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What is asylum? More than protection, less than citizenship

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1 | INTRODUCTION

Increasingly, European and other Western States no longer wish to accept refugees but rather explore and implement extraterritorial asylum policies that seek to keep refugees safe in their region of origin or transit. Australia recently reached an agreement with Cambodia to permanently transfer recognized refugees (see Gammelthoft-Hansen, Pijnenburg, & Rijken, 2018, p. 366). Likewise, Israel reached transfer agreements with Uganda and Rwanda to exchange recognized refugees (see Bar-Tuvia, 2018, p. 475). States promote protection outside their territories as a mechanism that prevents the unmanaged inflow of refugees into their societies while also claiming that regional protection facilitates the return of refugees once their country of origin has become safe. For instance, the EU Migration Partnership Framework launched in 2016 identifies two main objectives of the EU's cooperation with third states: "enable … refugees to stay close to their homes" and "increase the rate of returns to the country of origin or transit countries" (European Commission, 2016, p. 5).

At least two objections can be loaded against extraterritorial refugee protection. One objection is voiced by legal scholars who stress that the outsourcing of protection neglects the dire predicament of refugees contained in the region and ignores the fact that "the international community (including the EU) has not enabled refugees to subsist in the countries where they find themselves" (den Heijer, Rijpma, & Spijkerboer, 2016, p. 621). Also political philosophers have expressed their concerns about the "contemporary proliferation of refugee camps" in the region of origin or transit as the "primary domicile for refugees" (Gündoğdu, 2015, p. 140). Another objection is that states use extraterritorial protection to navigate the rise of populism while ignoring the growth of local and urban initiatives to welcome refugees and offer them refuge. Upcoming research on refugee cities in Europe and sanctuary cities in the United States has already demonstrated the increasing role that local actors play in the reception of refugees where governments fail (Oomen & Baumgärtel, 2018). Local political actors such as the mayors of Palermo (Italy), Leipzig (Germany), and Ghent (Belgium) as well as nonpolitical urban actors have welcomed and integrated refugees in their cities, sometimes even against national laws and policies (Oomen, Baumgärtel, & Durmus, 2018). In so doing, they not only take

responsibility to guarantee human rights for refugees, but they also implicitly revive the historical practice of cities to declaring themselves to be places of *asylios*.[1]

In his 1996 speech to the International Parliament of Writers, Derrida (2001, p. 4) suggested that cities of refuge give reason for a critical reflection on asylum that might reorient the politics of the state.[2] Derrida could not foresee the invention of states to outsource refugee protection to other states in the region of origin or transit. Yet, with policies that offer *protection elsewhere*, the meaning and purpose of *asylum* is in urgent need of serious rethinking. To criticize the outsourcing of protection as well as to inspire city-actors in their search for new narratives on refugees and refugee cities (Oomen et al., 2018, p. 4), this article therefore aims to conceptually clarify the normative notion of asylum.

What justifies and necessitates a theoretical reflection on the notion of asylum is the lack of a definition of the term in current refugee law (see Den Heijer, 2012, p. 9). Legal discourse on refugees is still hampered by a discursive language that draws on a traditional and modern concept of asylum (see De Wilde, 2019, p. 472) that both tend to understand asylum as protection accorded by a state against another state. In addition to the legal understanding that limits asylum to protection, normative theories identify the refugee's need for new membership (see Owen, 2018; Walzer, 1983) and define asylum as the conferral of new citizenship (see Cherem, 2016; Price, 2009).

However, in this article, I will argue that both protection and citizenship are problematic in conceptualizing asylum. Equating asylum with citizenship ignores the fact that legally speaking, refugee status and the protection that follows therefrom are only temporary. Article 1 of the 1951 Refugee Convention not only provides the legal criteria for identifying refugees as persons "with a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a social group or political opinion." It also includes the circumstances under which protection ceases to apply and that has informed the three internationally recognized durable solutions—publicly promoted, for instance, by the UNHCR—to end the refugee's plight: return to the country of origin, resettlement in a state other than the country of refuge, or integration through naturalization in the country of asylum. When states blindly focus on return home to justify protection elsewhere, the focus on citizenship that features prominently in political philosophy is equally one sided.

In his reflections on cities of refuge, Derrida (2011, p. 7) raises the question of whether it is possible to redefine asylum "without repatriation and without naturalization". However, Derrida does not answer this question and his subsequent account of hospitality does not offer much guidance to elucidate the notion of asylum. To conceptually clarify asylum, I will instead turn to Hannah Arendt's reflections on the spatiality of the law. In drawing out the implications of the spatiality of the law for refugees, I will make the case that asylum is more than protection but less than citizenship. Specifically, I intend to show the importance of place in matters of asylum and propose a novel conception of asylum as a *legal place of one's own* where protection can be enjoyed anew. On this view, international refugee protection requires the *legal emplacement* of refugees within host societies rather than their seclusion or containment in the region of origin or transit.

To set the stage, I will sketch how protection has taken precedence over asylum in the history and theory of international refugee law. Legal theorists tend to limit asylum to protection from persecution, torture, inhuman treatment, or other human rights violations that people risk upon return to their state of origin. But the conceptual choice for understanding asylum in terms of protection accorded by a state against the home state has had political implications that none of the legal theorists might have intended. Specifically, it will be demonstrated how states navigate and use the discourse on protection to keep refugees at a distance (section I). I will then discuss a more philosophical understanding of asylum (section II). Like the (modern) legal understanding, this philosophical understanding equates asylum with protection from persecution. Unlike the legal understanding, it focuses on persecution to justify the refugee's claim to new membership. However, I will point out the shortcomings thereof and argue that citizenship fails to capture the temporary nature of asylum. Next, I will draw on the drafting histories of both the 1951 Refugee Convention and the subsequent Conventions on Statelessness and argue that the predominance of protection in law relies on the conceptual understanding of the refugee as a *de facto* stateless person that informed the drafting histories of the Conventions (section III). In particular, I will explain that *de facto* statelessness misrepresents the legal plight of the refugee and in

so doing obscures the meaning and purpose of asylum. This resonates with Arendt's strong—but often unnoticed—criticism targeted at the notion of *de facto* statelessness that she describes in *The Origins of Totalitarianism* as one of the "many efforts of the legal profession to simplify the [refugee] problem" (Arendt, 1966, p. 281). To define asylum, it therefore seems necessary to refine the concept of the refugee. I will thereby critically assess the notion of *de facto* statelessness by drawing on a different historical understanding of the refugee as an unprotected and unplaced person that featured in legal discussions after World War I (section IV). In particular, I will turn to Arendt to elaborate on the notion of an unplaced person as a new searchlight to understand the legal predicament of the refugee and to rethink asylum. To vindicate asylum from the more general notion of protection, I offer an alternative conceptual framework that explores Arendt's reflections on the spatiality of the law that can be found throughout her work. The basic thought at issue here is that the enjoyment of rights and freedoms requires an individual to be "in place" in somewhere in particular. Legal emplacement casts a new light on the predicament of the refugee.[3] I will argue that the refugee, upon fleeing, moves outside the legal bonds of protection that connect him to a state, and therefore, not only forfeits state protection but also always loses a *legal place of his own*[4] that was hedged in by this legal bond. In conclusion, it will be argued that asylum is not simply protection accorded by a state against another state as is commonly believed, but refers first and foremost to a *legal own place* where protection can be enjoyed once again (section V).

This article is not about defining who is, or is not, a refugee nor is it about the moral right to *seek* asylum. Also, this article does not provide a theory as to why we would care for refugees or offer a normative foundation for our obligations toward them. The modest aim of this article is to conceptually clarify the normative notion of asylum.

2 | ASYLUM AS PROTECTION UNDER THE LAW

Today, rising numbers of refugees are in need of international protection, but are barely given asylum. In her reflections on the mass displacement of refugees and stateless persons, Arendt (1966, p. 280) already noticed that the arrival of hundreds of thousands of displaced persons after World War I was followed by the abolishment of the right to asylum. Although asylum was not a right that the individual could claim vis-à-vis a state, states nevertheless often had the occasion to offer it (see Morgenstein, 1949, p. 336). As the practice of asylum had served as a good substitute for national protection (Arendt, 1966, p. 295), Arendt even called the right of asylum the symbol *par excellence* of the Rights of Man (1966, p. 280). Without a right of asylum, refugees and the stateless were reduced to "the abstract nakedness of being human and nothing but human" (Arendt, 1966, p. 299). Instead of asylum, an internment camp was all the world had to offer to them (Arendt, 1966, p. 284).

Arendt presented her analysis of human displacement and the importance of asylum shortly before the 1951 U.N. Refugee Convention created a new rights regime for refugees. There is an obvious appeal in the idea that with the advent of refugee and human rights law, the right of asylum has become redundant. According to its preamble, the explicit purpose of the Convention is to "assure refugees the widest possible exercise of … fundamental rights and freedoms." The conferral of refugee status upon recognition and the rights that derive from this status seemingly make asylum irrelevant.

However, somewhere in between the lofty ideal to assure that refugees have rights and freedoms and current policies, the system of refugee protection is falling apart. A case in point is the response of EU policy makers to the arrival of hundreds of thousands of refugees in 2015. The EU approach of control, deterrence, and prohibitive measures to prevent refugees from reaching the EU's borders demonstrated a clear unwillingness of the Member States to meet their obligations toward refugees (see Den Heijer et al., 2016, p. 607). Bauböck (2018, p. 142) sharply captures the EU's failure by arguing that despite the best conditions being in place in Europe for effective refugee protection, EU policy makers nevertheless failed to realize this potential. Indeed, the lion's share of the academic literature on the refugee question locates the failure to protect in the political unwillingness of states to comply with international obligations that they themselves voluntarily accepted. This implies that a proper observation of the 1951 Refugee Convention would correct these failures (see Noll, 2003, 341; Harell-Bond & Verdirame, 2005, p. 341).[5]

I do not wish to take issue with the view that states manipulate and circumvent their legal obligations toward refugees. However, I will argue that part of the explanation as to why states fail refugees also derives from the fact that states and academics alike have consistently interpreted legal obligations under the 1951 Convention in terms of *protection* rather than *asylum*.[6]

Crucially, under international law, there is no general agreement on the meaning and definition of asylum. Legal discourse on asylum mainly draws on a traditional and modern understanding of the concept (see De Wilde, 2019, p. 472). According to a traditional understanding, asylum refers to the sovereign right of a state not to extradite a foreigner at the request of his state of origin that urgently wants him back for unlawful or unfair punishment (Morgenstern, 1949, p. 330). The modern concept understands asylum as the right of the individual not to be returned to persecution (see Walzer, 1983, p. 50). Notwithstanding the differences between them, the traditional and modern concepts share an understanding of asylum as protection accorded by a state against another State.

What is more, from the history and theory of international refugee law, it even appears that *protection* has taken precedence over *asylum*. In refugee law, protection is typically understood as protection from *refoulement* (Hathaway, 2005, pp. 2–3). Protection from refoulement derives from Article 33 of the Refugee Convention that prohibits a state from returning or expelling refugees to a state where their lives or freedom would be threatened on account of their race, nationality, religion, social group membership, or political opinion. As the purpose of the Convention would be frustrated if refugees were denied access to the territory of a state, the prohibition of refoulement also imposes a negative duty upon states not to reject a person at the border and to provide access to a fair asylum procedure (see Lax, 2008, pp. 330–333). Protection from refoulement therefore applies to both asylum seekers and recognized refugees and is generally considered to be the corner stone of refugee protection.[7] Over the past few decades, international human rights law has made the prohibition of refoulement an integral component of the prohibition of torture and inhuman and degrading treatment that is enshrined in Article 3 of the European Convention on Human Rights, Article 3 of the Convention Against Torture, and Article 7 of the International Covenant on Civil and Political Rights. This has resulted in the expansion of the scope of persons to whom states owe protective obligations (see Paz, 2016, p. 16). Not only is protection given to political refugees who fear individual persecution by state authorities, but also, for example, war refugees come within the scope of persons in need of international protection. Legal scholars mainly focus on the conditions under which an individual can claim protection as a refugee and examine the circumstances in which a state is under a human rights obligation to offer a person refugee protection. The conventional opinion in legal scholarship is that asylum is largely unimportant as the duty to protect a person stems directly from the prohibition of refoulement (Den Heijer, 2012, p. 106). The predominance of protection is thus unquestioned.

Already in the 1980s, the legal scholar Kennedy (1986, p. 10) observed that due to the predominance of protection in refugee law, efforts to give asylum a substantive meaning have failed. Asylum, he argued, is hanging in the void (Kennedy, 1986, p. 41). Indeed, the international community appears to be in complete disarray when it comes to defining the meaning and purpose of asylum. Take the UN conference convened in 1977 to decide on a draft Convention on Territorial Asylum. This conference was the final act in a long-term effort that had started in the 1950s to elaborate upon the right to *seek* asylum as articulated in Article 14 of the Universal Declaration of Human Rights (see Grahl-Madsen, 1980, p. 14). The main aim was to formulate and establish an individual right to asylum. This logically required that attention be paid to the notion of asylum itself. But 20 years of efforts led to no further clarification other than the idea that asylum was "something more" than *non-refoulement*. Grahl-Madsen, who participated in the drafting process, pinpoints the failure of the conference *inter alia* in this conceptual haziness: "The term 'asylum' has no clear or agreed meaning. However, as used in the draft conventions before us, the term 'asylum' must clearly mean something more, or something different, from both *non-refoulement* and non-extradition" (Grahl-Madsen, 1980, p. 50). Suggesting that asylum is something more than a positive formulation of *non-refoulement*, Grahl-Madsen intimates that asylum is not exhausted by the right to *seek* asylum, nor can it be reduced to protection from return to a state where the refugee's life and freedom are seriously threatened. Grahl-Madsen (1980, p. 52) therefore muses that asylum "must have something to do with residence", allowing refugees to live in the territory of the host state instead of merely remaining or lingering there (see also GoodwinGill & MCAdam, 2007, p. 336).

Seemingly, the recent inclusion of a right to asylum in the Charter of Fundamental Rights of the European Union repairs the theoretical shortcomings with respect to asylum. Article 18 stipulates that "the right to asylum shall be guaranteed in due respect for the 1951 Refugee Convention." At least in its wording Article 18 seems to extend beyond the human right to *seek* asylum. However, legal scholars have been quick to point out that Article 18 is "linguistically vague and legislatively malleable" (Noll, 2005, p. 548). On the understanding that the Charter only reaffirms rather than elaborates existing rights, it is argued that Article 18, although seemingly expansive, does not refer to anything other than a procedural right to be granted access to the asylum procedure (see Goodwin-Gill & MacAdam, 2007, pp. 367–368). According to Goodwin-Gill and McAdam (2007, p. 358), an argument to establish an individual right to asylum is bound to fail, not only because of "the continuing reluctance of States formally to accept such obligation" but also "on account of the vagueness of the institution".

While the concept of asylum is theoretically underexposed in law, it is often used as synonymous with protection. However, this bias in favor of protection carries important normative implications for the practice of refugee protection. Prominent legal scholars have observed that the prioritization of protection at the expense of asylum serves the interests of states in keeping refugees at a distance (Kennedy, 1986, p. 12). According to Joan Fitzpatrick, protection allows "democratic states in mediating public demands that asylum not be a backdoor to immigration" (Fitzpatrick, 2000, p. 208). Likewise, Goodwin-Gill and MacAdam (2007, p. 343) argue that "words such as 'refugee' and 'protection' may offer some advantage over any comparable use of the word 'asylum' in situations of mass influx … A receiving state called upon to grant 'asylum' to large numbers may well demur." Indeed, the ramifications of prioritizing protection over asylum become clear every time states are confronted with large numbers of asylum seekers and refugees who seek access to their territories. The routine political response to a "refugee crisis" is the attempt to loosen the link between protection and (irregular) immigration (den Heijer et al., 2016, p. 618) and to advocate regional or extraterritorial protection with a view to returning home (see Castillo & Hathaway, 1997, p. 16; Hathaway & Neve, 1997, p. 151). An early example thereof was the UK's 2003 *New Vision for Refugees* in which the Blair-government argued for regional protection in response to the influx of refugees from the former Yugoslavia.[8] The *New Vision* was captured by the striking slogan "Pro refugee, anti- asylum seeking strategy" (Den Heijer, 2012, p. 2). Similarly, the EU Turkey Statement that was negotiated as a response to the 2015 refugee crisis also aims to offer regional protection in order to prevent the onward movement of Syrian refugees to Europe. The Dutch liberal party VVD, under whose EU Presidency the EU Turkey Statement was negotiated, firmly stated that regional protection is to replace asylum in Europe (Azmani, 2015).

As in Arendt's time, asylum has fallen out of favor and lost its argumentative function in contemporary debates and policies on refugees. In order to question the focus on protection and redirect attention to asylum, the next section explores a normative theory on asylum.

3 | ASYLUM AS A NEW FORM OF CITIZENSHIP IN POLITICAL PHILOSOPHY

In the past decade, the refugee question has increasingly become a genuine subject of philosophical reflection. The philosophical literature on refugees is mainly dedicated to what Parekh has coined the "ethics of admission" that focuses on the question of what moral obligations states have toward refugees who seek admission (Parekh, 2016, p. 51). Establishing a moral right of first entry for refugees, representatives of this "ethics of admission scholarship" offer the normative underpinnings of the legal prohibition to reject refugees at the border of a state (Bader, 2005, p. 340; Benhabib, 2004, p. 137; Walzer, 1983, p. 51). Subsequently, political philosophers tend to make a quick slide from defending first admittance rights for asylum seekers to advocating the right of citizenship for refugees (see Benhabib, 2004; Kesby, 2012; and also Carens, 2013).[9] Some, like Walzer, acknowledge that refugees have a need for membership (Walzer, 1983, p. 48) but do not apply the membership requirement to the concept of asylum. Others, like Price and Cherem, equate asylum with protection from persecution to justify the refugee's claim to new membership (Cherem, 2016, p. 180). This section discusses the latter argument.

While legal scholars hesitate to define asylum in its own right and instead interpret it in terms of protection, Price (2009, p. 248) challenges the view that asylum responds to the victim's need for protection. In fact, Price believes that the focus on protection has turned asylum into a disorderly concept. The vagueness of asylum is not a theoretical matter according to Price but is rather a legal-empirical one caused by the stretching of eligibility criteria for refugee protection by incorporating human rights norms in international refugee law. Price (2006, p. 415) observes that in the past decades, courts have expanded the scope of persons in need of "refugee" protection by including victims of human rights violations and those whose basic needs are not met by their own state (Price, 2006, p. 432). The corollary thereof is a shift from "genuine refugees" to the humanitarian category of "persons in need of international protection." The latter clearly exceeds the limits of persons with a well-founded fear of individual persecution for reasons of race, religion, political opinion, nationality, or social membership that the Refugee Convention provides. This has turned asylum into an overstretched concept (Price, 2009, p. 5). On Price's view, if asylum is vague, it is because current policies sap it. To recover the normative appeal of asylum, Price offers a political conception that relies on persecution as a defining element of refugeehood (see Price, 2006, p. 418). For Price, then asylum is not "a compassionate response to human suffering" (Price, 2004, p. 281) but is rather a distinctive response to persecution that protects persons who are no longer treated as a citizen by their own state. As a response to the loss of legal and political membership, asylum "confers a *political* good – membership" (Price, 2006, p. 43).

I disagree with Price for three reasons. First, Price embraces the Refugee Convention for its limited definition of the refugee as a person with a well-founded fear of persecution. But the Convention does not foresee a right to political membership or citizenship and does not exclude the possibility that refugees may be returned home once the conditions in their country have been improved. If refugees are entitled to membership, it is due to the passing of time and the length of their stay in the country of asylum.[10] But in itself, citizenship does not capture the temporary nature of refugee status and is therefore inadequate to illuminate asylum. Second, while I share with Price the need to prudently distinguish between refugees and other categories of migrants, his emphasis on individual persecution as central in explaining asylum sidelines the importance of the prohibition of refoulement that has become an integral component of the prohibition of torture and inhuman and degrading treatment. With the incorporation of human rights norms in refugee law, the prohibition of refoulement not only protects refugees who fear individual persecution, but also war refugees who face a real risk of serious harm due to violence in the context of war or international conflict. War refugees from Syria or refugees from Venezuela who have suffered severe human rights violations are not just "needy victims." Like Convention-refugees, they are no longer protected by the state of which they are a national.

Related to this is my third objection. Price's view that asylum is a response to persecution hinges on the conceptual error that the eligibility criteria for refugee protection also provide the terms in which the meaning and purpose of asylum is to be explained. The flaw in this approach is relevant to my purpose here. "Persecution" and "harm" are key in the legal definition of a refugee and are therefore central to *identifying* persons who are in need of international protection. But the legal criteria that define who is and who is not a refugee do not allow for a full identification and understanding of the problem for which the refugee seeks international redress. Put differently, the question of who is a refugee does not answer the question of what asylum is. "Persecution" reflects the lack of protection people suffer *within* their own country. But the predicament that the international refugee regime addresses transcends the danger people fear in their own country, and is instead targeted at the lack of protection that befalls refugees *upon fleeing* and which they experience *outside* their home country. As will be explained below, what matters from a legal point of view is that outside his or her own country, the refugee is without a well-defined legal and political status that protects him or her.

To sum up, I do not contest that asylum applies to those who on the basis of international refugee law can be recognized as refugees. But this does not in itself explain the meaning and purpose of asylum. In order to arrive at a proper understanding of asylum, it is insufficient to pit it against the legal refugee definition that refers to the situation in the refugee's country of origin. What is required is a proper understanding of the situation that befalls refugees upon fleeing. The next section traces a different history of the refugee protection regime than the one Price presents and discusses the notion of *de facto* statelessness that in the history of international refugee law was used to conceptualize the legal predicament of the refugee outside her own country.

4 | *DE FACTO* STATELESSNESS, FAILING REFUGEES

After World War II, and, in particular, in the build-up to a legal regime for stateless persons, *de facto* statelessness was coined as the conceptual tool to identify and understand the refugee question as a legal problem. As Nehemiah Robinson's influential interpretation of the drafting history of the 1954 Statelessness Convention shows, the distinction between *de facto* and *de jure* statelessness entered the scene to justify the existence of two different legal regimes for refugees, on the one hand, and stateless persons, on the other hand (see Robinson, 1955, p. 8). As is well known, the issue of statelessness was originally intended to be dealt with in an additional protocol to the 1951 Refugee Convention that would allow for a *mutatis mutandis* application of the provisions of the Convention to the stateless. However, during the second conference of plenipotentiaries convened in 1954 by the Social and Economic Council, it soon became clear that a Protocol would hardly be an appropriate document. The most crucial reason for this position concerned the fact that the apparent causes of statelessness essentially differed from those turning people into refugees. As the reverse of nationality, statelessness was conceived as a rather technical-legal problem caused by gaps in nationality legislation, the lack of access to birth registration, failures to issue identity documents, and problems resulting from State succession (see Weis, 1979, pp. 161–162). By contrast, a person becomes a refugee if he seeks to escape the threat that state authorities exert over his life and freedom.

The difference between *de facto* and *de jure* statelessness articulates the difference between the highly political circumstances that cause people to flee and the legal–technical causes of statelessness. So, to delimit the scope of persons who were to be protected by a formally and materially different convention for the stateless, the International Law Commission provided the following definition of statelessness: "Stateless persons in the legal sense of the term are persons who are not considered as nationals by any State according to its law" (Robinson, 1955, p. 8). According to Robinson, this "definition clearly referred to *de jure* stateless persons only, because if a person was only stateless *de facto* he was still considered a national by a State" (Robinson, 1955, p. 8). A decade later, Grahl-Madsen underscored the difference between refugees and the stateless in his classical work on refugee law, arguing that "[r]efugees are unprotected as a matter of fact, not as a matter of law, as are the stateless" (Grahl-Madsen, 1966, 97).

Crucially, then, *de facto* statelessness treats the refugee as a person whose lack of protection is a *brute* but not a *legal* fact. It purports to express that the refugee is in principle a national of the escaped state but that the bond of protection between her and the state is currently broken, perverted, or ineffective. The understanding that the refugee suffers from a factual lack of protection was reaffirmed in the UNHCR's *Eligibility Guide* of 1962, which stated that "a refugee is always a person who does not enjoy … protection. His nationality is rendered ineffective … The result is that he is always *de facto* stateless" (UNHCR, 1962, p. 81). More recently, in an important and influential study on statelessness by the founder of the Institute on Statelessness and Inclusion, van Waas highlights that the lack of nationality is not essential to the refugee definition that "relies on a question of fact rather than of law" (2008, p. 21). In contrast to *de facto* statelessness, *de jure* statelessness reflects a formal lack of protection due to the absence of nationality. Thus, while the refugee is destitute of protection due to an ineffective nationality, the stateless person lacks protection because he has no nationality at all (see UNHCR, 2010, p. 2).

As self-evident as the distinction may seem today, it was the very distinction between *de facto* and *de jure* statelessness that was already being challenged in the early days of the international refugee protection regime, both in political thought and legal thinking. In *The Origins of Totalitarianism*, Arendt strongly opposed the razor-sharp distinction between refugees and stateless persons and disdainfully spoke of "the so-called problem of *de facto* statelessness" (1966, p. 279) that she saw as proof of the deteriorating language on statelessness.[11] In her view, the very distinction between *de facto* and *de jure* statelessness "oversimplifies the refugee problem" (Arendt, 1966, p. 282). Also, in legal thinking, *de facto* statelessness was challenged. An important historical document in this respect was the 1954 report "Statelessness, including Nationality" in which Cordova, who for a very short time was the special Rapporteur of the International Law Commission, proposed a rethinking of the refugee question. Cordova's arguments never went mainstream. But it is important to briefly consider his report as it strongly argues, as did Arendt, that *de facto* statelessness misrepresents the legal position of the refugee.

At the heart of both Cordova's plea to rethink the refugee question and Arendt's critique targeted at the distinction between refugees and the stateless, it was the concern that *de facto* statelessness keeps the refugee out of legal sight as a person who has lost her place in the world. First, since *de facto* statelessness purports to express that the refugee's lack of protection is a matter of fact not of law, it ignores that refugees are driven outside the pale of law and find themselves in "a condition of complete rightlessness" (Arendt, 1966, p. 296). Second, since *de facto* statelessness reflects the assumption that the refugee is in principle a national of the escaped state, it likewise assumes that she properly belongs in her country of origin. As Arendt writes: "All discussions about the refugee problems revolved around this one question: How can the refugee be made deportable again?" (Arendt, 1966, p. 284). Like Arendt, Cordova also debunked the distinction between *de facto* and *de jure* statelessness, arguing that the former fails to come to terms with the quandary that refugees face. Somewhat provocatively he stated that "*de facto* statelessness is much worse than *de jure* statelessness" (see Cordova in Massey, 2010, 13). On the assumption that refugees are factually unprotected but nominally belong to their State of origin, receiving states can always retreat to a mere confirmation that refugees have been currently abandoned by their national governments without any normative implication. At best, states will allow refugees to remain, but "postponing *sine die* the final settlement of the problem" and "always maintaining the threat of some drastic action concerning them" (Massey, 2010, p. 14). The drastic act Cordova had in mind was involuntarily being sent back to a country that the refugee no longer considered as his own.

To summarize, both Arendt and Cordova show that the conceptual distinction between *de facto* and *de jure* statelessness has normative implications with an adverse effect for refugees. By virtue of their *de facto* statelessness, refugees are still considered to be nationals of a state, even though it does not use its power to protect but instead threatens them. That is, *de facto* statelessness at the end of the day assumes that refugees belong "there", that is, in their country of origin, and not here, that is, the country of asylum where they are nonmembers and do not belong. This theoretical assumption is made explicit by van Waas. As to the final settlement of the refugee's plight, van Waas (2008, 228) is well aware of the fact that a return home is more often than not impossible or impracticable for refugees, if only because many refugees also happen to be stateless (van Waas, 2008, p. 247) and most refugee crises are enduring situations. Nevertheless, with respect to refugees, she argues that at least theoretically, "their position can be resolved by return to their State of nationality, whereas that of the stateless requires the (re)instatement of citizenship" (van Waas, 2008, p. 225).

This ties in with the slogan that the UNHCR adopted in the 1990s to celebrate return home as the best and most favorable solution to the refugee problem and that still seems to exert its attractive force on states that engage in extraterritorial asylum policies: "There is no place like home" (see Harell-Bond & Verdirame, 2005, pp. 272 and 393). But the truth of the matter is, that for the majority of refugees—then and today—this slogan takes on a different and ironic meaning. There is literally no place that equals home. On the contrary, as Parekh rightly observes in her study *Refugees and the Ethics of Forced Displacement*, the moral ideal of "return home" is (mis)used by states to justify the containment of refugees in camps (Parekh, 2016, p. 18). Formally, the refugee is protected in a "safe country of first arrival," a "safe third country," or "transit country" where regional protection is offered, which are all legal definitions that do not deny that refugees are in need of international protection but feature that protection is to be sought elsewhere (see De Vries, 2007, p. 87). Factually, legal concepts such as "safe third country" and "regional protection" come down to sheltering refugees in camps that, as Arendt already observed, "has become the routine solution for the problem of domicile for 'displaced persons'" (1966, 279). At the limits of *de facto* statelessness, the camp appears.

Plausibly, the assumption that the refugee lacks factual protection and is still legally inscribed somewhere—that is, the state of nationality or the country of origin—is at the root of the bias in favor of protection with a view to return home. In other words, *de facto* statelessness breathes life into the stubborn view that refugees, as Harell-Bond and Verdirame (2005, p. 335) put it, "have an eternal and visceral tie with the country of origin – "home" - the place to which they will always belong". Against *de facto* statelessness, Arendt argued that the distinguishing feature of the refugee's plight is her "deprivation of a place in the world" (1966, p. 296). For Arendt, the refugee and the stateless person are in the same position: they have no state to turn to for their protection and face the dilemma of where they have a right to live. Arendt therefore argues that "the core of statelessness" is "identical to the refugee problem"

(1966, p. 279). Rather than *de facto* statelessness, she uses the notion of "the rightless" and "displaced persons" to refer to both refugees and the stateless. While in the vast literature of Arendt, the refugee's deprivation of a place in the world is often politically interpreted as the loss of a place in the public world that makes actions and speech politically relevant, the next section examines the notion of a displaced person from a legal perspective. In particular, it will be argued that the notion of a "displaced person"—or unplaced person—is crucial in thinking differently about the plight of refugees, and to come to a more profound understanding of the meaning and purpose of asylum. I will make this argument against the backdrop of (a) a brief discussion of the treatment of refugees and the stateless before 1951 and (b) a more general theory on the spatiality of the law.

5 | REFUGEES: *Anomos and Atopos*

The previous section discussed Arendt's and Cordova's critique of *de facto* statelessness. The underlying assumption of their criticism was that refugees and stateless persons should be placed on an equal footing as both represented a class of unprotected persons who live outside the bond of nationality. To support their arguments, they can be referred back to the legal and political discussions on refugees that dominated in Europe after World War I. Rather than focusing on states which, either in fact or in law, failed to protect their citizens, the emphasis was on "unprotected" and "displaced" persons in international law. For instance, in 1921, the International Red Cross (IRC) expressed the view that the lack of any form of legal protection was the main cause of the distress refugees had to suffer: "These people are without legal protection and without any well-defined legal status … [It] is impossible that in the 20th century there could be 800,000 men in Europe unprotected by any *legal organization recognized by international law"* (*League of Nations Official Journal*, 1921, p. 228). The grave misgiving that the IRC expressed did not target the regimes that stripped their nationals of protection, in fact or in law. Rather, the IRC gauged the protection gap in international law. As is well known, in the early 20th century, the individual when abroad did not enjoy international legal protection as a rights-bearing subject, but on account of his status as a national of a foreign friendly nation (Van Panhuys, 1959, p. 44). The alien was a *Gast im Recht*, enjoying legal protection under international law provided that his national government offered the relevant backing (see Panhuys, 1959, p. 57). That is, the protection the alien enjoyed when abroad was principled on the duty of the state of nationality to allow him to reenter.

The international protection of aliens implicitly invoked the plight of refugees. As the refugee no longer benefited from (diplomatic) protection that is normally attached to nationality, he could no longer rely upon a home government to give him its backing. In a decisive letter to the Social and Economic Council in 1949, the International Refugee Organization (IRO) brought attention to the refugee's exclusion from international law:

> The refugee is an alien in any and every country to which he may go. He does not have the last resort which is always open to the "normal alien" - return to his own country … Moreover, the refugee is not only an alien wherever he goes, he is also an "unprotected alien" in the sense that he does not enjoy the protection of his country of origin … A refugee is an anomaly in international law, and it is often impossible to deal with him in accordance with the legal provisions designed to apply to aliens who receive assistance from their national authorities. (As cited in Hathaway, 2005, pp. 84–85)

Like the IRC 20 years previously, the IRO did not pass political judgment condemning states of nationality for becoming states of persecution. Instead, the IRO sketched the dilemma that refugees presented within the international legal order: without any form of legal protection, refugees constituted an anomaly in international law. In its 1944 *Study on Statelessness*, the Social and Economic Council also stressed that beyond *de facto* and *de jure* statelessness, being unprotected within the international community was decisive (see Massey, 2010, p. 7).

This resonates with Arendt's description of "the rightless." Crucially, for Arendt being rightless was tantamount to having lost a place in this world. Thus, in addition to the legal observation that refugees were anomos, Arendt stresses

that refugees are also always atopos. More precisely, as will be explained below, on the basis of Arendt's disclosure of the spatiality of the law, it can be argued that refugees become anomos *because* they are atopos. Plausibly, Arendt was one of the first political philosophers to reflect upon the plight of 20th century refugees. According to her, the harm done to refugees consisted of the "fundamental deprivation of a place in the world which makes opinions significant and actions effective" (1966, p. 296). Since Arendt, numerous scholars across the disciplines have written on the core phrase of "a right to have rights" that Arendt prompted (Beltrán, 1998; Benhabib, 2004; Borren, 2008; Gündoğdu, 2015; Honig, 2009; Kesby, 2012; Krause, 2008).[12] Against the backdrop of the loss of the "right to action" and the "right to opinion," the right to have rights is predominantly interpreted as the right to politics and public visibility. For example, Parekh argues that our ethical obligations toward the displaced consist of respecting them "as members of the common realm and as political agents" (2014, p. 659). Likewise, David Owen emphasizes that refugees are not merely victims in need of protection but are also agents who should be enabled to "exercise agency in addressing the circumstances in which they find themselves" (Owen, 2018, p. 25). An ethics or politics of refugee visibility and agency is, of course, important. However, in the reminder of this article, I explore a different thread of thought in Arendt and will focus on her recovery of the importance of "place" in matters of rights, freedom, and equality. To do so illuminates what the deprivation of a place in the world legally means, allowing us to criticize the concept of *de facto* statelessness and to redefine asylum.

While the refugee's exclusion from agency and politics seems central to the reception of *The Origins of Totalitarianism* with the effect that the refugee's deprivation of a place in the world is mainly understood in political terms, for example, the lack of political standing, Arendt's latter work also explores the interrelation between law, rights, and place. For instance, Arendt recognizes the interrelation between place and rights in her critique of cosmopolitanism. In her impatience with all the popular talk of "world citizenship" and "universal equality," Arendt reminds us that the rights and freedoms of the one individual are not only limited by the rights and freedoms of his fellow citizens, but by the boundaries of a territory as well (see Arendt, 1970, p. 81). According to Arendt, laws "are the positively established fences which hedge in, protect and limit the space in which freedom is not a concept, but a living political reality" (1970, p. 82). Arendt here draws attention to the idea that rights and freedoms require spatial limitation. In *On Revolution*, she tailors this insight to freedom of movement: "Freedom where it existed as a tangible reality, has always been spatially limited. This is especially true for … the freedom of movement; the borders of national territory or the walls of the city-State comprehended and protected a space in which men could move freely … What is true for freedom of movement is, to a large extent, valid for freedom itself. Freedom in a positive sense is only possible among equals, and equality is by no means a universal valid principle but, again, only applicable with limitations and within spatial limits" (Arendt, 1963, p. 275).

Thus, for Arendt, the individual's enjoyment of rights and freedoms is spatially limited and an orderly freedom of movement is only thinkable in a world divided by borders. To further clarify the spatiality of the law and the normative implications it carries for thinking about refugees, it can be divided into three parts. First, the spatiality of the law puts emphasis on the interrelation between place and rights. Second, this brings into view what can be described as place identity. Third, it calls to mind the notion of a common world and elucidates what it means to be forced out of it.

To begin with the interrelation between rights and place, it follows from the spatiality of the law that rights do not simply befall the human being, but instead require a status that, first, identifies the individual in terms of rights and, second, allocates the individual to a state responsible for the protection of those rights. In Arendt's time as well as in ours nationality is the paradigmatic form of this status. Put otherwise, nationality is the primary (and privileged) form of the legal bond of protection between the individual and the state (see Van Panhuys, 1959, pp. 219–221). Indeed, within international law, the primary role and function of nationality is to allocate different individuals to different states. The legal scholar Weis (1979, p. 53) therefore argues that nationality is to be considered as an element of order.

If nationality is an element of order that allocates individuals to a state, and thus, specifies *which* persons are to enjoy *what* rights *where* and *when*, then the deprivation of nationality in fact or in law places a person in a situation in which it is wholly undetermined which rights he enjoys, where he is supposed to exercise them and who is responsible for granting those rights. Hence, at the start of the 20th century, with no legal regime in place for refugees, the refugee

challenged the view that the prime responsibility for the alien lay with the state of origin. If nationality is an element of order, the refugee represents disorder. The point of the matter was not that outside his own country, the refugee was out of place in the sense of "being misplaced," or "not belonging," or "being unlawfully present" in the country where he took refuge. Rather, it was that binary categories such as "being in place" and "being misplaced;" "being lawfully present" and "being unlawfully present;" and "citizen" and "alien" no longer properly functioned with respect to refugees (see also Lindahl, 2006, pp. 888–889). If, as the IRO voiced, the refugee constituted an anomaly in international law, this was because he could no longer be properly located in a foreign State where he belonged by virtue of his nationality. The refugee was *anomos* because he had become *atopos*.

To summarize, nationality—or more generally, legal membership—legally seals the individual's place within the international order. This engages the second insight that derives from the spatiality of the law: the problematic of place identity. To clarify, consider Joseph Carens famous case for open borders. Carens argues that state borders and legal membership are no less contingent than a person's skin color, sex, gender, talents of the mind, and so on, and should therefore be covered up with the Rawlsian "veil of ignorance" if we want to arrive at proper principles of justice in matters of migration and citizenship rights (Carens, 1987). Like Carens, I take borders and legal membership to be contingent facts. But unlike Carens, this does not mean that they are indifferent facts. Quite the opposite, these endowments and properties are precisely what matter to us (see Agamben, 1993, p. 1; and Visker, 1991). So, if legal membership is a contingent fact, it is not, for that reason, also an indifferent fact. In a similar vein, although the state where one holds legal membership might be a highly contingent place, it is not "indifferent wherever." Indeed, the place where one enjoys rights and is free among equals is not a mere geographic substrata and even less an arbitrary point in space. On the contrary, the place where one is free and enjoys rights is first and foremost one's *own place*. It is the place where the individual is at home with himself and others; it is the place where one shares and builds a world together with one's equals, where one gives voice to what matters by speaking up in the public realm, where one makes oneself a life, works, learns, loves, raises children and so forth. Indeed, to be a self, to relate to itself, the human being needs a dwelling place, an ethos (see Agamben, 1998, p. 118). To borrow from Edward Casey's phenomenological reflections on place identity: the place where one is free also always exerts its power over the individual "in place," a power that "determines not only *where* I am in the limited sense of a cartographic location but *how* I am together with others (i.e., how I commingle and communicate with them) and even *who* we shall become together" (Casey, 1993, p. 23).[13]

Legal membership thus also always engages the existential aspects of belonging. Put differently, membership legally seals a place within the world the individual can call her *own*. This does not mean that the human being is a native fixed by birth and blood in a particular ethnic community, or rooted in the territory of the state in which he is born. What it does imply, however, is that, in a variation on the famous line by the writer Améry (1970, p. 76) (himself once a refugee), the human being needs a *Heimat*, a secure place of his own. It is from this place and out of it that the free world can be explored. In fact, the cosmopolitan ideal of being at home just about everywhere in this world is not precluded by having a place of one's own: it is one's legal membership of a political community that allows and enables one to leave home and travel the world. As Van Roermund lucidly argues, it makes little sense to stage "world citizenship" or "cosmopolitan citizenship" as the opposite of nationality or spatially limited membership. Rather, the opposite of being at home everywhere is not to have a place of one's own somewhere. The opposite of being at home everywhere is to be nowhere in a legal sense (Van Roermund, 2009, p. 171).

This brings us the third insight: the notion of a world. The notion of a common world only makes sense on the assumption that each and every individual on account of his nationality has a "legal own place." Consider in this respect the following argument by Arendt: "All laws first create a space in which they are valid, and this space is the world in which we can move about in freedom. What lies outside this space is without a law, and even more precisely, without a world" (Arendt, 2005, pp. 189–190). Indeed, freedom of movement manifests the *commonness* of the world. If one crosses the borders of the state in which one holds legal membership, one does not encounter an empty space. Instead, one enters upon the territory of a foreign state. This shows, as Lindahl (2005, p. 242) clearly argues, that state borders not only separate one legal and political order from another, but also unite what they separate into an encompassing unity: the common world. Without also uniting what state borders separate, there would not be a foreign country

on the other side of the fence, but a desert instead. By the same token, the "other" would not be a foreign national belonging to a different state, but would instead be a barbarian.

What does this imply for refugees? More specifically, how does the spatiality of the law help refine the concept of the refugee? That rights and freedoms require a spatial limitation, and that this limitation gives the human being a place he can call his own and gives rise to a common world, manifests the refugee's plight outside his country of origin in full. Upon fleeing, the refugee not only crosses the territorial borders of the home state, but also always moves outside the normative bond of protection that connects him—even if ineffectively—to a state. In so doing, the refugee not only forfeits state protection, but also loses his own place that was hedged in and spatially limited by this bond of protection. Moreover, without a place of his own that is legally warranted, the refugee, as Arendt (1966, p. 302) argues, is forced outside the common world. The refugee, as lay parlance has it, has lost his home that signals the rupture of his private existence and the destruction of his social identity. As Owen perceptively argues, refugees are without "everyday social contexts [that] shape the horizon in which persons coherently conceive of, and act to realize, their futures selves" (2018, p. 30). But importantly, the loss of one's home not only reflects a personal problem but portends a more basic point: it also always engages the issue of a legal own place. Indeed, the plight of the refugee is not only that he is destitute of protection, but also that he is deprived of an own place that is legally protected. The refugee has lost his *abode*, that is, the place where he abides by the law and where he is properly dwelling.

The loss of an abode in the twofold sense of a legal place and a dwelling place makes the failure of *de facto* statelessness to capture the refugee's plight conspicuous. Through the looking glass of the lack of a legal own place, the refugee and the stateless person both experience the desperate situation of being nowhere in this world. Conceptually, both face the same dilemma: where do they have a right to live? The problem of statelessness cannot be oversimplified by stating that it is merely a technical-legal problem, as it also reflects the existential problem of having no proper place and no lasting place. Vice versa, the refugee cannot be said to have simply fled his home, as this also always engages the legal issue of emplacement and a legal own place. It is therefore reductive to stage strong opposition in theory between the refugee's lack of protection as a brutal fact and the stateless person's lack of protection as a legal fact. The refugee is an unplaced or displaced person who has the desperate experience "of having no proper or lasting place, no place to be or to remain" (Casey, 1993, p. xii).

The understanding of the refugee as an unplaced person who has lost a legal place of his own within the common world places us in a better position to arrive at a proper understanding of asylum.

6 | IN CONCLUSION: EMPLACING REFUGEES, GIVING ASYLUM

As was argued at the outset of this paper, asylum is a rather nebulous concept within international law and is generally interpreted in terms of protection. Subsequently, the view that protection is to be understood as protection from refoulement predominates in legal thinking. Protection from refoulement imposes upon states the negative duty *not to* reject asylum seekers at their borders and *not to* return refugees to persecution. As nonrefoulement is widely considered to constitute the corner stone of international refugee law, any positive obligation of the state to secure conditions in which refugees are able to enjoy their rights and freedoms is pushed to the margins. Put differently, if asylum is nothing more than mere protection, the possibility of a positive aspect to asylum that would enable refugees to continue their lives would be precluded.

In *Asylrecht*, the German legal scholar Otto Kimminich points out that asylum is an ambiguous notion that refers to either or both "protection" or a "place of protection" (1968, p. 7). Interestingly, Kimminich also indicates that over the course of time, the former meaning came to predominate over the latter (1968, p. 33). In this article, I have set out to demonstrate that the understanding of asylum in terms of protection relies on the conceptual understanding of the refugee as a *de facto* stateless person who has no proper or lasting place in the country of refuge as he is deemed to properly belong in his country of origin. Whether knowingly or unknowingly, the idea of *de facto* statelessness is committed to the view that refugees, at the end of the day, ought to return home that, in turn, justifies the outsourcing

of protection to the region of origin. Ultimately, the limitation of asylum to protection serves the exclusion of refugees from our societies.

Admittedly, the etymology of the word asylum, according to which it means "sacred and inviolable" and "freedom from seizure," shores up the limitation of asylum to protection. The limitation seems furthermore warranted by the fact that, as Rigsby points out, asylum is a negative adjective that denotes the absence of legal and political order (Rigsby, 1996, p. 10). In this respect, we can note Arendt's argument that what lies outside the boundaries of law is strictly speaking without a world. To understand asylum as a negative adjective that is limited to protection is virtually to deny the refugee a place in this world.

I therefore suggest that the Refugee Convention's ambition to assure refugees the widest possible exercise of their rights and freedoms is contingent upon the very thing that was cut out of asylum: place. Indeed, the view elaborated in this article that the refugee is an unplaced person in the sense of having no place of her own that is legally warranted gives reason to take the notion of place back into the account of asylum. In claiming asylum, the refugee not only claims protection, as is commonly believed but, above all, claims a legal place of his own where protection can be enjoyed again. If, as was argued during the drafting of the Convention on Territorial Asylum, asylum is something more than *non-refoulement*, this is because the restoration of the legal person of the refugee requires that he is assigned a legal place of his own. Asylum protects refugees by emplacing—instead of secluding—them in host societies.

While asylum is more than protection, it is less than citizenship. Owen (2018, p. 29) rightly points out that the Refugee Convention addresses the civil, social, and economic rights of refugees yet does not include political rights. My account of asylum as a legal own place matches Owen's plea to secure conditions that enable refugees to rebuild their social lives and be themselves again: "encouraging refugee inclusion in the social and economic life of the state of asylum (in contrast to the use of refugee camps) can, when adequately supported, significantly increase the ability of refugees to exercise agency in relation to their immediate environment and to engage in autonomous choices with respect to their short-term future" (2018, p. 31).

Granted, by including the notion of place, asylum anticipates the possibility that refugees again become rooted. To be sure, my account of asylum does not exclude the possibility nor denies the normative need to ultimately confer citizenship upon refugees. Moreover, of course, there will always be refugees who continue to regard the escaped state as the homeland for which they yearn. There will always be refugees who themselves decide to return home. Their wish to return (or stay) may change over time, and will be motivated by a penumbra of facts that, for the large part, remain unpredictable in the jagged course that human life can take. But the refugee's decision to bid farewell to the country of asylum or the normative need to allow refugees to acquire citizenship status within a reasonable period of time, does not refute the argument that in between return home or naturalization asylum offers the refugee a place of his own that is legally warranted.

This offers a new starting point for discussion that may further new interpretations of international refugee law that cities and urban actors may bring to local, national and international negotiating tables (see Oomen & Durmus, 2019, p. 146). Indeed, interpreting our legal obligations under the 1951 Refugee Convention in terms of protection rather than asylum may better serve the aims of the Convention. For the Refugee Convention is indeed like a wall. However, not a wall behind which refugees can shelter—as a UNHCR slogan in the 1990's stated (see UNHCR, 2001, p. 2). Rather, it is a wall, that like the walls of the City, spatially limits protection and hedges in freedoms and rights so as to emplace refugees once again.

NOTES

[1] Greek cities declared themselves to be places of *asylios* to assert themselves as free and dignified cities (Rigsby, 1996, p. 27).

[2] Indeed, as Ridgley (2008, p. 56) shows, cities of refuge may be important sites from which to challenge and change state policies.

[3] Kesby (2012) rightly argues that "place" is an extremely rich concept to analyze the right to have rights, and that it merits evaluating what it means to be in and out of place in the international legal order. However, Kesby does not tailor her findings to the issue of asylum.

[4] The notion of a legal own place was prompted by Lindahl (2006, p. 882; 2009, p. 140).
[5] Against the backdrop of the political unwillingness of states to protect refugees, academics have been devoted to exploring the normative foundations of refugee law. For an overview of different normative theories, see Parekh (2016).
[6] Gibney (2018, p. 5) also points out the difference between offering protection and granting asylum.
[7] This was explicitly stated by the UNHCR in the *Introductory Note to the Refugee Convention of* 2006.
[8] For an overview of discourses and practices of temporary regional protection, see Fitzpatrick (2000, pp. 282–287).
[9] Obviously, there is a wide variety of different principles that political scholars and philosophers explore to justify the legal and political inclusions of foreign-born persons (immigrants and refugees alike) in existing communities. For example, Honig (2009) explores the ethical principle of proximity and Bosniak (2007) examines territoriality as a normative principle for inclusion, while Cohen (2011) clarifies temporality as an ethical-legal principle to confer citizenship status.
[10] For the function of time in politics and the conferral of citizenship, see Cohen (2018).
[11] In her discussion of the harm of statelessness, Serena Parekh also refers to Arendt's use of the term *de facto* statelessness. According to Parekh (2014, p. 650), Arendt perceives and appreciates *de facto* statelessness as the proper term to describe displaced refugees. My interpretation differs from Parekh's reading of Arendt. Given that *de facto* statelessness was precisely the term used to conceptualize the refugee question during the drafting period of the Refugee Convention and two conventions on statelessness, I show that Arendt criticized rather than recommended the notion of *de facto* statelessness.
[12] Interestingly, the right to have rights is conceived as a right to action and to politics (Benhabib, 2004; Gündoğdu, 2015; Honig, 2009) or as a right to citizenship and nationality (Kesby, 2012) but not as a right to asylum.
[13] Generally, for a philosophical and anthropological understanding of the relation between place and identity, see Waldenfels (2009).

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