

## Human Rights and Politics, 1980-2012

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**Are human rights a cornerstone of democracy, or a threat to social ties? Are they a precondition for the existence of a public space, or a triumph of individualism? Political thinkers have debated these questions during the last three decades. In this essay, Justine Lacroix explains the issues and the current situation.**

Human rights are “not a good subject for political philosophy,” because they do not “involve very interesting philosophical problems.” Thirty years ago, that was the judgement of Charles Beitz (a professor at Princeton); he himself mentions this fact in a recent book, on the subject of – well, human rights<sup>1</sup>. He has abandoned his previous assessment, because in the meantime human rights have emerged as the main criterion for evaluating political legitimacy and as the most common idiom of social demands. In political thought, after a long period spent on standby, individual rights is once more an essential philosophical topic. It is significant that Frédéric Worms, in his book *La philosophie en France au XXe siècle* [Philosophy in France in the Twentieth Century], constructs his last chapter (“Le moment présent”) around two debates, the first of which, arising in the late 1970s, concerned the idea of human rights. Moreover, he emphasizes that this discussion deserves attention because it is not just one theme among others, “but an argument about the very principles of politics, or rather about whether we should treat the issue of human rights as the first principle of politics.”<sup>2</sup> In fact, a good many contemporary controversies come down to asking whether human rights claims are a source of depoliticization, or are vehicles of a revival of democratic ambitions.

### The Revival of Human Rights

The idea of human rights has probably never been “taken as seriously” as it is today – at least, not since the American and French Revolutions. Indeed, the question of when this concept emerged in our political discourse and practice has inspired a rich historiographical debate between those who point to the postwar world and those who refer instead to the late 1970s.<sup>3</sup> In political thought, however, it seems to be accepted

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<sup>1</sup> Charles R. Beitz, *The Idea of Human Rights*, Oxford, Oxford University Press, 2009, Preface, p. xi.

<sup>2</sup> Frédéric Worms, *La philosophie en France au XXe siècle: Moments*. Paris, Gallimard, 2009, p. 557.

<sup>3</sup> For an overview of this debate, see Devin O. Pendas, “Towards a New Politics? On the Recent Historiography of Human Rights,” *Contemporary European History*, 21, 1, 2012, pp. 95-111.

that it is only really in the last three or four decades that the idea of human rights has come out of a long period when it was treated with indifference or contempt. The publication of John Rawls' *Theory of Justice* (1971) marks the rebirth of grand political theorizing that aims to assess social demands in terms of individual rights rather than in relation to general utility or to the integrity of the body politic. In this perspective, fundamental rights become the nodal point of debates about political justice, sometimes to the point of being granted a form of normative superiority vis-à-vis all other factors that might help legitimize political action. It was to emphasize the importance of political participation that Jürgen Habermas developed his famous thesis about the co-originality of private autonomy (fundamental freedoms) and public autonomy (political rights). In this perspective, human rights are the precondition and the guarantee of collective deliberation, which in turn is the only way to guarantee the free exercise of all fundamental freedoms.<sup>4</sup>

Beyond the debate between liberalism and republicanism, it is significant that individual rights are now invoked on both sides of the debate about the organization of society. So advocates of minimal public intervention – libertarians like Robert Nozick – begin their books with the assertion that individual rights are so strong and so far-reaching that they make us wonder if there is anything that the state can do.<sup>5</sup> But social democrats also invoke the idea of rights, arguing that they are the ones who take rights “seriously,”<sup>6</sup> because citizens can exercise these rights to equal opportunity only if they are sure to enjoy a form of independence in their private economic sphere.

### **The Lefort “Moment” in France**

In France, too, theoretical works on human rights have multiplied since the early 1980s, after a long period of disrepute in the dominant discourses, including (but not only<sup>7</sup>) those in the Marxist movement. Of course, in France as elsewhere, the rejection of bourgeois rights – which the young Marx, writing *On the Jewish Question* (1844), described as the rights of the “egoistic” man separated from other men and from the community – has always gone hand in hand with a reformism that considered the rights declared in 1789 to be the primary foundations of a true socialist order.<sup>8</sup> However, even among the defenders of “formal” liberties, the idea persisted that human rights would constitute a distinct sphere of politics, a kind of sanctuary for morality, the agent of which would be the individual.

However, at the end of the 1970s, the seminal article of Claude Lefort, “Droits de l’homme et politique”<sup>9</sup> blew a hole in that view of the issue. Faced with the totalitarian phenomenon, the nature of liberal democracy seemed to Lefort to consist of the corrosive force of fundamental rights and the disembodiment of politics. More precisely, Lefort opposed the interpretation that reduces human rights to the rights of individuals

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<sup>4</sup> Jürgen Habermas, *Between Facts and Norms*, MIT Press, 1996, p. 127. Translated by William Rehg from the German original (*Faktizität und Geltung*, Frankfurt am Main, Suhrkamp Verlag, 1992).

<sup>5</sup> Robert Nozick, *Anarchy, State and Utopia*, New York, Basic Books, 1974, p. ix.

<sup>6</sup> Ronald Dworkin, *Taking Rights Seriously*, Cambridge (MA), Harvard University Press, 1977.

<sup>7</sup> As shown by Michel Villey’s sharp critique of the very idea of human rights, in *Le droit et les droits de l’homme*, Paris, PUF, 1983.

<sup>8</sup> Serge Audier, *Le socialisme libéral*, Paris, La Découverte, 2006.

<sup>9</sup> Claude Lefort, “Droits de l’homme et politique” [Human Rights and Politics], *Libre*, no. 7, 1980. Reprinted in *L’invention démocratique*, Paris, Fayard, 1981, pp. 45-84.

concerned only with their personal interest. Because of his inability to conceive of human rights other than as rights of the individual, Marx became a prisoner of the ideological version of rights, and did not grasp what they meant in practice, the upheavals they entailed in social life, and how they necessarily tied individual subjects to each other. For human rights “are not a veil.” Far from covering up the dissolution of social ties that would make each of us a “monad,” they both affirm and generate a new network of relationships among men. Thus, for example, the liberty of opinion is clearly “a liberty of relationships, and a liberty of communication,” and this shows that “it is a human right – one of the most precious of these rights – to get out of oneself and to connect with others by speaking, writing, and thinking. Better still, it makes it clear that man cannot legitimately be relegated to the limits of his private world, and that he has the right to speak and to think in public.”<sup>10</sup>

So Lefort thought that we can assess the development of democracy only if we recognize in the institution of human rights some signs of the emergence of a new kind of public space. The French Revolution profoundly changed the relationships between power and right: right is now a separate and uncontrollable seat of legitimacy. This “disentanglement” of right from power gives an eminently political character to struggles for rights – struggles by women, homosexuals, workers, associations defending immigrants, and so on.

### **New Criticisms of the Primacy of Human Rights**

However, for some thirty years, this new primacy given to human rights has provoked serious resistance among political thinkers.<sup>11</sup> Thus, the publication of Rawls’ *Theory of Justice* seems to have breathed new life into not only the liberal idea of rights but also the main opposition to that idea. Of course, there are few writers who follow the lead of Alasdair MacIntyre in viewing human rights simply as “fictions,” the existence of which can be established no more than can that of “witches” or “unicorns.”<sup>12</sup> And there are also very few political thinkers who join Alain de Benoist in rejecting human rights as such, i.e. rejecting the normative and legislative basis of the rule of law in democracies.<sup>13</sup>

On the other hand, the *use* made of human rights in contemporary democracies does inspire lively criticism. Compared with traditional criticisms of human rights, recent ones are distinctive in emanating from writers whose aim is the full realization of the principles and practices of democratic citizenship. More specifically, for thirty years, the primacy given to the rights of the individual over the ties of belonging and of loyalty that unites citizens with their political community has inspired considerable

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<sup>10</sup> *Ibid.*, p. 58.

<sup>11</sup> Of course, in this article I do not explore all of the criticisms of human rights in contemporary thought. In particular, criticisms on the basis of cultural pluralism are not discussed here. The same goes for critiques of human rights policy in international relations, and critiques that see declarations of rights as expressions of domination. My interest here is rather in the challenge to human rights policy on the grounds that it entails risking a form of social atomism and democratic disintegration.

<sup>12</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, Notre Dame, Notre Dame University Press, 1981, p. 67.

<sup>13</sup> Alain de Benoist, *Beyond Human Rights*, UK, Arktos Media Ltd., 2011. Translated by Alexander Jacob from the French original (*Au-delà des droits de l'homme*, Paris, Krisis, 2004).

reservations, both in North American political thought and in French political philosophy.

For some “communitarian” or “civic republican” writers, the theory of the primacy of human rights is oblivious to the committed and contextualized character of existence, and is based on an abstract idea of persons as mere bearers of rights.<sup>14</sup> This anthropological critique is not always far from the view that the recourse to individual rights is a symptom of our failure to establish virtuous institutions driven by a sense of the common good. The argument is that if we have the same goals, and if we are bound by real affective ties, we will not really need rights. Thus, Michael Sandel takes the example of the family as a model of an institution based on an identity of meanings and purposes, and not just on duties and obligations.<sup>15</sup>

For other writers, it is not rights as such but the contemporary proliferation of them that poses a problem. The inflation of rights, like an uncontrolled growth of desires, can devalue the “true” rights such as equality before the law and the right of free expression.<sup>16</sup> Our new “rights culture” is described as excessively legalistic and absolutist: legalistic in the sense that every social problem is approached in terms of formal rights, and absolutist in the sense that these formal rights rule out the search for compromises built around the common good. The “politics of rights” has been carried too far, so there is a risk of undermining civic republicanism and of transforming citizens into passive and selfish holders of individual rights.

While these critiques are constructed on different premises, they converge in thinking that the result of the increasing use of the language of rights is the growing fragmentation of society. The extension of individual rights and the legalization of conflicts is a clear sign of the loss of all sense of collectivity. The growing sense of powerlessness felt by Americans is explained by the loss of control in communities confronted with abstract rights imposed by federal courts. In this point of view, there is a conflict between the growing demand for rights and the existence of a civic community.

In a similar fashion, but without much reference to this North American debate, granting primacy to human rights has also encountered growing reservations in some sectors of French political thought over the last thirty years. Saying this may seem paradoxical since most foreign observers of the French intellectual scene have rather embraced the hypothesis of a French conversion to liberalism in the 1980s, after the antiliberalism of the 1960s.<sup>17</sup> However, French criticism of the alleged domination of human rights has continued to grow since the collapse of the Soviet empire. That is why Lefort’s thesis of a truly political dimension of human rights finds itself challenged by a number of writers with a large public presence.

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<sup>14</sup> See especially Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda*, New York, Crown, 1993; Michael Sandel, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1982, as well as his *Democracy’s Discontent: America in Search of a Public Philosophy*, Cambridge (MA), Harvard University Press, 1996; and Thomas L. Pangle, *The Ennobling of Democracy: The Challenges of the Post-Modern Age*, Baltimore, Johns Hopkins University Press, 1992.

<sup>15</sup> Michael Sandel, *Liberalism and the Limits of Justice*, *op. cit.*, p. 33.

<sup>16</sup> See especially Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*, New York, Free Press, 1991.

<sup>17</sup> See especially Mark Lilla, *New French Thought*, Princeton, Princeton University Press, 1994.

For thinkers such as Marcel Gauchet and Pierre Manent, the vitality of pluralistic societies that was highlighted by Lefort could eventually turn against democracy itself.<sup>18</sup> Since it ends in a politics of human rights, the implementation of the very principles of democracy lead to democracy's decay, if not to a more profound dissolution of its structure and its instruments. Lefort's error was in forgetting that highlighting individuals and their interests and rights meant blurring political standards that had given substance to the process of modern democracy. The most striking sign of this transformation of democracy was the contemporary coronation of the rights of the individual – in fact, the rights of “the individual” insofar as they refer to a very specific conception of human rights, in which it is now a matter of “setting the inherence of rights in the person against citizenly membership, instead of making one support the other as in the original republican version.”<sup>19</sup> These writers agree in the view that Lefort had not seen the result of the movement that he was the first to observe. For Pierre Manent, there well and truly remained something “profoundly true” in Marx's analysis of the atomizing character of human rights. According to Manent, one mark of this divisive character of rights is the fact that women no longer need to establish a “conjugal tie” in order to have a place and a role in society.<sup>20</sup>

On this specific issue of Lefort's having refuted Marx, the similarity of the arguments of several writers is all the more significant because their political affiliations and sources of intellectual inspiration seem to be radically distinct. The writings of Manent – a Catholic, a former assistant to Raymond Aron, and more notably a disciple of Leo Strauss – here come together with those of the ex-Communist Jean-Claude Michéa, who supports an “original” socialism, with George Orwell as its most faithful follower in the twentieth century. Welcoming the contemporaneity of Marx's diagnosis of the individualizing character of human rights, Michéa complains that Lefort's analyses have played a “decisive role” in the emergence of new radicalities and thus of a liberal-libertarian left.<sup>21</sup>

At first glance, this critique of human rights discourse – a critique that could be called “communitarian” or “conservative” (whether left- or right-wing conservatism) – seems to be supported by the Hannah Arendt's famous chapter on “The Decline of the Nation-State and the End of the Rights of Man” (1951), a chapter that is often reduced to a denunciation of the abstract and formal character of human rights, which lost all their effectiveness, as events demonstrated, as soon as they were dissociated from national rights. And given that Arendt herself did see in the plight of stateless people in the interwar period an “ironical, bitter and belated confirmation of the famous arguments with which Edmund Burke opposed the French Revolution's Declaration of the Rights of Man,”<sup>22</sup> it could appear logical to conclude that today she would “resume the Burkean

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<sup>18</sup> See especially two books by Marcel Gauchet, *L'avènement de la démocratie*, Tome 1, *La révolution moderne*, Paris, Gallimard, 2007, pp. 16-20, and *La démocratie contre elle-même*, Paris, Gallimard, 2002; and two by Pierre Manent, *Cours familiers de philosophie politique*, Paris, Fayard, 2001, and *La raison des nations*, Paris, Gallimard, 2006.

<sup>19</sup> Marcel Gauchet, *La religion dans la démocratie*, Paris, Gallimard, 1998, p. 111.

<sup>20</sup> Pierre Manent, *Cours familier de philosophie politique*, Paris, Fayard, 2001, p. 180. Notice how Manent uses writers (Marx in this instance) to reach quite different conclusions from those that they intended to support. Jean-Yves Pranchère drew this to my attention.

<sup>21</sup> Jean-Claude Michéa, *La double pensée: Retour sur la question libérale*, Paris, Champs, 2008, p. 252.

<sup>22</sup> Hannah Arendt, *The Origins of Totalitarianism*, New York, Harcourt Brace Jovanovich, 1973, p. 299.

opposition between ‘metaphysical rights’ and ‘true human rights’ – the latter of which assumed citizens “belonging to a specific community, supported by a tradition, which alone could effectively guarantee rights.”<sup>23</sup> However, acceptance of this conservative capture of Arendt’s work is far from unanimous. We shall return to this below.

### **Cynicism of Form?**

At a seminar on French antilegalism, Antoine Garapon referred to the existence in France of a kind of “cynicism of form” that “prefers words to things.”<sup>24</sup> And in fact, the most striking thing about the repeated denunciation of the harmful effects of the primacy of human rights is perhaps its lack of any relation to reality. It is postulated – and nothing more – that social reality is governed by the primacy of rights. But has human rights discourse really become the exclusive discourse in our democracies? And are its effects really those that are denounced? Those who assert that the coronation of human rights (if this has happened) has emptied civic commitment of its substance seem to think this assertion is so obvious that they never support it by any empirical data about new modes of sociability, or about the associational or activist phenomena.<sup>25</sup> This obscures the fact that this idea is nevertheless still a minority view on the planet, and that the rhetorical triumph of human rights does not imply its extension in practice – as is clear even within the European Union, where weak activity on some issues directly connected to fundamental rights has allowed such things as British complicity in the transfer of prisoners to Gaddafi’s Libya, attacks on freedom of expression in Hungary, the plight of the Roma in several states in central and eastern Europe, and the calamitous situation in many prisons in France and Belgium.<sup>26</sup>

In particular, it is arguable that the surest way to resist hedonistic consumerism and flabby individualism is still the democratic self-organization of society.<sup>27</sup> It is true that the actions taken in the public sphere by “minorities” in order to demand recognition of their rights are more numerous and diversified than they were in the nineteenth and a large part of the twentieth centuries. These actors do not have the permanence of parties and unions, nor their capacity to provide their members with a structure for their life and a model for interpreting the world. Nevertheless, these struggles for rights – for the respect and enlargement of accepted rights, and for the acquisition of new rights – always take place through the formation of collectivities that unite individuals “who rally *together* to obtain the recognition of rights they feel deprived of.”<sup>28</sup> The fact that rights protect the interests of individuals does not mean that they cannot be claimed through a political struggle carried on with and for others:

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<sup>23</sup>Philippe Raynaud, *Trois révolutions de la liberté. Angleterre, Amérique, France*, Paris, PUF, 2009, p. 35. See also Raynaud’s preface to Hannah Arendt, *L’humaine condition*, Paris, Gallimard, 2012, pp. 26-30.

<sup>24</sup> Antoine Garapon, “Edgar Quinet, pourfendeur de l’antijuridisme français,” presented in the 2009-2010 seminar on Justice at the Institut des Hautes Etudes, 30 November 2009.

<sup>25</sup> See Serge Audier, *La pensée anti-68: Essai sur les origines d’une restauration intellectuelle*, Paris, La Découverte, 2008, p. 313.

<sup>26</sup> See the 2012 Human Rights Watch Report: [http://multimedia.hrw.org/world\\_report/wr-download.html#](http://multimedia.hrw.org/world_report/wr-download.html#).

<sup>27</sup> See Richard Wolin, “From the ‘Death of Man’ to Human Rights: The Paradigm Change in French Intellectual Life, 1968-1986,” in *The Frankfurt School Revisited and Other Essays on Politics and Society*, New York, Routledge, 2006.

<sup>28</sup> Catherine Colliot-Thélène, *La démocratie sans demos*, Paris, PUF, 2011, p. 6.

“in the real world, ...what is striking is that, on the whole, claims [“of right”] are put forward by people *on other individuals’ behalf*.”<sup>29</sup>

More specifically, these critiques of the primacy of rights, critiques that come from political philosophy, neglect the basics of the contributions of sociology and law, and cling to the conventional idea that the primacy of rights discourse automatically results in a loss of civic autonomy. But these alleged results must be qualified in the light of research that shows that in political practice, taking rights seriously has more often opened than closed discussions, and has encouraged more than it has hindered the development of solidarity between workers and their allies. A number of empirical studies – such as the work of Michael McCann in the USA<sup>30</sup> - have established that the individualistic bias that is present in the heart of rights discourse has coexisted with perspectives with a collective or relational vision. This research also shows, in contrast to common sense, that the critiques of the alleged invasion of justice into the private and public spheres greatly exaggerate things. In reality, “the so-called crisis of the judicial system, which has been described as all powerful and swamped with complaints, is in fact largely a fabrication that is widely exploited to challenge citizens’ assertions of rights.”<sup>31</sup> While these conclusions are not held unanimously, the idea that human rights discourse leads to a loss in terms of collective participation would benefit from some empirical support.

The same is true for the not very plausible idea that the members of liberal societies consider each other as no more than bearers of individual rights. We have noted above that Sandel takes the example of the family as a model of an institution founded on an identity of meanings and purposes, and Manent takes that of women who are now free to live “untied,” to illustrate the divisive logic of fundamental rights. But on this point, Will Kymlicka’s objections remain relevant: why must one choose between justice and love? Does the fact that women can change jobs without their husband’s permission mean that all of them will choose to exercise this right and risk separating their family? The primacy of rights does not exclude ties of affection, it simply ensures that affective relationships are not corrupted by the logics of domination and subordination.<sup>32</sup> The critics of the atomizing character of individual rights here simply disregard the work in political philosophy that has tried to show that their scepticism could well be based on a narrow and rigid conception of fundamental freedoms and on an inadequately dialectical view of the relationship between rights and social practices.<sup>33</sup>

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<sup>29</sup> Jeremy Waldron, *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man*, London, Methuen, 1987, p. 196 (emphasis in original).

<sup>30</sup> Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, Chicago, The University of Chicago Press, 1994.

<sup>31</sup> Liora Israël, *L’arme du droit*, Paris, Presses de Sciences Po, 2009, p. 129.

<sup>32</sup> Will Kymlicka, *Contemporary Political Philosophy*, second edition, Oxford, Oxford University Press, 2002, pp. 173, 210.

<sup>33</sup> See especially John Tomasi, “Individual Rights and Community Virtues,” *Ethics*, vol. 101, no. 3, 1991, pp. 521-536, and Kenneth Baynes, “Rights as Critique and the Critique of Rights: Karl Marx, Wendy Brown and the Social Function of Rights,” *Political Theory*, vol. 28, no. 4, 2000, pp. 451-468.

## Lefort and Wild Democracy

With regard more specifically to the case of France, the criticism of Lefort – that he had not seen that a “politics of human rights” would lead to collective powerlessness – does not do him justice, for at least two reasons.

For one thing, we too often forget that Lefort directed his critique not only against the Marxist interpretation of the rights of man but also against that of the “new philosophers.” It is known that these philosophers joined the depoliticization movement of the 1970s, which saw human rights flourishing on the ruins of grand ideologies. As Samuel Moyn has shown, for many people it was after the Prague coup and the assassination of Allende had ruined the hopes for “socialism with a human face” that human rights became a provisional, minimal and simple morality situated beyond politics.<sup>34</sup> It was precisely against this simplistic interpretation that Lefort intended to rehabilitate political thinking. In other words, while he recognized certain merits in the new philosophers – especially their having substantially amplified dissidents’ testimony – Lefort rejected taking a lofty view that would reflect an incapacity to confront the question of politics. More specifically, in 1980 he insisted on the fact that the unconditional defense of human rights, in the name of a religion of resistance to all power, shared with Marxism a pure and simple refusal to think about politics. A few years later, in a text in which he returned to objections that had been raised against his “Droits de l’homme et politique,” Lefort again forcefully emphasized his refusal of a form of liberal humanism incapable of comprehending the strength of collective identities and of taking into account the historical dimension.<sup>35</sup>

Furthermore, Lefort ceaselessly emphasized that acquiring new rights always depended on a public recognition brought about by a collective debate. The exploration of the political dimension of human rights did not lead him to neglect civic participation and the sense of the common good. On the contrary, he recalled that struggles for new rights, if they are part of a collective struggle for justice and liberty, are possible and desirable only in a public space that liberates communication among citizens.<sup>36</sup> In this sense, Lefort clearly placed his analysis within the horizon of a democratic logic understood as a process of emancipation.<sup>37</sup> Human rights are products of past struggles and the main object of present ones. Democracy always has a “wild”<sup>38</sup> (*sauvage*) character, for its mainspring resides precisely in challenges and claims by those who are excluded from its benefits.

Here we can see why Lefort’s concept is difficult to reconcile with a defensive view of democracy troubled by the limitlessness that is generated by the dynamics of rights. For Lefort, the idea of a “democracy against itself” seems to have no meaning except as a rhetorical figure of speech. We could almost say that democracy is always in

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<sup>34</sup> Samuel Moyn, *The Last Utopia*, Cambridge (MA), Harvard University Press, 2010.

<sup>35</sup> Claude Lefort, “Les droits de l’homme et l’État Providence,” in *Essais sur le politique*, Paris, Seuil, 1986, pp. 33-63.

<sup>36</sup> Serge Audier, *La pensée anti-68*, *op. cit.*, p. 312.

<sup>37</sup> Catherine Colliot-Thélène, “L’interprétation des droits de l’homme: enjeux politiques et théoriques au prisme du débat français,” *Trivium*, 3, 2009, <http://trivium.revues.org/3290>.

<sup>38</sup> Claude Lefort, “La communication démocratique,” *Esprit*, 1979, reprinted in *Le temps présent: Ecrits 1945-2005*, Paris, Belin, 2007, p. 389.



a way “against itself,” since with human rights in place, established law cannot be settled once and for all. After all, “where the law is questioned, the established order is questioned; from this comes one of the definitions of democracy.”<sup>39</sup> However, far from ignoring possible perversions of this aspect of democracy, in 1979 Lefort emphasized that we need to avoid two pitfalls: immediately seeing every claim as a right, and continuing to believe in the existence of an ultimate criterion for deciding what is and what is not a right. “Each time, we ourselves – and not just the state – are in the situation of having to face up to an indeterminacy, and to argue, on the basis of what we consider to be truth and justice, whether or not a right is acceptable.”<sup>40</sup> It is therefore implausible to accuse Lefort of reducing democracy to the autonomy of the subject, and of forgetting about self-legislation by the people.

### **Human Rights, Humanity, and Democratic Limitlessness**

Paradoxically, today many of the thinkers most faithful to Lefort’s intuitions have a Marxist background. But perhaps the paradox is only apparent: some people think that in the era of capitalist globalization, claiming rights – which includes both struggling against social violence and criticizing the limits of the national state – is necessarily the favoured instrument of radical democracy. For authors like Jacques Rancière and Étienne Balibar, an emphasis on human rights policy is inseparable from a concept of democracy understood as by nature unlimited. This limitlessness does not reside in the proliferation of the desires of insatiable individuals, but in the gesture, authorized by rights, whereby subjects constantly move the boundaries of public and private, and of social and political. Social plurality, nurturing resistance to the domination of a self-appointed elite, is the source of a democratic process conceived as a permanent recomposition of social divisions. This perpetual movement is the mainspring of democratic life.

This explains Rancière’s attack on a “neo-republican” ideology which, “behind its reverence for the Enlightenment, and for the Anglo-American tradition of liberal democracy,” would merely renew the “very French denunciation of the individualist revolution tearing apart the social body.”<sup>41</sup> In reality, the “democratic scandal” means that in politics there will never be a unitary principle legitimizing the actions of rulers on the basis of laws inherent in the assembling of human communities. Thus Rancière responds to Hannah Arendt’s famous dilemma whereby the “rights of men and citizens” would be either empty (the rights of those who have no rights) or reducible to a tautology (the rights of citizens, i.e. the rights of those who already have rights): according to him, Arendt left out a third possibility, namely that human rights are the rights of those who do not have the rights that they have, and who have the rights that they do not have. This is illustrated by the actions of women during the French Revolution, who showed both that they were deprived of rights that they had (those recognized in the *Declaration of the Rights of Man and of the Citizen*) and that they had (through their actions) rights that the Constitution denied to them.<sup>42</sup>

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<sup>39</sup> Claude Lefort, “La pensée politique devant les droits de l’homme” (1980), in *Le temps présent, op.cit.*

<sup>40</sup> Claude Lefort, “La communication démocratique”, *op. cit.*, p. 395.

<sup>41</sup> Jacques Rancière, *The Hatred of Democracy*, London and New York, Verso, 2006, p. 15. Translated by Steve Corcoran from the French original (*La haine de la démocratie*, Paris, La Fabrique, 2005).

<sup>42</sup> Jacques Rancière, “Who is the Subject of the Rights of Man?” *The South Atlantic Quarterly*, 103, 2/3, 2004, p. 304.

However, here one could ask if Rancière is not “more Arendtian than he thinks.”<sup>43</sup> Some writers think that Rancière misses the “aporetic” character of Arendt’s approach, which, far from merely presenting a paralysing alternative between human rights and citizens’ rights, outlines a critical space that can renew our understanding of the concept of rights.<sup>44</sup> Arendt’s analysis of the Dreyfus Affair bears witness to this, especially in this eloquent passage:

There was only one basis on which Dreyfus could or should have been saved. The intrigues of a corrupt Parliament, the dry rot of a collapsing society, and the clergy’s lust for power should have been met squarely with the stern Jacobin concept of the nation based upon human rights – that republican view of communal life which asserts that (in the words of Clemenceau) by infringing on the rights of one you infringe on the rights of all.<sup>45</sup>

In other words, Arendt was highly conscious of the French *Declaration’s* potential, including the fact that it could be an instrument for protests from which claims to equality emerge, but she also recognized it was ambivalent and unpredictable. Therefore we can understand why Étienne Tassin says we should “recognize the distance and irony” in Arendt’s approval of Burke.<sup>46</sup> Arendt was not interested in invalidating declarations of human rights because they were inconsistent, but in paving the way for reflection on the conditions of their effectiveness beyond a specific national collectivity. Rather than binding together the fates of human rights and the modern state, so that, as Giorgio Agamben says, “the decline and crisis of the one necessarily implies the end of the other,”<sup>47</sup> Arendt’s analysis paved the way for reflection on the modalities of a right to political inclusion, or of a “human right to the political,” beyond the nation state:<sup>48</sup>

The concept of human rights can again be meaningful only if they are redefined as a right to the human condition itself, which depends upon belonging to some human community.... The Rights of Man can be implemented only if they become the prepolitical foundation of a new polity, the prelegal basis of a new legal structure, the, so to speak, prehistorical fundament from which the history of mankind will derive its essential meaning in much the same way Western civilization did from its own fundamental origin myths.<sup>49</sup>

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<sup>43</sup> This was Étienne Tassin’s description, in the doctoral seminar “Polis” at the Université libre de Bruxelles on 22 May 2012. One could also say that about Lefort, who in his essay on Arendt seems to miss the similarities between his concept of human rights and Arendt’s, which he compares to Burke’s. Claude Lefort, “Hannah Arendt et la question du politique,” in *Essais sur le politique, op. cit.*, pp. 72-74. On this point, see Jeffrey C. Isaac, “A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights,” *American Political Science Review*, vol. 90, no. 1, 1996, pp. 61-72.

<sup>44</sup> Ayten Gündoğdu, “Perplexities of the rights of man: Arendt on the aporias of human rights,” *European Journal of Political Theory*, vol. 11, no. 1, January 2012.

<sup>45</sup> Hannah Arendt, *The Origins of Totalitarianism, op. cit.*, p. 106. This passage came to my attention by its citation (from a French translation) by Ayten Gündoğdu, *op. cit.*, p. 16.

<sup>46</sup> Étienne Tassin, “Hannah Arendt: la signification politique des droits de l’homme,” paper presented to the doctoral seminar “Polis” at the Université libre de Bruxelles on 22 May 2012.

<sup>47</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford (CA), Stanford University Press, 1998, p. 134. Translated by Daniel Heller-Roazen from the Italian original (*Homo sacer: Il potere sovrano e la nuda vita*, Torino, Giulio Einaudi editore s.p.a., 1995).

<sup>48</sup> Étienne Balibar, *La proposition d’égalité*, Paris, PUF, 2010, p. 67.

<sup>49</sup> Hannah Arendt, *The Burden of Our Time* (the title given to the first UK edition of what was published in 1951 in the USA as *The Origins of Totalitarianism*), London, Martin Secker & Warburg, 1951, Ch. 13 (“Concluding Remarks”), p. 439. This chapter, which Arendt removed from later editions of her book, has recently been reprinted as an appendix in *The Origins of Totalitarianism*, New York, Schocken Books, 2004, pp. 618-32.

There is clearly coming into view a reading of Arendt very different from the one that would endorse a kind of scepticism about human rights discourse and politics. For several writers, Arendt's thinking paved the way to a "political" concept of rights, which differs from a "philosophical" concept in that it sees less need to determine the foundations of human rights than to raise questions about their practical actualization. In this perspective, as humorously summarized by James Ingram, human rights should be compared not to "unicorns" but to "mules": these animals do not exist in nature and do not reproduce themselves, but they can exist and therefore can have real effects.<sup>50</sup> Or in other words: perhaps we are not in fact born equal, but we can become equal through our declared will to ensure rights to ourselves mutually.

In this sense, rights have at least as much to do with status as with actions – actions here being understood as the active practices of those who recognize each other as equals. So the "politics of human rights" can be redefined as "democratic actions," and in practice the tension between fundamental freedoms and self-government can be released: "not only are rights the precondition of democracy, political democracy is the only reliable foundation of rights."<sup>51</sup> Though it comes from a different philosophical background, this emphasis on the practice of rights agrees with the thought of Habermas, who in his most recent book reminds us that "the origin of human rights in the moral notion of human dignity explains the explosive political force of a concrete utopia."<sup>52</sup>

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<sup>50</sup> James D. Ingram, "What is a Right to Have Rights? Three Images of the Politics of Human Rights," *American Political Science Review*, vol. 102, no. 4, November 2008, p. 402.

<sup>51</sup> *Ibid.*, p. 414.

<sup>52</sup> Jürgen Habermas, *The Crisis of the European Union: A Response*, Cambridge (UK) and Malden (MA, USA), Polity Press, 2012, p. 75. Translated by Ciaran Cronin from the German original (*Zur Verfassung Europas: Ein Essay [On the Constitution of Europe: An Essay]*, Berlin, Suhrkamp Verlag, 2011).