



A politics of human rights – The right to rights as universal right to politics?

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Confronted by the charge of depoliticisation levelled at human rights frameworks and interventions, I investigate the possibility of a politics of human rights at the core of democratic politics. In doing so, I am guided by Hannah Arendt's reconstitutive critique, and Claude Lefort's analysis of political modernity, which could be seen to converge in a justification of a 'politics of human rights' and, even more specifically, of 'the political' of human rights. Central in this regard is Arendt's postulation of "the Right to have rights", which would meet the criteria for "equaliberty" (Balibar), a symbolic division (Lefort), and intensive universality (Balibar), which, in turn, circumscribe the concept of 'the political'.

The confrontation between human rights and politics is ubiquitous in political modernity. But the confrontation, if critics are to be believed, is about to disappear in the image of a mutual incorporation. There is, first, the tendency to conflate morality and law, norm and prescription, and to confuse a moral demand with a legal entitlement (Douzinas 2007: 9-10). Secondly, and more significantly, rights make claims on politics, but politics depoliticises rights. Both negative rights, so-called 'first-generation rights', initially formulated as protection from state power, and positive rights, so-called 'second-generation' rights encompassing socio-economic and cultural rights historically associated with social democratic and socialist traditions, have migrated, along with the role of the state itself, to form elements in armatures of governmentality. Human rights form the basis of a new global consensus, reconciling former friends and enemies. The flattening of political antagonisms

becomes internal to their own legitimations, which justify humanitarian interventions outside of political jurisdictions, while simultaneously perpetrating human rights violations against other others on, or inside the borders of their sovereign states. In the complicity between violence and limits set to it, human rights interventions themselves become immune from international law, and from charges for crimes committed in their name (Balfour & Cadava 2004: 288). Human rights frameworks take the antagonism out of politics, displacing it to a new 'inside' and 'outside' of orders, which do not thereby interpellate political subjects; rights "become rewards for accepting the dominant order; but [...] are of little use to those who challenge it" (Douzinas 2010: 96).

In an older political-theoretical register, the principles of universal human rights, liberty and equality, would be termed 'ideological' to the extent that they conceal structural inequalities and oppression. 'The rights of man' are always either beneath or beyond politics. Not only is it being said that "there is no politics of the rights of man" or "the rights of man are not a matter of politics" (Balibar 1994), but, more specifically, the Human of human rights does not, on these accounts, correspond to the Political of politics.

It would seem consistent with this assessment of human rights when, in a gesture resonating with the rhetorical flourish with which Marx and Engels open the *Manifesto of the Communist Party*, Costas Douzinas announces the appearance of the spectre of human rights in the disappearance of politics, with the triumphant march of human rights echoing the historically revolutionary role of the bourgeoisie in Marx and Engels' diagnostics of world history:

A new ideal has triumphed on the world stage: human rights. It unites traditional enemies, left and right, the pulpit and the state, the minister and the rebel, the developing world and the liberals of the West. The new world order, we are told, is genuinely liberal democratic. Ideological controversies of the past have given way to general agreement about the universality of western values and have placed human rights at the core of international law. After the collapse of communism, human rights have become the ideology after the end of ideologies, at the end of history, the morality of international relations [...]. (Douzinas 2013: 51).

Yet this "nursery tale of the Spectre" (Marx & Engels [1948] 1984: 481) forms only one prong of Douzinas's approach, responding to which I do not intend to conjure up a Manifesto, but a contestation beyond the conventionally so-called 'Janus face' of human rights, radicalising their '*adikia*' (see Douzinas 2010: 90-1, Žižek 2008: 101), whose neutralisation, I would want to argue, is anything but a foregone conclusion. To alert ourselves to this, we would only need to consider

the fragility of the universal and, indeed, of the conventional genealogy of human rights in the face of struggles against racial hierarchy and exclusionary humanisms (see Gilroy 2009).

Re-opening the contestation, among a plethora of debates on the question of the politics of human rights, I would like to ask (with Etienne Balibar): “How is it possible to reconcile a critique of the idea of basic human rights while at the same time locating a typical *politics of human rights* at the core of politics in general, especially democratic politics?” (Balibar 2007: 728). In addressing this question, I call up four protagonists (at times antagonists), who engage with each other’s writings on this issue: Hannah Arendt and Wendy Brown on the one hand, and Claude Lefort and Jacques Rancière, on the other.

Implicitly taking up Carl Schmitt’s dictum that “humanity is not a political concept, and no political entity of society and no status corresponds to it” (Schmitt [1927, 1932] 2007: 55), Arendt famously notes the perplexities of human rights attendant upon the end of the European system of states and of nation-state institutions in the interwar years. In the wake of civil wars, statelessness, forced migration, social dislocation, and homelessness, millions of people found themselves outside of legal protections. Loss of citizenship meant loss of human rights; human rights could not be claimed beneath or beyond civic-political rights. Inalienable human rights could be claimed only by citizens. The gap between the Rights of Man and the Rights of the Citizen widened under these conditions, but without thereby instituting a no-man’s-land:

Effective rights follow national belonging. While proclaimed on behalf of universal humanity beyond local or historical factors, only national citizens get full protection. The gap between universal man and national citizen is populated by millions of refugees, migrants, stateless, moving and nomadic people, the inhabitants of camps and internment centres, [...] who belong to ‘humanity’ but have few if any rights because they do not enjoy state protection (Douzinas 2010: 83).

In a parallel development, the State moved from politically encasing the Law and political institutions to serving as an instrument of the nation, drawing more rigid lines of exclusion in the process. European nation-states failed in guaranteeing human rights to those who had lost nationally guaranteed rights, thus contributing to the conditions for genocide. In Arendt’s famous – and for Rancière, controversial – statement,

[t]he calamity of the rightless is not that they are deprived of life, liberty [...] or of equality before the law [...] – formulas which were designed to solve problems *within* given communities – but that they

do no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them [...] their right to live [is] threatened; only if they remain perfectly “superfluous”, if nobody can be found to “claim” them, may their lives be in danger. (Arendt [1951] 1994: 295–296)

Their civic divestment is marked by successive stages of deprivation of legal status, denationalisation, ghettoisation, deportation into camps, and genocide, which deprived victims of their human rights without loss of the quality of being human (Arendt [1951] 1994: 297). Such demotion, from the citizen to ‘bare life’, became a self-fulfilling prophecy for totalitarian ideologies, which denounced advocacy of human rights as “hopeless idealism” or “feeble-minded hypocrisy” (Arendt [1951] 1994: 269). Their apolitical nature is furthermore revealed to Arendt ([1951] 1994: 292) in the consideration that “the declarations that [the groups formed for protection of human rights] issued, showed an uncanny similarity in language and composition to that of societies for the prevention of cruelty to animals”; claiming human rights amounted to an assertion of “belonging to the human race in the same way that an animal belongs to animal species” (Arendt [1951] 1994: 302). “Afraid that they might end by being considered beasts”, human rights were not invoked even by the victims themselves, who knew that “the nakedness of being human [...] was their greatest danger” (Arendt [1951] 1994: 300).

One of the major problems with human rights, as Arendt ([1951] 1994: 291, 299) sees it, is their immanence, premised, as they are, on an abstract, isolated human being, without any authority that could guarantee these rights, by reference to any source of legitimacy outside of themselves.

The relegation of human rights, as an exception for those who have nothing better to fall back on, to a sphere outside of citizenship, outside of a common world of communicative action, is what defines them as a-political for Arendt.

Wendy Brown (2004) radicalises Arendt’s characterisation of human rights as apolitical, casting human rights activism as *anti*-political project. It presents itself as an expressly moral antidote, as defence of innocent and powerless individuals against abusive political power and collective violence, and as protection against pain, deprivation, and suffering in the absence of a political discourse of comprehensive justice (Brown 2004: 453–4). This defence, mobilised on moral grounds, is largely left to NGOs and other non-state actors, or to institutions outside of the state. With their decidedly and explicitly announced apolitical stance, they suspend the question as to what kind of politicisation they set in motion against the powers they oppose (see Žižek 2005: 126).

Where the rights of man are pitted against politics, as in this negative dialectic, politics, in turn, is pitted against the Rights of Man (Balibar 1994). Such is Rancière's retort to Arendt.

Arendt's (and, by extension, Brown's) characterisation of human rights, as rights of the victims unable to claim them politically in their own right, comes under close scrutiny in Rancière's questioning of the subject of the Rights of Man. Referring to Arendt's statement (quoted earlier) about the superfluity – “beyond oppression” – of the dislocated stateless, he charges her with “depoliticizing matters of power and repression and setting them in a sphere of exceptionality that is no longer political”. Thus, the depoliticisation of the Rights of Man, “the radical suspension of politics in the exception of bare life”, according to Rancière, is not so much a description of the state of statelessness, as it is of Arendt's (and, by extension, Brown's) methodological bias – *viz.* a framework of analysis that Rancière terms “archipolitical” (2004: 301).

However, Rancière's assertion, *contra* Arendt (as he believes), that “bare life” can be “political”, founders on the warrants that he adduces for his claim. A decidedly political stance was asserted, Rancière opines, “during the French Revolution by a revolutionary woman, Olympe de Gouges, in her famous statement that if women are entitled to go to the scaffold, they are entitled to go to the assembly” (Rancière 2004: 303). Olympe de Gouges' statement can be considered “within the political” precisely because the division from within which she speaks, that between domestic and public life, between the legal status of men and that of women, is still internal to a political community defined by the principle of sovereignty, including the sovereign decision over life and death. The exclusion against which De Gouges comes up is an exclusion that is still inscribed within an inclusion (see Balibar 2014: 109). Such internal exclusion is not what describes the situation of Arendt's stateless rightless. The division between the Rights of Man and the Rights of the Citizen that Arendt sees epitomised in the destruction of the political under totalitarianism, does not mean, as Rancière (2004: 306) understands it normatively, “that the only real rights are the rights given to the citizens of a nation by their belonging to that nation” – quite the contrary: for Arendt, the “capture of the state by the nation” is precisely part of the problem, for the same nation-state institutions that conferred rights could also destroy those rights. It was on the basis of the historical confusion of the Rights of Man with the rights circumscribed by the nation-state (see Arendt 1946) that the Rights of Man were referred to the principle of nationality, and those falling out of the European nation-state system fell into rightlessness (see Arendt [1951] 1994: 291-2).

As if to step into the breach between the Rights of Man and the Rights of the Citizen, which Arendt sees structurally widened in the systematic depoliticisation

of rights conducive to conditions disposing those with 'bare' human rights to mass murder and genocide, Lefort, like Rancière after him, wishes to re-instate the political significance of human rights. And like Rancière after him, Lefort is reaching for examples and instantiations to demonstrate his point, in this case Eastern European dissidents giving political significance to human rights in demanding rights that become incompatible with totalitarian regimes (see Lefort 1986: 241). But just as in the case of Rancière after him, I question this exemplification.

Dissidents, civic movements, and workers' uprisings in Eastern Europe in the late 1980s, while struggling for the recognition of human rights that would attack the foundation of totalitarian regimes and thus asserting a fundamental opposition, had arguably not, at the stage at which Lefort wrote about them, taken full cognisance of the disincorporation of power that describes the political form of modern democracy, raising the question of a change in the kind of attachment that a new political order would solicit.¹ While thinning out the locus of power through 'thin' demands voiced as abstract universals, and emptying or deforming the contents of each of the demands/principles in such a way that they become substitutable for, or equivalent with each other, they were not by the same token averse or resistant to nationalist re-incorporations. In the demonstrations in Prague in 1989, for instance, Laclau (1997: 309) claims, 'truth' and 'justice' functioned as equivalent terms "to expose the good of the community, denied by the fallen regime". The space that had momentarily opened up for a contestation of the relationship between the state and civil society tended to be closed by the concretisation and consecration of 'the people' with national and ethnic group affiliation. The easy slippage from the understanding of 'the people' as empty principle of sovereignty, to that of the embodiment of national or ethnic group identifications, was perhaps nowhere more clearly evident than in East Germany in the heady days of the beginning of November 1989. The slogan "We are the people" served as a rallying call for popular discontent – but only for five days, viz. from 4 to 9 November 1989. For five days only, intonings of a common political language could be heard, until the slogan acquired an increasingly nationalist ring. By early December 1989, the chant "We are the people" had given way to "We are one people", which became instrumental in nationalist right-wing campaigning for the 1990 elections.

Highlighting Solzhenitsyn's *Gulag Archipelago* (Lefort 1976) as an earlier example of a nascent politics of human rights, Lefort does not exemplify or demonstrate his points, but misses them. Lefort sees the narrator (whom he

1 Notions of a public sphere and democratic institutions were slow to take hold under social conditions characterised, *inter alia*, by informal relations, and exchanges within associations understood as 'communities' (see Stojanov 2012).

conflates with the author) moving from a description of social conditions, and conditions in the camps, under 'really existing socialism' in the first two volumes, to an activist stance in tune with the account given of collective resistance in the camps in the third. However, his textual example, read as testimony of the forced labour camps in the Soviet Union, entailing systemic (threatened) forced removal, dislocation, and exile, does not contradict, but rather confirms the analysis of the perplexities of human rights mounted by Arendt.

On the basis of these considerations, Lefort's insistence on a *politics* of human rights would seem doubly inconsistent. The fact that he was awarded the Hannah Arendt Prize of the City of Bremen in 1998 would seem to add to the irony of his insistence on a *politics* of human rights, *contra* Arendt, while not developing an argument that would amount to a challenge to her analysis of the vicissitudes of human rights under totalitarian regimes.²

Attempts to refute Arendt's diagnostics of the perplexities of human rights and establish a '*politics*' of human rights by reference to the civil rights initiatives culminating in the 1989 uprisings, variously termed 'velvet revolutions', in Eastern Europe, thus, can be shown to be limited if not flawed.

However, there are other aspects on which Arendt's reconstitutive critique and Lefort's analysis of political modernity could be seen to converge towards a justification of a '*politics* of human rights', and even more specifically, of 'the political' of human rights.³ To be able to demonstrate this convergence, I will have to revisit Arendt's *The origins of totalitarianism* and Lefort's *The political forms of modern society*.

Towards the end of her chapter on 'The decline of the nation state and the end of the rights of man', Arendt postulates "the right to have rights", which comprises the right "to live in a framework where one is judged by one's actions and opinions and a right to belong to some kind of organized community" ([1951] 1994: 296). With "the right to have rights", Arendt indicates a reversal in the widely assumed and asserted order of rights: it is *not* a matter of how citizenship is made by man (how the Rights of the Citizen are premised on the

2 Lefort does, at a later stage, engage with Arendt's analysis of 'Terror and Ideology' in the last chapter of *The origins of totalitarianism*, finding it wanting for not accounting for the structure of the social in relation to the perversion of the law in the Soviet Union (see Lefort 2002: 45); but in making a case for a '*politics* of human rights', he remains "noticeably unconcerned with the question of citizenship" (Blackell 2006: 51) and does not engage with the perplexities of human rights that form the basis of Arendt's conceptualisation of a genocidal totalitarianism – not even in his chapter explicitly devoted to 'Hannah Arendt and the Question of the Political' (Lefort 1988).

3 Lefort cursorily gestures towards this convergence when he links Arendt's prioritisation of the Rights of the Citizen with that of Burke (Lefort 1988: 52).

Rights of Man, or more distantly, on natural right), but how man is made by citizenship (how the Rights of Man are premised on the Rights of the Citizen). With this reversal, Arendt provides a juridical adequation (as opposed to an uncritical conflation) of the Rights of Man and the Rights of the Citizen, to assert a universal right to politics, to effective participation within a community of political actors (Balibar 2004, see also Balibar 2007: 733).

The juridical adequation of the Rights of Man and the Rights of the Citizen simultaneously entails a mutual implication of first- and second-generation rights, liberty and equality, articulated through Balibar's (2004: 313, 318) concept of "equaliberty", signifying an indissociable political tie in coming into citizenship.

Far from constituting a tautology or a "deceptive trick", as Rancière (2004: 302) claims, I would want to show that "the Right to have rights" meets Lefort's more stringent requirements for a 'politics' of human rights. "The Right to have rights" is neither a natural nor a positive or statutory right (Howard 2007: 65), but a political right of a special kind: it indicates a division between political constitution and an instituted order. "The Right to have rights" cannot be circumscribed *within* society (Lefort 1986: 258), which is why rights have to be declared as right in a performative utterance, from a location set outside of the domain in which they become effective. This illocutionary act, enunciated in the name of a collective that constitutes itself in that act without anteriority, re-enacted in every one of its subsequent invocations, is a radical discursive operation, leaving the field of instituted politics (see Balibar 1994: 205–26). With its own institution being referred to an external source of authority, "society now turns out to be uncircumscribable, by virtue of the fact that it cannot relate to itself in all its elements and represent itself as a single body [...]" (Lefort 1986: 256). "The Right to have rights" is distinct from, and in tension with private or particular interests on the one hand, and laws and institutions of the state on the other, without thereby being rendered 'apolitical' or 'antipolitical'.⁴ In this tension lies its irreducibility to interest, demand, codified law and power; simultaneously, the symbolic dimension of rights unfolds in this tension, which keeps society from deciphering itself and closing in on itself (Lefort 1986: 258–60). Awareness of rights fostered by "the Right to have rights" operates as a generative principle, inscribing new rights, along with their progressive politicisation, analogous to life-engendering productive life of a common humanity of Marx's description in the 1844 Paris Manuscripts (Lefort 1986: 258–60).

4 Lefort (1986: 258) elaborates: "From the legal recognition of strikes or trade unions, to rights relative to work or to social security, there has developed on the basis of the rights of man a whole history that transgressed the boundaries within which the state claimed to define itself, a history that remains open."

An understanding of the political significance of human rights, of human rights as political rights, would have to recognise the Right to have rights as a universal introduced into history (see Balibar 2014: 168) – not in the sense of abstract, individual rights premised on individualised natural right, but as rights that cut to the condition of *common* humanity.⁵ Willingly and consciously adopting human species-being as well as the being of all other species, the human being lives in a reflexive relation to itself, treating him-/herself “as universal and therefore a free being” (Marx [1844] 1959: 31).

The consideration of the human condition from the perspective of a philosophical anthropology, articulated in Marx’s idea of human species-being (and alienation from it), leads to a further specification of the universal. The Right to have rights names a non-foundational division that constitutes society on the basis of the reflexive capacity that marks human species-being – not in an uninterrupted relation to nature, but in an intentional mode of politics (see Moyn 2012: 41), which symbolically assumes, and responds to its own division (Moyn 2012: 43). The *political* institution of society effecting a division between the instituting and the instituted is centrally at issue in a universal history (rather than a stagist, linear, political-evolutionist or developmental history) of the political and of the state, including polities designated as “societies without history” and “societies against the state”.⁶ The State – whether in the form of an overcoding unity, or whether in resistance to, or forestalling of such conjunction – stands in a relation with an outside. In the absence of transcendental reference points of a theological-metaphysical ‘outside’, the Right to have rights takes on that political role.

The consideration of an “intensive universality” (as opposed to abstract or extensive or ‘thin’ universality) indicates a third sense in which the Right to have rights is universal: “[it] forbids the denial of citizenship in the name of determinations of condition, status, or nature” (Balibar 2004: 312).

5 For Marx, individualised natural rights appear as a function of estranged labour: “[Estranged labor] changes for [man] the life of the species into a means of individual life. First it estranges the life of the species and individual life, and secondly it makes individual life in its abstract form the purpose of the life of the species, likewise in its abstract and estranged form (Marx [1844] 1959: 31).

6 About “societies against the state”, Marcel Gauchet (1974) writes in response to Pierre Clastres’ *Society against the state* (1974), highlighting and extending the latter’s ‘discovery’ in studying the structures of power among the Guayaki in Paraguay: “Modes of organization, customs, rites, usages, and techniques: the totality of traits that amount to social life is conceived only in reference to an origin situated in a radical *elsewhere* and is thought to make sense only in reference to an absolutely *other* place. [...] Savage society is that society that is controlled through an essential relation, at a distance from itself, to the origins of its own meaning: it is a society whose origin is a division between it and the site of its intelligibility” (quoted in Moyn 2012: 45).

From the elaborations rendered so far (by reference to the writings of Arendt, Lefort, and Balibar), we could draw some lessons crucial for the attempt to make the case for a politics of human rights, for human rights integrally tied up with the definition of the political. These revolve around

- neither pitting human rights against politics, nor pitting politics against human rights;
- dismantling the disjunction between the Rights of Man and Rights of the Citizen through a juridical adequation (as opposed to an uncritical conflation) of the Rights of Man and Rights of the Citizen; rendering the principles of equality and liberty indissociable ('equaliberty');
- the "Right to have rights" as universal right to politics;
- the "Right to have rights" indicating a division between political constitution and an instituted order; the "Right to have rights" as generative principle, inscribing new rights;
- the "Right to have rights" as universal right, not in extrapolation or extension of individual abstract right, but in terms of a universal history of the political.

I believe that these points would contribute to clarifying the relationship that has vexed theoretical practice, between liberty and equality, in ways that can stand up to political challenge – the challenge of the political.

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