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'The nation has conquered the state': Arendtian insights on the internal contradictions of the nation-state

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Abstract

The globalisation of political power into structures 'above' or 'beyond' the nation-state has increasingly been called into question as part of a 'sovereigntist turn' in contemporary politics. While such demands for local control by bounded peoples may be democratic, empirically they often also take a nationalist form. Building on Hannah Arendt's analysis of how 'the nation conquered the state', I argue that the slippage from *democratic* to *national* sovereigntism is rooted in fundamental conceptual instabilities within the concept of the nation-state. Whereas the first term in this hyphenated construct favours certain individuals based on their ethnic background, the latter is a universal concept that demands the equal treatment of all. My basic thesis is that these internal contradictions help to explain the nationalist tendency in calls to return political power to the nation-state. I illustrate these points by drawing on examples from the 'illiberal democracies' of Central-Eastern Europe, focusing on Poland and Hungary.

Introduction

While the globalisation of political power into structures 'above' or 'beyond' the nation-state defined much of political development during the post-war era (1945–1989), since the turn of the millennium this transformation has increasingly been called into question. Proponents of this 'sovereigntist turn' on both the right and the left have pushed back against the international disempowerment of national *government* by post-national *governance*, albeit for different reasons.[1] While the former tend to focus on immigration policy and the protection of existing cultural practices in the face of increasing multiculturalism (which conservative critics see as detrimental), the latter argue that multinational corporations and global market forces can only be restrained by popular sovereignty operating at the local level.[2] Despite these differing motivations, both sides agree on the necessity of moving political competencies back 'down' to the level of the nation-state.

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[1]Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford, CA: Stanford University Press, 1964); Seyla Benhabib, 'The new sovereigntism and transnational law: Legal utopianism, democratic scepticism and statist realism', *Global Constitutionalism*, 5:1 (2016), pp. 109–44.

[2]For example, see David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016); Wolfgang Streeck, 'The return of the repressed', *New Left Review*, 104 (March–April 2017); Richard Tuck, *The Left Case for Brexit: Reflections on the Current Crisis* (Cambridge: Polity Press, 2020).

Empirically, these sovereigntist 'commitments to territoriality, national politics, deference to executive power, and resistance to comity or international law as meaningful constraints' have usually been accompanied by a 'new' or 'neo-nationalism'.[3] Theoretically, however, such statist movements need not be connected to nationalism. On the contrary, a communitarian variant thereof could simply emphasise that coercive legislation cannot be legitimate unless it is adopted by a bounded, self-determining people that can see itself both as the author and the subject of the law.[4] In other words, conceptually there is no reason why *popular* sovereignty, understood as the right of all citizens within a given territory to have a say in creating the rules that govern them, should slip into *national* sovereignty, where the views of the members of the dominant national community are given preference in decision-making.

In practice, however, arguments for empowering the state via popular sovereignty often turn into appeals for national sovereignty via nationalistic jurisprudence.[5] Observationally, this association is clear in 'illiberal' regimes such as Poland and Hungary, where resistance to the supremacy of international and European law links a popular, majoritarian interpretation of democracy directly to local control and national self-determination.[6] It is also visible in the United Kingdom (UK), where the desire to restore the omnicompetence of Westminster was a key driver of Britain's exit from the European Union (EU), among both conservative defenders of English exceptionalism and old-school socialists, who wanted to restore Parliament's ability to expropriate private property. Meanwhile, in the United States conservative jurists argue that comity and international law should not be treated as meaningful constraints on national prerogatives.[7] The lack of respect for human rights and xenophobia on display in such sovereigntist movements has fuelled growing fears of a 'return of fascism'.[8]

Even in the face of such worries, proponents of nationalism point to its continuing power as a source of communal solidarity. For example, in the wake of Russia's invasion of Ukraine in February 2022, Francis Fukuyama has called on 'liberals not to give up on the idea of the nation', arguing that the defence mounted by Ukrainians against overwhelming odds has made it clear that national identity 'can be shaped to reflect liberal aspirations and to instill a sense of community and purpose among a broad public'.[9] However, while undoubtedly inspiring, it is important to remember that the bravery of the Ukrainians would not be necessary if it was not for the militant nationalism that drove Russia to attack its neighbour based on the dubious claim that they are one historical, ethnic, and cultural people.[10] Furthermore, it is also unclear whether Ukraine's nationalism will remain civic in the future, or whether the brutal experience of war with Russia will drive further nationalistic conflict.

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[3]Harold Hongju Koh, *Transnational Litigation in United States Courts* (New York: Foundation Press, 2008), p. 248; Eirikur Bergmann, *Neo-Nationalism: The Rise of Nativist Populism* (London: Palgrave Macmillan, 2020).

[4]See Thomas Nagel, 'The problem of global justice', *Philosophy and Public Affairs*, 33:2 (2005), pp. 113–47; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998); Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, MA: The Belknap Press of Harvard University Press, 1998).

[5]Maureen A. Eger and Sarah Valdez, 'Neo-nationalism in Western Europe', *European Sociological Review*, 31:1 (2016), pp. 115–30.

[6]Fareed Zakaria, 'The rise of illiberal democracy', *Foreign Affairs*, 76:6 (1997), pp. 22–43.

[7]Sophie Meunier and Milada Anna Vachudova, 'Liberal intergovernmentalism, illiberalism and the potential superpower of the European Union', *JCMS: Journal of Common Market Studies*, 56:7 (2018), pp. 1631–47; Aron Buzogány and Mihai Varga, 'The ideational foundations of the illiberal backlash in Central and Eastern Europe: The case of Hungary', *Review of International Political Economy*, 25:6 (2018), pp. 811–28; Tuck, *Left Case for Brexit*.

[8]Seyla Benhabib, 'The return of fascism', *The New Republic* (29 September 2017), available at: {https://newrepublic.com/article/144954/return-fascism-germany-greece-far-right-nationalists-winning-elections}; Benjamin A. Schupmann, 'Constraining political extremism and legal revolution', *Philosophy & Social Criticism*, 46:3 (2020), pp. 249–73.

[9]Francis Fukuyama, 'A country of their own: Liberalism needs the nation', *Foreign Affairs* (May/June 2022).

[10]Vladimir Putin, 'On the historical unity of Russians and Ukrainians', The Kremlin, available at: {http://en.kremlin.ru/events/president/news/66181}.

In this paper, I argue that understanding this 'sovereigntist turn' necessitates a renewed engagement with the nation-state as the basic unit of political science and international relations. More specifically, the empirical linkage between statism and nationalism raises important theoretical questions about the relationship between the two terms that comprise this foundational concept. While the two elements of the nation-state can be separated analytically by treating the state as the institutional regime in which rule and order occurs and the nation as the predominant description of the collective agent that does the ruling and ordering, it is unclear whether they can be kept apart in practice.

Building on Hannah Arendt's analysis of how 'the nation had conquered the state' in the *Origins of Totalitarianism* (1951, hereafter OT), I root the recent slippage from *popular* to *national* sovereigntism to the fundamental conceptual instability of the nation-state.[11] While this hyphenated construction appears to have logical unity as a result of its frequent use, I show that its two poles actually pull in opposing directions, eventually leading to 'the transformation of the state from an instrument of law to into an instrument of the nation' (OT, p. 275). Whereas the first term in the nation-state favours certain individuals based on their ethnic background, the latter is a general concept that demands the equal treatment of all under the law.

My argument has three main implications. First, my use of Arendt's methodological framework demonstrates the value of focusing on how conceptual contradictions play out in practice. Second, I highlight theoretical dangers and contradictions of the new sovereigntism by explaining its connection to neo-nationalism. Finally, I provide a new analytical framework for investigating concrete instantiations of the nation-state by charting whether the former term, which focuses on the protection of universal rights, or the latter, with its emphasis on popular sovereignty, has priority. My reading of Arendt – as well as my application of her ideas to the present – thus brings together different substantive debates and literatures from different subfields of politics and international relations within a common theoretical and empirical framework.

I am hardly the first to draw on Arendt in highlighting 'the historical and institutional contradictions of the idea of the nation-state'.[12] However, in contrast to the existing literature, I do not focus on the implications of her analysis for citizenship or on the ability of stateless migrants to claim a 'right to have rights'.[13] Instead, I zero in on her claim that the nation-state is always in tension with itself, as it is invariably caught between particularism and universalism. Additionally, while it is true that OT's 'methodology is opaque' and 'aporetic', I show that Arendt's example-based arguments, which draw extensively on history and sociology, can overcome the traditional division between description and prescription in international theory by focusing on how conceptual contradictions play out in practice.[14] I also contribute to the existing scholarship on the 'new sovereigntism' by applying these ideas to examples within politics at the start of the 21st century to explain the nationalist tendencies visible in contemporary calls for a 'return to the nation-state'.[15]

[11]Hannah Arendt, *The Origins of Totalitarianism* (New York: Brace Harcourt, 1951), p. 275; Benhabib, *The New Sovereigntism and Transnational Law*.

[12]Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), p. 63.

[13]See, for example, ibid., pp. 49–69; Frank I. Michelman, 'Parsing "a right to have rights"', *Constellations*, 3:2 (1996), pp. 200–8; Christoph Menke, 'The "aporias of human rights" and the "one human right": Regarding the coherence of Hannah Arendt's argument', *Social Research*, 74:3 (2007), pp. 739–62; Andrew Schaap, 'Enacting the right to have rights: Jacques Rancière's critique of Hannah Arendt', *European Journal of Political Theory*, 10:1 (2011), pp. 22–45.

[14]Nicholas Devlin, 'Hannah Arendt and Marxist theories of totalitarianism', *Modern Intellectual History*, 20:1 (2021), p. 2; Ayten Gündoğdu, '"Perplexities of the rights of man": Arendt on the aporias of human rights', *European Journal of Political Theory*, 11:1 (2012), pp. 4–24; Joshua Foa Dienstag, 'The example of history and the history of examples in political theory', *New Literary History*, 48:3 (2017), pp. 483–502.

[15]Gerard Delanty, 'Return of the nation-state? De-Europeanisation and the limits of neo-nationalism', *Journal of Contemporary European Research*, 17:2 (2021), pp. 102–115; Chiara Pierobon, 'Back to the nation-state: Citizenship practices in Germany and Italy', *Eurosphere Working Paper Series*, 26 (2010); Martin Eiermann, 'Instead of debating the future of Europe, liberals are content with retreating back to the nation-state', LSE European Politics and Policy (EUROPP) blog (28 June 2012), available at: {https://blogs.lse.ac.uk/politicsandpolicy/europe-liberals-eiermann/}.

My basic thesis is that the internal tensions between particularism and universalism within the nation-state help to explain why statism is often paired with nationalism. I make this argument in four steps. I start by briefly examining the conceptual and historical origins of both the nation and the state, as well as their fusion in the nation-state. An exploration of the internal political contradictions of this hyphenated concept follows. In her analysis of 'The Decline of the Nation-State and the End of the Rights of Man', Arendt argues that as they are 'the most symptomatic group in contemporary politics' (OT, p. 277), the treatment of migrants reveals the underlying pathologies of the nation-state. In the third section, I illustrate the political implications of these theoretical problems with examples from the European migrant crisis of 2015, focusing in particular on the new, 'illiberal' regimes that have developed in Central-Eastern Europe (CEE) at the start of the 21st century. I conclude by reflecting on the broader implications of this argument for the debate between sovereigntists and supporters of global constitutionalism within international theory.

The concept of the nation-state

As is true of most of the social sciences, the basic concepts of politics and international relations are contested. It is therefore not surprising that a basic term like the nation-state would resist clear definition. The difficulty of such an enterprise is enhanced by the fact that given its prevalence the meaning of this hyphenated concept in contemporary parlance seems obvious. Most of the time, therefore, this expression is simply used to describe the predominant form of political community around the world.

However, this reflexive, quotidian usage masks a number of difficulties. To start, the quixotic nature of nation-state is increased by the fact that this term is often used interchangeably with its constituent parts, *nation* and *state*, as well as with other closely related words, such as *government, regime*, and *people*. The fact that multi-ethnic, multinational polities such as the UK and Belgium, as well as settler colonial societies such as the United States and Australia, whose populations never shared a common national origin, are often referred to as nations or nation-states makes matters even more confusing. Even scholars who are committed to 'vocabular precision' often thus 'improperly and inconsistently utilize these fundamental terms'.[16]

I cannot hope resolve the myriad ambiguities, imprecisions, and inconsistencies involved in the usage of the nation, state, and nation-state; fortunately, my goal is more modest. Rather than establishing firm definitions or engaging in a full-blown genealogy of these concepts and the differences between them, I merely aim to show that the hyphenated construction of the nation-state contains a number of internal tensions and contradictions. I argue that this conceptual analysis helps to explain the often-observed tendency of arguments for *popular*, communitarian forms of sovereigntism, which do not rely on any preexisting characteristics of belonging to determine the composition of 'the people' in question, to slide into an ethnic, pre-political *national* sovereigntism instead.[17]

In the Anglosphere, the term 'state' began to displace older terms – such as the realm or body politic – in reference to the form of union underlying civic government at the end of the sixteenth and beginning of the seventeenth century.[18] During the European Renaissance, the idea of state thus originally referred to the status of royals, who had to act in order to 'maintain their state' (*mantenere lo stato*) – i.e. their status as princes – and employed councillors and other 'officers of state' (*officiers d'état*) to help them do so. Eventually, through a process of linguistic slippage,

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[16]Walker Connor, 'A nation is a nation, is a state, is an ethnic group is a …', *Ethnic and Racial Studies*, 1:4 (1978), pp. 377–400 (p. 379).

[17]See Seyla Benhabib, 'Claiming rights across borders: International human rights and democratic sovereignty', *American Political Science Review*, 103:4 (2009), pp. 691–3.

[18]While I confine my brief analysis to English due to constraints of space, a similar story leading to the same basic conclusions could be told about *l'état, der Staat*, and the word for the state in most other European languages as well.

the idea of the state was expanded to include maintenance of the legal and territorial integrity of the *corpus politicum* more generally, not just of the personal status of its ruler.[19]

The key point is that 'maintaining one's state' focuses on keeping political power and control over a given territory; it does not imply any form of peoplehood or purpose beyond the preservation of the 'totality of power' (*summa potestas*) or 'sovereignty' (*souveraineté*). For example, in his famous definition of the 'Citie or state' in the *The Six Bookes of a Commonweale* (1576, original English translation 1606), Jean Bodin notes that these terms refer to 'the union of the people under the same soveraigntie of government'.[20] While sparse, this definition reiterates the fact that the state refers to a civic polity; states are defined by the fact that their powers apply to all without regard for background or creed. Quentin Skinner therefore concludes that at its core, this term refers to 'a specific type of union or civil association, that of a *universitas* or community of people living subject to the sovereign authority of a recognised monarch or ruling group'.[21]

The universalist impulse of the state as a civil association-based universal popular sovereignty stands in contrast to the central connotations of the nation, which are more particularistic and exclusive. Although Valery Tishkov is right that 'all attempts to develop terminological consensus around *nation* resulted in a grand failure', it is still possible to out some basic points of agreement.[22] Just as critics agree that the state is a 'civic union, a body or society of people united under government', the nation is generally seen as an 'imagined' form of pre-political community.[23] While it overlaps with the state, it is not conceptually tied to it. However, since the age of nationalism, which is usually dated to 1848, the nation has been linked to the desire for national self-determination, i.e. to a desire for national sovereignty.[24]

The etymology of the nation points to a key difference between this term and the state. Whereas the state originally refers to a status – i.e. something that can be maintained or lost – the nation is rooted in a fundamental characteristic of birth (*natio*). While a foreigner can become a citizen of a state, strictly speaking a non-national cannot become member of the 'abstract community' of the nation.[25] Additionally, as a result of its concrete competencies, jurisdiction, and institutions, the state has a certain objective force. By contrast, 'nationality is essentially subjective … a sentiment based upon real but diverse factors, political, geographical, physical, and social, any or all of which may be present in this or that case, but no one of which must be present in all cases'.[26] It is precisely the affective character of the nation that makes it both difficult to define and politically powerful.

Historically, the nation became a source of legitimacy for state authority in Europe over the course of the nineteenth century through the various movements for national liberation and/or unification. For instance, in his path-breaking lecture 'What Is a Nation?' (1882), Ernest Renan linked the backward-looking 'possession in common of a rich heritage of memories' directly to a forward-looking 'desire to live together, and the will to continue to make the most of the joint inheritance'.[27] While the legacy and traditions of the nation were often 'invented' by activists and national entrepreneurs, these ideas served as an important new source of solidarity when Europe's multiethnic empires started to break down.[28] During the era of Romanticism, these political

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[19]Quentin Skinner, 'A genealogy of the modern state', *Proceedings of the British Academy*, 162 (2009), pp. 327–8.

[20]Jean Bodin, *The Six Bookes of a Commonweale*, ed. Kenneth Douglas McRae (Cambridge, MA: Harvard University Press, 1962), 1.2, p. 10.

[21]Skinner, *A Genealogy*, p. 327.

[22]Valery A. Tishkov, 'Forget the "nation": Post-nationalist understanding of nationalism', *Ethnic and Racial Studies*, 23:4 (2000), pp. 625–650 (p. 627).

[23]Skinner, *A Genealogy*, p. 332; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991).

[24]Eric Hobsbawm, *Nations and Nationalism since 1780* (Cambridge: Cambridge University Press, 1992).

[25]Paul James, *Nation Formation: Towards a Theory of Abstract Community* (London: Sage Publications, 1996).

[26]Carl Darling Buck, 'Language and the sentiment of nationality', *The American Political Science Review*, 10:1 (1916), pp. 44–69 (p. 45).

[27]Ernst Renan, 'What is a nation?', in Omar Dahbour and Micheline R. Ishay (eds), *The Nationalism Reader* (Atlantic Highlands, NJ: Humanities Press, 1995), pp. 143–155 (p. 153).

[28]E. J. Hobsbawm and T. O. Ranger, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1992).

developments were combined with the spread of literacy and vernacular languages. With the awakening of national communities, political leaders worked with historians, writers, and other cultural activists to forge the bonds of solidarity that would unify the ethnic nation with the political state, the national *ethnos* with the civic *demos*.[29] As a result, it came to be seen as natural that the sovereign state should be understood as a 'nation that governs itself, under what form soever, without any dependence on a foreign power', as the 18th-century jurist Emer de Vattel put it.[30]

While necessarily brief, my examination of its constituent parts show that the two terms that form the hyphenated concept of the nation-state are an awkward fit. Conceptually, the state is a universal, civic, and political concept that refers to a form of government that applies to all within its jurisdiction, regardless of ethnic or national belonging. By contrast, the nation is a particularistic ideal that politicians and activists utilise 'for specific purposes to mobilize and establish their own in-group and out-group status'.[31] The same is true historically. For instance, the creation of France, the preeminent example of an *état-nation*, preceded the formation of the French people.[32] Conversely, in contrast to other examples of state-driven unifications such as the UK and China, in ethnic nations such as Germany and Italy, cultural unification preceded statehood. While there are many theories of the nation-state, they generally agree that its origins are the result of contingent factors, not conceptual clarity or historical necessity.[33]

The conceptual and historical conditionality of the nation-state does not, however, diminish its impact or importance. On the contrary, the desire to ensure the greatest possible overlap between the boundaries of the nation and the borders of the state drove much of European history in the nineteenth century as well as the first half of the twentieth, spurring countless international wars and conflicts. The ideal of the nation-state also shaped domestic policy. In contrast to their non-national, multi-ethnic predecessors, during this period most states with heterogeneous populations sought to become nation-states by creating a uniform national culture through the extermination or assimilation of minority nations on their territories. In particular, they adopted universal schooling and developed infrastructure (especially railways) to integrate their populations into the circle of national solidarity.[34]

Despite the many conflicts, for much of the nineteenth century nationalism the desire to bring the nation and the state into closer relation with each other was understood as a source of international peace. For example, the Italian revolutionary Giuseppe Mazzini saw the creation of states for all nations through a process of self-determination as a prerequisite for peace. He therefore founded Young Europe (*Giovine Europa*), an organisation that brought together nationalist organisations across the continent in the hope that their mutual liberation from multi-ethnic empires would in the future 'free nations might combine to form a loosely federal Europe with some kind of federal assembly to regulate their common interests'.[35]

The belief that nationalism and the creation of nation-states could lead to peace persisted after the horrors of the First World War. The peace settlement following the Great War, which I turn to in in the next section, thus integrated nationalism into international law. Both US President Woodrow Wilson's Fourteen Points and the minority treaties, created to protect non-national peoples in the

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[29] Hayden V. White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore, MD: Johns Hopkins University Press, 1973), pp. 170–5.

[30] Quoted in Skinner, *A Genealogy*, p. 352.

[31] Tishkov, 'Forget the "nation"', p. 640.

[32] Eric Hobsbawm, *Nations and Nationalism Since 1780* (Cambridge: Cambridge University Press, 1992), p. 60.

[33] Andreas Wimmer and Yuval Feinstein, 'The rise of the nation-state across the world, 1816 to 2001', *American Sociological Review*, 75:5 (2010), pp. 764–90; Xue Li and Alexander Hicks, 'World polity matters: Another look at the rise of the nation-state across the world, 1816 to 2001', *American Sociological Review*, 81:3 (2016), pp. 596–607; Robert L. Carneiro, 'A theory of the origin of the state', *Science*, 169:3947 (1970), pp. 733–8.

[34] Keith A. Darden and Anna M. Grzymała-Busse, 'The great divide: Literacy, nationalism, and the communist collapse', *World Politics*, 59 (2006), pp. 83–115; Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, CA: Stanford University Press, 1976).

[35] Denis Mack Smith, *Mazzini* (New Haven, CT: Yale University Press, 1994), p. 10.

new nation-states that were created out of the rubble of the Habsburg, Russian, and Ottoman empires, represented a retrenchment to nationalism and the 'time-honored core of international diplomacy'.[36] Following the Great War, leaders did not rethink the foundations of political life; instead, they returned to old ideas, seeking to implement the principles and dictates of nationalism more fully, despite the difficulty this caused in a region where many small nations lived together in deeply intermixed communities.[37]

The difficult, contradictory tensions between the particularism of the nation and the universalism of the state reached their height within the fascist movements of interwar years. For example, although it officially called itself an empire, the Third Reich sought to create a German *völkische Staat* (national state) by implementing policies such as the Nuremberg Laws (*Nürnberger Gesetze*, 1935). These two statutes, Law for the Protection of German Blood and German Honour (*Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre*) and Reich Citizenship Law (*Reichsbürgergesetz*), denied Jews and other minorities citizenship due to the fact that they were not considered part of the people (*Volk*). These legal measures – the logical end point of an attempt to ensure that the nation is synonymous with the state – turned these internal out-groups into mere subjects of national political authority within the nation-state.[38]

A brief caveat is in order before I proceed. Both in theory and in practice, the nation-state is often legitimised by the use of a third term: democracy. However, while democracy can be related to both the nation and the state, it is synonymous with neither and stands in a complicated relation to both. Historically, the emergence of the term 'state' in 16th-century Europe occurred at a time when these political communities would have described themselves either as monarchies (as in France) or as aristocratic republics (as in most of the states on the Italian peninsula at the time). The association of democracy and representative government with the state comes much later and is not fully established until well into the twentieth century.

The historical connection between democracy and the nation in the nineteenth-century age of nationalism in Europe is similarly tenuous. After all, both Italy and Germany – the two major nations that unified during this period – came together under the auspices of monarchies that claimed to represent the people in the person of the king. Building on this point, in his authoritative history of *Nations and Nationalism* (1990), Eric Hobsbawm notes that in this period of national liberation and unification, 'the political systems of nation-states still benefitted from the absence of electoral democracy'.[39] While demands for democracy have been more closely associated with national liberation movements in the 20th century, in practice many of these societies have failed 'to come up with political formulas that satisfy the needs of political democracy'.[40]

Conceptually speaking, the connection between the nation-state and democracy is also complicated. For much of the history of political thought, democracy was used to 'name the politics of the assembled poor', rather than rule by the people in terms of popular sovereignty or universal suffrage. This interpretation dates back to Aristotle, who points out in his *Politics* that in democracies such as ancient Athens, the poor rule because in such regimes 'the poor are more powerful than the rich'.[41] As a result, linking democracy to popular sovereignty in this period is anachronistic at best. While I cannot go into this point further here due to constraints of space, my basic

[36]Jay Winter, *Sites of Memory, Sites of Mourning: The Great War in European Cultural History* (New York: Cambridge University Press, 1995), p. 49.

[37]Peter J. Verovšek, *Memory and the Future of Europe: Rupture and Integration in the Wake of Total War* (Manchester: Manchester University Press, 2020), pp. 35–6.

[38]See Lothar Gruchmann, '"Blutschutzgesetz" und Justiz: Zu Entsehung und Auswirkung des Nürnberger Gesetzes vom 15. September 1935', *Vierteljahrshefte für Zeitgeschichte*, 31:3 (1983), pp. 418–442.

[39]Hobsbawm, *Nations and Nationalism since 1780*, p. 43.

[40]Edmond J. Keller, 'Decolonization, independence, and the failure of politics', in Phyllis Martin and Patrick O'Meara (eds), *Africa*, 3rd ed. (Bloomington: Indiana University Press, 1995), pp. 156–71 (p. 157); M. A. Mohamed Salih, 'African liberation movement governments and democracy', *Democratization*, 14:4 (2007), pp. 669–85.

[41]Andreas Kalyvas, 'Democracy and the poor: Prolegomena to a radical theory of democracy', *Constellations*, 26:4 (2019), pp. 538–553 (p. 539); Aristotle quoted in ibid., p. 538.

point is that democracy cannot be clearly linked to the nation-state conceptually via the notion of representative democracy, nor can it be connected to it historically through the national liberation movements 19th-century Europe.

These reflections on the concepts and history of the state, the nation, and the nation-state (as well as their connection to sovereignty and democracy) set the stage for my analysis of Arendt's examination of the internal tensions between these ideas. Her argument, which combines conceptual analysis with constitutional theory and international politics in a unique manner, shows how the particularism of the nation has a tendency to 'conquer' the universalistic legal aspirations of the state within the hyphenated construct of the nation-state. It thus provides historical and theoretical support for the conclusion that 'the most fundamental error involved in scholarly approaches to nationalism has been a tendency to equate nationalism with a feeling of loyalty to the state rather than with loyalty to the nation'.[42]

The nation has conquered the state

In 'The Decline of the Nation-State and the End of the Rights of Man', Arendt links the contradictory tendencies contained within the nation-state to European imperialism, the rise of fascism, and the Holocaust. This ninth chapter of OT builds on her preceding analysis of both anti-Semitism in Part One of the text – which culminates in her examination of the Dreyfus affair in France – as well as her analysis of imperialism in Part Two, much of which focuses on racism. The second section ends with Arendt's account of the decline of the nation-state, before proceeding to her analysis of totalitarianism as such.[43]

While Arendt's treatment of both anti-Semitism and racism in the preceding pages of OT are also important, I set them aside in favour of a deeper reading of just this famous chapter. Much of her analysis in 'The Decline of the Nation-State and the End of the Rights of Man' – as well as in the existing literature on this final section of Part Two of OT – centres on the phenomenon of statelessness and the loss of rights this situation entails for migrants who can no longer claim citizenship of any state. By contrast, what is original about my reading is my focus on her conclusion that the events of the interwar years had shown that the 'nation had conquered the state, national interest had priority over law long before Hitler could pronounce "right is what is good for the German people"' (OT, p. 275).

A methodological note is in order before I proceed. Although Arendt frames her conceptual analysis in universal terms, her historical examples – as well as much of the text of OT itself – focus on Europe.[44] Additionally, her engagement with these issues is deeply Eurocentric in the sense that she builds unreflectively on 'universalist political-theoretical categories of deeply European origin'. Arendt thus not only uses the European ideas of the nation and the state as the normative referent against which other cultures and experiences are judged, but she also treats them as having 'transcended the fragment of European history in which … [they] have originated'.[45]

This does not, however, mean that her analysis is without value. On the contrary, paying attention to these categories derived from European history and thought is important, since these ideas were violently exported from Europe to the rest of the world through colonialism and imperialism.[46] As a result, even though terms such as nation and state derived from the European experience may not be suitable to describe political communities in other parts of the world that are not

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[42] Connor, 'A nation is a nation', p. 378.

[43] Peter J. Verovšek, 'Unexpected support for European integration: Memory, totalitarianism and rupture in Hannah Arendt's political theory', *The Review of Politics*, 76:3 (2014), pp. 404–5.

[44] See Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford, CA: Stanford University Press, 2009), esp. ch. 2 on 'At the limits of Eurocentrism: Hannah Arendt's *The Origins of Totalitarianism*'.

[45] Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, 2000), p. 17.

[46] Sankaran Krishna, 'Race, amnesia, and the education of international relations', *Alternatives: Global, Local, Political*, 26:4 (2001), pp. 401–24.

organised on classically European ethnic/*völkisch* lines, the internal political tension between universalism and particularism that these European concepts capture – and to which Arendt draws our attention – are still relevant. Finally, these categories are appropriate for my analysis given that I will be applying them to sovereigntist movements in the European context in the next section.

Turning back to the ninth chapter of OT, Arendt bases much of her investigation of the internal tensions of the nation-state in an analysis the interwar crisis (1919–39). However, she starts by tracing the conceptual and historical contradictions of the nation-state back to the French Revolution and the Declaration of the Rights of Man and of the Citizen (*Déclaration des droits de l'homme et du citoyen*) adopted by the French Constituent Assembly in 1789. As the title already makes clear, in order to guarantee basic liberties, this document linked the 'the Rights of Man' – human rights, in contemporary parlance – to the 'will of the people' through the concept of citizenship.

This is not a problem in and of itself. It becomes an issue, however, when the state that is supposed to guarantee these rights bases citizenship on national belonging – when it becomes a nation-state, in other words. Insofar as membership of the nation becomes the prerequisite for membership of the state, Arendt observes that the supposedly inalienable rights of man 'quickly and inexorably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to ensure them' (OT, p. 291).

This problem brings out the internal contradictions contained within the nation-state. Whereas the state claims legitimacy as a result of its status as the 'supreme legal institution' that supposedly ensures 'the protection of all inhabitants in its territory', Arendt notes that the nation is an in-group that defines itself 'by right of origin and fact of birth' (OT, p. 230) in opposition to out-groups. The 'decline of the nation-state' in Arendt's terms thus has nothing to do with a loss of power or capacity; instead, it is rooted in 'the initial erosion, and later complete shattering, of the principle that all inhabitants of a territory are also citizens of the state that legislates over this territory'.[47] The fundamental problem for Arendt therefore is the 'identification of the rights of man with the rights of peoples in the European nation-state system' (OT, p. 291).

She draws out the full implications of this linkage in her analysis of the post-war settlement of 1920 and the interwar crisis that followed. The states born out of the shattered pieces of the Russian, Ottoman, and Habsburg empires – namely, Austria, Hungary, Czechoslovakia, Poland, Yugoslavia, Lithuania, Latvia, Estonia, and Bulgaria, as well as the Greek and Turkish republics – were not good candidates to become nation-states in the first place, as they all included numerous sub-national minorities that formed comparatively large parts of their populations. Although the Great Powers had already decided to implement the idea of national self-determination more fully in order to guarantee peace in the aftermath of the Great War, they also realised that the rights of smaller, 'non-state peoples' would be threatened, as the presence of such non-national elements went against the internal presuppositions of the nation-state. As a result, Seyla Benhabib points out that 'the nation-state system … [has] always carried within itself the seeds of exclusionary injustice at home and aggression abroad'.[48]

In order to counteract this tendency, Woodrow Wilson and the Allied and associated powers gathered at the Paris Peace Conference in 1919–20 imposed minority treaties on the newly created nation-states in CEE. These agreements forced these new members of the international community to pledge 'to their minorities civil and political equality, cultural and economic freedom, and religious toleration'.[49] In a striking display of hypocrisy, which revealed the sovereign equality of states under international law to be a legal fiction, the victorious powers, including Great Britain, France, and Italy, refused to consider generalising the principle of minority protection, much less to sign minority treaties themselves.

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[47]Menke, 'The "aporias of human rights"', p. 743.

[48]Benhabib, *The Rights of Others*, p. 61.

[49]Carole Fink, 'Defender of minorities: Germany in the league of nations, 1926–1933', *Central European History*, 5:4 (1972), pp. 330–357 (p. 331).

In light of these historical considerations, Arendt concludes that by enshrining minorities into international law for the first time, these agreements demonstrated that 'modern power conditions … make national sovereignty a mockery except for giant states' (OT, p. 269):

> The Minority Treaties said in plain language what until then had been only implied in the working system of nation-states, namely, that only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin. (OT, p. 275)

This is a stark conclusion that demonstrates the futility of attempting to organise politics on the basis of nationalism. For Arendt, political belonging needed to be determined politically; it could not be outsourced to a pre-political concept of belonging such as the nation, which she refers to as 'an eternal organic body, the product of inevitable growth of inherent qualities' because 'it explains peoples, not in terms of political organizations, but in terms of biological superhuman personalities'.[50]

The practical and logical end point of the nation-state system became clear during the interwar years. While there was always a theoretical danger that the nation would conquer the state, this actually occurred in Nazi Germany, where the state was 'transformed from an organ which would execute the rule of law for all its citizens and residents into an instrument of the nation alone'.[51] The Third Reich was hardly alone in engaging in such practices. Not only had Hitler studied the Dred Scott decision and the US race laws to develop Nazi purity legislation, other states in Europe and around the world also adopted similar forms of 'national jurisprudence', including the adoption of restrictive citizenship laws, the expropriation of the private property of non-nationals, and the expulsion of migrants and stateless individuals.[52]

Although Arendt believed in popular sovereignty, she did not think that democratic governments could do anything to help to secure the rights of non-nationals within a national state. The basic problem is that within the nation-state, there is always the danger that *popular* sovereignty will turn into *national* sovereignty, which works in the name of the nation, not the state. This is most visible in the plight of the stateless – most often members of unwanted minorities – whose citizenship had been taken away by governments using formally legal procedures. In a chilling passage, Arendt concludes that within the nation-state, 'it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof' (OT, p. 299).

Despite this statement, Arendt was not necessarily anti-nationalist. On the contrary, she actively supported Zionism, which she saw as necessary in light of the continuing persecution of Jews around the world. While she believed that states had the potential to preserve the capacity for 'action in concert' that she associated with politics, she was convinced that the nation-state was an irredeemably flawed form of political organisation. In light of its conceptual tensions and the empirical problems revealed during the interwar crisis, she concluded that the 'principle of the national organization of peoples could no longer either guarantee true sovereignty of the people within or establish a just relationship among different peoples beyond the national borders'.[53] In terms of contemporary debates, Arendt is clearly advocating for a '"civic" as opposed to an "ethnic" ideal of polity and belonging'.[54]

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[50]Hannah Arendt, *The Jew as Pariah: Jewish Identity and Politics in the Modern Age*, ed. Ron H. Feldman (New York: Grove Press, 1978), p. 156.
[51]Benhabib, *The Rights of Others*, p. 54.
[52]Koh, *Transnational Litigation*, p. 248.
[53]Arendt, *The Jew as Pariah*, p. 141.
[54]Benhabib, *The Rights of Others*, p. 60.

In principle, Arendt can be read as a supporter of the Westphalian state, so long as the constituent states of the international system are not national states. This conclusion is bolstered by Arendt's forceful rejection of the idea of world government, noting that 'nobody can be a citizen of the world as he is a citizen of his country'.[55] However, given the pivotal role her own personal memories of 'the downfall of a European order based on the nation-state, the collapse of the Weimar Republic, and the rise of National Socialism' played in her thinking, Arendt knew that, given its historical power, nationalism could no longer be separated from concept the state itself.[56]

Instead of advocating for a non-national form of statehood, Arendt supported the creation of a new form of localised politics below the level of both the nation and the state, which could be realised in the form of a council system. This 'relatively neglected theme in the scholarly literature on Arendt' allowed her to develop a politics based on direct citizen participation.[57] Insodoin, Arendt drew on a number of disparate historical precedents, including Thomas Jefferson's ideas for the development of a ward system, the American Revolution, the Paris Commune of 1789, the creation of *soviets* in the first days of the Russian Revolution in 1917, the 1919 Spartacist Uprising (*Spartakusaufstand*) that she experienced as a child, the Jewish *kibbutzim* she saw during her trip to Palestine in 1935, and the councils formed during the Hungarian Revolution of 1956.

In these cases, Arendt argues that local councils 'concerned with the reorganization of the political and economic life of the country and the establishment of a new world order' were not planned but instead 'sprang from the people as spontaneous organs of action and of order'.[58] In addition to being non-national by virtue of their sub-national character, the quotation above highlights her belief that councils could become the new foundation unit of global affairs. Arendt is vague about how exactly such a system would work, as she 'never clearly and systematically set out her thought in this area'. However, 'a federated political structure more akin to Kant's "republic of republics" is certainly compatible with her views'.[59] In fact, something along these lines might be precisely what Arendt had in mind when she endorsed the 'framework of universal agreements' laid out in the writings of Karl Jaspers.[60]

Although Arendt argues that 'the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself', she was realistic about how achievable this goal was, noting, 'it is by no means certain whether this is possible' (OT, p. 298). The fact that the revolutionary councils were best preserved in America's federal system of self-government explains why the United States remained a beacon of hope for her after the Second World War.[61] It is unclear exactly how the council system would prevent the kinds of exclusionary politics that can be adopted by a majority against an internal minority (I return to this point in the conclusion). However, Arendt's intuition is that the kinds of strong, pre-political identities that are problematic at the level of the nation-state are less likely to form at the local level, where individuals form concrete communities where everyone knows each other, not the kinds of large, 'imagined' communities presupposed by nationalism. In any case, making nationalism less salient by moving politics down to a lower level would help, even if it did not eliminate the problems of exclusionary national sovereignty completely.

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[55]Hannah Arendt, *Men in Dark Times* (New York: Harcourt, Brace & World, 1968), p. 81.

[56]Christian Volk, *Arendtian Constitutionalism: Law, Politics and the Order of Freedom* (Oxford: Hart Publishing, 2017), p. 172; Peter J. Verovšek, 'Integration after totalitarianism: Arendt and Habermas on the postwar imperatives of memory', *Journal of International Political Theory*, 16:1 (2020), pp. 2–24.

[57]Shmuel Lederman, 'Philosophy, politics and participatory democracy in Hannah Arendt's political thought', *History of Political Thought*, 37:3 (2016), pp. 480–508 (p. 504).

[58]Hannah Arendt, *On Revolution* (New York: Penguin Classics, 1990), p. 263.

[59]Patricia Owens, 'Walking corpses: Arendt on the limits and the possibilities of cosmopolitan politics', in Cerwyn Moore and Chris Farrands (eds), *International Relations Theory and Philosophy: Interpretive Dialogues* (London: Routledge, 2010), pp. 72–82 (p. 73); Patricia Owens, *Between War and Politics* (Oxford: Oxford University Press, 2007), pp. 000–000 (p. 146).

[60]Arendt, *Men in Dark Times*, p. 93.

[61]Arendt, *On Revolution*, pp. 156–70.

In reflecting on the legacy and imperatives of totalitarianism, therefore, Arendt concludes that humanity must return to a participatory, localised politics. Much like the *kibbutzim* could form the nucleus for the new Jewish homeland of Arendt's unorthodox Zionist vision, so the model of councils more broadly could form the backbone of a new politics that is no longer based on the fundamentally flawed and internally contradictory notion of the nation-state.[62] James Muldoon therefore concludes, 'the councils are the only new form of government of the twentieth century that provides Arendt with hope for the stabilization of political freedom within a lasting political regime'.[63]

National sovereigntism and the 2015 migration crisis

Arendt's argument regarding the conquest of the nation by the state centres on 'the problem of the stateless people' (OT, p. 276), which she sees as the most prominent symptom of the broader pathologies brought about by the nation-state. For her, the issues of international migration across borders and the inability of non-state peoples to claim their human rights reveal the incapacity of the universalistic state to live up to its ideals when it is combined with the particularistic aspirations of the nation.[64] In this way, the supposedly *popular* sovereigntism of the interwar period quickly degenerated into a dangerous, totalitarian *national* sovereigntism.

While similar dynamics are visible in many contemporary contexts, in applying Arendt to the present my illustrative examples focus on the national sovereigntism that has developed within the growing 'axis of illiberalism' in CEE since the turn of the second millennium.[65] Immediately after the fall of communism in 1989, the states that Milan Kundera referred to as the 'kidnapped West' sought to reclaim the heritage that had been taken from them by the Red Army in 1945 by rapidly adopting political, legal, and economic reforms based on the Western European model.[66] As part of this 'return to what is already known', they therefore joined many of the international political and juridical regimes designed in the West during the post-war period to constrain popular sovereignty in such a way that nation-states could not deploy national law to 'kill the juridical person' by taking away basic rights from unwanted individuals and groups.[67] This Arendtian insight into the origins of totalitarianism and of how the conquest of the state by the nation enabled the atrocities of the Holocaust is crucial to understanding the commitment to liberalism, which the West enshrined in the Council of Europe and its European Court of Human Rights in Strasbourg, as well as in the EU itself.[68]

With the accession of the first of these post-communist member-states, the 'catch up revolution' (*nachholende Revolution*) in CEE seemed complete.[69] However, once this major political goal, which had unified politics in the new member-states throughout the 1990s, had been achieved, political leaders in the region realised that they were not satisfied with merely imitating the economic and political models of the West.[70] Given their recent experience of the loss of sovereignty

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[62]See Hannah Arendt, *The Jewish Writings*, ed. Jerome Kohn and Ron H. Feldman (New York: Schocken Books, 2007), pp. 349–50, 395, 400.

[63]James Muldoon, 'The origins of Hannah Arendt's council system', *History of Political Thought* 37:4 (Winter 2016), pp. 761–789 (p. 789).

[64]See Peter J. Verovšek, 'Migration and forgetting in East-Central Europe', *Social Europe* (20 December 2018).

[65]Boris Vezjak, 'Axis of illiberalism', *Eurozine* (9 July 2018).

[66]Milan Kundera, 'A kidnapped West or culture bows out', *Granta* 11 (1 March 1984), available at: {https://granta.com/a-kidnapped-west-or-culture-bows-out/}.

[67]François Furet, 'L'énigme de la désaggrégation communiste', *Le Débat*, 5:62 (1990), pp. 153–163; Schupmann, 'Constraining political extremism and legal revolution'; Timothy Snyder and Luka Lisjak Gabrijelčič, 'Beware the destruction of the state! An interview with Timothy Snyder', *Eurozine* (9 September 2016).

[68]See Peter J. Verovšek, 'Caught between 1945 and 1989: Collective memory and the rise of illiberal democracy in postcommunist Europe', *Journal of European Public Policy*, 28:6 (2021), pp. 840–57.

[69]Jürgen Habermas, *Die nachholende Revolution: Kleine politische Schriften VII* (Frankfurt am Main: Suhrkamp Verlag, 1990).

[70]Ivan Krastev and Stephen Holmes, 'Explaining Eastern Europe: Imitation and its discontents', *Journal of Democracy*, 29:3 (2018), pp. 117–28.

and control over their domestic affairs to the Soviet Union during the post-war period, leaders such as Victor Orbán in Hungary and Jaroslaw Kaczyński in Poland revolted against the new external constraints placed on them by the European legal system – as well as international law and the Western human rights protection regime more generally – by symbolically and rhetorically speaking of 'Brussels as the new Moscow' and of the 'EU as the new USSR'.[71]

Orbán's *Fidesz* and Kaczyński's *Prawo i Sprawiedliwość* (PiS, Law and Justice) parties thus portray their sovereigntist movement as part of a response to overzealous attempts by international governance regimes such as the EU to dictate domestic policy to independent states. For instance, in a report commissioned by the Speaker of the Lower Chamber of the Polish parliament in July 2016, a group of conservative, nationalist jurists 'proposed a novel interpretation of the Polish Constitution' that downplays 'the abstract principle of rule of law and delivers a concept of separation of powers based on the supremacy of Parliament' as the primary representative of 'the nation'.[72] While such an understanding of European law is incompatible with membership of the EU – as well as with the post-war international human rights regime – it could merely signal a move towards a popular form of sovereigntism.

However, the nationalistic character of these movements quickly became evident. For example, in Hungary Orbán has adopted policies not unlike those described by Arendt during the inter-war years, including the passage of a Hungarian citizenship law that offered citizenship exclusively to Hungarian-speaking descendants of those who lived within the country's pre–First World War borders as part of a broader programme of irredentism. Additionally, the anniversary of the signing of the Treaty of Trianon on 4 June 1920, which gave large portions of the Hungarian part of the Habsburg Empire to neighbouring states (Romania and Ukraine, as well as the newly formed Czechoslovakia and Yugoslavia), is now celebrated as National Unity Day.[73]

Similarly, in Poland the Kaczyński regime has placed great emphasis on the defence of the Polish nation and Polish memory.[74] This has been accompanied by attacks on the rights of ethnic and national minorities, which have driven Polish opposition to migrants and a rejection of European resettlement quotas for asylum seekers during the migrant crisis of 2015.[75] As a result of these considerations, it is difficult to take the illiberal claims to be defending 'self-government by virtuous republican citizens' emanating from CEE as evidence of a statism that seeks to defend the prerogatives of popular sovereignty. On the contrary, in associating European law and the international rights regime with communism and 'national enslavement', these new regimes are not engaging in *popular* sovereigntism, but in a form of *national* sovereigntism in which 'the nation has conquered the state'.[76]

Orbán and Kaczyński have been careful to avoid 'evok[ing] the images familiar from twentieth century dictatorships' and totalitarianism. However, their regimes exhibit all of the classic symptoms of national sovereigntism identified by Harold Hongju Koh, including a commitment to territoriality, a deference to the executive over the judicial and legislative branches of government, and a rejection of 'alien' law in favour of national politics.[77] They have even managed to spread their ideas throughout the Visegrád Group, which is composed of Poland, Hungary, Slovakia, and Czechia (formerly the Czech Republic). Following the Polish and Hungarian model, other states

[71]Aurelian Craiutu and Stefan Kolev, 'Political thought in Central and Eastern Europe: The open society, its friends, and enemies', *European Journal of Political Theory*, 21:4 (2022), pp. 808–35.

[72]Anna Mrozek and Anna Śledzińska-Simon, 'Constitutional review as an indispensable element of the rule of law? Poland as the divided state between political and legal constitutionalism', *Verfassungsblog* (12 January 2017), p. 2.

[73]Michael Toomey, 'History, nationalism and democracy: Myth and narrative in Viktor Orbán's "illiberal Hungary"', *New Perspectives*, 26:1 (2018), pp. 87–108.

[74]'What's new in Poland's memory law?', *The Economist* (19 February 2018).

[75]Michał Krzyżanowski, 'Discursive shifts in ethno-nationalist politics: On politicization and mediatization of the "refugee crisis" in Poland', *Journal of Immigrant & Refugee Studies*, 16:1–2 (2018), pp. 76–96 (p. 92).

[76]Aleksander Smolar and Magdalena Potocka, 'History and memory: The revolutions of 1989–91', *Journal of Democracy*, 12:3 (2001), pp. 5–19 (pp. 12, 16).

[77]Jan-Werner Müller, 'Homo orbánicus', *New York Review of Books* (5 April 2018); Koh, *Transnational Litigation*, p. 248.

in post-communist CEE have followed the 'autocratic legalism' of Poland and Hungary by seeking 'to remove the checks on executive power, limit the challenges to their rule, and undermine the crucial accountability of [state] institutions' as part of the broader 'nationalist and populist surge in Eastern Europe today'.[78]

The power of this movement, and the conquest of the state by the nation within these regimes, became visible as a result of the increasing influx of refugees from the Middle East and Africa starting in 2015. Coming on the heels of the Great Recession of 2008, this supposed 'invasion' of migrants and stateless peoples fuelled xenophobic nationalism in CEE. In fact, it was precisely 'Kaczyński's hard line on refugees, verging on xenophobia, [that] won over people who normally would never have voted for PiS' in the elections of 2015, which returned the party to power, allowing him to consolidate his rule and 'remodel Poland according to his nationalistic and conservative ideology'.[79]

Unlike much of Western Europe, where states that have not (yet) been hollowed out by the nation sought to defend the rights of refugees to claim asylum, Poland and Hungary instead responded by tightening asylum laws, rejecting refugee resettlement arrangements, using the security services to conduct surveillance of foreigners without their knowledge, erecting barbed wire fences, and criminalising assistance to refugees.[80] In contrast to the sovereigntist constitutional capture in CEE, similar nationalistic, anti-migrant far-right parties have been sidelined in the West.[81] Building on their religious ethno-nationalist understanding of the nation, Hungary, Poland, and the Visegrád states more generally have portrayed themselves as standing on 'ramparts of Christianity' (*antemurale christianitatis*), fighting to save European civilisation from both the threats of Islam in the south and of multiculturalism and liberalism from the west. In Milan Kundera's words, despite their anti-EU rhetoric, these nations see themselves as the defenders of a 'spiritual notion' of 'Europe rooted in Roman Christianity'.[82]

These responses are surprising, since much of the development of international law since the end of the Second World War has sought to overcome the problems involved in claiming a 'right to have rights' identified by Arendt in 1951. For example, the right of migrants to claim asylum under the Convention relating to the Status of Refugees (1951, updated 1967) is one of the key developments of the post-war liberal order. This agreement was designed to prevent a repeat of the events of the interwar period, when forced migration was used as both a mechanism of ethnic cleansing and a way to destabilise neighbouring states by flooding them with waves of unwanted individuals, whose property had been seized and who thus had no way to support themselves. The fact that the Convention allowed these migrants and refugees to assert their rights as 'persons in need of international protection' made their claims more difficult for Western states to ignore, given their post-war commitment to the state over the nation.[83]

The presence of refugees does not threaten the liberal understanding of democracy given the Arendtian lessons Western Europe had drawn from Nazism and World War II. This historical memory helps to explain the reluctant efforts by Western European member-states to grant the claims of the individuals pouring into Europe, despite the financial burdens they pose. This stance is most visible in German Chancellor Angela Merkel's acceptance of 1 million refugees in 2015 as

[78]Kim Lane Scheppele, 'Autocratic legalism', *University of Chicago Law Review*, 85:2 (2018), pp. 545-584 (p. 547); Jakub Dymek and Zsolt Kapelner, 'It doesn't take a dictator to smother a free press', *Dissent* (3 May 2017), available at: {https://www.dissentmagazine.org/online_articles/hungary-poland-orban-pis-press-freedom/}.

[79]Joanna Fomina and Jacek Kucharczyk, 'The specter haunting Europe: Populism and protest in Poland', *Journal of Democracy*, 27:4 (2016), pp. 58–68 (p. 62).

[80]Ibid., p. 65.

[81]Tomasz Tadeusz Koncewicz, 'Constitutional capture in Poland 2016 and beyond: What is next?' *Verfassungsblog* (19 December 2016).

[82]Jacques Rupnik, 'Surging illiberalism in the East', *Journal of Democracy*, 27:4 (2016), pp. 83–4; Kundera, 'A kidnapped West'.

[83]Masha Gessen, 'Ireland's strange, cruel system for asylum seekers', *The New Yorker* (4 June 2019).

part of Germany's 'welcome culture' (*Willkommenskultur*). Although she was aware of the difficulties in integrating such a large group of asylum seekers, many of whom had spent years in refugee camps and had little formal education, she argued that 'we can do this' (*wir schaffen das*).[84]

By contrast, the post-communist states of the Visegrád Group – whose collective memories are dominated by the loss of domestic control enforced by the international communist movement – pushed back against Western attempts to protect asylum rights and redistribute refugees across the continent at the supranational level.[85] As a result, the EU had to abandon its plans for quotas of asylum seekers, due to a split 'between east and west … compounded by emotions which make it hard to find common language'. Instead, much like the events of the interwar crisis described by Arendt in OT, it appears that the refugee and migrant crisis – and the concomitant demands by the EU that all member-states accept their centrally determined quota of migrants – has given illiberal 'populism a new xenophobic energy' in CEE.[86]

For Arendt, the persecution of refugees – which was a feature of the politics of Central Europe in the interwar years, just as it is again today – is a signal that the 'nation has conquered the state', i.e. that the popular will of the dominant, pre-political majority has sought to repress the civil, human rights of minorities and other outsiders. This is not to say that the illiberal regimes of CEE can be compared to the fascist regimes of the interwar years; clearly they cannot. Nor can the migration or welcoming crisis following 2015 reasonably be compared to the large flows of migrants and stateless people of the interwar years that Arendt describes.

That being said, the backsliding that has accompanied the rise of illiberal, nationalistic sovereigntism in post-communist Europe is still worrying. While events are still unfolding, it is possible that the gradual takeover of the nation by the state at the start of the twenty-first century foreshadows a broader 'return of authoritarianism in nationalist-conservative guise', as illiberal politicians have pushed back on the post-war human and migrant rights regime through a combination of what the late Hungarian philosopher Agnes Heller calls 'ideology and identity politics'.[87] The example of the refugee crisis shows the continuing power of migration as a symptom of the nation conquering the state, as flows of non-nationals allow nationalist leaders to portray themselves as defenders of the ethnic nation against external powers.

While I have focused on migrants as 'the most symptomatic group in contemporary politics' (OT, p. 277), the nationalistic character of the sovereigntism spreading through CEE today is visible in other areas as well. Most notably, this statist pushback is visible in judgement K 3/21 of the Polish Constitutional Tribunal of 7 October 2021, which 'effectively put an end to primacy of EU law in Poland' by rejecting the Union's Treaties as an independent source of law and requiring that EU law be reviewed against the standards set in the Polish Constitution.[88] As a result of this national sovereigntism, there is a growing fear that Poland and Hungary are withdrawing from the EU, de facto if not de jure.[89]

Nor is the rise of such national sovereigntism confined to the post-communist region. On the contrary, American conservative jurisprudence is a driving force of this global movement. Sticking to the European context, while there are growing fears of a 'Polexit' or a 'Huxit', Brexit has actually already occurred. Since it is composed of four separate nations – England, Scotland, Wales, and Northern Ireland – it is clear that the UK is not a classic example of a nation-state. However, Brexit is still a distinctively English project, as support for the referendum was highest in this part of the

[84]Matthew Karnitschnig, '5 years on from Angela Merkel's three little words: "Wir schaffen das!"', *Politico* (31 August 2020), available at: {https://www.politico.eu/article/angela-merkel-wir-schaffen-das-5-years-on/}.

[85]Peter J. Verovšek, 'Divided by memory: Divergent memory cultures and the debate about democracy in the EU', *Journal of European Integration History*, 29:1 (2023): 89–110.

[86]Fomina and Kucharczyk, 'Specter haunting Europe', p. 66.

[87]Ibid., p. 64; Agnes Heller, 'Hungary: How liberty can be lost', *Social Research: An International Quarterly*, 86:1 (2019), pp. 16–17.

[88]Herwig C. H. Hofmann, 'Sealed, stamped and delivered: The publication of the Polish constitutional court's judgment on EU law primacy as notification of intent to withdraw under Art. 50 TEU?', *Verfassungsblog* (13 October 2021), p. 1.

[89]See Christophe Hillion, 'Poland and Hungary are withdrawing from the EU', *Verfassungsblog* (27 April 2020).

country. English nationalists not only used Brexit as a mechanism to further their own particular goals within the UK; the Leave campaign also won only because of the vast numerical superiority of England, whose large population overcame the opposition of the vast majority of voters in both Scotland and Northern Ireland (the Welsh voted for Brexit by a narrower margin than the English).[90] As a result, it is still possible to speak of the nation conquering the state even in the UK context, although it would be even more accurate to refer to this as the English nation conquering the multinational British state.

Furthermore, in line with Arendt's expectations, surveys in the UK not only reveal that the public sees immigration as 'the most important issue facing the country', but also that concerns about 'ethnic diversity and immigration … dominated the referendum'.[91] The centrality of these concerns is confirmed by growing desires for stricter immigration and citizenship laws in the post-Brexit UK and by growing support for the preferential treatment of co-nationals on the job market.[92] Closely following on from these concerns about the loss of national identity – particularly the loss of English national identity – was 'the question of "sovereignty", that is whether it is right that the UK should sometimes have to adopt EU laws and regulations to which it had been opposed'.[93]

Finally, the case of Brexit – where a large percentage of socialist voters joined conservatives in voting to leave the EU – shows that support for sovereigntist movements is not confined to the far-right or even the center-right of the political spectrum. On the contrary, the desire to reclaim the omnicompetence of parliament in Westminster has played an important role in debates on the left as well, especially among those who want to renationalise large portions of the British economy.[94] While doing so is possible within the strictures of European law, it is much easier without protections of property rights and the limitation on state aid enforced by the EU. While many supporters of such left-wing statism see this as a way of combatting the power of globalization and the power of international financial markets by defending social policy and the welfare state domestically, the empirical slippage from popular to national sovereigntism does not bode well for these movements given nationalistic trends visible within the working classes.[95]

Conclusion

I have shown that while sovereigntist claims regarding the need to return to the nation-state as the primary site of politics are often made on the grounds of popular sovereignty, they often descend into a dangerous, exclusionary nationalistic sovereigntism instead. Conceptually, I built on Arendt to lay out internal tensions within the hyphenated concept of the nation-state, which is invariably torn between the universalistic, civic aspirations of law and the particularistic demands of national belonging. Empirically, I highlighted the new sovereigntist movements in Europe at the start of the twenty-first century, focusing in particular on the ways that the illiberal regimes in Poland and Hungary have rooted their calls for a 'nostalgic return to the nation state' not only in the language of popular sovereignty, but also more ominously in nationalistic appeals to the purity of culture and the homogeneity of the nation.[96] The crucial role that the European migrant and refugee crisis

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[90]Anthony Barnett, *The Lure of Greatness: England's Brexit and Trump's America* (London: Unbound, 2017); Sara B. Hobolt, 'The Brexit vote: A divided nation, a divided continent', *Journal of European Public Policy*, 23:9 (2016), pp. 1259–77.

[91]Matthew Goodwin and Oliver Heath, 'The 2016 referendum, Brexit and the left behind: An aggregate-level analysis of the result', *The Political Quarterly*, 87:3 (2016), p. 328.

[92]Ronald Inglehart and Pippa Norris, 'Trump and the populist authoritarian parties: The silent revolution in reverse', *Perspectives on Politics*, 15:2 (2017), pp. 445–6.

[93]John Curtice, 'Brexit: Behind the referendum', *Political Insight*, 7:2 (2016), pp. 4–7 (p. 5).

[94]Peter J. Verovšek, 'Lexit undermines the left: It will be no prize for Labour', LSE European Politics and Policy (EUROPP) blog (16 October 2018), available at: {https://blogs.lse.ac.uk/brexit/2018/10/16/lexit-undermines-the-left-it-will-be-no-prize-for-labour/}; Peter J. Verovšek, 'Book review: The left case for Brexit: Reflections on the current crisis', LSE Brexit blog, (26 October 2020), available at: {https://blogs.lse.ac.uk/brexit/2020/10/26/book-review-the-left-case-for-brexit-reflections-on-the-current-crisis/}.

[95]Inglehart and Norris, 'Trump and the populist authoritarian parties'.

[96]Koncewicz, 'Constitutional capture in Poland 2016', p. 8.

of 2015 played in such appeals – not only in CEE, but in other contexts such as Brexit England – shows that migrants remain 'the most symptomatic group in contemporary politics' (OT, p. 277), just as they were when Arendt was writing in the mid-twentieth century.

Where does this leave us? To start, my findings confirm Kenichi Ohmae's observation 'the nation state has rapidly become an unnatural, even dysfunctional, unit'.[97] However, broader predictions of the 'end of the nation-state' and claims that recent developments 'simply leav[e] no room for any valid notion of the state' go too far.[98] Even in Europe, where Joseph Weiler argues that the legal and constitutional infrastructure of the EU has rendered the 'nation-state hollow and its institutions meaningless', it continues to play an important political role, as the examples cited above make clear.[99]

While it is true, from a functional perspective, that the state system has experienced a 'multifaceted erosion of sovereignty' and that decision-making across the globe has 'an increasingly marginal connection with sovereignty', the rise of new sovereigntist movements at the start of the twenty-first century shows that there is still great demand for local control.[100] In large part, it is possible to interpret the desire to re-empower the state as a way to combat the feeling of powerlessness that many ordinary citizens feel in the in the face of global economic, social, and legal forces.[101] In this sense, even if we accept Arendt's conclusions about the conceptual, historical, and institutional contradictions of the nation-state, a move towards a world polity is likely to only increase the popular alienation of people from politics.

I have already mentioned that Arendt's preferred solution to this problem is to be found in local councils that operate in non-national ways at the sub-state level. In reflecting on the legacy and imperatives of totalitarianism, Arendt concludes that a federalised council system could potentially form the backbone of a new politics for the post-war world.[102] Although her proposals for a communicative cosmopolitanism based on the council system are thought-provoking, it is hard to draw firm conclusions about her thought on this topic. On the whole, however, these ideas are unconvincing. After all – as Arendt's historical examples themselves demonstrate – a system of governance based on local councils has never endured for any extended period of time. While these revolutionary institutions can indeed be seen as proof of the enduring human capacity to act in concert that she so valued, Benhabib points out that Arendt's faith in the council system 'seems to fly in the face of the realities of the modern world'.[103]

In addition to questioning their practical realisability, the ability of the council system to resolve the basic problem that Arendt is trying to solve can also be called into question. As I have argued, it is clear that statist popular sovereignty can easily slide into exclusionary, pre-political forms national sovereignty that violate the rights – as well as the even more fundamental 'right to have rights' or right to belong to a political community – of minorities and other outsiders. However, it is also possible to imagine situations where smaller communities organised around councils would develop similarly exclusionary ideas of belonging that would violate the rights of some of their members.

Given that Arendt never fully developed her ideas in this area, it is unclear how she would respond to this question. It is certainly true that all forms of popular sovereignty – whether at

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[97]Kenichi Ohmae, *The End of the Nation State: The Rise of Regional Economies* (New York: Free Press, 1995), p. 42; also Jean-Marie Guéhenno, *The End of the Nation-State* (Minneapolis: University of Minnesota Press, 1995); Mathew Horsman and Andrew Marshall, *After the Nation-State: Citizens, Tribalism, and the New World Disorder* (London: HarperCollins, 1994).

[98]Guéhenno, *The End of the Nation-State*; J. P. Nettl, 'The state as a conceptual variable', *World Politics*, 20:4 (1968), pp. 559–592 (p. 561).

[99]J. H. H. Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge: Cambridge University Press, 1999), p. 98.

[100]Mark Mazower, *Governing the World: The History of an Idea* (New York: The Penguin Press, 2012), p. 421; Martti Koskenniemi, 'What use for sovereignty today?', *Asian Journal of International Law*, 1 (2011), pp. 61–70 (p. 63).

[101]See Tuck, *Left Case for Brexit*, p. 39.

[102]Arendt, *Jewish Writings*, pp. 349–50, 395, 400.

[103]Benhabib, *The Reluctant Modernism of Hannah Arendt*, p. 165.

the level of the council, the state, or a world government – are plagued by the possibility of the majority engaging in exclusionary politics against the minority. This may be what Arendt meant when she wrote, 'if men wish to be free, it is precisely sovereignty they must renounce'.[104] From this perspective, the only way out is to abandon popular sovereignty altogether in favour of a pure protection of human rights.

That being said, Arendt's insight seems to be based on the fact that smaller communities, based on councils that are only loosely institutionalised and thus retain a closer connection to 'democratic protest and experimentation,' are less likely develop the kinds of permanent, stable structures of identity and law necessary to develop clear minorities or the institutions to repress them completely in the long term.[105] On the contrary, she seems to think that resolving political issues 'on the lowest and most promising level of proximity and neighborliness' is less likely to result in exclusion both because everyone knows each other and also because such totalitarian measures would be easier to escape and avoid – in addition to being more transient – when implemented at the local level than at the level of the state or (even worse) a world government.[106]

There is obviously much more to be said regarding these foundational political issues. However, despite the fact that developments over the course of the post-war period have 'shaken the state concept and its sovereignty' to its core, it is clear that the state will continue to play a role in global political organisation for the foreseeable future.[107] However, the connection between the new sovereigntism and neo-nationalism that I have highlighted also points to the danger of abandoning the structures of supranational rights protection developed over the course of the post-war era, which at least offer some protection to individuals in cases where the nation threatens to conquer the state. While structures like the UN Declaration of Human Rights, the European Court of Human Rights, and other structures of supranational rights protection are imperfect at best, they at least offer some recourse for minorities threatened by the exclusionary use of national sovereignty in the nation-state.

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[104]Hannah Arendt, 'Dream and nightmare', in Jerome Kohn (ed.), *Essays in Understanding, 1930–1954* (New York: Harcourt, Brace & Co., 1994), pp. 416–17; Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1977), p. 165.

[105]Benjamin Ask Popp-Madsen, *Visions of Council Democracy: Castoriadis, Lefort, Arendt* (Edinburgh: Edinburgh University Press, 2021), p. 5.

[106]Arendt, *Jewish Writings*, p. 400.

[107]Hannah Arendt, *Crises of the Republic* (New York: Harcourt Brace, 1969), p. 231.