than an inherent problem for the de-territorialised state proposal.

²⁰³ Ödalen, ‘Underwater Self-Determination’, 226.

²⁰⁴ *Ibid.*, 227.

fishing licences contribute “close to half of the Government’s revenue”²⁰⁵ and more than 45% of GDP²⁰⁶ respectively, and such revenues could make an important difference in terms of quality of life²⁰⁷. Regular elections would also ensure that the citizens could meaningfully think of the political community as their own. Nonetheless, as McAdam points out, over time the efficacy of the government-in-exile will wane, and “the presumption of diplomatic protection may gradually favour the state in which the person resides”²⁰⁸. Politically, the de-territorialised state is not as stable an entity as a state with sovereign territory; this proposal entails a risk that its capacity to function as a genuine political community will decrease over time.

In terms of (iv) the risks to cultural integrity, this proposal also emphasises different aspects. Ödalen also points out that regular elections would “help the diaspora of a vanished island state to maintain a sense of internal identity”²⁰⁹. This would go some way to promoting the shared cultural structure that was identified as valuable. Whilst it is may well be the case that it will be easier to avoid cultural domination where a state has its own territory and can host its population in one place, it is worth noting that the de-territorialised state proposal does supply some unique advantages in this area. It allows for both complete diaspora, as well as for the relocation of larger groups as identifiable minorities in host communities. We have seen that it is highly unlikely, for example, that land given over in cases of cession of territory will be geographically similar to the previous territory of the state, whereas under the de-territorialised state proposal, it would be possible for the population to be spread across states where land is used in more familiar ways, mitigating the changes in lifestyle that would otherwise be required. Populations might be able to be dispersed across more culturally similar islands in the Pacific, where they would at least be able to maintain some of their ways of life. Whilst the population would be spread in diaspora, this response would in this sense undoubtedly be more ‘local’. By contrast, in the case of the cession of territory, a far greater number of people would need to move to one area, which would significantly

²⁰⁵ C.I.A., ‘The World Factbook 2016-17 (Kiribati)’.

²⁰⁶ C.I.A., ‘The World Factbook 2016-17 (Tuvalu)’.

²⁰⁷ The extent to which this will make a significant difference will depend on other factors, such as how it is distributed and the cost of living in the host state.

²⁰⁸ McAdam, “Disappearing States”, *Statelessness and the Boundaries of International Law*, 117.

²⁰⁹ Ödalen, ‘Underwater Self-Determination’, 227. It is worth noting, however, that this proposal does not necessarily entail a diaspora.

reduce the options for land which is suitable in terms of ways of life and cultural traditions.

Relocating larger groups, including entire communities, into host countries, is also possible, and may make it easier for cultural ties to be kept intact. However, this may also have some drawbacks, since as more identifiable community, larger groups may be more susceptible to marginalisation. Diaspora itself, however, does not necessarily mean that it will no longer be possible to maintain the culture. In Tuvalu, for example, the dispersal and migration of populations often does not imply the loss of the connection to the community; Farbotko and Lazrus write, for example:

“[B]y generating remittances to the islands and nurturing social connections that extend back to and also beyond the islands, Tuvaluans living, studying and working overseas, although bodily absent from national territory, are acting very much in the national interest”²¹⁰

The diasporic experience does allow for cultural structures and webs of affiliation to be maintained, but it also risks cultural change being out of the control of the populations, at least to an extent. Living in a host state will undoubtedly require adaptation to new norms.

We can see, then, that this proposal also stresses different aspects of self-determination. Its potential drawbacks include its failure to guarantee genuine political self-determination, and the difficulty of maintaining the cultural structure in one place. It does, however, stress the cultural conception of self-determination, and provide for the possibility of a more local solution which takes into account the environmental conditions that might be preferable, emphasising the possibility of continuing ways of life that the community identifies as valuable. It also avoids the potential moral costs of the cession of territory, and does seem promising in terms of viability. Clearly, neither proposal is ideal, and each proposal stresses different aspects of self-determination, which will be of differing value to each self-determining community. The populations facing statelessness due to SLR are not homogenous, and are likely to have different preferences for how they continue as self-determining communities. This chapter has demonstrated that ‘self-determination’ is not a straightforward ‘solution’, but nevertheless can be adapted to the specific needs and wishes of the communities at risk.

²¹⁰ Farbotko and Lazrus, ‘The First Climate Refugees?’, 387.

Conclusion

Climate change-induced displacement raises a host of important questions, both practical and philosophical. I have undertaken to inform a response to the plight of a particular subset of those affected by it: those at risk of statelessness due to SLR. The central aim of this thesis was to identify the harms facing those at risk of statelessness in the context of SLR, and to inform a response to their plight. To do so, I have reconstructed Arendt's analysis of the harm of statelessness in light of the specific conditions facing those at risk of statelessness due to SLR. The Arendtian analysis has demonstrated that those at risk face the harms of (i) the lack of rights protection, and (ii) the alienation from the political community. Reconstructing this analysis in light of the context, we have further identified the harms of (iii) the loss of one's own political community, and (iv) the risk to cultural integrity. The Arendtian analysis has enduring relevance for those in this precarious situation, and we have seen that it is important to consider the specific challenges that they face. The concept of the 'right to have rights' has proven to be a useful point of orientation; by considering how to protect such a right in light of the specific harms identified, we determined that self-determination is the appropriate goal. Contrary to common understandings, then, the provision of citizenship will not always be the best way to protect the right to have rights, and this conclusion is supported by the Arendtian framework, though it is not identified by it in its original form. Two proposals for enacting self-determination were then considered: cession of territory by another state, and the de-territorialised state proposal. Each proposal stresses different aspects of self-determination and faces unique challenges, the appropriateness depends on the wishes and values of the particular self-determining population.

There are, however, further questions to be examined in future research. One concerns the responsibilities of different parties to fund and to shoulder the burdens of such proposals. Given that host communities will likely bear the brunt of the burdens of the deterritorialised state proposal, and that cession of territory has important moral costs, it is important to examine how such costs can be shared equitably. Furthermore, further research is needed into the 'push' factors of migration associated with climate change. In the case examined here, we consider planned, large-scale relocation. In all likelihood however, a lot of migration will occur before the point at which planned

responses are implemented, and climate change may be a driving factor in such migration. It is important both to identify the extent to which climate change is a factor in migration from small island states *in advance of* planned responses, and to determine what duties other states might reasonably owe to such migrants. This research would allow for a more complete understanding of the process of climate change related migration from those states facing extinction.

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