The Right to Have Rights
Alison Kesby

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Writing in the immediate aftermath of the Second World War, the political theorist Hannah Arendt argued that the plight of stateless people in the inter-war period pointed to the existence of a ‘right to have rights’. This right to have rights was the right to citizenship—to membership of a political community. Since then, and especially in recent years, theorists have continued to grapple with the meaning of the right to have rights. In the context of enduring statelessness, mass migration, people flows, and the contested nature of democratic politics, the question of the right to have rights remains of pressing concern for writers and advocates across the disciplines. This book provides the first in-depth examination of the right to have rights in the context of the international protection of human rights. It explores two overarching questions. First, how do different and competing conceptions of the right to have rights shed light on right-bearing in the contemporary context, and in particular on concepts and relationships central to the protection of human rights in public international law? Secondly, given these competing conceptions, how is the right to have rights to be understood in the context of public international law? In the course of the analysis, the author examines the significance and limits of citizenship, nationality, humanity, and politics for right-bearing, and argues that their complex interrelational points to how the right to have rights might be rearticulated for the purposes of international legal thought and practice.

The Right to have Rights as Nationality
Alison Kesby

in The Right to Have Rights: Citizenship, Humanity, and International Law

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Chapter 2 examines the emancipatory potential and limits of the right to have rights conceived in terms of the right to a nationality. Four different conceptions of the right are examined and critiqued—the formal, human rights, democratic governance, and substantive belonging approaches, with the author favouring the latter. Whichever conception is adopted, however, it is argued that nationality risks usurping humanity such that the subject of rights becomes the national alone.

The Right to have Rights as Humanity
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Chapter 4 examines the right to have rights from the perspective of international human rights law. At issue is the claim that the human is the subject of rights—a claim which is challenged by ‘internal borders’, the construction of human rights on the basis of immigration status. While international human rights norms may challenge these internal borders (as evidenced by a case involving an undocumented migrant’s right to marry), it may also facilitate their imposition. The Migrant Workers Convention is an example of this. Finally, the chapter explores the border between international and national law in the context of the indefinite detention of stateless people.

The Right to have Rights as the Politics of Human Rights
Alison Kesby

Focusing on the work of the French philosopher Jacques Rancière, Chapter 5 examines the right to have rights in terms of the politics of human rights—of the rightless taking up, claiming, and enacting denied rights. The subject of rights is the limitless subject of politics. This is a performative understanding of the right to have rights in that the excluded confer a ‘place in the world’ on themselves. While Rancière seeks to overcome exclusions from the subject of rights, it is argued
that his account is not itself immune from exclusion. Finally, the chapter examines the implications of Rancière’s work for international human rights law.

The Right to have Rights as a ‘Place in the World’
Alison Kesby

in The Right to Have Rights: Citizenship, Humanity, and International Law

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Chapter 1 examines the right to have rights in the context of the movement of people across borders. In the present international system of states, it is imperative that each person has a ‘place in the world’, a place of lawful residence, and is not constantly shunted between states. The author examines how international law constructs the need for a ‘place in the world’ and the legal statuses by which individuals are emplaced (or misplaced) within it, namely the international legal status of nationality and, exceptionally, the humanity of international human rights law as inflected in rights such as the right to respect for family and private life.

Introduction
Alison Kesby

in The Right to Have Rights: Citizenship, Humanity, and International Law

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Introduces Hannah Arendt’s concept of the right to have rights and the purpose, approach, and structure of the book. Chapters 1 to 5 examine five different, and at times competing, interpretations of the right to have rights. Each chapter in turn explores the question of the right to have rights along two related axes: the right to have rights in terms of ‘a place in the world’ and the right to have rights in terms of the subject of rights. These two axes provide a unifying thread for the five chapters.
Chapter 3 examines the right to have rights in terms of citizenship: membership of the political community. Arendt's conception of citizenship forms the starting point of the analysis, and the disenfranchisement of convicted prisoners furnishes its context. It is argued that the political equality posited by international law remains tenuous at best—a precarious citizenship of potential internal exiles. Drawing on the work of the sociologists Loïc Wacquant and Margaret Somers, the final sections of the chapter examine the intersection of criminality, ‘race’, and social exclusion, and call into question legal and Arendtian analyses which privilege political membership and inclusion for the protection and recognition of rights.

Conclusion
Alison Kesby

The author concludes by presenting her understanding of the right to have rights, arguing that the complex interrelation of citizenship, nationality, humanity, and politics traced throughout the preceding chapters points to how the right to have rights might be rearticulated for the purposes of international legal thought and practice.

The “Right to Have Rights” to the Rescue
Eva Erman

in Human Rights at the Crossroads
This chapter aims to highlight some ambiguities in the attempts to account for the intrinsic elements of democracy via “the right to have rights,” and offers some guidance in the choice of alternative strategies. It defends the thesis that, “the right to have rights” (RHR) approach is unable to satisfactorily explain these intrinsic elements because it does not distinguish properly between the political and the democratic community. More specifically, the difficulty of making sense of the shift from the political to the democratic community is due to two unfulfilled gaps: between (moral and legal) rights and agency, on the one hand, and between individual rights and collective decision-making, on the other. It is argued that an essential property of any democratic system, namely, democratic legitimacy, cannot be achieved by the RHR approach. This is because democratic legitimacy is premised on democratic agency and neither human rights (including full-fledged political rights) nor a right to have rights are able to secure such agency. The chapter concludes that rather than attempting to develop a general theory of human rights which accommodates the intrinsic value of democracy, human rights and democracy are better viewed as two separate normative ideals, which under certain circumstances are strongly related, instrumentally or intrinsically, whereas under other circumstances they are not.

The Problem

Sarah Conly

in One Child: Do We Have a Right to More?

Chapter 1 argues that we need to consider population growth as the most important cause of environmental damage. There is extensive evidence that most of the environmental damage we’re doing is a result of our numbers: there are just too many of us for the planet to support, given the way we live. Most people who are concerned about the environmental future recommend cutting back on our use of resources, but the chapter argues that cutting back population growth is a better option. While cutting back on the perquisites of our modern lifestyle may be a reasonable idea for some of us, we know that the majority of people on the planet are frantically trying to increase their use of resources. The people who now live on $1.25 a day aren’t going to cut back, and we couldn’t reasonably ask them to if they were willing. Instead, they will, with time, improve their living conditions, but with that, they will naturally use more resources and produce more waste. Rather attempting to change our lifestyle in very significant ways, the best
solution is simply reduce our numbers, and the best way to reduce our numbers is to allow some sort of government regulation of population. Chapter 1 also gives a brief description of the topics discussed in each of the remaining six chapters.

One Child
Sarah Conly

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This book argues that at present we don’t have a right to have more than one child. The world is suffering serious environmental degradation, and we can foresee that as the population rises this degradation will become more and more severe. This, in turn, causes grave suffering for others. We don’t have a right to commit acts that have this likelihood of causing great harm. Rights generally are thought to arise from either of two bases: interests and the exercise of autonomy. The book argues that we don’t have any basic interest in having more than one child, so we cannot insist on this as necessary to our basic welfare. While we generally have rights to choose the way we live, thought of as autonomy rights, even when basic welfare is not at stake, autonomy rights are always limited by the amount of harm an action would cause to others. At present, the foreseeable harm from population growth seems to make unlimited procreation too dangerous to be something that can be protected as a right. Given this, if done correctly, state sanctions intended to constrain how many children we have can be morally justified. While there are some punishments and some preventive measures that would be impermissible, it seems likely that there are other methods for enforcing such a law that would not violate rights.