

Human Rights and the Political Paradox

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HOW MIGHT CONCEPTUALIZING ‘HUMAN RIGHTS’ IN RELATION TO THE CONCEPT OF THE political transform what we take to be the politics of human rights? What are its stakes and conditions of possibility? These are abstract questions, which can only be properly answered in relation to particular political circumstances and struggles. Although such work is important, in this article I want to maintain a certain level of abstraction, refraining from engaging in the immediacy of political reflection. For reflecting on the relation between human rights and the political as a meta-theoretical concern may open a different set of preoccupations and questions than we might otherwise start with when we say these key words—‘human rights’—in a given context.¹

The distinction between ‘the political’ and ‘politics’ is awkward in English—it has made its way into Anglo-American political theory via European philosophy.² Broadly, the concept of the political refers to the notion of polity or political unity. The concept of the political is presupposed in ordinary political discourse when actors explicitly or implicitly appeal to notions such as ‘the common good’,

¹ Thanks to Ned Curthoys for inviting me to present an earlier draft of this paper at the Australian National University and to James Ingram for his comments and ongoing dialogue around these issues. I am hugely indebted to Ingram’s excellent scholarship.

² In French, the distinction is between *le politique* and *la politique* and in German between *die Politik* and *das Politische*.

the 'public interest', the 'people' or some sense of a 'we' in order to legitimate their particular claims. Politics, by contrast, is usually taken to refer in its ordinary sense to the struggle for power and its exercise. It is conflict over who gets what, where, when and how. Within phenomenology the distinction between politics and the political is often mapped onto the difference between the ontic and the ontological: politics refers to the appearance of the struggle for power, while the political refers to the shared horizon that politics presupposes. Although the concept of the political is today often invoked by post-Marxists and theorists of radical democracy, it was first articulated within twentieth century political thought by thinkers such as Carl Schmitt and Hannah Arendt, reacting against the Marxist view of politics. Both Schmitt and Arendt insisted on the autonomy of the political as a domain of human experience that is irreducible to legal, economic, moral or social relations. French post-Marxists such as Claude Lefort, Étienne Balibar and Jacques Rancière have drawn on debates about the political both to critique the liberal human rights consensus that emerged in the wake of the Cold War and to consider how human rights might be mobilized for an emancipatory politics.

As far as I am aware, Paul Ricoeur first introduced the distinction between politics and the political to the French scene in 1956. Ricoeur wrote his now seminal essay, 'The Political Paradox', in response to the failed Hungarian revolution. Ricoeur was shocked by the unexpectedness of the Budapest uprising and the severity of its suppression by Soviet troops. In his view, the event revealed the autonomy of the political as a domain of human experience (distinct from other domains such as the moral, economic or aesthetic) with its own particular problems, dynamics, modes of action and normative criteria. Contrary to the orthodox Marxist dogma that under communism the state would wither away, the suppression of the Budapest uprising by Soviet troops demonstrated that politics 'fosters specific evils' that are irreducible to other evils such as economic alienation (Ricoeur 248). Due to the means of violence that the state commands, the temptation for its abuse within a socialist economy is even greater than in a capitalist economy. Yet, with his insistence that the problem of political evil must be understood in relation to the concept of the political, Ricoeur also departs from a certain liberal pragmatism that is inherently mistrustful of the state as a necessary evil. This is due to the fact that Ricoeur identifies the political with a specific rationality based on the mutual recognition of citizens as free and equal. As such, he distinguishes the political from politics. If *politics* refers to the use of power (the struggle to found and preserve a political association and make decisions on behalf of all), for Ricoeur *the political* refers to the self-representation of the polity as a rational association of free and equal members. Since the political only emerges through politics, conversely, this gives rise to a paradox: 'the greatest evil adheres to the greatest rationality' (249).

In this article, I take Ricoeur's reflections on the political paradox as a starting point from which to consider how the politics of human rights is related to the constitution and transformation of political community. After introducing Ricoeur's political paradox, I examine the respective accounts of the politics of human rights offered by liberal pragmatism and Marxism. Liberal pragmatism presents the politics of human rights primarily as a matter of implementation, of protecting vulnerable subjects by empowering the powerless. For Marx, by contrast, the politics of human rights is, at worst, ideological since it dissimulates class antagonism, or at best, impotent, since there is no material basis from which it could bring about emancipation. Drawing on critiques offered by Badiou and Lefort, I show how each fails to grasp the relation between politics and the political that Ricoeur draws our attention to. Liberal pragmatism is inherently conservative since it ends up treating human rights as a protection against any effort to unite a people in the collective determination of their own conditions of existence. In contrast, the Marxian tradition fails to recognize the symbolic effectivity of human rights as a condition of possibility for democratic politics. In the final section, I return to Ricoeur's political paradox to consider what can be recuperated from liberal pragmatism and Marxism to understand the politics of human rights. I also reflect on the limits of Ricoeur's own thematization of the autonomy of the political in light of this discussion.

The Political Paradox

Ricoeur discerns two broad traditions of reflection on political life. One tradition (exemplified by Aristotle and Rousseau) emphasises that aspect of political life that Ricoeur calls *the political*: the rational organization of the polity according to principles that all can accept as free and equal members. The other tradition (exemplified by Machiavelli and Marx) emphasises that aspect of political life that Ricoeur calls *politics*: the struggle for mastery, the use of coercion to impose the will of one group over another. Ricoeur differentiates the political from politics around several opposing terms. While the political refers to the cooperation of equals for the sake of a common good, politics entails a struggle among rivals to acquire and exercise power. The political becomes apparent through the free use of public reason, while politics is enacted through decisions. While the political presupposes the origin of the state in a virtual consensus, politics concerns the establishment and preservation of the state through incentive violence. The meaning of the political can only be discerned retrospectively through reflection, while politics is pursued through strategic calculation, by reckoning prospectively with probabilities and weighing possible consequences. While the political 'carries on without interruption', politics 'exists in great moments, in "crises", in the climactic turning points of history' (Ricoeur 255). Ricoeur insists that any adequate political reflection must recognize how

these two aspects of political life mutually presuppose each other. The challenge for political reflection is thus to recognize the political paradox as constitutive of political life, to understand political violence and political rationality as mutually constitutive.

Ricoeur highlights two features of the political. First, from Aristotle he takes the idea that the political is part of what makes us distinctively human. For Aristotle, the meaning of politics could only be understood in relation to the Good or what makes a human life worth living. The state, like every society, is instituted for the purpose of the good of all its members. Since the state is the most universal of all political associations, it aims at the highest good and is therefore inextricably bound up with the humanity of man, the 'admission of man to humanity by means of citizenship' (251). It is by virtue of participating in politics, by concerning themselves with this highest good of the political association, that citizens actualize their humanity. 'The threshold of humanity is the threshold of citizenship, and the citizen is a citizen only through the State' (240). Importantly, Ricoeur takes from Greek political thought the insight that tyranny is to be understood only as perversion of the rationality of the political. No Greek philosopher 'ever resigned himself to the exclusion of politics from the domain of rationality' (249). For if politics was identified with evil and tyranny and understood in opposition to philosophy's concern with the good and moral reasoning, then reason itself would have no actuality within human co-existence, it would be enclosed 'within nihilistic moralism' (249).

Second, from Rousseau, Ricoeur highlights the idea of the social contract, which captures the 'specific nature of the political bond as opposed to the economic bond'. The insight Rousseau offers is that 'the body politic is born of a virtual act, of a consent which is not a historical event but one which only comes out in reflection' (251). This idea captures the rationality of the political as a self-reflexive institution of the polity, i.e. a virtual act through which a people constitutes itself by establishing a state (252). The representation of the origin of the political community as a consensual undertaking among free and equal members is irreducible to any sociological account of the origins of political community. For the political consent that gives rise to unity of the political association can 'be recovered only in an act which has not taken place, in a contract which has not been contracted, in an implicit and tacit pact which appears only in political awareness, in retrospection, and in reflection' (252). The 'ideal equality of each before all' is the *truth* of the political in the sense that it is the fundamental presupposition of every social order. It acquires a reality within every actually existing body politic since even in the most despotic State the ruling group must legitimate its rule by claiming to act on behalf of the whole. But precisely because this political bond remains virtual it is prone to untruth. What Marx calls the 'illusory' sovereignty of a community of equals is easily

invoked to legitimate the particular interests of a ruling class (252). Yet, Ricoeur insists, this rationality is never 'completely reducible to the projection of the interests of the ruling class into the sphere of law' (252). Before 'giving rise to falsehood' the rationality of the political 'founds the freedom of citizens, a freedom which ignores particular cases, the real differences of power, and the real conditions of persons, but which is nevertheless valuable because of its very abstraction' (253). Consequently, even though the idea of the social contract potentially dissimulates social domination, it also allows for ideological reversal since the terms of belonging within actually existing political community might be contested by appealing to its 'better self'.

Ricoeur highlights two features of politics that correspond to these two aspects of the political. First, with reference to Machiavelli, he highlights *violence* as a specific evil fostered by politics. Machiavelli was concerned with the problem of founding a political order, which requires employing the 'techniques of acquiring and preserving power', which are predicated on the 'essential political relationship between friend and enemy' (257). For Machiavelli politics is defined by the deployment of 'calculated and limited violence designed to establish a stable state' (258). Politics reminds us of the contingency of the foundation of the historical community, the fact that the state is 'marked from its inception by violence which was successful' (258). The violent birth of a state is, to some extent, retroactively redeemed by reference to a virtual consensus that the political presupposes. However, the contingency of the foundation of the political association can never be entirely overcome. Inceptive violence is in this way the political evil that corresponds to the ideality of the social bond. The political necessarily involves politics since political rationality can only be actualized by means of decisions. Conversely, politics necessarily involves the political since decisions can be legitimized only by appealing to some notion of the collective good. This mutual implication of politics and the political is evident in the fact that every historical political community originates in a violent seizure of power. Yet this inceptive violence must also appeal to a legal validity through which the ideal equality of citizens enters the self-understanding of the political community. Consequently, 'the political sphere is divided between the ideal of sovereignty and the reality of power, between sovereignty and the sovereign' (259).

Second, Ricoeur turns to Marx in order to highlight *untruth* as a second political evil, which corrupts 'man's primordial state, which is word, discourse and reason' (257).³ Marx exposes the illusion of the representation of the State as

³ Since we communicate within language, language is bound up with the political insofar as it is part of the being in common, or becoming common of a community. If language makes possible the expression of the truth of human existence, it also makes possible

mediator in which citizens actualize their freedom (258). The State for Marx (in 'On the Jewish Question'), is 'not the true world of man but rather another and unreal world; it resolves real contradictions only in virtue of a fictive law which is, in turn, in contradiction with the real relationships between men' (258-259). What Ricoeur wants to retain from Marx is the insight that the 'State is not and cannot be what it claims to be' (258). But rather than view this aspect of politics as a historically specific condition brought about by the development of capitalism, Ricoeur insists that this political alienation is 'constitutive of human existence' (260).⁴ While Marx diagnosed this fundamental contradiction he failed to recognize its 'absolute character' (259). Political existence is necessarily conditioned by the gap between the abstract life of the citizen and the concrete life of family and work (260).⁵ Marxism failed to recognize the permanent possibility of political evil because it viewed the state as a historically specific institution that emerged in order to contain class conflict. Yet, in dismissing the idea of the state as an association of free and equal citizens as bourgeois illusion, Marxism also relinquishes the political, recognizing only the reality of politics in the State which appears as the 'organized power for the ruling class for oppressing another' (259). Because it treats political alienation as symptom of economic alienation, Ricoeur argues, Marxism fails to recognize that the socialist state 'requires a vigilant popular control precisely because its rationality is greater' than the bourgeois state (264). Rather than rendering basic bourgeois rights redundant (such as the right to an independent judge, freedom of information, the right to strike and to participate in political deliberation), these rights become all the more important to protect within a socialist state.

What happens to our understanding of the politics of human rights if we take seriously Ricoeur's insight that politics and the political mutually presuppose each other? To answer this question, I turn now to consider in some detail two contending accounts of the politics of human rights: liberal pragmatism (exemplified by the work of Michael Ignatieff and Judith Shklar); and the radical critique of human rights (exemplified by the writings of Marx himself). In different ways, each account of the politics of human rights fails to recognize its implication in the political. On the one hand, as Badiou highlights, because liberal pragmatism fails to recognize political evil as a corruption of political rationality, it potentially supports a conservative politics. On the other hand, as Lefort highlights, insofar as the Marxist tradition does not recognize alienation as

tyranny, which is intimately linked to 'flattery, the art of persuasion by means other than the truth' or in Marxian terminology, ideology (Ricoeur 257).

⁴ Political society involves this external contraction between an ideal sphere of legal relations and a real sphere of communal relations—and this internal contradiction between sovereignty and the sovereign, between the constitution and power or, in the extreme, the police (259).

⁵ Although we aspire to achieve a state in which these contradictions would be overcome, the 'evil is this aspiration is not within our reach' (259).

constitutive of the political condition, it neglects the symbolic effectivity of human rights.

Liberal Pragmatism

According to Michael Ignatieff, human rights are inherently political since their recognition emerges from the experience of state violence (83). As such, we should not understand human rights as universal moral entitlements that are independent of the contingencies of political life (an ethic of absolute ends), as perfectionist liberalism might do. Rather our shared commitment to human rights should be predicated on a prudential political morality (an ethic of responsibility) (Weber; see Ingram, 'What is...' 404). According to Ignatieff, the Universal Declaration of Human Rights was written in full awareness of the 'disastrous heritage of European collectivism' (65) and the need to 'safeguard individual agency against the totalitarian state' (66). The Declaration thus stands as a warning to the rest of the world of the danger of politics descending into barbarism (81). As such, the promise 'never again', through which a shared commitment to human rights is articulated, is not based on the mutual recognition of what makes a human life worth living. Rather it is predicated on a common understanding of what makes human life intolerable (Ignatieff 56).⁶ This consensus is negative in that it requires only a limited form of reciprocity according to which we consider what it is in our mutual interest to avoid in political life (Shklar 10). Since it is not possible to 'conceive of any circumstances in which we might excuse [human rights violations such as torture] against ourselves or anyone we know, we have good reason to believe that such practices should be outlawed' (Ignatieff 89).⁷ The cosmopolitan basis of human rights is thus premised on the universality of fear, which becomes politically relevant when its object is the cruelty inflicted by the state (Ignatieff 80; Shklar 11).⁸

If what binds the community of human rights holders together is a shared aversion to the abuse of state power, what makes a shared commitment to human rights possible is a 'pragmatic silence on ultimate questions' (Ignatieff 78). In defending the universality of human rights, Ignatieff warns against

⁶ As Judith Shklar observes, it does not 'offer a *summum bonum* to which all agents should strive, but it certainly begins with a *summum malum*, which all of us know and would avoid if we could. That evil is cruelty and the fear it inspires and the very fear of fear itself' (10).

⁷ For commentary on Ignatieff's position on human rights in subsequent writings see Gearty.

⁸ Ignatieff's liberal pragmatism exemplifies the triumphalist view of human rights that prevailed following the end of the Cold War. As Costas Douzinas observes, the post-cold war era was 'the time of the "ends": of ideology, of history, of Utopia and the beginning of the human rights millennium' (167).

appealing to any fundamental claims about what it is to be human, such as the inherent dignity of the individual. Rather than relying on a positive conception of what humans require to flourish, we should build support for human rights simply on the fact that they work by protecting the agency of their holders. ‘Human rights matter because they help people to help themselves’ (Ignatieff 57). As Shklar observes, for liberal pragmatists ‘the basic units of political life are not discursive and reflecting persons, nor friends and enemies, nor patriotic soliders citizens, nor energetic litigants, but the weak and the powerful’ (9). Human rights are universalisable because they only specify what human beings need to be free *from* in order to enjoy any kind of life, rather than defining ‘what their freedom *to* should consist in’ (Ignatieff 75). If liberal pragmatism explicitly avows anything about the subject of human rights, then, it is simply the physical vulnerability of individuals, the powerlessness of individuals when confronted by violent means at the disposal of state agents.

From these presuppositions about the aversive community and the vulnerable subject of human rights follows an ‘image’ of the politics of human rights as a matter of ‘implementation’, as James Ingram puts it (‘What is...’ 403-405). Liberal pragmatism provides an inherently political justification for individual rights, insists Shklar (3), since it recognizes the state as posing the greatest threat to freedom, a threat that is graver than the sources of social oppression. In normal times, human rights can be understood to require only a negative duty on the part of a state to refrain from violating the interests of individuals. Within normal circumstances, Ignatieff observes, human rights may serve as a ‘discourse for the adjudication of conflict’ (20). While parties to a conflict may disagree on the content, interpretation and relative priority of conflicting rights claims, human rights may nonetheless establish a ‘common set of reference points that can assist parties in conflict to deliberate together’ (20).⁹ However, during exceptional circumstances in which state agents perpetrate abuses, human rights activism requires ‘mobilizing constituencies powerful enough to force abusers to stop’ (Ignatieff 9). Human rights then requires ‘empowering the powerless, giving voice to the voiceless’ (Ignatieff 70).¹⁰ The simple negative duty to refrain

⁹ Since human rights are not moral absolutes that stand above politics they are not capable of settling political disputes in themselves but are dependent on other political factors such as prudential motivations for bringing a conflict to a close and the development of mutual recognition and respect through political bargaining (Ignatieff 21; 83-84). It is the shared awareness by parties to a conflict of the exceptional possibility of political violence that motivates them to ‘discipline their partiality—their conviction that one side is right—with an equal commitment to the rights of the other side’ (Ignatieff 10).

¹⁰ When a conflict does emerge between a rights holder and rights withholder, the politics of human rights consists as Ingram puts it, in ‘finding an agency to implement and enforce rights, a surrogate for an absent, enfeebled, negligent, or malevolent state’ (‘What is...’ 403). Such activism may include publicizing and shaming tactics of

from human rights abuses is then transformed into a problem based on the positive duty to prevent human rights abuses by a third party. In these circumstances, as Ingram (2008, 404) discusses, the politics of human rights becomes a matter of compromise and tragic choice, of tempering moral imperatives by reckoning with probable consequences.

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If liberal pragmatism sounds like so much common sense and, indeed, self-consciously adopts such a posture, Alain Badiou charges that it is, in fact, conservative, dehumanizing and depoliticizing. Badiou's critique depends precisely on showing how liberal pragmatism fails to attend to the political paradox: first because it fails to recognize the evil of human rights violations as a corruption of political rationality; second, because it fails to recognize how human beings actualize their humanity through political action. Liberal pragmatism is inherently *conservative*, Badiou insists, because it is based on a shared aversion to the abuse of state power (13). Rather than understanding evil as a *corruption* of the good, it *derives* its idea of good from an evil it supposes to be self-evident (12). However, if a human rights consensus is based on the avoidance of the evils of political power, Badiou observes, 'it follows that every effort to unite the people around a positive conception of the Good [becomes the] source of Evil itself. ... Every will to inscribe an idea of justice or equality turns bad. Every collective will to the Good creates evil' (13). Indeed, Michael Ignatieff supposes that the UDHR was predicated on an awareness of the danger of 'collectivism' (Ignatieff 65-66).¹¹ Ignatieff distinguishes human rights (which he identifies with moral individualism and universalism) from self-determination (which he associates with political collectivism and particularism). Having posited a fundamental tension between these ideals, Ignatieff asserts that when they conflict, self-determination must give way to human rights and constitutionalism (25, 30). Liberal pragmatism thus has at best a luke-warm commitment to democracy as the least worst form of government. As Shklar observes, 'liberalism is monogamously, faithfully, and permanently married to democracy—but it is a marriage of convenience' (19). While liberal pragmatism 'regards abuses of public power in all regimes with equal trepidation', it

organizations such as Amnesty International and Human Rights Watch. Yet, says Ignatieff, human rights may also be used to 'assemble the reasons and the constituencies necessary for the use of force' (22).

¹¹ According to Samuel Moyn, the idea that a human-rights consensus emerged in a 'moment of post-Holocaust wisdom' is probably the 'most universally repeated myth about their origins', which was retroactively ascribed in the 1990s, when human rights 'took on a literally millennial appeal in the public discourse of the West' (6). In fact, at the time of the Declaration in the aftermath of WWII, human rights 'turned out to be a substitute for what many around the world wanted, a collective entitlement to self-determination', for which the Atlantic Treaty (1941) had raised expectations (45).

recognizes only an instrumental value in democracy as the regime least likely to violate the human rights of citizens since it allows unpopular governments to be removed through elections (Shklar 9).

Badiou objects to the representation of the vulnerable subject of human rights by liberal pragmatism on the grounds that this is essentially *dehumanizing* because it identifies the essence of the human being with her bodily vulnerability, which is shared with animals. Badiou takes issue with the notion that it is possible to identify a natural essence of Man that can provide the basis for a 'consensus law-making concerning human beings in general, their needs, their lives and their deaths' (6). Ignatieff may reject 'humanism's 'idolatory' of the 'human person' as possessing an 'inviolable dignity' (Ignatieff 82-83). Yet, liberal pragmatism nevertheless presupposes a general human subject in order to establish a pragmatic basis for its universalism. For liberal pragmatists, as Badiou puts it, 'man is the being who is capable of recognizing himself as a victim' (10). Yet neither our bodily vulnerability nor our predatory nature serve to distinguish human beings from other animals: as either executioner or victim, the human is an 'animal abjection' (Badiou 11; cf. Ignatieff 82).¹² Consequently, Badiou insists, if the 'rights of man' mean anything, they cannot be the 'rights of life against death' but must be the rights of the human as a being that is able to affirm her existence 'over the contingency of suffering and death' (12). Judith Shklar anticipates this objection, observing that since liberal pragmatism 'is based on common and immediate experiences, it offends those who identify politics with mankind's most noble aspirations' (13). But since even the most appealing causes can be turned into justifications for evil when they are forced upon others, she retorts, there is 'nothing "reductive" about building a political order on the avoidance of fear and cruelty unless one begins with contempt for physical experience' (Shklar 14). Yet Shklar misses the point of this line of criticism, namely, that the contempt for the physical experience of the vulnerable subject of human rights is often an effect of human rights discourse. Human rights discourse may not only *protect* (or fail to protect) but also *produce* the vulnerable subject that it presupposes (Brown 459).

This brings us to Badiou's third objection that liberal pragmatism is *depoliticizing*. Badiou insists that 'every intervention in the name of a civilization requires an initial contempt for the situation as a whole, including its victims' (13). Its universalism is inauthentic because it does not follow from an immanent critique of social relations through which particular forms of human suffering are produced. If man is the victim who is capable of recognizing himself as a victim,

¹² Indeed, as survivors of the death camps attest, those who were able to remain human within these circumstances were able to do so not just through their sheer physical survival but in their determination to distinguish themselves otherwise, their determination to be something 'other than a "being-for-death"' (Badiou 12).

in practice this supposedly universal subject is split between the abject subject deprived of her human rights and the fully human subject who is incited to intervene on her behalf (10, 12). Yet this gives rise to a paradox: although the purpose of human rights is supposed to be the protection of the *agency* of individuals, the implementation of human rights through intervention makes the subject of human rights dependent on an outside agency for their enjoyment. The politics of human rights thus emerges as 'something the powerful do for the powerless' (Ingram 'What is...' 405; Badiou 13). Liberal pragmatism is thereby often implicated in reproducing the contempt for the subject that human rights are supposed to protect.

The Marxian critique

In contrast to liberal pragmatists, the problem that preoccupied Marx was not how to constrain state power but how to account for the impotence of the state when confronted by social pathologies. He was less concerned with the suffering inflicted by state violence than that inflicted by the silent compulsion of economic processes that thwart human autonomy within society. The Marxian critique of human rights is therefore bound up with its critique of the limits of politics within the social conditions produced by capitalism. The rights of man were announced as universal freedoms won through political struggle against the feudal order. Yet their declaration amounted to recognition by the newly established bourgeois state of the socio-economic conditions that it presupposed. While social distinctions, such as property-ownership, were removed as barriers to political participation, at the same time these sources of distinction came to operate free from political control. Human rights were thus symptomatic of the displacement of power from the political to the social realm.

The Marxist critique of the *subject* of human rights is well-known, indeed clichéd: what counts as 'human' is in fact a particular conception of the person masquerading as universal. Marx points out that the 'man' of the rights of man (as distinct from the citizen) is 'no one but the member of civil society', that is, '*egoistic* man, man separated from other men and the community' (Marx 52). For Marx (echoed by Badiou), the private, isolated life of man in civil society, without concern for any higher good than his own self-interest is contemptible.¹³ Yet, perversely, this 'unpolitical man' appears as 'an object of immediate certainty' and is thus recognized as 'natural man' by the state (Marx 56). While the egoistic subject of human rights appears as natural, however, Marx insists it is in fact the product of social transformation. Marx historicizes the subject of human rights

¹³ Such a life has 'separated man from his general being, thus making him into an animal, its being coinciding immediately with its determinate character' (Marx cited in Mewes 281).

by locating its emergence in the transition from feudalism to capitalism. The declarations of the rights of man were bound up with the eighteenth century revolutions, which ‘unfettered the political spirit’ from the hierarchical constraint of feudal society, setting up the political sphere of the state as ‘common to all, the general affair of the people’ (Marx 56). At the same time, however, they emancipated civil society from political life, relegating particular professions and ranks to ‘merely individual importance’ and thereby ‘shaking off those bonds that had kept the egoistic spirit of civil society fettered’ (Marx 56). The feudal property relations that had become fetters on the emergent productive forces were replaced by ‘free competition, accompanied by a social and political constitution adapted to it’ (Marx 225-226). In recognizing egoistic man in civil society as the ‘real and true man’ the state naturalizes the egoistic subject of human rights (Marx 54).

What the community of human rights holders have in common, then, is *alienation* from community. This is evident in the contradiction between the ‘unreal universality’ enjoyed by the citizen and the fact the individual is ‘given over to the domination of inhuman conditions and elements’ within civil society (Marx 46, 50). The rights of citizens institutionalise relations of mutual recognition of equal membership in the polity (Marx 51; see Bernstein 105; Katz 251). Yet, this is an ‘illusory communal life’ since it separates the virtual political participation of citizens in the state from their actual material relations within society (Marx 169, 46). The state becomes the ‘mediator onto which [man] transfers all his goodness and his human liberty’ (Marx 45). In contrast to his ideal existence as citizen, within civil society the individual finds himself to be a ‘plaything of alien powers’, subject to economic processes that appear to be beyond the self-conscious collective control of citizens (Marx 29). Within this ‘sphere of egoism’, the ‘only *bond* that holds [individuals] together is natural necessity, need and private interest, the conservation of their property and egoistic person’ (Marx 47, 54; emphasis added). Civil society *appears* to be natural since, in contrast to the constitution of the state, it lacks rational determination (Marx 46). However, the naturalization of civil society is, in fact, only achieved through the recognition of the rights of man by the state (Bernstein 1991, 107). Underlying the Marxian critique of human rights then, is an appeal to the species being that is the ‘true collectivity of man’, a non-alienated mode of communal existence that would be actualized within a post-capitalist society (Marx 126; see Wolin 2004, 418). Human emancipation would entail overcoming the political alienation on which the bourgeois state is predicated. Man in his material existence within society would ‘recognize his own forces as social forces, organize them, and thus no longer separate social forces from himself in the form of political forces’ (Marx 57). In other words, human emancipation is the realization of the human power to collectively determine the conditions of our own existence within the social realm.

From a Marxian perspective, politics is a matter of *class struggle*. Since class antagonism emerges from the mode of production it is constitutive of politics and, in that sense it is, as Balibar puts it, the 'impolitical face of the political' ('On the Aporias' 64). The Marxian category of class struggle thus both *circumscribes* politics by treating it as a reflection of more fundamental relations of production (ideology) and *expands* our understanding of politics to include acting on social conditions (transformation) (see Wolin 417). Correspondingly, we need to consider the Marxian image of the politics of human rights in relation to what Balibar describes as 'two heterogeneous politics' that mutually negate each other: an ideological politics that dissimulates class conflict within the state apparatus and a transformative politics that intensifies class conflict through social movement ('On the Aporias' 66). Human rights are *ideological* to the extent that they are part of the organization of the power of the bourgeoisie (Marx 238). Within the liberal constitutional order, human rights re-present an irreconcilable political struggle between social forces as economic competition among manifold individuals that can be mediated by the state (Marx 176, 184). Human rights are political in this ideological sense, then, as a ruling idea through which the bourgeoisie falsely universalizes and projects its class interest via the state. They mask exploitation by dissimulating class antagonism. On the other hand, Marx seemed to think that human rights were useless as part of an emancipatory politics. They are *impotent* in the struggle for social transformation since they cannot transcend the economic structure of society and therefore pose no radical challenge to it (Marx 569; but see Bernstein 92-95). Moreover, they would be *redundant* in a classless society. For with the elimination of class antagonism, 'the public power would lose its political character' and so pose no threat to the freedom of its members (Marx 238, 569; see Katz).

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We have seen how Badiou's critique of liberal pragmatism presupposes Ricoeur's insight about the political paradox since liberal pragmatism both fails to recognize political evil as a corruption of political rationality and because it neglects to see that it is through politics that we actualise our humanity. Despite what is often referred to as the economic reductionism of Marxism, Marx himself broadly shared an understanding of the human as a political animal and effectively expanded this to encompass the social. It would be a mistake, therefore, to critique Marx and Marxism for neglecting the place of the political altogether as liberal pragmatism does. Rather, the problem is the bifurcation of politics and the political, with politics treated as a symptom of contemporary conditions, and with the political projected into a future classless society from which we are currently alienated. Building on Ricoeur's analysis of the political paradox, Claude Lefort argues that Marx makes the opposite mistake to liberal

pragmatists in treating political evil as an eliminable. In viewing alienation (political evil) as a contingent rather than inherent feature of political life, he also fails to take into account the symbolic effectivity of human rights as a condition of possibility for a democratic politics.¹⁴ For Lefort, following Ricoeur, in contrast, alienation is not only constitutive of political life but a condition of possibility for an emancipatory politics.

If Marx's apparent dismissal of human rights appears fateful for socialism in the twentieth century, it is inherently connected to his view of politics as itself a transient and historically specific feature of capitalist society.¹⁵ In Claude Lefort's view, the emergence of totalitarian regimes in the twentieth century demonstrated the fallacy of Marx's analysis (*Political Forms* 246-248). Marx viewed the rights of man as symptomatic of political alienation and social atomism. Yet in totalitarian regimes in which the separation between state and society was abolished, individuals are more radically isolated and alienated from political community than ever before. This leads Lefort to reverse Marx's alienation thesis to argue that the separation of state and society is a condition of possibility for an authentic democratic politics.¹⁶ The problem with the Marxian critique is that it reduces the symbolic dimension of human rights to its ideological function. While Marx rightly highlighted how human rights could dissimulate oppressive social relations, he failed to recognize their 'symbolic efficacy' that made possible 'demands and struggles which contributed to the rise of democracy' (Lefort, *Democracy* 43, 21, 23). While denouncing the 'fictional universals of the French Declaration' Marx failed 'to see what it bequeaths us: the universality of the principle which reduces right to the questioning of right' (*Democracy* 38).

In Lefort's view, Marx accepts liberal philosophy's image of civil society as composed of individuals and its reduction of human rights to individual rights (*Democracy* 30). Since Marx remains trapped by liberalism's atomistic representation of civil society, he fails to recognize the implicit communal

¹⁴ Claude Lefort was among the first intellectuals on the Left in France to criticize communism in 1956 (Ingram, 'Politics' 38). Lefort's [1980] reconsideration of the Marxian critique of human rights was at the same time a response to the 'French Left's largely anti-political turn to human rights' following the disillusionment with Marxism of the 1970s (Ingram, 'Politics' 43).

¹⁵ This left a problematic, if not disastrous legacy for twentieth century Marxism (see Douzinas 165ff.). Yet, as Jay Bernstein observes, 'the ban on rights belongs to the most reductive and economic aspects of Marx's thought' while 'On the Jewish Question' contains many more ambivalences and ambiguities about the politics of human rights than an orthodox Marxist position admits (92).

¹⁶ 'The singular thing about the freedoms proclaimed at the end of the eighteenth century is that they are in effect indissociable from the birth of the democratic debate' (Lefort, *Democracy* 39).

character of human rights (*Democracy* 32).¹⁷ The 'private' freedoms declared to be the rights of man, Lefort argues, also inaugurate in practice a 'new mode of access to the public sphere' (Lefort, *Political Forms* 249).¹⁸ In this way the rights of man establish a 'circulation of thoughts and opinions, speech and writing which falls outside the authority of political power' (*Political Forms* 251). It is this 'separation between power and knowledge' and not only the 'split between the bourgeois and the citizen, between private property and politics' that is at stake in the affirmation of the rights of man (*Political Forms* 251).

According to Lefort, the reason Marx was not able to grasp this positive practical development stems directly from his 'rejection of the political' (*Political Forms* 254). Marx rejects the political, Lefort says, by adopting a 'theory of society in which the dimension of power, and with it the dimensions of law and knowledge ... are abolished' (*Political Forms* 254). Marx rejects the *autonomy* of the political as a dimension of human experience concerned with the establishment and preservation of sovereign authority over a collectivity. On Lefort's account, building on Ricoeur, 'the political' refers to 'politics-as-regime' as concerned with the proper constitution of the polity: it is the way in which a society represents its unity to itself. 'The political' (*le politique*) is thus distinct from 'politics-as-struggle' for public power (*la politique*) (Ingram, 'Politics' 36). On Lefort's account, the political is the scene in relation to which political struggle appears. According to Lefort, Marx's heteronomous view of politics as a product of socio-economic conditions does not allow him to grasp 'the historical mutation in which power is assigned limits and right is fully recognized as existing outside power' (*Political Forms* 254). Within the Marxian critique of human rights, 'this double movement becomes unintelligible, a mere sign of illusion' (*Political Forms* 254).

Whereas Marx views the Declaration of the Rights of Man as symptomatic of the transition from feudalism to capitalist social relations, Lefort emphasises how they are associated with the transformation of political power in the transition from monarchy to democracy (Lefort, *Democracy* 31, 35). The split between

¹⁷ For instance, while Marx asserts that the right to liberty in Article 6 of the Declaration is in fact a right to separation, he ignores Article 10 that established freedom of opinion. While opinion might be represented within the bourgeois representation of civil society as the private property of the individual, in practice it establishes the right of the individual to public speech and thought and so it is a 'relational freedom' (Lefort, *Democracy* 33): as such the Declaration of the rights of man does not simply degrade politics to a means to secure private freedoms, as Marx asserts.

¹⁸ 'As everyone acquires the right to address others and listen to them, a symbolic space is established; it has no definite frontiers, and no authority can claim to control it or decide what can and what cannot be thought, what can and cannot be said. Speech as thought and thought as such prove to exist independently of any given individuals and belong to no one' (Lefort, *Democracy* 33).

universal and particular (of which the distinction between the rights of citizen and man is symptomatic, for Marx) emerged much earlier than the bourgeois revolutions with the establishment of monarchy and was articulated in the theory of sovereignty. What was significant about the declaration of the rights of man, then, was not the emergence but the transformation of this dualism. In particular, the bourgeois revolutions signified a 'disincorporation of power and disincorporation of right which accompanies the disappearance of the "the king's body", in which the community was embodied and justice mediated' (Lefort, *Political Forms* 255). In other words, the practical significance of the declaration of the rights of man is that, on the one hand, the identity of the political community is no longer guaranteed by the presence of the body of the king but is represented in the figure of the people, the popular sovereign that is invoked by the rights of citizens. On the other hand, human rights invoke a 'sphere that cannot be controlled' so that 'right comes to represent something that is ineffaceably external to power' (Lefort, *Political Forms* 256). Right is deprived of a fixed point (within the order of the body politic) and is instead invested in the indeterminate figure of man. Since, for Lefort, 'power becomes and remains democratic when it proves to belong to no one', human rights are inherently related to democracy because their declaration is bound up with the disincorporation of power' (*Democracy* 27). Although power depends on conforming to right for its legitimacy, what counts as right cannot be finally determined by the state. Rather, just as the identity of the subject of human rights becomes uncertain so 'the tribunal before which his right is asserted is not visible' (Lefort, *Democracy* 32).

For Lefort, the democratic achievement of the declaration of the rights of man lies precisely in the indeterminacy that the separation of right and power introduces into the political association. This indeterminacy is apparent both in the representation of the unity of the political association and in the subject of human rights. While the unity of society is conceived as an association of free and equal individuals, this unity remains indeterminate since it cannot be represented as a single body without the 'mediation of an incorporated power' (Lefort, *Political Forms* 256). Since the individuals who make up the popular sovereign also exist, act and communicate outside the sphere of sovereign power, what counts as the common of the community remains an open question. Contrary to Marx, then, the abstract sovereignty of the citizens is not merely an illusion simply because it lacks a final determination. Rather this indeterminacy is a condition of possibility for democratic politics.

Similarly, while the subject of the rights of man may appear as 'natural' man outside of political community, at the same time, 'man appears through his representatives as the being whose essence it is to declare his rights' (Lefort, *Political Forms* 257). Since the subject of human rights is also the author of his

rights, no higher authority exists to grant or ratify rights. The indeterminacy of the subject of human rights thus also establishes the openness of what counts as a human right (Lefort, *Democracy* 41). Like the democratic community, human rights themselves must be enacted in order to be actualized but their content can never be finally determined since every formulation of rights ‘contains the demand for their reformulation’ (*Political Forms* 256). It is this indeterminacy that makes them universalizeable: their meaning and effects cannot be fixed to a particular time or place (*Democracy* 37). Thus ‘from the moment when the rights of man are posited as the ultimate reference, established right is open to question’ (*Political Forms* 258). With the institution of human rights, the division between illegitimate and legitimate is ‘removed from the realm of certainty’ (*Democracy* 39). Consequently, as Lefort famously writes, the declaration of the rights of man is constitutive of modern democracy as a ‘regime founded upon the legitimacy of a debate as to what is legitimate and what is illegitimate—a debate which is necessarily without any guarantor and without any end’ (*Democracy* 39).

Human rights are thus not simply a property of the person, as a juridical-moral entity. Rather, the symbolic dimension of human rights is ‘a constitutive element of political society’ since it is inherent to the representation of power (Lefort, *Political Forms* 259). The political effectivity of human rights thus stems precisely from what Ricoeur describes as the reality of the ideality of the social bond. It is this symbolic dimension of human rights that makes both their declaration and violation *political* in the sense of affecting the constitution of society as a whole. Lefort claims that the ‘struggle for human rights make[s] possible a new relation to politics’ in the way in which they make conflict over the principles of right constitutive of political community. Human rights are distinct from the rights of citizens in that they are not reducible to the legal rights ascribed by political institutions. While human rights ‘animate institutions’ of a democratic society, their effectiveness arises from the ‘allegiance that is given to them’ which is ‘bound up with a *way of being in society*’ (Lefort, *Political Forms* 260; emphasis added). The notion of an ethos of human rights is essential to Lefort’s understanding of the relation between human rights and the political since it is by virtue of this way of being that human rights are associated with a certain mode of political formation through which society represents its unity to itself.

In this context, Lefort discerns two distinctive features about the ‘character and style’ of struggles inspired by human rights, which differentiate them (negatively) from the Marxian image of social struggle. First, they are not aimed at solving conflicts through the ‘conquest or destruction of established power’ (*Political Forms* 262). In contrast to the Marxian notion of the dictatorship of the proletariat, they do not seek to seize control of political power in order to bring

about social transformation. Nor do they aim at the dissolution of the state. Second, struggles over human rights emerge from diverse contexts and ‘tend not to fuse together’ (266). They are not ‘dominated by an agent of history’ such as the proletariat and, in contrast to the Marxian notion of human emancipation, they reject the idea that ‘right will be achieved in reality’ (266).

Lefort suggests that the social struggles that emerge around human rights relinquish the idea of a non-alienated form of social solidarity *per se*. The Marxian ideal of human emancipation is impossible in principle because ‘there is always a gap between a society’s self-representation of its unity and its real divisions. While every society imagines itself as unified, this unity can never be achieved’ (Ingram, ‘Politics’ 35). Political alienation is a permanent feature of human co-existence. However, the declaration of human rights make it a constitutive feature of the democratic polity so that ‘society’s inability to correspond to its idea of itself provides the terms in which its actual arrangements can be contested’ (35). In Lefort’s view, the revolutionary politics that the Marxian critique presupposes is predicated on the same attraction for the One that he associates with totalitarianism (*Democracy* 33-34). The vision of a post-capitalist society in which public power would lose its political character secretly harbours a desire to construe society as transparent to itself, in which all forms of human cooperation would ‘express a single way of being’ (Lefort, *Political Forms* 270).

Human rights: between politicization and politicism

Marx criticises political philosophy for its politicism, its failure to take into account the socio-economic conditions of politics and thus its inability to comprehend social suffering as a form of domination. In turn, Ricoeur criticizes Marxism and implicitly liberal pragmatism for its economism, its failure to understand politics in relation to the autonomy of the political and, therefore, for its inability to understand the specificity of political evil. Against the Marxian critique, Ricoeur insists that ‘the political mode of existence entails the breach between the citizen’s abstract life and the concrete life of family and of work’ (260). Moreover, rather than simply revealing the untruth of politics, the ‘premise of civic equality’ is the original truth of the political, a necessary presupposition of every particular political community, albeit one that is never fully actualized. From this perspective, post-Marxists have emphasized how the gap between man and citizen might be understood as a condition of possibility for politicization. Rather than verifying the reality of inequality through the critique of ideology, post-Marxists point to the opposite possibility of verifying equality by testing it through political action. In other words, what Ricoeur calls the ‘reality of ideality’ of the political affords an opening through which groups

may mobilize human rights to contest the terms of belonging within a political association.

Yet, how far does Ricoeur's analysis of the political paradox take us from liberal pragmatism? Liberal pragmatists derive their minimalist conception of the good from the recognition of political evil and a shared aversion to this cruelty. But Badiou insists we must reverse this way of seeing things: it is 'from our positive capability for Good, and thus from our boundary-breaking treatment of possibilities and our refusal of conservatism, including the conservation of being, that we are to identify Evil—not vice versa' (16). This is precisely what Ricoeur attempts to articulate in analyzing political evil as an 'outgrowth of the specific rationality of the political' (248). According to Ricoeur:

political evil is serious only because it is the evil of man's rationality, the specific evil of the splendour of man. ... Henceforth, man cannot evade politics under penalty of avoiding his humanity. Throughout history, and by means of politics, man is faced with his grandeur and his culpability. One could not infer a political 'defeatism' on the basis of this lucidity. Such a reflection leads rather to a political vigilance. (Ricoeur 261)

If political philosophy is not to 'enclose itself within nihilistic moralism', Ricoeur insists (251), it cannot oppose the truth of the philosopher to the power of the tyrant. Rather, it should begin from reflection on the political, the proper purpose of the political association and the bond that unites its members.

Lefort's account of the relation between human rights and the political has proved fruitful for post-Marxists and radical democrats both in re-evaluating the Marxian critique of human rights and in recuperating human rights for an emancipatory politics. In particular, his understanding of how human rights *institutionalize* the empty place of power in a democracy, *recognize* the ineradicability of political alienation and are *constitutive of* a conflictual public space have enabled post-Marxists to re-identify human rights with the revolutionary ideal of self-determination. Yet, as Ingram highlights ('Politics' 38), two distinct conceptions of the purpose and risk of human rights emerge from Lefort's account. On the one hand Lefort's analysis lends itself to a diagnosis that, while importantly distinct from liberal pragmatism in terms of its ontology, nonetheless leads to somewhat similar prescriptions. If political alienation is an ineliminable condition of politics, human rights are generative principles of a democratic mode of being insofar as they institutionalise this alienation as a limit to democratic politics. Human rights are essential to democracy since, by institutionalizing the separation of power and right, they resist the totalitarian impulse to actualize the people as One. Yet, on the other hand, Lefort's account also lends itself to a radically democratic diagnosis. If dissension is constitutive

of democratic politics, human rights are generative principles of a democratic mode of being insofar as they are associated with an 'excess of right beyond any particular instantiation of right' (Ingram, 'Politics' 43). As such they can be invoked to contest the terms of belonging within any polity. Human rights are essential to democracy because they exceed any and every political order and thereby resist the institutionalization of any given configuration of power. As Ingram puts it, on this account, human rights 'are not just the framework but also the product and object of struggle' ('Politics' 44).

In Balibar's terms, the politics of human rights might thus be identified either with a *constitutional* politics (i.e. of the constituted power) or with an *insurrectional* politics (i.e. of the constitutive power). Or, in other words, we may say that human rights might be invoked to *police* or to *politicize* a determinate social order. Lefort's insistence on the 'autonomy of the political' and the symbolic effectivity of human rights (against the Marxian insistence on the heteronomy of politics and human rights as an ideological effect) thus introduces its own ambivalences to any understanding of the democratic politics of human rights. Yet for Balibar, who remains closer to Marx in his thinking, whether the crisis in Marxism that emerged following the collapse of socialism 'should lead to a revival of political theory as a theory of the *autonomy of the political*' is a crucial philosophical question that remains 'entirely open' (*Masses* xi). This question can be put *vis-à-vis* human rights in terms of a further distinction that Balibar makes between three concepts of politics. In the first place, recognizing the political paradox may enable us to recuperate human rights from Marxism for a politics of *emancipation*. While remaining attentive to how human rights can be ideological by dissimulating social conflict, the political paradox enables us to recognize their symbolic effectivity and ideological reversibility in the service of a politics that deepens and widens civic equality. In the second place, recognizing the political paradox might enable us to recuperate human rights from liberal pragmatism for a politics of *civility*. Rather than taking the evil of state violence to be self-evident, we can recognize violence as an ever present risk of the political that should be countered within social struggles from the bottom up, as it were, to avoid recourse to a human rights paternalism that liberal pragmatism ends up legitimating. Yet, the danger of insisting on the autonomy of the political is to lapse back precisely into the kind of politicism that the Marxian tradition highlights by failing to attend to the social conditions for a politics of human rights. Consequently it remains to be considered what role human rights might play in a politics of *transformation* (see Balibar, 'Three concepts'; Ingram 'Democracy') that acts precisely on the non-political conditions that continue to shape political life.

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