

## **The Declaration of the Rights of the Man and Citizen (1789) vs. The Universal Declaration of Human Rights (1948).**

### **The perspective of Hannah Arendt about the claim of universality and inalienability of the human rights stipulated in these Declarations**

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#### **Abstract:**

*Both the French Declaration of the Rights of the Man and Citizen (1789) and respectively The Universal Declaration of Human Rights (1948) have been adopted as necessary measures of safeguard against a background of countless atrocities and tyrannies that have oppressed mankind during its history. These official declarations, with the claim of universality and inalienability, even if they appear in different contexts, they resemble the human desire to restore their rights and their due respect, which were previously constrained by the sovereign power of the privileged social classes. The two Declarations of human rights are proven to be mostly just theoretical, incapable of being applied mostly when their protection would be more required. Human rights are not as absolutely universal and inalienable as the Declarations pretend them to be, depending exclusively on the national rights, on the rights of the citizen. This is emphasized and analyzed by the philosopher Hannah Arendt. She finds the existence of a paradox of human rights stipulated in these two Declarations. By referring to this paradox, she intends to dismantle the claim to universality and inalienability of human rights, sustained by both official Declarations.*

**Key words:** Declaration of the Rights of the Man and Citizen, The Universal Declaration of Human Rights, the universality and inalienability of human rights, the paradox of human rights, the rights of the citizen, the rights of a human being.

## **Introduction**

*The Declaration of the Rights of the Man and Citizen* of 1789 was issued during the ongoing events of the French Revolution, the purpose of which was the overturning of the old order of the absolutist monarchic regime of Louis XVI, marking the entrance of the beginning of modernity. The document was intended to delineate a programmatic framework for the emancipation of the individual from all the forms of servitude that were characteristic of the old feudal order, a framework that was to provide the basis for establishing the constitution of the new social order. The main causes of the French Revolution were the financial and economic crisis in which France has found itself due to the high expenditure taken by the wars in which it has been involved between 1740 and 1783, combined with widespread corruption: large prejudices done against the state treasury by those who were to collect taxation from the People, but had diverted the funds for personal gain. In order to try to remedy the situation, the king has called, on 5 May 1789, for the meeting of the Estates-General<sup>1</sup> at Versailles. The representatives of the Third Estate, unwilling to accept that despite their vast numerical superiority over the representatives of the other Estates, their vote was to be considered as carrying less weight than that of the other Estates, withdrew from the meeting and declared themselves to

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<sup>1</sup> The Estates-General was comprised by the representatives of the three Estates: the First Estate was the clergy, the Second was the nobility and the Third, while standing for the rest of the People, was effectively composed of representatives of the bourgeoisie.

be the sole representatives of the People, calling their own meeting the National Assembly. Their declared purpose was “the elaboration of a *Declaration* of the fundamental principles that are to stand at the basis of a new constitution”<sup>2</sup>.

The text of *The Declaration of the Rights of Man and Citizen*, emitted by the National Assembly, was intended to embody the universalizing of the ideals of the ongoing French Revolution – Freedom, Equality, Fraternity. It is considered as the fundamental charter that has laid the basis of modern democracy in France. Its preamble situates the legitimacy of such a universalizing in the doctrine of natural law: being “a solemn *Declaration* that expounds on the natural, inalienable and sacred rights of man.” Its purpose was to serve as constant reminder of the rights and duties of the members of the social body. The premise of the *Declaration* refers to a break with an anterior state<sup>3</sup>, in which due to failure to respect these rights of Man the result was always violence. The failure to respect the natural rights of Man is explained in the preamble of the *Declaration* through the concepts of ignorance (in the social hierarchy of the feudal system, only the superiors, the elite, had access to culture and education, the inferiors being relegated to a fate of ignorance), forgetfulness (referring to an anterior period during which private interests were held higher than public ones), contempt (for all that was anterior, for the past itself).

*The Universal Declaration of Human Rights* (1948) owes its existence to the United Nations, an organization created in order to prevent the resurgence of violence and atrocities similar to those of the World War II that has just ended. This Declaration as a guarantee of universal human

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<sup>2</sup> *The Declaration of the Rights of Man and Citizen* (1789), Preamble.

<sup>3</sup> “Ignorance, forgetfulness and the contempt for the rights of man are the only causes of popular unhappiness and of the corruption of governments.” *The Declaration of the Rights of Man and Citizen* (1789), Preamble.

rights and freedoms, was drafted during two years by the Human Rights Commission, which was composed of eighteen members from eight U.N. member-countries. The most important Human Rights Committee Members are: Eleanor Roosevelt (USA), Rene Cassin (France), Charles Dukes (England), Charles Malik (Lebanon), William Hodgson (Australia), Herman Santa Cruz (Chile) și John Humphrey (Canada).

Adopted by the U.N. member states at 10 December 1948, *The Universal Declaration of Human Rights* envisions a normative ideal towards which all nations and all People should strive for. A strategic importance is given to education and learning, that should be used as tools to develop the respect of the citizens of all countries towards these rights and freedoms, this being the first step towards their realization.<sup>4</sup> Education is considered as the primordial and most important means through which these rights may be realized effectively. For this reason, the U.N. asks that the *Declaration* be exposed and read publicly everywhere, but more so in the institutions of education.

The premises of the elaboration of *The Universal Declaration of Human Rights*, as part of the *U.N. Charter*, are the fundamental nature of freedom, justice and peace for the respect of the dignity, of the equal and inalienable rights of the member-states of the U.N. as well as the manifest nefarious and violent consequences of the ignorance of human rights. Thus, it is important that human rights should be protected by

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<sup>4</sup> “Now, Therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.” *The Universal Declaration of Human Rights* (1948), Preamble.

law, so that people could hope for a world where human beings shall enjoy freedom of speech and belief. The Human Rights Declaration is part of U.N. Charter, which promotes faith in: fundamental human rights, in the dignity and human values, rights and gender equality in social progress.

### **Structure statements and comparative analysis of both Declarations**

Both *Declarations* start with a preamble section, listing the aspects previously mentioned. With regard to the content of the articles, the two *Declarations* present both similarities (they assume a politically independent stance, their purpose being to enforce the respect for human rights; both espouse a secular viewpoint, making no reference to any determinate deity – the concept of the sacred in not being used here as a theological category, but as a reference to the universal validity of the human rights, derived from the very nature of the human beings as such) and certain differences with regard to the essence of the rights and the concepts that these are based upon (the XX-th century *Declaration* brings as novelties the concepts of dignity, work, family and education, unmentioned as rights in the XVIII-th century one).

a) *The Declaration of the Rights of Man and Citizen* contains 17 articles that describe three categories of rights: the rights of Man in general, the rights of the French citizens – the freedoms that the law shall guarantee them – and the rights of the French nation. As an instrument of societal change, the *Declaration* itself is more centered on the passage from natural man to citizen, discussing less man itself and more about social organization, about how to organize a new type of society.

The first four articles refer to the rights of man in general, rights that do not depend for their validity on the existence of a state or a law. These are what are stated to be as

the fundamental and inalienable rights of man: freedom and equality. It must be observed that, while making its appearance in the first article as a natural right of all men, irrespective of the conditions of the social organization in which they live, equality reappears later in the category of the rights of the citizen, through the concept of equality before the law. In the case of both the 1789 and the 1948 *Declarations*, the first article is simultaneously the most relevant and the most problematic. In the case of the first *Declaration*, this article takes the following form: "People are born and remain free and equal in rights. Social differences may be founded only on public utility." The important elements here are the natural and inalienable rights that man has from birth: freedom and equality. These proceed from and are inscribed in the nature of man, positing an essential link between right and the biology of the human being, the inalienable character of the rights stemming immediately from the fact that the human being is born as such. This inalienable character of the rights is emphasized by the use of the verbs at present tense: "are born" and "remain". Thus, the revolutionary quality of this article is the negation of the existence of any natural social differences between men, all having the same birthright for freedom and equality. The second part of the article introduces with subtlety the rights of the citizens, as members of a definite political body (whereas the first part referred solely to men in general): public utility is the only criteria that may establish social differences between men. If the first part of the article affirms that all men are born and remain equal in rights, the second brings the amendment that there are, in fact, social differences between men, but that these must be established solely on the base of public utility. Public utility refers to the direct satisfaction of the public needs and interests. This means that, in the view of the authors of the *Declaration*, public interest is to be given priority over private interest, public good being of superior import than private good.

The people being free and equal in rights, in order that there be common wealth, the existence of social differences is affirmed as necessary. Why should this be so? Why can't personal interests coincide with the general interest? A possible answer could be that equality with regard to rights may be just a legal fiction, the missing cornerstone somehow necessary for the construction of the edifice the National Assembly intended to build: a new legal order. In the second article, that lists the inalienable rights of man that have to be upheld by the political association<sup>5</sup>, equality is already missing. It is replaced by other inalienable rights: the right to security and the right to resist oppression. The right to freedom remains as an inalienable right all through the *Declaration*, the fourth article<sup>6</sup> defining its limits. Its content can be rendered as meaning that my freedom stretches until where the other's freedom begins – one is free to do whatever one wants, for as long as one's action does not affect someone else. The only limit in exercising this right is that one's freedom should not encroach upon someone else's exercise of his own freedom, thereby giving rise to conflict. The limit between the freedoms of different individuals is to be determined by law.

If the first two articles regard the relationship between the individual and the political association, the third<sup>7</sup> regards the very purpose of the National Assembly: the destruction of

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<sup>5</sup> "The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression." *The Declaration of the Rights of Man and Citizen, Article 2*

<sup>6</sup> "Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law" *The Declaration of the Rights of Man and Citizen, Article 4*

<sup>7</sup> "The principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it." *The Declaration of the Rights of Man and Citizen, Article 3*

the old regime (the absolutist monarchy) and the constitution of a modern democratic nation-state. The sovereign, the supreme source of all legitimacy and authority is no longer the monarch, governing by divine right, but the nation born out of the People. The question that had to be resolved was that of internal sovereignty<sup>8</sup> foremost, of how can a power derived from the People be exercised legitimately over the People.

The first four articles referring to the rights of man as such, starting with the fifth article, the *Declaration* turns towards the citizen's rights, rights that are limited by law. According to the sixth article<sup>9</sup>, the law is expression of the general will, in the formation of which every citizen has the right to participate, either directly or through the intermediary of representatives. The law must consider all citizens as equals. An aspect of this equality is the equal opportunity for occupying a job, an equality that must be guaranteed by law. According to the fifth article<sup>10</sup>, the law may forbid only such actions as that are deemed detrimental to society, limiting the freedom of the citizens only if they are breaking an effective law.<sup>11</sup> The

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<sup>8</sup> External sovereignty regards the relationship between states, questions of international law.

<sup>9</sup> "The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents." *The Declaration of the Rights of Man and Citizen, Article 6*

<sup>10</sup> "The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain." *The Declaration of the Rights of Man and Citizen, Article 5*

<sup>11</sup> "No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty." *The Declaration of the Rights of Man and Citizen, Article 7.* "The Law must prescribe only the punishments that are strictly and evidently necessary; and



purpose of lawful punishment is to determine the citizen to respect the provisions of article four<sup>12</sup>. The rights of the citizen expressed in the next articles are: the right to be punished only in virtue of an existent effective law (from this being derived also the duty of not resisting an arrest made in conformity with the law), the right to the presumption of innocence, the right to the freedom of expression of opinions and beliefs (for as long as they do not bring harm to the freedom of others)<sup>13</sup>, the right to own property<sup>14</sup> and the right of being informed on the activities of the political force that guarantees these rights<sup>15</sup>.

The last category of rights stated in this *Declaration* is that of the rights and duties of society, envisioning the guarantee of the rights of the man and citizen through the institution of a impartial public force, sustained by taxes levied from the citizens, and through a constitution that effectively

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no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied." *The Declaration of the Rights of Man and Citizen, Article 8.*

<sup>12</sup> "Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law" *The Declaration of the Rights of Man and Citizen, Article 4*

<sup>13</sup> "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order." *The Declaration of the Rights of Man and Citizen, Article 10.* "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law." *The Declaration of the Rights of Man and Citizen, Article 11.*

<sup>14</sup> "Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid." *The Declaration of the Rights of Man and Citizen, Article 17.*

<sup>15</sup> "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration." *The Declaration of the Rights of Man and Citizen, Article 14.*

imposes conformity to the principle of the separation of state powers.<sup>16</sup>

b) *The Universal Declaration of Human Rights*, similarly to the XVIII-th century *Declaration*, starts with a preamble – of which I have written above – and 30 articles referring to the rights of the human being in general, his juridical rights in the context of an existing legal framework, the obligations of the human being, as well as on the paramount role of education in the realization of these rights. These classes of rights are somewhat similar to those described by *The Declaration of the Rights of Man and Citizen*, but also bring certain additions and differences: the first six articles refer strictly to the human being in general, without implying the existence of a law or a juridical statute of the human being. The first article – “All human beings are born free and equal in dignity and in rights. They are endowed with reason and conscience and must behave one towards the other in the spirit of fraternity.” – is fundamentally different from the first article of the 1789 *Declaration* by the recourse to the concepts of dignity, reason, conscience and fraternity. The concept of dignity – first developed as fundamentally linked with that of humanity in the philosophy of Kant<sup>17</sup> – is the foundation from which all the

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<sup>16</sup> “To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.” *The Declaration of the Rights of Man and Citizen, Article 12.* “For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.” *The Declaration of the Rights of Man and Citizen, Article 13.* “Society has the right to ask a public official for an accounting of his administration.” *The Declaration of the Rights of Man and Citizen, Article 15.* “Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.” *The Declaration of the Rights of Man and Citizen, Article 16.*

<sup>17</sup> In the *Metaphysics of Morals*, Kant differentiates between means and ends in themselves, and likewise between things that have a price and things that cannot be priced. Kant argues that human beings are such that their value cannot be quantified even in terms of usefulness, of their relative utility with

other specific rights stem from: the right of not being subjected to torture, of not suffering humiliations, to be respected, to be free. Dignity is an integral, compact concept, that does not admit any transgression, relativization or exception from it. The urgency that makes itself felt in the use of this concept in the first article of the *Declaration* is due to the fact that the horrors produced during the course of the Second World War that has just ended were not only transgressions against certain determinate rights, but affronts against human dignity as such. Another difference from the 1789 *Declaration* is that while birth confers freedom and equality in dignity, in rights, in reason and in conscience, all these together realize a synergy that leads to the development of acceptance and respect for the other, hence to the development of a feeling of fraternity that may unite humanity in a world of peace – a world that may be free from the scourge of war and the untold sufferings that it brings.

The second<sup>18</sup> and the third article<sup>19</sup> develop the first, upholding the universality of human rights, the fact that they do not depend in any way on race, religious beliefs, color of skin, the political status of a country. Social differences are no longer admitted as permissible, as it was done in the 1789 *Declaration*

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regard to an end. The categorical imperative of Kantian ethics states that human beings should never be considered simple means towards an end (however lofty it may be), but always as ends in themselves. As ends in themselves, they cannot be assigned a relative price, hence their value is only the absolute value of dignity.

<sup>18</sup> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." *The Universal Declaration of Human Rights, Article 2.*

<sup>19</sup> "Everyone has the right to Life, liberty and security of person." *The Universal Declaration of Human Rights, Article 3.*

on the basis of their public utility. The third article describes the fundamental rights of the human being: the right to life, freedom and security. In the 1789 *Declaration*, the right to life was not formulated, and instead of the right to security there was a right to safety, although these two are not altogether the same thing. Freedom appeared explicitly as an inalienable right also in the 1789 *Declaration*, together with the complementary duty of not infringing upon the freedom of another.

If in the 1789 *Declaration* the rights of the citizen appear from his relation to the framework of the law, in *The Universal Declaration of Human Rights*, the emphasis is on the rights of the human being in his relation with law. Thus, the human being has the following rights that were not to be found in the former *Declaration*: the right not to be subjected to slavery<sup>20</sup> and torture<sup>21</sup> (linked to the rights to dignity, integrity and unrestricted freedom safe for reasons established by due lawful process following pre-existent laws)<sup>22</sup>, the rights to paid vacation and holidays<sup>23</sup>, the right to a universally-recognized juridical status<sup>24</sup>, to be protected by law against discrimination

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<sup>20</sup> "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." *The Universal Declaration of Human Rights, Article 4.*

<sup>21</sup> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." *The Universal Declaration of Human Rights, Article 5.*

<sup>22</sup> "No one shall be subjected to arbitrary arrest, detention or exile." *The Universal Declaration of Human Rights, Article 9.* "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." *The Universal Declaration of Human Rights, Article 11.2.*

<sup>23</sup> "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." *The Universal Declaration of Human Rights, Article 24.*

<sup>24</sup> "Everyone has the right to recognition everywhere as a person before the law." *The Universal Declaration of Human Rights, Article 6*

and injuries to one's reputation and honor<sup>25</sup>, the right to fair and impartial trial<sup>26</sup>, the right to the presumption of innocence<sup>27</sup>, the right to receive political asylum<sup>28</sup>.

Besides these rights, the present *Declaration* differentiates itself from the previous one also through the explicit presence of rights linked to family, education and work. The legal age being reached, a couple may marry if both parts express their free consent, having from that moment onward rights protected by law – the right to have a family and the right of the family to be protected by the state<sup>29</sup>, the right of the

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<sup>25</sup> "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." *The Universal Declaration of Human Rights, Article 8*. "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." *The Universal Declaration of Human Rights, Article 12*.

<sup>26</sup> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." *The Universal Declaration of Human Rights, Article 10*.

<sup>27</sup> "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." *The Universal Declaration of Human Rights, Article 11*.

<sup>28</sup> "Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations." *The Universal Declaration of Human Rights, Article 14*.

<sup>29</sup> "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." *The Universal Declaration of Human Rights, Article 16*.

mother and the child to receive protection and welfare if needed<sup>30</sup>. The human being has a right to an equitable employment, in satisfying work conditions, receiving for it a wage corresponding to the effectuated work, with which to be able to assure for himself and his family an existence in accordance with the requirements of human dignity: the right to a decent living, the right to be able to support one's family.<sup>31</sup> An essential pillar for the realization of all these rights is that offered by the concept of education. The human being has an equal right to education in general, to gratuitous elementary and general education, to participate in the cultural life of the community, to participate to research and scientific progress, his moral and cultural interests being protected by law.<sup>32</sup> The duty of education is to teach the value of respecting the rights of the human beings, to take an active part in the development of human personality and capacities, and to promote

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<sup>30</sup> "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." *The Universal Declaration of Human Rights, Article 25.2.*

<sup>31</sup> "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests." *The Universal Declaration of Human Rights, Article 23.* "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." *The Universal Declaration of Human Rights, Article 25.1.*

<sup>32</sup> "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." *The Universal Declaration of Human Rights, Article 27.*

understanding, tolerance and friendship between people of different races, beliefs and nationalities.<sup>33</sup>

### **Hannah Arendt's personal view on the provisions of the two *Declarations*. Her critiques against the universality and inalienability of the rights and freedoms stipulated in both *Declarations***

Hannah Arendt, in the chapter on “The Decline of the Nation-State and the End of the Rights of Man” from her work *The Origins of Totalitarianism* brings a series of critiques to these two *Declarations*, dealing mostly with the 1789 one. She intends to prove that, according to these two acts, human rights have value only in the framework of national rights and their corresponding legal institutions, which are the only ones to have the means of guaranteeing the respect of a right. She argues that there is a paradox at the very heart of the conceptualization of the human rights, which appears as evident at the very moment when human rights become problematic as such, as the rights of a being that retains only the quality of being human: “The loss of the rights of man coincides with the moment in which a person becomes just a human being in general – without a profession, without citizenship, without opinions, without a title by which to identify and specify himself – and differs in general by not

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<sup>33</sup> “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children.” *The Universal Declaration of Human Rights, Article 26*.

representing anymore anything else than his own absolutely unique identity which, lacking any means of expression and action inside a common world, loses any significance.”<sup>34</sup>

Her argument starts from marking the purpose of the XVIII-th century *Declaration* and the change that it brought with it: “the emancipation of man from under any form of tutelage and the announcement that he has become of age”<sup>35</sup>. Man becomes the only source of law, without any reference to history or to the divinity, the historical<sup>36</sup> or divine rights being replaced with natural rights supposed to be inalienable, supposed to be independent of any government, citizenship and nationality, as self-evident truths, given by birth to any man. Being self-evident, they were considered as the universal fundament of any other possible law, without it being necessary that they be given official form in the constitution or in any specific law.<sup>37</sup> The XVIII-th century *Declaration* describes a secularized, emancipated society, where all men have “inalienable” rights from their birth, canceling feudalism with its privileges allotted to the nobles and the clergy. The purpose of the *Declaration* was “to provide an extremely necessary protection in this new era, when people were no longer certain of the social standing of their birth or of their equality as Christians in front of God”<sup>38</sup>. A constitution was urgently needed to provide legitimacy to the order of the new regime, due to the social strife that has engulfed society due to the

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<sup>34</sup> Arendt, *Originile totalitarismului*, 377.

<sup>35</sup> Arendt, *Originile totalitarismului*, 363.

<sup>36</sup> As it was clearly stated in the preamble of the two *Declarations*, the past acts of violence and barbarity were rendered possible because the immanent rights of man were disrespected. The immanent character of these rights, their inherence in pure human nature made them to be considered as “the rights of the naked savage”. Arendt, *Originile totalitarismului*, 375.

<sup>37</sup> “No special law was considered necessary to protect these rights, being presupposed that all laws are founded upon them.” Arendt, *Originile totalitarismului*, 364.

<sup>38</sup> Arendt, *Originile totalitarismului*, 363.



economic crisis and the violence used in ending the privileges of the formerly dominant estates.

If the first two articles describe a sovereignty of Man in relation to his emancipation, and the necessity of recognizing the existence of his “inalienable” rights, guaranteed according to the second article by the political association, with the third article one can observe the reduction of Man from the position of an individuality independent of the political order to that of a simple citizen as a part of a nation, losing the aura conferred to him by the first two articles.<sup>39</sup> The People and not the individual has become the image of Man, the *Declaration* talking about the citizens of a state and not about Man as such. The rights of Man become part of the right of the People to sovereign self-determination, confirming the agenda of the French Revolution, the realization of the passage from monarchy to modern democracy.<sup>40</sup> The joining of human rights to national rights (citizenship being that which guarantees the quality of someone being human)<sup>41</sup> first manifested its aporetic character at the end of the First World War, when, after the signing of the peace treaties that had ended the war, there appeared a mass of persons who had lost all their national rights (minorities, the stateless, the refugees) remaining only with their purely human ones, presupposed to be “universal and inalienable”, but that were utterly useless, without any government to guarantee and enforce them, exactly because

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<sup>39</sup> “Man had just appeared as a completely emancipated and isolated being that wore his dignity in himself without having to refer to a more comprehensive and more general order, when he disappeared again into a simple member of a People.” Arendt, *Originile totalitarismului*, 364.

<sup>40</sup> “The sovereignty of a People (as distinct from that of a prince) was not proclaimed through the grace of God, but in the name of Man, so that it seemed altogether natural that the <inalienable> rights of man would find their guarantee and would become an inalienable part of the right of Peoples to sovereign self-government.” Arendt, *Originile totalitarismului*, 364.

<sup>41</sup> “All human beings were citizens of a kind of political community.” Arendt, *Originile totalitarismului*, 366.

they were not official part of the constitution.<sup>42</sup> Practically, these persons carried their lives under a state of exception<sup>43</sup>, their rights were rights of exception, losing altogether the universal character so strongly affirmed in both *Declarations*, showing these rights as nothing more than “the proof of a hopeless idealism or of the confused hypocrisy of half-wits”<sup>44</sup>, completely unrealizable factually. With the loss of their citizenship, the stateless persons lose two fundamental categories of rights: the loss of a community to which to belong as into a home in the world – on which the very life of the social animal called human being depends– with the added injury of not being able to find any new community to which to belong, since no one wanted them, a community where their opinions and actions, their life, would be able to acquire a meaning;<sup>45</sup> and the loss of the protection of any government, leading automatically to the loss of their legal status, their placement outside the law, in all the countries of Europe<sup>46</sup>, amounting to their excommunication from mankind. They could not find any community to accept them, being excluded from every country – that already had formed a single world, outside which no one had any right save a minimal right to live. If this minimal right

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<sup>42</sup> As already mentioned, the rights of Man were considered by those who redacted them as evident in and through themselves, as the foundation of all law, hence not requiring to be founded on any law.

<sup>43</sup> They had the exceptional status of the void. Ultimately, their human rights were “the standard slogan of the protectors of the disadvantaged, a kind of supplementary law, a right of exception necessary for those that had no other succor.” Arendt, *Originile totalitarismului*, 366.

<sup>44</sup> Arendt, *Originile totalitarismului*, 338.

<sup>45</sup> “All of a sudden, there was no place on Earth towards which these immigrants could have directed themselves without the direst of restrictions, no country in which they could have been assimilated, no territory where they could have found a community of their own.” Arendt, *Originile totalitarismului*, 367.

<sup>46</sup> “The reciprocity treaties and the international agreements have woven a net surrounding Earth, making it impossible for the citizen of any country to take his legal status with him if he went to another place.” Arendt, *Originile totalitarismului*, 367.

to live also disappears, it may be said that such people do not exist anymore. Their tragedy is not that they have lost certain rights, but the fact that they have no community to belong to, because no one in the whole world wants them.<sup>47</sup>

With the arrival of the stateless people, the European nation-states from between the two World Wars changed their legislations in an attempt to get legally ridden of these unwanted people. These states had two options, born out of the abolishment of the right to political asylum: their repatriation or their assimilation. Both failed, because no country wanted to receive them and because they also did not want to let themselves be assimilated, to give up their nationality, their cultural heritage. Having only a bare minimum of a right to live, the solution to survive and not be deported (to another country that would also not receive them) was either to become a criminal<sup>48</sup> or a valuable recognized genius – either solution taking them into the folds of the law and into the respect of the citizens.

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<sup>47</sup> They suffer not because they are not equal in front of the law, but because there is no force of law for them; they suffer not because they do not have the right to freedom, but because they do not have the right to act; it is not that they do not have the right to think, but that they do not have the right to have opinion: “Their freedom of opinion is the one that a madman enjoys, because nothing they could think has any importance whatsoever.” Arendt, *Originile totalitarismului*, 370. “Man may lose all his so-called Rights of Man, without losing his essential quality of being human, his human dignity. But the loss of a polis to belong to excludes one from humanity.” Arendt, *Originile totalitarismului*, 372.

<sup>48</sup> “The same man who was yesterday locked in a dungeon due to his simple presence on the face of the world, living without any right and under the constant threat of deportation, or who was interned without any trial and any sentence just because he tried to work in order to gain a living, may become a citizen with almost complete rights just through the means of committing a little theft.” Arendt, *Originile totalitarismului*, 358.

## **Conclusion**

The two *Declarations* of human rights are proven to be mostly just theoretical, incapable of being applied mostly when their protection would be more required. Human rights are not as absolutely universal and inalienable as the *Declarations* pretend them to be, depending exclusively on the national rights, on the rights of the citizen. This was shown clearly and repeatedly in the case of persons who have lost their national rights and remained only with their rights as human beings in general, rights that guaranteed them practically nothing. We become aware of the importance of these rights and of the necessity of having an effective mechanism to safeguard them only when we see them broken, for once they have been lost to a person, they only with utmost difficulty may be gained back due to the global political and economic situation. These human rights belong to the dignity of the human being as such, not on his quality as citizen of a particular country, and should be valid in any situation without any exception – an inalienable right that suffers exception does not seem to be so inalienable after all – “even if only a single human being would exist on the whole Earth: they are independent of human plurality and should remain valid even for a single human being that is exiled from the community”<sup>49</sup>. The right to have rights should be effectively guaranteed by human dignity, by humanity itself, not by the utility that the individual provides for the whole.

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