

FROM UNICORNS TO MULES:  
PHILIP PETTIT, HANNAH ARENDT, AND THE LIBERAL HUMAN  
RIGHTS REGIME

BY

SEBASTIAAN BROEILS BIEREMA

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Voor mijn ouders,  
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## Abstract

The research presented here is an effort to interpret the discrepancy between the theoretical inalienability of human rights and the ease with which they are alienated in practice; a paradox Hannah Arendt regarded as the most conspicuous and cruel contradiction of human rights discourse. Proponents of the contemporary human rights regime have recognised that two principal characteristics of liberal human rights politics—namely, the double appellation of the *Rights of Man and Citizen* and an insistence on sovereignty and power-politics—directly contribute to this paradox. Nonetheless, they deem the current approach to combatting rights violations to be ‘the best we can hope for’. After discussing this pragmatic liberal approach, this paper continues by analysing the alternative approaches championed by two republican traditions which criticise liberal human rights—Pettit’s neo-republicanism and Arendt’s participatory republicanism. The former of these proposes an institutional commitment to the rights of the citizen, whereas the latter deems the direct action of political subjects to be the most effective form of guaranteeing written rights in practice. Finally, in agreement with Arendt’s thought, this paper argues that while liberal power-politics and neo-republican institutionalism have their place in human rights politics, rights are at their most secure as expressions of autonomous action.



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# 1.

## Introduction

*“No paradox of contemporary politics is filled with more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as ‘inalienable’ those human rights which are enjoyed only by the citizens of the most prosperous and civilized countries, and the situation of the rightless themselves.”*

- Hannah Arendt<sup>1</sup>

On January 21, 1793, King Louis XVI of France was executed for the sake of the freedom of all Frenchmen; his death, as Saint-Just argued, determined “*the principle by which the society that judges him lives.*”<sup>2</sup> And indeed, there are few principles in whose name more tyrants have been overthrown than that of liberty. However, neither have there been many principles in whose name more blood has been shed, more repression has been justified, and more wars have been fought. While it would be uncontroversial to claim that humans, in general, tend to be in favour of being ‘free,’ this consensus shatters when it comes to questions about what it means to be ‘free;’ what ‘liberty’ actually entails.

Even though there are almost as many different conceptions of freedom as there are theorists writing on the subject, the dominant 20<sup>th</sup> and 21<sup>st</sup> century approach to understanding freedom in political thought has rested on a liberal understanding of negative freedom, where one is ‘free’ if they have a set of rights protecting them from interference by other actors. This tradition of thinking about liberty can trace its roots back, also, to the French Revolution. The *Declaration of the Rights of Man and Citizen* was enacted in 1789; a few short years before the rights it guaranteed the French Citizens were spectacularly abrogated—not just during the Revolution itself, but relatively consistently throughout a century and a half of oppression,

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<sup>1</sup> Hannah Arendt, *The Origins of Totalitarianism* (Boston: Houghton Mifflin Harcourt, 1973), 279.

<sup>2</sup> Antoine Saint-Just, quoted in: Albert Camus, *The Rebel: An Essay on Man in Revolt*, trans. Anthony Bower (New York: Vintage books, 1956), 114.

uprisings, and wars. Despite this questionable track record, in the latter half of the 20<sup>th</sup> century, the decidedly liberal discourse of human rights has inhabited a truly ascendant space in normative thought about human freedom.<sup>3</sup> It has come to a point where we deem human rights to be, in Kofi Annan's words, "the yardstick by which we measure human progress;" you are deemed to be 'free' if your rights are respected, and you are not if they are not.<sup>4</sup>

During these same post-war decades, while dominated by liberal ideas, political theory has experienced a spectacular revival of republican thought, which has sought to inject what they perceive to be the dying body of liberal hegemony with a transfusion of republican blood.<sup>5</sup> Their criticism of liberal rights is driven by its perceived inability to secure rights. In this thesis, I shall discuss the theoretical inalienability of human rights and the ease with which they are alienated in practice. Furthermore, I will analyse the liberal response to this issue—which Arendt regarded as the as well as most cruel and conspicuous paradox of human rights discourse—as well as two republican models of rights politics which have been proposed as alternatives capable of addressing this contradiction.

Both the neo-republican and Arendtian critiques focus on the way in which the practical politics which stems from a liberal understanding of human rights engages with questions of power and freedom, but offer radically different solutions to its flaws. Unlike the liberal approach, which treats rights as gifts from the powerful to the powerless, neo-republicans seek to guarantee the rights of citizens through a-political institutions, while for Arendt, rights are inescapably intertwined with direct political action. Overall, in agreement with Arendt's thought, this paper argues that while liberal power-politics and neo-republican institutionalism have their place in human rights politics, rights are at their most secure as expressions of autonomous action.

In analysing these critiques of, and alternatives to, the politics with which we seek to guarantee human rights and freedoms, this thesis will be broken into four main sections. Firstly, I will discuss some of the philosophical roots of contemporary

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<sup>3</sup> Particularly in Western thought.

<sup>4</sup> Kofi Annan, quoted in: Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), 53.

<sup>5</sup> Quentin Skinner's historiographical work, in particular, has reinvigorated contemporary debates on neo-Roman republican thought, where it has been picked up by theorists such as Michael Sandel and Philip Pettit—regarding political theory—and Frank Michelman and Cass Sunstein—in respect to constitutional law. See e.g. Quentin Skinner, *Visions of Politics* (Cambridge: Cambridge University Press, 2002). Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge: Harvard university press, 1998). Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997). Frank Michelman, "Law's Republic," *Yale Law Journal* (1988). Cass R. Sunstein, "Beyond the Republican Revival," *ibid*.

rights language, as well as why republican theorists take such issue with it. Secondly, I will look at how those who place themselves at the centre of the human rights paradigm—a position which I identify mainly with Michael Ignatieff's—responds to some of these questions. This first approach essentially embraces a view of human rights politics as the show of pragmatic—usually statist—force to guarantee a limited range of negative rights. Thirdly, I will consider the neo-republicanism of Philip Pettit, which criticises the liberal focus on the non-interference of sovereign powers and seeks to guarantee rights and freedoms by resorting to non-dominating institutionalism.

Fourth, the Arendtian conception of human rights politics insists that rights can only be guaranteed by direct political action by the rights-bearers themselves. From this perspective, the anti-political tendencies of neo-republican thought is in itself believed to be inimical to the liberty which human rights are meant to guarantee. I shall conclude on a discussion with the aim of synthesising the different republican approaches with the liberal rights discourse they critique; resolving the paradoxes which these conflicting conceptions of human rights politics contend with. All the while, I shall consistently return to the French Revolution as a vignette to help illustrate and visualise the implications of the theories that are being discussed.

I shall discuss whether the more conspicuous problems surrounding human rights politics stem from our conceptions of the intersection between human rights, freedom, and power. Human rights seek to protect the agency and autonomy of individuals, yet human rights discourse in its current form has embraced a politics which empowers arbitrary and unaccountable entities to protect the rights of the powerless; making said powerless individuals dependent on the goodwill of this protector rather than being empowered themselves. Viewing human rights politics through a republican lens, I believe, will give us an insight into the guarantees of human dignity that is left obscured from the mainstream, liberal vantage point. By questioning some of the ideas about freedom and rights that characterise the contemporary human rights regime, I hope to draw a connection between rights and direct political action.

## 2.

### Prelude

*“Even when I am at a loss to define the meaning of freedom,  
I know full well the meaning of captivity.”*

- Adam Zagajewski<sup>6</sup>

*“Myths have no life of their own. They wait for us to give  
them flesh.”*

- Albert Camus<sup>7</sup>

In the late eighteenth century, the idea that all human beings were endowed with inalienable ‘rights’ was by no means unfamiliar. Philosophical discussions of rights had been in vogue for some years by this time; gaining popularity throughout the enlightenment.<sup>8</sup> The outbreak of revolution in France, however, with its *Declaration of the Rights of Man and Citizen*, presented history with its first example of human rights as a political project.<sup>9</sup> The *Declaration* was part of a broader republican programme to replace the tyranny of the *ancien régime* with popular liberty. In a few short years, however, the rights enshrined by the *Declaration* clashed violently with some of the other features of the young republic. This discord between human rights and the republican government which was meant to guarantee them, Constant argued, stemmed from the fact that human

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<sup>6</sup> Adam Zagajewski, quoted in: Magdalena Zolkos, "Human Rights and Polish Dissident Traditions: The Civic Republican Perspective," *Studies in Social and Political Thought* 10 (2004): 57.

<sup>7</sup> Albert Camus, *Lyrical and Critical Essays*, ed. Philip Thody, trans. Ellen Conroy Kennedy (New York: Vintage Books, 1968), 141.

<sup>8</sup> See; Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750-1790* (Oxford: Oxford University Press, 2011).

<sup>9</sup> Although the French Declaration of Rights was not the first such proclamation—it was preceded by the Bills of Rights found in numerous American State constitutions—it was the first to declare *human* rights; not merely citizens’ rights. The rights the French revolutionaries claimed for themselves belonged to every individual on earth; regardless of their nationality, faith, social standing, or ethnicity.

rights come from a tradition of thought which is at odds with—and at times even directly counterpoised to—republican and democratic theories of government.

The two traditions, as Benjamin Constant pointed out and Isaiah Berlin expanded upon, referred to two completely different conceptions of freedom which are incompatible if either is taken to its logical extreme.<sup>10</sup> Whereas the Revolution's democratic aspects, which Constant identified with the 'liberty of the ancients,' were inherently political, the codified *Rights of Man*—consisting largely of the 'liberty of the moderns'—carried with it a strong anti-political streak. The recognition that these different aspects of freedom are not necessarily compatible heavily influenced the composition of the modern human rights regime and the ways in which the international community currently seeks to turn the ideals of human freedom into a reality. Moreover—and despite the fact that some of Constant and Berlin's observations were heeded carefully to prevent a relapse into the chaos and violence of the French Revolution—a lack of consideration of some of the nuances in their work has allowed Arendt's paradox to remain a prominent characteristic of human rights discourse.

### **The Revolutionary Origins of Human Rights**

In 1787 the royal treasury of France was, to all extents and purposes, empty, and the monarchy was on the precipice of collapse.<sup>11</sup> France not only lost large amounts of prestige, Canada, and all of its outposts in India in great power rivalries since the 1750s, but the debt it incurred to fund these failed exploits had spiralled out of control. By 1787, it had come to the point where interest payments alone were swallowing half of the Louis XVI's revenue stream, and the monarchy could no longer afford to finance its vast armies and navy.<sup>12</sup> The only solution left—if the state wished to remain on its feet, let alone retain its ascendant position internationally—was to reorganise the state's revenue streams. "This involved persuading the privileged elites, who owned most of the wealth, to surrender some

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<sup>10</sup> Benjamin Constant, "The Liberty of the Ancients Compared with That of the Moderns," in *Constant: Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988); Isaiah Berlin, *Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, 2002).

<sup>11</sup> For information regarding dates and facts about the French Revolution, see; Peter Michael Jones, *The French Revolution 1787-1804* (New York: Routledge, 2014); Georges Lefebvre, *The French Revolution. Vol. 1. From Its Origins to 1793* (New York: Routledge & Kegan Paul, 1965); Jonathan Israel, *Revolutionary Ideas: An Intellectual History of the French Revolution from the Rights of Man to Robespierre* (Princeton: Princeton University Press, 2014). Whereas opinions and interpretations of revolutionary events will be referenced individually, the events themselves—as historical facts—are amply chronicled and widely acknowledged. Consequently, the author does not deem it necessary to provide readers with evidence for every incident that occurred during the Revolution.

<sup>12</sup> Jones, 10.

of their immunities and exemptions and contribute more to state revenues.”<sup>13</sup> Said elites were happy enough to forego some of their privileges, but only in return for a larger share of governmental power. In return for a loan which would keep the state functioning, Louis accepted that the Estates-General—which were dominated by the nobility and the clergy—were to have full authority to reform the financial system. “By 1788, the weakened monarchy was distinctly at risk of being reconstituted as an aristocratic republic, with the King reduced to a mere figurehead.”<sup>14</sup> The nobility, clergy, and *parlements* appeared to have few obstacles to reinterpreting the institutional framework as they wished; further advancing their already privileged position in society.

When the Estates-General convened in 1789, however, the deputies of the Third Estate, the common people, refused to act as they were bid to do; disrupting the nobility’s designs. Rather than accepting their inferior role and meeting separately from the other Estates, they occupied the main hall and invited the representatives of the First and Second Estates—the clergy and the nobility, respectively—to join them. The offer was refused, and the first two Estates set about discussing the taxation reforms they came for. The Third was not satisfied with this and declared itself to be the National Assembly, claiming to represent the entire French people. When Louis sought to suppress this challenge to his authority by locking the meeting hall in which the Assembly had housed itself, they simply moved to an indoor tennis court, where they swore not to part company until France had a new constitution. This set in motion “a process of emancipation, democratization, and fundamental renewal on the basis of human rights—ruthlessly interrupted in 1793-94 and progressively aborted in 1799-1804.”<sup>15</sup>

The National Assembly continued to confer upon itself more powers and made it clear that, while the invitation for the First and Second Estates to join them remained open, they would not wait for them. They would happily govern the country by themselves. While a large number of noble and clerical representatives did eventually join the commons, they were unable to prevent the Assembly from enthusiastically overhauling what it saw as an oppressive system that had kept the French people enslaved by the monarchy and the nobility for centuries. The summer of 1789 was dominated by tireless legislative activity seeking to overhaul existing social arrangements.

*Without debate the Assembly enthusiastically adopted equality of taxation and redemption of all manorial rights except for those*

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<sup>13</sup> The peasantry and the urban proletariat were already shouldered with devastatingly high levels of taxation; the nobility was exempt from that burden. See; Israel, *Revolutionary Ideas*, 30.

<sup>14</sup> *Ibid.*, 31.

<sup>15</sup> *Ibid.*, 12.



*involving personal servitude—which were to be abolished without indemnification. Other proposals followed with the same success: the equality of legal punishment, admission of all to public office, abolition of venality in office, conversion of the tithe into payments subject to redemption, [and] freedom of worship.*<sup>16</sup>

The Assembly considered that the crimes the Crown committed against the people during its centuries of domination—which had been institutionalised in these laws they struck down so prodigiously—occurred because the people had inadequate power to claim their rights. It was “ignorance, neglect, or contempt of human rights,” they argued, which were “the sole causes of public misfortunes and the corruption of governments.”<sup>17</sup> Of particular significance, therefore, was the *Declaration of the Rights of Man and Citizen*, adopted on August 26.<sup>18</sup>

The *Declaration* guaranteed a wide range of personal rights and freedoms such as the freedom of expression, the right to due process, and a series of rights of the accused. It declared that “every citizen may speak, write, and publish freely,”<sup>19</sup> and may freely choose her “religious opinions.”<sup>20</sup> Officials representing the state were prohibited from acting in an “arbitrary” fashion, and citizens were not allowed to be arrested “except in cases determined by the law, and according to the forms it has prescribed,” and then not by means of excessive force.<sup>21</sup> When they were arrested for suspicion of criminal activity, moreover, citizens were “presumed guilty [until]... convicted.”<sup>22</sup> Quite contrary to tradition, furthermore, it declared that all “men are born equal in respect of their rights,” and that “whether [a law] protects or punishes... [all citizens are] equal in its sight.”<sup>23</sup>

Its content, then, bore some striking similarities to the American *Declaration of Rights*. Given the recent toppling of absolute monarchy, however, the *Rights of Man* envisaged a set of principles to guide the reconstruction of society anew rather than the reassertion of principles “supposedly inherent in the nation’s legal past. Where the American *Declaration* declares natural rights inherent in British constitutional liberties, the French *Declaration* invokes rights enshrined in laws yet

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<sup>16</sup> Lefebvre, 130.

<sup>17</sup> *Declaration of the Rights of Man and Citizen*, 1789, Preamble.

<sup>18</sup> I shall henceforth use the terms ‘*Declaration of the Rights of Man and Citizen*’ and ‘*Rights of Man*’ synonymously.

<sup>19</sup> *Declaration of the Rights of Man and Citizen*, 1789, Article XI.

<sup>20</sup> *Ibid.*, Article X.

<sup>21</sup> *Ibid.*, Article VII.

<sup>22</sup> *Ibid.*, Article IX.

<sup>23</sup> *Ibid.*, Article I, Article VI.

to be made.”<sup>24</sup> The Revolution sought to wipe tyranny from the face of the earth by forcing authority to bear constitutional shackles inspired by the *Rights of Man*.

The *Rights of Man*, central as they were to the revolutionary vision of the French state, were “written upon tablets and placed in the midst of the legislative body and in public places,” so that “the people may always have before its eyes the fundamental pillars of its liberty and strength... the authorities the standard of their duties, and the legislator the object of his problem.”<sup>25</sup> Neither the Sans-culotte mob that thirsted for the blood of counter-revolutionaries, however, nor the legislators that sought to safeguard the Revolution—and their ascendant position within it—adhered to these commandments carved in stone.

Within three years of the endorsement of the *Rights of Man* and the establishment of a constitutional monarchy, the King, Louis XVI had been beheaded and the Revolution had descended into a dictatorship led by Robespierre and the Committee of Public Safety—unrepentantly pursuing a policy of Terror. For the sake of protecting the *Rights of Man*, the *Rights of Man* were temporarily suspended so those who sought to revoke them could be dealt to without remorse. The situation degenerated to the point that at a meeting at the Cordeliers club in Paris, the tablet portraying the *Rights of Man* was veiled.<sup>26</sup> The carved rights remained unceremoniously hidden from sight while all around Paris there raged the fires of popular violence and the brutal abuse of governmental powers. To say the least, then, the *Declaration*’s initial effectiveness is questionable.

At this point, it may be useful to clarify that my discussion of the French Revolution is not an attempt to (re-)interpret these historical events. Writing on the different identities that the French Revolution has had bestowed on it—for it has its liberal, conservative, republican, anarchist, Jacobin, and royalist historiographies—François Furet cautioned that we do not contaminate the past with the present; that we do not misuse history’s great capacity for theoretical assimilation.<sup>27</sup> Hence, I will not attempt to reduce the Revolution to a simple series of causes and effects that speak to a certain ideological worldview. Instead, I will break up the chronological order of the Revolution’s story, along with one of those worldviews—the liberal, human rights centred, story—in order to analyse the prescriptions that emerge from this narrative. Rather than treating the Revolution

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<sup>24</sup> Israel, *Revolutionary Ideas*, 84.

<sup>25</sup> Address of W. Bourke Cockran, in: John Forrest Dillon, *John Marshall: Life, Character and Judicial Services as Portrayed in the Centenary and Memorial Addresses and Proceedings Throughout the United States on Marshall Day, 1901, and in the Classic Orations of Binney, Story, Phelps, Waite and Rawle* (Chicago: Callaghan & Co., 1903), 407-08.

<sup>26</sup> Israel, *Revolutionary Ideas*, 547.

<sup>27</sup> François Furet, *Interpreting the French Revolution*, trans. Elborg Forster (Cambridge: Cambridge University Press, 1981), 7.

as a problem to be solved, its story may help solve the problem I have chosen to tackle. As Furet claimed, “the mere fact that the Revolution had causes does not mean that they are all there is to its history.”<sup>28</sup>

These events of more than two-hundred years ago may provide valuable insights—at times literal and at others metaphorical—into some of the ongoing debates about human rights. It provides us with a light to guide us through the obscure and cryptic darkness that so often shrouds libraries filled with abstract and theoretical knowledge. As Hannah Arendt, whose work will play an indispensable role throughout this thesis, observed; “no matter how abstract our theories may sound or how consistent our arguments may appear, there are incidents and stories behind them which, at least for ourselves, contain as in a nutshell the full meaning of what we have to say.”<sup>29</sup> My hope, similarly, is that by grounding my analysis of the human rights in more tangible affairs, I may prevent the discussion from getting bogged down in a mire of abstraction. My examination of these republican critiques of human rights discourse will seek, however modestly, to realise “the mapping survey of the region which” the French Revolution “had completely illuminated for a fleeting moment.”<sup>30</sup>

Beyond its metaphorical value, the French *Declaration of the Rights of Man and Citizen* is of great theoretical import to modern thought on human rights, as well as for its influence on the 1948 *Universal Declaration of Human Rights*. Many theorists, whichever side of the issue they may take, see the rights declarations drafted during the French Revolution as the grandfather to the modern human rights system.<sup>31</sup>

*Most debates about rights originated in the eighteenth century, and nowhere were discussions of them more explicit, more divisive, or more influential than in revolutionary France in the 1790s. The answer given then to most fundamental questions about rights remained relevant throughout the nineteenth and twentieth centuries. The framers of the UN declaration of 1948 closely followed the model established by the*

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<sup>28</sup> Ibid., 22.

<sup>29</sup> Hannah Arendt, "Action and the 'Pursuit of Happiness'," in *Politische Ordnung Und Menschliche Existenz. Festgabe Für Eric Voegelin Zum 60. Geburtstag*, ed. Alois Dempf and Friedrich Engel-Janosi (Munich: C. H. Beck, 1964), 2.

<sup>30</sup> Ibid.

<sup>31</sup> For further discussions on the relationship between the French Declarations and modern human rights discourse, see; Stephen P Marks, "From the "Single Confused Page" to the "Decalogue for Five Billion Persons": The Roots of the Universal Declaration of Human Rights in the French Revolution," *Human Rights Quarterly* 20, no. 3 (1998).

*French Declaration of the Rights of Man and Citizen in 1789, while substituting 'human' for the more ambiguous 'man' throughout.*<sup>32</sup>

This relationship between the first, revolutionary *Declaration* that men had an inalienable set of rights that ought to be protected, and our contemporary narrative on human rights, it seems, speaks to a certain identity which has been pressed upon the French Revolution. An identity adopted many years after the Revolution itself came to an end. This particular worldview, whose recommendations I spoke of dissecting earlier, credits the French Revolution with being the beginning of the regime by which, today, we judge ethics in the political arena.

As a narrative, it assumes that “the starting point of human rights in the modern sense of the term is clearly to be found both in the ‘*Declaration of the Rights of Man and the Citizen...*’ and in the social conditions underlying it.”<sup>33</sup> Given this widespread sense that human rights provide a connection between France in the late eighteenth century and the latter half of the 20<sup>th</sup> century, and that our contemporary human rights regime carries within it the influences of those revolutionary years, let us begin by considering the composition of this bond.

### **Human Rights and Democracy: Disparate Traditions**

Shortly after the adoption of the *Declaration of the Rights of Man and Citizen*, the rights it enshrined were abrogated wholesale. Writing several decades after the Terror, Benjamin Constant argued that it was a failure to distinguish between different conceptions of liberty that caused this upheaval.<sup>34</sup> On the one hand, Constant spoke of the liberty of the ‘moderns,’ of his contemporary co-inhabitants of the world. This form of freedom, which he identified with many of the rights found in the *Rights of Man*, encompassed rights to bodily integrity; the right to free speech, freedom of movement, freedom of association, and so forth.

The freedom of the ‘ancients,’ on the other hand—of citizens of the Greek and Roman republics of antiquity—refers to the collective and direct participation in a polity’s governance. Freedom, in this sense, is to live under laws you partook in creating, rather than living under laws that were forced upon you by another. From this perspective, the collective of ‘the people’ must be absolute; citizens are free when there is no higher power that can interfere with the peoples’ political choices. This also implied, however, that no sphere of life lay beyond the polity’s authority;

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<sup>32</sup> Lynn Hunt, "Introduction: The Revolutionary Origins of Human Rights," in *The French Revolution and Human Rights: A Brief Documentary History* (Boston: Bedford/St. Martin's, 1996), 3.

<sup>33</sup> Imre Szabo, "Historical Foundations of Human Rights and Subsequent Developments," in *The International Dimensions of Human Rights*, ed. Karel Vasak and Philip Alson (Westport: Greenwood Press, 1982), 14.

<sup>34</sup> Constant.

the price of public freedom was that citizens were all but slaves in the private. “The individual was in a way lost in the nation, the citizen lost in the city.”<sup>35</sup> Where human rights are associated with the first of these two traditions, democracy and self-government stem from the latter. Similarly, where the liberty of the ancients is highly political, the ‘rights’ of the moderns seek to place their bearers beyond the scope of political authority.

Referring back to the French Revolution, Constant argues that those revolutionaries who sought to guide the people away from servitude—while they were undoubtedly well-meaning—failed to recognise the differences between the two different conceptions of freedom. Especially under Jacobin rule—throughout the period known as the Terror (*la Terreur*)—the yearning for collective self-governance, of the liberty of the ancients, led to a diminishing of individual spheres of freedom. They followed in the footsteps of those classical republicans who thought that “the citizens should be entirely subjected in order for the nation to be sovereign, and that the individual should be enslaved so that the people can be free.”<sup>36</sup> In seeking recourse to absolute sovereignty, rather than increasing the negative liberty of the French people, they merely replaced all the despotic prerogatives of the King with those of the ‘people’. Rather than constraining the authority of the state, they claimed it for the citizens to wield collectively, at the expense of the rights of each individual citizen.

The leaders of the French Revolution sought to force the individual to lay down her rights before the collective will, believing that participation in government would be ample recompense for her sacrifice. They found out the hard way that many Frenchmen did not believe that being the sovereign—or, at the very least, being a miniscule fragment in the sovereign body of the people—was an adequate trade-off for sacrifices they were expected to make.<sup>37</sup> The newly-established republic made demands of the time and energy of its citizens—and expected of them a level of civic virtue—that exceeded the severity of the absolutist monarchs that came before. “The nation had no desire for those austere laws, and wearily thought, sometimes, that it would rather have the yoke of tyrants.”<sup>38</sup> Whereas the ancients considered themselves freer the more they were able to dedicate themselves to politics, Constant believed that the moderns find more valuable that liberty which relinquishes them from political duties and responsibilities.<sup>39</sup>

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<sup>35</sup> Ibid., 312.

<sup>36</sup> Ibid., 318.

<sup>37</sup> Ibid., 320.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., 228.

The main caveat to this love for individual liberties, Constant concludes, is that many people today are inadequately passionate about their political liberties, to the point where they often willingly “neglect—sometimes too much, and always wrongly—the guarantees that it gives us.”<sup>40</sup> Proponents of the liberty of the moderns were not overly concerned with who governs, as long as whoever takes up this role refrains from interfering with the rights of its citizens. Constant is insistent, however, that at least some measure of the liberty of the ancients is a necessity if we wish to prevent the state from trampling on the rights of its citizens.<sup>41</sup> Where the distinction between the liberty of the moderns and that of the ancients is a helpful tool to help us think about freedom without surrendering to contradiction and inconsistency, he denied that we ought to treat them as a dichotomy—embracing one while ignoring the other.

Isaiah Berlin expanded on Constant’s discussion in his essay *Two Concepts of Liberty*.<sup>42</sup> Similarly to Constant, he split liberty into two distinct categories. The first of these two categories treats freedom as a negative concept, in that the presence of liberty depends on the absence of external constraints which prevent individuals from freely pursuing those ends which they devised for themselves. This is very closely related to what Constant called the liberty of the moderns. The latter category—that of freedom in a positive sense—instead relates to that desire for an individual to be the master of her own destiny. The liberty of the ancients would fall under this category. An individual can, therefore, determine the extent to which she is free in the negative sense by asking ‘*What am I free to do or be?*’ whereas her positive freedom lies within the answer to ‘*Who is to say what I am, and what I am not, to be or do?*’

One is thought to be free in the negative sense only to the extent that no individual or group of individuals interferes with her ability to do what she has decided she wants to do. Essentially, all members of a society draw a protective circle around themselves which delineate a set of rights that nobody else ought to infringe upon.<sup>43</sup> “The wider the area of non-interference the wider my freedom.”<sup>44</sup> Similarly, they are to respect the same line in the sand that other individuals have drawn to outline those same freedoms for themselves. Berlin argued that, from a purely negative perspective, the sphere of an individual’s freedom must be constrained and cannot run rampant.<sup>45</sup> The law, in limiting the scope of individuals’ liberties, becomes a

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Berlin.

<sup>43</sup> Quentin Skinner, “The Paradoxes of Political Liberty,” *The Tanner Lectures on Human Values* 7 (1986).

<sup>44</sup> Berlin, 170.

<sup>45</sup> Ibid.

necessary evil to enforce these protective zones with the threat of force; ensuring that the mutually hostile individuals which inhabit them do not attempt to increase the size of their own circle at the expense of any other.

While the state is expected to prevent individuals from encroaching upon the rights of their fellow men, it is also—for the most part—to refrain from extending its own reach over the liberties of the individual. For proponents of negative liberty, or liberals, the state is a sort of black box; they are indifferent to how it is constituted and who controls it.<sup>46</sup> As long as it does not interfere with the lives of its citizens it is begrudgingly accepted, but woe if it were to even think about extending its reach. Consequently, liberal rights are perfectly compatible with benevolent dictatorships and other laissez-faire autocrats; there is no direct link between negative freedom and democracy. Even the slave is deemed free if her master is benevolent. In saying that, following Constant's warnings against foregoing political participation completely, democratic government has been defended by liberals and libertarians as providing the best guarantee against the state venturing beyond this mandate.<sup>47</sup> Democratic elections are but instruments that incentivise the state to refrain from interfering with its citizens; that prevent the slaveholder from becoming malevolent.

While they are often believed to go hand in hand, human rights and democracy come from two entirely distinct traditions, and are, as often as they are believed to go together, antagonistic principles. Whereas human rights condone the "practice of limiting rule for the sake of individual freedom," democracy is usually described as a certain form of rule—and is thus related to positive freedom.<sup>48</sup>

Liberty is positive not when the slave wishes to be left alone by her master, but to become her own master. Unlike Constant's conception of participation in public life as self-government, this is expanded by Berlin to contain a notion of autonomy. This requires individuals not only to be un-coerced in pursuing whatever action they wish to pursue, but also to be free from external, heteronomous forces in making decisions about which action to pursue in the first place. As Berlin described it, I am free in the positive sense when I am "conscious of myself as a thinking, willing, active being, bearing responsibility for my choices and able to explain them by reference to my own ideas and purposes."<sup>49</sup>

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<sup>46</sup> This is especially true for 'classical' liberals; modern liberalism holds a more nuanced view on the matter.

<sup>47</sup> Berlin, 176-78.

<sup>48</sup> James D Ingram, "The Politics of Claude Lefort's Political: Between Liberalism and Radical Democracy," *Thesis Eleven* 87, no. 1 (2006): 34.

<sup>49</sup> Berlin, 179.

While being one's own master does not seem too dissimilar to being un-coerced, the main difference between the two stems from their understandings of life, and, more specifically, its purpose. Whereas the liberal would argue that life is without a pre-determined end goal, without an inherent purpose—leaving it up to the individual to make of it what she will—positive freedom requires a belief that life has a goal which can be objectively identified; whether it be the pursuit of happiness, wisdom, justice, self-fulfilment, etc. This purpose need not be the same for everyone, and it may be up to the individual to identify this purpose for themselves before setting out to pursue it. Thus, while positive freedom argues that there is an overarching purpose to life, it is no less pluralistic than negative freedom in that it is up to the individual to discover this for themselves.

If individuals are autonomous creatures in pursuit of some determinable goal—“authors of values, of ends in themselves, the ultimate authority of which consists precisely in the fact that they were willed freely”—then all obstacles that stand in the way not only to their actions, but also to their will, must be eradicated if they are to be free.<sup>50</sup> Self-mastery, in that sense, requires that an individual liberates herself from the tyranny of her whims, of the irrational desires and impulses that direct her down a path leading away from her purpose. The major implication of this conception of human consciousness is that individuals are divided against themselves. It gives the unified black box that is the liberal individual a split-personality; a body shared by an enlightened and an impulsive self. The individual's rational, ‘autonomous’ self must discipline her ‘heteronomous’ self to prevent her from being enslaved by circumstance or nature. Anything that interferes with an individual's capacity to determine her true goals, then, is an obstacle to her self-mastery; even if those obstacles originate from within.

From here it is a very small step to equating freedom with what the rational self *ought* to do. Berlin argues that this could justify coercing individuals who are not controlled by their rational selves, because their blindness or ignorance stands in the way of their autonomy.<sup>51</sup> In this case, it would not merely be that they are liberated by their coercion, but that they are free *because* they are being coerced. Liberty, rather than being threatened by the authority of the state, or some other enlightened entity, becomes indistinguishable from it. “Freedom is not the freedom to do what is irrational, or stupid, or wrong;” in fact, being prevented from doing so makes one freer.<sup>52</sup>

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<sup>50</sup> Ibid., 183.

<sup>51</sup> Ibid., 180.

<sup>52</sup> Ibid., 219.



*Once I take this view, I am in a position to ignore the actual wishes of man or societies, to bully, oppress, torture them in the name, and on behalf, of their 'real' selves, in the secure knowledge that whatever is the true goal of man (happiness, performance of duty, wisdom, a just society, self-fulfilment) must be identical with his freedom – the free choice of his 'true', albeit often submerged and inarticulate, self.<sup>53</sup>*

In *Two Concepts of Liberty*, Berlin cautions against embracing positive freedom because positive liberty has, in the past, been perverted and led astray from the pluralism that all conceptions of freedom must ultimately embody. While classical liberalism, he argued, was not necessarily any less likely to descend into despotism, those who justify the enslavement of the people by a malevolent sovereign do not—or cannot—“have the effrontery to call it freedom.”<sup>54</sup> Later in his career, however, in *the Birth of Greek Individualism*, he pointed out that...

*both concepts could be perverted in the course of human history. Negative liberty could be interpreted as economic laissez-faire, whereby in the name of freedom owners are allowed to destroy the lives of children in mines, or factory-owners to destroy the health and character of workers in industry.<sup>55</sup>*

The perversion of liberty—both in their positive and negative senses—Berlin argued, is the result of its appropriation by ‘monistic’ principles.<sup>56</sup> He believes that oppression in the name of liberty is usually linked to...

*the naïve notion that there is only one true answer to every question: if I know the true answer and you do not, and you disagree with me, it is because you are ignorant; if you knew the truth, you would necessarily believe what I believe; if you seek to disobey me, this can be so only because you are wrong, because the truth has not been revealed to you as it has been to me.<sup>57</sup>*

It is such fanatical certainty of having found *the* answer—the correct ends to be working towards—he argues, that has convinced so many tyrants that their cruel and merciless means were justified.<sup>58</sup> Consequently, Berlin appears to be of the opinion that the two concepts of liberty he outlines—while belonging to two distinct traditions—are not necessarily incompatible. They are both legitimate, and

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<sup>53</sup> Ibid., 180.

<sup>54</sup> Ibid., 210.

<sup>55</sup> Ibid., 327.

<sup>56</sup> Ibid., 328.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

necessary, ends, and it is not until it is claimed that one ought to be the sole criterion for how a society judges its own liberty that problems arise. In moderation, they are no less reconcilable than so many other values contemporary society holds dear; be they equality, social justice, law and order, or happiness. Both individual liberty and popular sovereignty need to be weighed against each other as well as these other claims; attempts to elevate one to a position of dominance cannot but lead to one form of oppression or another. He argues that, because...

*the world that we encounter in ordinary experience is one in which we are faced with choices between ends equally ultimate, and claims equally absolute, the realisation of some must inevitably involve the sacrifice of others. Indeed, it is because this is their situation that men place such immense value upon the freedom to choose; for if they had assurance that in some perfect state, realisable by men on earth, no ends pursued by them would ever be in conflict, the necessity and agony of choice would disappear, and with it the central importance of the freedom to choose.*<sup>59</sup>

Democracy and human rights, while both inextricably intertwined with ideas of liberty, are best thought of as coming from two separate traditions. Where the former encapsulates the idea that there is value in acting autonomously—in deciding who is to govern us—the latter betrays the sentiment that similar value is to be found in the belief that individuals need a space beyond the purview of politics—that there ought to be a limit beyond which whoever sits on the throne has no authority. It is important to note, then, that the value of both of these conceptions of freedom lie within their pluralism; their ability to open doors rather than close them. As the epigraph to this chapter denoted, while it may be difficult to agree on what liberty entails exactly, oppression is easily recognisable to those who are subjugated, shackled, enslaved, coerced, dominated, or disenfranchised; restriction of choice is always the abrogation of liberty.

Having discussed these different conceptions of liberty, we arrive at the contemporary—primarily liberal—human rights discourse. Benjamin Constant noted that much of the *Rights of Man* is strongly connected to protecting what he called the ‘liberty of the moderns’; it concerned that private area of life where the individual is beyond the purview of the state. When looking at modern human rights discourse, we, again, find this association between the private individual and human rights. Michael Ignatieff, for example, argued that “human rights matter because they help people to help themselves. They protect their agency. By agency,” he means “more or less what Isaiah Berlin meant by ‘negative liberty,’

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<sup>59</sup> Ibid., 321.

the capacity of each individual to achieve rational intentions without let or hindrance.”<sup>60</sup>

Where Berlin and Constant are of the opinion that there are important lessons to be found within both the positive and negative conceptions of liberty, the human rights regime with which Ignatieff aligns himself runs into several contradictions by valuing only negative liberty. Undeniably, “rights, and the idea of a private sphere in which I am free from scrutiny,” are “indispensable to that minimum of independence” which individuals require to flourish, yet problems arise when one forgets that without positive liberty there is no guarantee that these rights stand as inalienable.<sup>61</sup> “Schoolboys,” Berlin points out, “however lightly ruled, have no rights against the masters.”<sup>62</sup>

### **Critiques of Human Rights Discourse**

The epigraph to this thesis—where Hannah Arendt laments “the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as ‘inalienable’ those human rights which are enjoyed only by the citizens of the most prosperous and civilized countries, and the situation of the rightless themselves”—is emblematic of a wider despair with the effectiveness, or lack thereof, of rights discourse in guaranteeing freedom and dignity.<sup>63</sup> No matter how much proponents of negative liberties exclaim that a protective circle of rights drawn around an individual is indispensable to their well-being, it provides no inherent solace from interference by the state or other individuals.

While the French *Declaration* presents a hopeful vision for a future freed from suffering, the responsiveness of institutions to human rights claims in their wake have been mediocre at best. Directly after the formulation of the *Rights of Man*, the National Assembly gave way to the Convention, only to be followed by the Terror, Empire, restoration, war, and the Vichy government’s home-grown fascism; a century and a half where circumstance paid no heed to the formal existence of human rights. These rights to protect individuals from interference, then, appear to be a figment of our collective imagination. There is nothing in nature that would imply that humans have rights, let alone that these rights are so meaningful that we cannot disregard them. Merely declaring we have them does not make it so.

Quite simply, there is no metaphysical basis on which to conclude that somehow, individuals have a set of rights and that these rights ought to be protected. Alasdair MacIntyre, for example, argued that “there are no such rights, and belief in them is

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<sup>60</sup> Ignatieff, 57.

<sup>61</sup> Berlin, 286.

<sup>62</sup> Ibid., 301.

<sup>63</sup> Arendt, *Origins*, 279.

one with belief in witches or unicorns.”<sup>64</sup> Merely wishing to avoid cruel practices such as torture or imprisonment, and making the assumption that others similarly wish to escape such procedures, does not necessarily mean that it is your right not to be tortured or wrongfully imprisoned. As Bentham argued, “reasons for wishing there were such things as rights are not rights; a reason for wishing that a certain right were established, is not that right—want is not supply—hunger is not bread.”<sup>65</sup>

Jack Donnelly, in a similar vein, conceded that “there is no strong foundation for human rights”—“or, what amounts to the same thing, there are multiple, or inconsistent, ‘foundations’” which happen in many cases to be incompatible.<sup>66</sup> As with negative liberty, which Berlin defended in terms of a feeling that a minimum level of independence may be valuable, there is no absolute justification for the existence of human rights.<sup>67</sup> Instead, they express a belief that there are certain practices so barbaric that no human should have to endure them. “The basic intuition,” Ignatieff claimed, is “that what is pain and humiliation for you is bound to be pain and humiliation for me.”<sup>68</sup>

This intuition alone has far-reaching implications; with regard to the *Rights of Man*, for example, “no one believed that the mere proclamation of rights would end wars and bring in a new era of freedom, equality, and fraternity.”<sup>69</sup> Nonetheless, “by all accounts, the principal drafters sincerely believed that establishing the rule of law and respect for human rights as the cornerstones of the new social order was their historic duty.”<sup>70</sup> Merely because human rights are a figment of our imagination and do not carry any inherent authority does not mean we cannot give them authority through mutual agreement.

The metaphysical foundation of human rights is not quite as pressing a question when they are respected in practice. The human rights regime, therefore, concerns itself more with the pragmatic aim of guaranteeing the universal validity of these rights despite, or perhaps in spite of, the question of their philosophical justification. “Rather than unicorns,” Ingram responds to MacIntyre, “think of them as mules.”

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<sup>64</sup> Alasdair MacIntyre, *After Virtue, a Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1981), 67.

<sup>65</sup> Jeremy Bentham, “Anarchical Fallacies,” in *‘Nonsense Upon Stilts’: Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987), 53.

<sup>66</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 21-22.

<sup>67</sup> Berlin, 216-17.

<sup>68</sup> Ignatieff, 55.

<sup>69</sup> Marks, 467.

<sup>70</sup> *Ibid.*

*They do not exist in nature and do not reproduce on their own, but they can exist. If the philosopher claims that rights are nonsense, even nonsense on stilts, the pragmatist need not be troubled. From a pragmatic... point of view, the essential difference between a unicorn and a mule is not that the mule exists, but that it will work.*<sup>71</sup>

Where thinkers such as MacIntyre and Bentham refuse to amalgamate the *ought to be* and the *is*, the human rights activist works to turn the former into the latter. Their approach values the rights drawn around the individual and seeks to develop this line in the sand to the point where it is recognised in practice. Human rights politics, according to Ignatieff, is powerful precisely because it does not seek any transcendent truth or comprehensive theoretical principles; its goals are merely to limit violence and suffering.<sup>72</sup> Support for human rights, Ignatieff argued, does not need to validate itself with recourse to a particular notion of human nature or of the human good.<sup>73</sup> “All that can be said about human rights is that they are necessary to protect individuals from violence and abuse, and if it is asked why, the only possible answer is historical.”<sup>74</sup>

Seeing as human rights, at this current moment, may indeed be likened to a tautological unicorn—they are “enjoyed only by the citizens of... countries” which do not attempt to abuse them—the main question for human rights activists becomes how we turn them into Ingram’s mules.<sup>75</sup> How do we get human rights to work, even in those countries that currently ignore their existence and actively abuse them? In order to answer that question, and before we discuss several approaches to encouraging mules’ productivity, it may be useful to discuss what it is that prevents human rights discourse from successfully guaranteeing human dignity.

As Wendy Brown noted in her discussion of Ignatieff’s *Human Rights as Politics and Idolatry*, the contemporary human rights regime has been charged with a whole host of critiques. It is said that they are...

*vague and unenforceable; their content is infinitely malleable; they are more symbolic than substantive; they cannot be grounded in any ontological truth or philosophical principle; in their primordial individualism, they conflict with cultural integrity and are a form of liberal imperialism; they are a guise in which superpower global*

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<sup>71</sup> James D Ingram, "What Is a 'Right to Have Rights'? Three Images of the Politics of Human Rights," *The American Political Science Review* 102, no. 4 (2008): 402.

<sup>72</sup> Ignatieff, 149.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid., 149.

<sup>75</sup> Arendt, *Origins*, 279.

*domination drapes itself; they are a guise in which the globalisation of capital drapes itself; they entail secular idolatry of the human and are thus as much a religious creed as any other;*

and so the list goes on.<sup>76</sup> The two criticisms I want to focus on in particular, however, are the arguments that the *Rights of Man*—as opposed to the rights of the citizen—are too abstract to have any meaningful impact, and secondly, that human rights and sovereignty are incompatible concepts.<sup>77</sup> Where many of the charges against the human rights regime dispute whether they are actually beneficial—regardless of whether they are completely effective—these arguments about the subject of human rights and their relationship with sovereignty are seen to hit at the core of their unenforceability.<sup>78</sup> If, therefore, human rights are deemed to be beneficial despite their links to liberal imperialism, the globalisation of capital, and primordial individualism—to name but a few unresolved disputes—these two issues I wish to discuss outline the more pertinent practical roadblocks to solving Arendt's paradox.<sup>79</sup>

Regarding the difference between the rights of the citizen and the rights of man, even amongst liberal scholars, it is widely accepted that citizenship within a representative state is more likely to protect an individual's rights than membership of an abstract 'humanity'.<sup>80</sup> Ignatieff noted that in those liberal democracies which respect and protect the private sphere, the rights that are guaranteed by the state—the rights of the citizen—are often the first point of call in the case of grievances.<sup>81</sup> International human rights conventions are turned to only in cases where domestic rights fail. Groups of people who do not have a sympathetic state to turn to in the case of rights violations—perhaps because the state is the one perpetrating these wrongs—"certainly make use of human rights language to denounce their oppression, but for ultimate remedy they seek statehood for themselves and the right to create a framework of political and legal protection for their people."<sup>82</sup>

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<sup>76</sup> Wendy Brown, "The Most We Can Hope For...": Human Rights and the Politics of Fatalism," *The South Atlantic Quarterly* 103, no. 2 (2004): 451.

<sup>77</sup> By discussing both Pettit's neo-republicanism and Arendt's republicanism throughout this thesis, it will become clear how these objections to human rights discourse interact with each other and influence these two branches of republican thought. The first of these charges is central both to Pettit and Arendt's work, while the latter draws out some of the disparities between their thought.

<sup>78</sup> Even amongst proponents of the human rights regime, these two claims are recognised as serious kinks which need to be ironed out. For example, see Ignatieff.

<sup>79</sup> The discussion regarding the value of human rights as such, while hugely important, will be beyond the scope of this paper.

<sup>80</sup> See; Ignatieff, 14; Michael Walzer, "Human Rights in Global Society," *Internationale Politik Transatlantic Edition* 6, no. 1 (2005): 7.

<sup>81</sup> Ignatieff, 14.

<sup>82</sup> Ibid.

Ignatieff is quite clear about the fact that a democratic state is the most effective remedy for any national grouping who wishes to escape persecution. Neither is he the only one within the liberal tradition to heed the advice of Berlin and Constant regarding the interconnected nature of negative and positive liberties, as demonstrated by the credence the human rights regime lends to democratic institutions worldwide.<sup>83</sup> Nonetheless, Ignatieff refused to embrace a ‘human right’ to statehood. He believed that while creating a new, sovereign state would protect the rights of those in charge of its institutions, it does not solve the problem of minority rights being violated. The creation of a new state will in most cases entail the creation of new minority groups also. “Nationalism solves the human rights problems of the victorious national group while producing new victim groups whose human rights situation is made worse.”<sup>84</sup>

The problem, in this sense, is not the fact that minorities do not have access to a sovereign state of their own, but the fact that minorities have sovereignty exerted over them. When Ignatieff speaks of human rights and democracy not necessarily being compatible, then, he refers to the fact that, as a sovereign community, even a democracy is capable of banishing its own members from that community or refusing to admit those who beg at the gates.<sup>85</sup>

These problems with the enforcement of human rights—which both Pettit and Arendt expand upon—are by no means unknown to Ignatieff. Nonetheless, he refrained from following either path to its logical conclusion; accepting instead the imperfect nature of the *status quo*. On the one hand, he is dragged towards the neo-republican solution, which is “to put more emphasis not on democracy alone but on constitutionalism, the entrenchment of a balance of powers, judicial review of executive decisions, and enforceable minority rights.”<sup>86</sup> On the other hand, he is well aware of the fact that, as Arendt would argue, juridification of rights can run counter to respecting the autonomy of the bearers of those rights. Rather than taking rights out of the political picture by means of aggressive institutionalisation, eschewing the sovereignty of a bureaucratic state would imply politicising these rights.<sup>87</sup> In this sense, “to be a rights-bearer is not to hold to some sacred inviolability but to commit oneself to live in a community where rights conflicts are adjudicated through persuasion, rather than violence.”<sup>88</sup>

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<sup>83</sup> For example, see; United Nations General Assembly, "Resolution 62," (December 13, 2007).

<sup>84</sup> Ignatieff, 15.

<sup>85</sup> Ibid., 29.

<sup>86</sup> Ibid., 30.

<sup>87</sup> Werner Hamacher and Ronald Mendoza-de Jesús, "On the Right to Have Rights: Human Rights; Marx and Arendt," *CR: The New Centennial Review* 14, no. 2 (2014).

<sup>88</sup> Ignatieff, 84.

Being dragged in two different directions, Ignatieff has instead resigned himself to the way things are. Although, in his words, “our interventions are sometimes making matters worse,” we have to accept with a Hobbesian pessimism that when “all order in a state has disintegrated and its people have been delivered up to a war of all against all, or where a state is engaging in gross, repeated, and systematic violence against its own citizens, the only effective way to protect human rights is direct intervention.”<sup>89</sup> Even though liberal thinkers seem to be aware of the problems of humanitarian intervention, they seem incapable, or unwilling, to imagine an alternative system. Rather, they continue in vain to combine moral imperatives with an ineffective, sometimes counterproductive, conception of statist politics. Because “national self-determination is not always favourable to individual human rights,” and it appears “utopian to look forward to an era beyond state sovereignty,” a liberal (anti-)politics of humanitarian intervention, as we shall now discuss, is supposedly “the most we can hope for.”<sup>90</sup>

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<sup>89</sup> Ibid., 47, 37.

<sup>90</sup> Ibid., 173, 29, 35.



# 3.

## Liberalism

*“It is not against the arm that one must rail... but against the weapon. Some weights are too heavy for the human hand.”*

- Benjamin Constant<sup>91</sup>

Ignatieff, despite his misgivings about the contemporary human rights regime, argues that it is the best we can hope for in our current circumstances. The response of the human rights regime to Arendt’s paradox, consequently, has been characteristically pragmatic. Faced with the contradiction between the theoretical inalienability of human rights and the consistency with which they are alienated in practice, it merely affirms their universality and sets out to guarantee them in practice by whichever methods are most commonly available. It seeks to directly bridge the gap between morality and the state-oriented *status quo* in global politics. In practical terms, this implies a heavy reliance on humanitarian intervention; if individuals are deprived of human rights, then it is our duty to stop the perpetrators of these abuses in their tracks. This approach, however, struggles to think means and ends together. Responding with a knee-jerk reaction in the face of evil, they have contemplated no ‘good’ with which to replace ‘evil’ once they have driven it back into the depths from whence it came.

In seeking to directly protect the agency and autonomy of individuals—by force if necessary—this pragmatic liberal approach to human rights has embraced a form of politics which empowers arbitrary and unaccountable entities to protect the rights of the powerless. While it may protect the victims of human rights violations from their abusers, humanitarian intervention is, by necessity, carried out by an even more powerful entity than the one being replaced. This higher power, moreover exists within the same institutional structures from which the perpetrators of human rights violations first arose. While it may be well-intentioned, and at

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<sup>91</sup> Benjamin Constant, quoted in: Berlin, 209.

times very effective in the short term, this form of human rights politics denies the individuals they are saving from the autonomy which human rights intend to facilitate. Both before and after the intervention, the dignity of the powerless is dependent on the goodwill of those wielding power over them. Regardless of whether this sovereign power is benevolently-minded, it will always be a philanthropic entity; those under its protection have no power of their own.

### **Replacing an Overbearing Monarch**

In the centuries leading up to the Revolution, it was not uncommon for Kings to be murdered by would-be Kings or by hatchet men who were royally rewarded for their work by pretenders. The exception to deposing of a ruling monarch in the hopes to succeed him appears to be those cases where religious zealots, who did not even need to be in the pay of any pretender, “struck down the old rule in the hope of a new one more firmly formed in the image of their faith.”<sup>92</sup> While regicide was not completely uncommon, this righteous anger was only ever directed at the person who happened to represent the Crown; the Crown itself—along with its royalist ideology of absolute sovereignty—was never attacked. Rather than the power afforded to whomever sat upon the throne at any given moment, it was her character that was called into question whenever she became an insufferable tyrant.

As Albert Camus argued in *the Rebel*, “it never occurred to them that the throne could remain empty forever.”<sup>93</sup> As a matter of fact, an empty throne would never have been in their interest. In France, before Louis XVI’s time, Ravallac and Damiens—regicide and would-be—did not seek to call the powers of the monarch into question; they merely wanted another to wield them.<sup>94</sup> Since the regicides themselves wished to accede into the position of the man they had just helped out of this world, or at the very least free his space for someone in whom they had more faith, the principle of the monarch as God’s representative on earth remained respected even when her person was not. The authority of the person of the King was to remain unchallenged, even moments after the former King had been killed. “So Kings for centuries were killed in corners, the murders hushed up, the murderers unthanked, neglected, condemned.”<sup>95</sup> Yet, despite the fact that a monarch might be expecting her assassin to arrive any day, she was always able to proclaim her authority to be absolute; her divine right.

*It is as if every King until the Revolution preened himself before the same magic mirror and saw the same gratifying image: himself God’s*

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<sup>92</sup> Michael Walzer, “Regicide and Revolution,” *Social Research* 40, no. 4 (1973): 618.

<sup>93</sup> Camus, *The Rebel*, 112.

<sup>94</sup> With the exception of the execution of Charles I in 1649 in England, who, as was the case with Louis XVI, was killed in person as well as in principle.

<sup>95</sup> Walzer, “Regicide and Revolution,” 620.

*deputy, head and soul of the body politic, sole knower of the mysteries of state, father of his subjects, husband of the realm, healer, peacemaker, sovereign lord.*<sup>96</sup>

Such a regicide, however, was not what the revolutionaries had in mind when they put Louis XVI on trial. Not content with killing his person, they sought to deny his personal inviolability and the divine right that gave him his power. As Oliver Cromwell supposedly remarked before the execution of Charles I of England—"I tell you, we will cut off his head with the crown on it"—so Danton exclaimed; "we do not want to condemn the King... we want to kill him."<sup>97</sup> Not merely executing Louis, but making a commitment to killing him in public *as* his royal persona, had the effect of destroying the integrity of monarchism as a principle. They killed the person who claimed to sit on the throne alone so a different principle—the sovereignty of the people—may take her place. Having killed divine right at the *Place de la Revolution*, however, the story of how a sovereign was deposed returned to its pre-revolutionary framework. The most distinctive example of this is undoubtedly the Thermidorian Reaction, which supposedly brought an end to the Reign of Terror; those in power were deposed yet the basis of this power was left intact.

The King, ruling alone, was the only man in France whose voice was politically relevant; the words of his monologue were God and law. With the death of both the King and his majestic legitimacy, the people took his place on the throne. "Since the nation did not speak," however, "someone had to speak for it."<sup>98</sup> The people alone had the right to govern, yet *le peuple* was not a group of individuals whose interests were objectively identifiable. Instead, it was an evanescent principle which no amalgamation of individuals was able to represent. The position of the voice of the people, therefore, was thrown wide open, and the attempts to fill the void of power where monarchical institutions previously governed became a competition between different discourses seeking to appropriate legitimacy.

*Legitimacy (and victory)... belonged to those who symbolically embodied the people's will and were able to monopolise the appeal to it. It is the inevitable paradox of direct democracy that it replaces electoral representation with a system of abstract equivalences in which*

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<sup>96</sup> Ibid., 627.

<sup>97</sup> Joseph George Muddiman, *The Trial of Charles the First* (Edinburgh and London, Hodge & Co, 1928), 70.

<sup>98</sup> Furet, 184.

*the people's will always coincides with power and in which political action is exactly identical with its legitimacy.*<sup>99</sup>

It was through mastery of this revolutionary language, Furet argues, that Robespierre was able to appropriate the Revolution's discourse and monopolise the right to speak for the people.

*He alone mythically reconciled direct democracy with the principle of representation, by occupying the summit of a pyramid of equivalences whose continued existence was guaranteed, day after day, by his word. He was the people to the sections, he was the people to the Jacobin club, he was the people to the national representative body; it was continually necessary to establish, control and restore the perfect fit between the people and the various assemblies that claimed to speak in its name... for without that perfect fit there could be no legitimate power, and the first duty of power was to maintain it; that was the function of the Terror.*<sup>100</sup>

In 1793, but four years after the ratification of the *Rights of Man*, the National Convention—which had replaced the National Assembly in 1792—instituted *la Terreur*, the Reign of Terror, as to purge from society those reactionary elements that opposed the Revolution, the republican Constitution, and liberty itself. The rights that were declared to be universal and inalienable by the Revolution were suspended indefinitely under Robespierre's leadership; the possession of rights and freedoms, after all, made it easier for counter-revolutionaries to destroy freedom and reinstate royal tyranny. The people, Robespierre argued, would only prevail if it took on the mantle of “the despotism of liberty against tyranny.”<sup>101</sup>

The freedom of expression and freedom of the press that had been so boldly pronounced in by the *Rights of Man* were subordinated to the needs of the young republic. Books, pamphlets, and newspapers were censored, and those who by “their writings have shown themselves partisans of tyranny and *fédéralisme*, and enemies of liberty” were arrested.<sup>102</sup> Now that the people were in full control of the government and the press, only those who wished to see the downfall of their legitimacy as rulers would speak out against them. Once in custody, the right to be judged according to the principles of the *Rights of Man* was equally disavowed, as “prisoners were often beaten, starved, raped, or executed without trial. Those who

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<sup>99</sup> Ibid., 48.

<sup>100</sup> Ibid., 60.

<sup>101</sup> Maximilien Robespierre, *Œuvres De Maximilien Robespierre*, ed. Marc Bouloiseau, et al., vol. 10 (Paris: Presses Universitaires de France, 1926-67), 357.

<sup>102</sup> Israel, *Revolutionary Ideas*, 460.

survived these abuses,” as Johnson described, “stood little chance of an impartial hearing or fair treatment.”<sup>103</sup>

Those who opposed Robespierre’s official line were increasingly subject to persecution, and the prisons were filled with ‘suspects’ who had been arrested on ever more absurd charges. Consequently, in Furet’s words, “there was no longer any gap to be filled between the idea and power, nor any room for politics except in consensus or death.”<sup>104</sup> In practice, this played out through “a nightmarish series of house-to-house visits by roving search parties, armed with batches of freshly printed warrants.”<sup>105</sup> Daily, they ensued in “streetlamp lynchings and destruction of property.”<sup>106</sup> That which did not fit Robespierre’s accepted vision of *le peuple* must be its Manichean counterpoint.

Emotionally exhausted and weary of the constant violence, by July 1794, public opinion began to place Robespierre’s ascendant position in the Convention and the Committee of Public Safety under threat. The deputies of the Convention—even those veteran *Terroristes* who had supported Robespierre for years—began to doubt the necessity of the *idée fixe* of the Terror and called for moderation; undermining Robespierre’s control over the revolutionary discourse. Some of them, particularly Collot d’Herbois, Billaud-Varenne, Tallien, and Fouché, actively conspired to bring about an end to Robespierre’s reign, seeking to take from him the mantle of the people’s voice.

On the 9<sup>th</sup> of Thermidor, in the revolutionary year two—the 27<sup>th</sup> of July, 1794—Robespierre attempted to consolidate his power by convincing the Convention of the necessity of inflexibility in the face of all counter-revolutionary and monarchical sentiment. His speech, however, managed only to unite his enemies against him.

*He denounced his foes only in the vaguest terms, without actually naming anyone, so that the speech placed everybody in the Convention with whom he had reason for dissatisfaction at immediate risk, thereby unnecessarily panicking some frightened deputies who had no other reason for opposing him into the arms...*

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<sup>103</sup> Vincent Robert Johnson, "The Declaration of the Rights of Man and of Citizens of 1789, the Reign of Terror, and the Revolutionary Tribunal of Paris," *Boston College International & Comparative Law Review* 13, no. 1 (1990): 21.

<sup>104</sup> Furet, 70.

<sup>105</sup> Cleveland Moffett, *The Reign of Terror in the French Revolution* (New York: Ballantine Books, 1962), 8.

<sup>106</sup> *Ibid.*

of those plotting his downfall.<sup>107</sup> He was losing his grip on the discourse that let him assume absolute power in the name of the people. That same evening, at the Jacobin Club, “leaping to the podium, Robespierre was shouted down: “*à bas le roi, à bas le tyran, ce nouveau Cataline!*”<sup>108</sup> Both the Convention and the Jacobin club—traditionally the base of Robespierre’s support—deserted him for those deputies who had been seeking his downfall. When his control over revolutionary discourse failed him he lost “the right to be the image of the people” and his power was swept away “like so many sandcastles assaulted by the tide.”<sup>109</sup>

After claiming the capacity to speak *as* the people by officially putting an end to the Terror, the Thermidorians did surprisingly little to dismantle its machinery of violence and fear. While the Thermidorian Reaction, as it came to be known, represented a symbolic end to the Terror—especially because the new government sought to publicly distance itself from Robespierist political violence—it was not the decisive turning point in the Revolution that it is often made out to be. As Harder pointed out, the violent purges of the Terror continued almost uninterrupted after Robespierre’s execution.<sup>110</sup> “In place of the ruthless men Robespierre had selected with an eye to their usefulness to himself,” Jonathan Israel argued, “the Thermidorians substituted only other proven *terroristes* scarcely less tyrannical, dishonest, and demagogic.”<sup>111</sup>

The main qualification needed for a position in the post-Thermidor regime was distance from Robespierre. Where many of his hard-core supporters were imprisoned, executed, or lynched, many more who had actively partaken in the Terror retained their positions. “By linking the Terror just to Robespierre’s accomplices, provincial agents of the Terror sought to cover their tracks and reemerge, despite their crimes, as respected representatives of a wronged people.”<sup>112</sup> Consequently, the repression that characterised the revolutionary years I and II was eased very gradually, if at all, and many of the rights and liberties that Robespierre suppressed remained so.

*The difficulty with the wall the Thermidorians so assiduously erected between themselves and Robespierre’s tyranny was that it was*

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<sup>107</sup> Israel, *Revolutionary Ideas*, 576.

<sup>108</sup> *Ibid.*, 578.

<sup>109</sup> Furet, 73, 46.

<sup>110</sup> Mette Harder, “A Second Terror: The Purges of French Revolutionary Legislators after Thermidor,” *French Historical Studies* 38, no. 1 (2015): 35.

<sup>111</sup> Israel, *Revolutionary Ideas*, 583.

<sup>112</sup> *Ibid.*, 583-4.

*completely fictitious. There was no clear dividing-line separating them from Robespierre's despotism.*<sup>113</sup>

The replacement of Robespierre by the Thermidorians left in place the ideological framework of the Terror; removing the tyrant left completely unresolved the conditions which allowed the government to oppress the people.

### **The Response of Liberal Pragmatism**

In accordance with the republican critique of rights as unenforceable unless they are conceived of as citizens' rights, Ignatieff conceded that having a state which guarantees the rights of its inhabitants is a highly effective way of countering Arendt's paradox.<sup>114</sup> Michael Walzer, however, is wary of the fact that "some states protect some rights some of the time and no political agency does that much."<sup>115</sup> In conceiving of human rights primarily as negative rights—where the state is supposed to be the citizens' protector—without respect to positive questions of who controls the state, there is nothing preventing the state from rejecting the duty which liberal thought had ascribed to it. Citizens, like Berlin's schoolboys firmly under the yoke of their masters, have no control over the state's actions. There is often very little preventing a sovereign power from replacing the tautological rights of the citizen with the meaningless rights of man. Thus, it is not at all uncommon to find a state which is either incapable or unwilling to protect the rights of its citizens from the malevolent intentions of others, or even enthusiastically partaking in human rights abuses.

When human rights are actively reduced to the status of unicorns, the pragmatic liberalism of mainstream human rights theorists deems the necessary response to be one of resetting this relationship akin to *noblesse oblige*. As Jacques Rancière described it, if "those who suffer inhuman repression are unable to enact the human rights that are their last recourse, then somebody else has to inherit their rights in order to enact them in their place."<sup>116</sup> He refers to humanitarian intervention as a "return to sender: the disused rights that had been sent to the rightless are sent back to the senders."<sup>117</sup> Human rights politics, in this liberal sense, involves

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<sup>113</sup> Ibid., 586-7. This discursive legitimacy only came to an end when the last of the *Terroristes*, the men of Thermidor among them, were themselves purged from the government. At this point, representative democracy replaced the "imaginary discourse on power" of the Jacobins by placing institutional checks on the sovereignty of the people. See; Furet, 73.

<sup>114</sup> Ignatieff, 14.

<sup>115</sup> Walzer, "Human Rights," 7. For further discussions on why states may not always protect its citizens' rights, see; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998).

<sup>116</sup> Jacques Rancière, "Who Is the Subject of the Rights of Man?," *The South Atlantic Quarterly* 103, no. 2 (2004): 308-9.

<sup>117</sup> Ibid.

replacing as guarantor of rights those states that are too weak to enforce the rights of its citizens, turn a blind eye to their abuse, or actively partake in trampling them. “Where all order in a state has disintegrated and its people have been delivered up to a war of all against all, or where a state is engaging in gross, repeated, and systematic violence against its own citizens,” Ignatieff argued, “the only effective way to protect human rights is direct intervention, ranging from sanctions to the use of military force.”<sup>118</sup>

Who could disagree with this reflex to impede unnecessary suffering using whatever means at one’s disposal? As James D. Ingram notes, “if anything is uncontroversially a basic human right, it is the right not to be massacred; if anything can justify the suspension of state sovereignty and international law, it is mass slaughter.”<sup>119</sup> Surely humanitarian intervention is justified in such a clear-cut case of rights violations. Ingram continued, however, by identifying two main problems with this approach; the first being that “massive human rights violations cannot be prevented, halted, or punished by unicorns or even by mules. What is needed is a cavalry, overwhelming force, which only very powerful states can ordinarily bring to bear.”<sup>120</sup> Such state-centric politics, however, often ends up reinforcing existing, highly unbalanced power relations. The second problem is that while morality often requires us to see human rights abuses as a Manichean conflict between good and evil, seldom will things be that simple in practice. Pretending that they are, furthermore, often ends up making things worse.<sup>121</sup>

Firstly, by seeking to protect the weak from arbitrary interference by a more powerful actor, we are often forced to seek recourse in the perverse notion that we need to summon an even greater power. In the case of an oppressive state slaughtering its people, for example, any interventionist politics will, by necessity, have to be undertaken by an actor mightier than said oppressor. As Ignatieff pointed out, there are three—potentially four—criteria for resorting to humanitarian intervention, let alone for it to be successful.

*(1) The human rights abuses at issue have to be gross, systematic, and pervasive;*

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<sup>118</sup> Ignatieff, 37.

<sup>119</sup> Ingram, “What Is a ‘Right to Have Rights,’” 403.

<sup>120</sup> Ibid., 404.

<sup>121</sup> For further discussions on why best laid political plans, when depending on overly simplistic schema, will often run into unforeseen and equally misunderstood contingencies, see; James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).



*(2) they have to be a threat to international peace and security in the surrounding region; and*

*(3) military intervention has to stand a real chance of putting a stop to the abuses.*

*In practice, a fourth criterion comes into play: the region in question must be of vital interest, for cultural, strategic, or geopolitical reasons, to one of the powerful nations in the world and another powerful nation does not oppose the exercise of force.*<sup>122</sup>

Human rights politics is played out very much at the whims of sovereign powers. Although state sovereignty has become much more conditional than it used to be, any state could essentially be forgiven for their human rights abuses if they do not infringe on these four rules; leaving countless rights violations unresolved.<sup>123</sup> The politics of humanitarian intervention, consequently, tend to mirror and reinforce existing—highly unequal—power-relations between global actors and individuals; exacerbating the original problem. “All forms of power are open to abuse,” Ignatieff notes, “and there is no reason why power that legitimises itself in the name of human rights should not end up as open to abuse as any other.”<sup>124</sup> Only this time, that power which lends itself to abuse is even greater than that which preceded it, or it would not have vanquished its predecessor. The contemporary human rights regime, therefore, fails to provide a lasting guarantee of human rights. In some cases, it allows rights abuses to go ahead, whereas in others it installs someone new on the throne in the hope that she will act more graciously.

Reinforcing the relationship between individuals and sovereign powers which have the choice of guaranteeing or invalidating their rights does nothing to alter the situation in which human rights violations are such an oft-recurring phenomenon. Rights are anything but inalienable if their inalienability depends on the whim of a sovereign power. Placing all of your rights in the hands of the state is, therefore, very much an enterprise of faith. Some powerful actors—states or the elites that control them, in most cases—may promote human rights without their bearers having to do anything for it, but Ingram likens this to “a car continuing down the road after one has taken one’s hands off the wheel.”<sup>125</sup>

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<sup>122</sup> Ignatieff, 40.

<sup>123</sup> When states fail to protect the rights of their citizens, Ignatieff argues, “they render themselves subject to criticism, sanction, and, as a final resort, intervention.” Their sovereignty, therefore, is far from absolute. See; *ibid.*, 17.

<sup>124</sup> *Ibid.*, 47.

<sup>125</sup> Ingram, “What Is a ‘Right to Have Rights’,” 414.

Secondly, while humanitarian intervention is highly dependent on a *realpolitik*, in which it may be questionable whether the plight of the victim or the self-interest of the intervener is more important, once intervention has been initiated, the plight of the victim suddenly becomes absolute. When morality, rather than politics, becomes the measure by which a situation is judged, human rights abuses are often reduced to a Manichean conflict between good and evil. Ingram, for example, argues that the problems of humanitarian intervention and the responsibility to protect reach their full potential when the logic of power politics meets with a logic of simplification. "Morality encourages and at times even requires us to see the world in terms of good and evil; clarity of vision can be a moral virtue. In politics things are seldom so simple, and imagining that they are can lead to serious mischief."<sup>126</sup>

This simplification has several dimensions; it does not merely purify the victims of human rights abuses, but also the incentives of the intervener. As Ignatieff identified, "intervention is... problematic because we are not necessarily coming to the rescue of pure innocence."<sup>127</sup> There are nearly always two sides to a story, even in cases of gross human rights violations, and it is highly unlikely to encounter situations where one side is completely innocent while the other is solely at fault. Consequently, Ingram speaks of Weber's 'ethic of responsibility,' which outlines that commitment to political causes must always go hand in hand with the ready embrace of the consequences of political action.<sup>128</sup> Where in morality, intentions may often be privileged over consequences, "human rights is nothing other than a politics, one that must reconcile moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends, but between ends themselves."<sup>129</sup>

Pretending, then, that humanitarian intervention is fighting on the side of pure right against pure wrong—thus elevating the victims in terms of moral virtue and further debasing the image of the perpetrators—is a highly political decision; not a moral one. While this may be overlooked in the case of wholesale human rights abuses, it becomes quite poignant when taking into account the power politics involved in deciding to intervene in the first place. What is a political decision to intervene is magically transformed into an example of moral 'goodness', which denies any further political input. While military intervention often leads to further losses of life and dignity, the intervener can no longer be held accountable for these abuses, since they fight alongside moral purity. The unwarranted simplicity of human

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<sup>126</sup> Ibid., 404.

<sup>127</sup> Ignatieff, 45.

<sup>128</sup> Ingram, "What Is a 'Right to Have Rights'," 404.

<sup>129</sup> Ignatieff, 23.

rights 'politics' lays the foundations for a troubled relationship between human rights discourse and politics.

On the one hand, the human rights regime is conscious of itself as “inescapably political,” because rights “tacitly imply a conflict between a rights holder and a rights ‘withholder,’ some authority against which the rights holder can make justified claims.”<sup>130</sup> On the other hand, liberal human rights theorists often regard human rights as pre-political; if not actively anti-political.<sup>131</sup> The moral imperatives that human rights denote, apparently, ought not to be challenged by politics—after all, they ought to be inalienable. They only become political in their implementation. Proclaiming an argument to be pre-political, moreover, protects it from any political challenge. Ignatieff is right that rights are ‘inescapably political;’ if only because by proclaiming them to be pre-political, one appropriates for oneself the political decision regarding which rights may be withheld.

In seeking to protect the autonomy and the dignity of individuals, liberal pragmatism, is content to leave the philosophical core of rights undetermined; they recognise that for the sake of individual autonomy, the requirements for human flourishing ought not to be dictated by an outside party.<sup>132</sup> A belief in human rights, according to Ignatieff, ought therefore to be reconcilable with a diverse range of opinions on what constitutes the fulfilment of a good life.<sup>133</sup> It would contradict the values that human rights seek to represent to deny the existence—or at least the possible emergence in the future—of visions of the good life and of human flourishing that contrast the values of the authors of rights. In Donnelly’s words, liberal human rights discourse “assumes that people are best suited, and in any case are entitled, to choose the good life for themselves.”<sup>134</sup>

The discourse of human rights, from the perspective of those at its centre, is a discourse of empowerment and of autonomy. By virtue of their silence on what a fulfilling human life entails, human rights—as a project of negative liberty—give “voice to the voiceless;” by “empowering the powerless” to live a life free from fear and coercion, they allow individuals to forge the path they wish themselves to follow.<sup>135</sup> When I speak of human rights discourse, then, this is the image I am confronted with; a (pre-)political project, in Ignatieff’s words, “to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of

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<sup>130</sup> Ibid., 67.

<sup>131</sup> See; Brown.

<sup>132</sup> Ingram, "What Is a 'Right to Have Rights'," 402.

<sup>133</sup> Ignatieff, 88.

<sup>134</sup> Jack Donnelly, "Human Rights and Asian Values: A Defense of 'Western Universalism'," in *The East Asian Challenge for Human Rights*, ed. Joanne Bauer and Daniel Bell (Cambridge: Cambridge University Press, 1999), 86.

<sup>135</sup> Ignatieff, 70.

ordinary people,” so these assaults upon their dignity cannot prevent individuals from living life on their own terms.<sup>136</sup>

The rights that ought to be protected, according to Ignatieff, are only those political and civil rights “that are strictly necessary to the enjoyment of life.”<sup>137</sup> As Ignatieff argues, “human rights is only a systematic agenda of ‘negative liberty,’ a tool kit against oppression, a tool kit that individual agents must be free to use as they see fit within the broader frame of cultural and religious beliefs that they live by.”<sup>138</sup> He does not set out to tell people what is right; only what is uncontroversially wrong. Rather than telling people how to live their lives, this view of rights politics seeks to rid the world of those evils which prevent political communities from ordering their shared world as they wish. Supposedly, then, rights are pre-political because they allow for plurality. As Brown summarised it;

*on this view, rights simply set people free to make the world as they see fit—they do not have normative or subject-producing dimensions; they do not carry cultural assumptions or aims; they do not prescribe or proscribe anything; they do not configure the political in a particular way or compete with other political possibilities or discourses. They simply expand autonomy and choice.*<sup>139</sup>

She continued, however, by making the point that...

*there is no such thing as mere reduction of suffering or protection from abuse—the nature of reduction or protection is itself productive of political subjects and political possibilities. Just as abuse itself is never generic but always has particular social and subjective content, so the matter of how it is relieved is consequential.*<sup>140</sup>

Because it is up to those in possession of overwhelming force to decide whether to intervene or not, it is up to them to decide which rights individuals ought to possess, and, consequently, to determine what constitutes ‘oppression’. The practical implications thereof are that positive liberties are of little importance to the liberal approach; it is not up to the downtrodden to decide which negative freedoms they would like to have respected.

As a toolkit against oppression, human rights politics only allow an oppressed people to replace their oppressors with a different, hopefully more benign,

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<sup>136</sup> Ibid., 173.

<sup>137</sup> Although, interestingly enough, economic rights such as food and shelter do not seem to fall under this category. See; *ibid.*, 90.

<sup>138</sup> Ibid., 56-7.

<sup>139</sup> Brown, 461.

<sup>140</sup> Ibid., 460.

sovereign power. By conceiving of human rights as a purely negative project, positive liberties are implicitly denounced; in being pre- or anti-political, human rights actively deny their bearers from partaking in political action—it drives them into the private sphere. Politics, in the end, remains the domain of the powerful who hold court while the powerless are denied the voice needed to partake in the conversation. “It is an old ruse of liberal reformers,” Brown argues, “in pursuing agendas that have significant effects in excess of the explicit reform, to insist that all they are doing is a bit of good or holding back the dark... It is a politics and it organises political space, often with the aim of monopolising it.”<sup>141</sup>

Where Ignatieff claims that “rights are universal because they define the universal interests of the powerless, namely, that power be exercised over them in ways that respect their autonomy as agents,” the powerless get no say regarding *which* of these rights define their interests, nor who exercises power over them.<sup>142</sup> The main issue with this view of human rights politics is the discrepancy between the ends they wish to achieve and the means they employ to get there. Power politics necessarily corrupt the objective of guaranteeing autonomy. “Human rights politics is then the activity of whoever is willing and able to enforce these rights—anyone, that is, except the rights bearers themselves.”<sup>143</sup> Claiming that the pragmatic human rights politics of the liberal tradition empowers individuals, or concedes them any autonomy, is dubious.

Thus, you end up with a situation where “human rights ‘belong’ to one party, but power is used on their behalf by another. The politics of human rights is, seemingly of necessity, something the powerful do *for* the powerless.”<sup>144</sup> They ensure that power is wielded over the little guy respectfully. Rather than changing power dynamics, it seeks to keep power in check to prevent its abuse. However, Ingram argues that while securing human rights for the powerless seems great for her—and that it may even be an ethical requirement for wielding power in the first place—it cannot be called a ‘right’ if you cannot use it when and how you wish. Instead, Ingram likens it to a gift. “The impulse behind this politics is essentially philanthropic.”<sup>145</sup> When the greatest of powers is in the position to decide which rights ought to be protected and which ones not, there is very little to be said for the autonomy they afford individuals. Liberal pragmatism, then, is not only unable to resolve the countless rights abuses the world is faced with, but many crimes against the dignity of individuals it does not even recognise as violations of rights.

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<sup>141</sup> Ibid., 461.

<sup>142</sup> Ignatieff, 68.

<sup>143</sup> Ingram, “What Is a ‘Right to Have Rights’,” 405.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

Human rights politics as the liberal human rights regime conceives of it is very much a gamble; there is no guarantee that these rights will actually protect you but blind faith. We cannot just seek to civilise the use of power to prevent its abuse; it may actually be necessary to heed Constant and Berlin's advice regarding the importance of positive rights and adjust the balance of power. Many modern liberal thinkers have already accepted this point by embracing institutional measures such as democratic elections and the separation of powers.<sup>146</sup> In addition, the paternalistic nature of providing individuals with a pre-determined set of rights and then protecting these on their behalf is not only inconsistent with the focus on autonomy that human rights seek to embrace, but it actually exacerbates the problem that there are very few guarantees keeping a sovereign power on the straight and narrow.

While being clear-sighted as to the moral imperative that universal human rights represent, this approach sets out neither an end where they may be protected nor a means of arriving there. In the same way that the Thermidorian reaction did not lead to a de-escalation of the violent methods of the Terror, human rights abuses are likely to reappear in the absence of systematic change. The alternative requires removing opportunities for the abuse of power by re-distributing it; allowing the weakest members of a society to effectively guard their rights. Where this pragmatic liberal response to the inadequacies of human rights discourse sought to solve the problems that underlie Arendt's paradox, it effectively reinforces it. While to Ignatieff, this may appear as the "the most we can hope for," within the republican tradition—oddly enough, given the historical opposition to rights discourse in republican thought—this is seen as too pessimistic an aspiration.<sup>147</sup> In the following chapters, therefore, I shall turn to two alternative, republican approaches to rights politics.

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<sup>146</sup> See; Berlin, 176-78.

<sup>147</sup> Ignatieff, 35. As Ivison pointed out, "the very idea of republican rights, let alone republican human rights, seems paradoxical." See; Duncan Ivison, "Republican Human Rights?," *European Journal of Political Theory* 9, no. 1 (2010): 31.

## 4.

### Neo-Republicanism

*“Freedom, ‘that terrible word inscribed on the chariot of the storm,’ is the motivating principle of all revolutions. Without it, justice seems inconceivable to the rebel’s mind. There comes a time, however, when justice demands the suspension of freedom. Then terror, on a grand or small scale, makes its appearance to consummate the revolution.”*

- Albert Camus<sup>148</sup>

The neo-republican response to the issues that plague the liberal human rights regime is to assert that freedom is not something granted by the wielders of power. Unlike this philanthropic approach to rights, they deem the foundations of rights to lie with the individuals to whom they belong. On the basis of this assertion, neo-republican thinkers have developed a contrasting vision of rights politics as system-building. Rather than depending on the powerful to magnanimously protect the weak, they seek to replace the highly unequal *status quo* with a more balanced distribution of power. Their focus is on the establishment of a well-ordered republic where human rights are guaranteed institutionally rather than as a kneejerk response to crises. Where the liberal tradition failed to conceive of an end to which their means could work, the neo-republicans do not escape this struggle to think means and ends together. Thinkers in this tradition may “share an explanatory and normative framework of the well-ordered republic,” yet the question of how to get there remains open-ended.<sup>149</sup>

There are several problems that quickly become apparent with the neo-republican approach to rights politics. Firstly, it does not solve the problematic relationship

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<sup>148</sup> Camus, *The Rebel*, 105.

<sup>149</sup> Jessica L Kimpell, "Neo-Republicanism: Machiavelli's Solutions for Tocqueville's Republic," *European Political Science Review* 1, no. 3 (2009): 378.

between human rights politics and power that the liberal conception suffered from; it merely displaces it. Whereas the successful establishment of neo-republican institutions may indeed address the problems that human rights politics experiences with existing power imbalances, the institution builders now have the problems of power politics thrust into their hands. If it is folly to expect the wielders of power to behave graciously to those under their yoke, it is equally so to expect them to gracefully relinquish their power instead. Secondly, system-builders are required to contend with a recalcitrance of the individuals that populate the society they wish to re-order. Even though establishing legal structures to protect human rights may benefit a society, if these legal structures do not afford a certain amount of artistic licence to the members of society themselves, the very purpose for which we desire human rights may be undermined.

### **Constitutionalism and Terror**

Before 1789, French citizens could expect to enjoy the protection of the King only to the extent that he was willing to dispense it. “One of the attributes of grace,” Camus wrote, “is that it is discretionary.”<sup>150</sup> In its theocratic form, monarchy takes the side of grace over justice; in every instance wishing to have the last word.<sup>151</sup> Not willing to let freedom and justice remain an object of hope, the revolutionaries sought explicitly to extinguish the “arbitrary” aspects of executive power.<sup>152</sup> “Correctly defining and guaranteeing human rights by means of a viable constitution” was indispensable to this project of ending “abuse and exploitation,” and “ensuring government for the well-being of the majority and in the interest of all.”<sup>153</sup>

Throughout late 1789 and early 1790, the constitutional committee of the National Assembly worked to combine the radical elements of the *Rights of Man* with moderating elements of the *ancien régime*.<sup>154</sup> At its completion, France was a fully functional constitutional monarchy; the foundations of whose sovereignty theoretically lay with the people, but was wielded by both the legislature and the King. As Bonneville argued, it was necessary “to give the people’s voice its full force and scope to censure,” while at the same time recognising that it may not be beneficial to let the people “by itself exercise either... legislative or executive power.”<sup>155</sup> Instead, “the people’s views should be freely expressed but also channelled, refined, and guided by *philosophes* presiding over a free press and the now-transformed educational and political spheres;” a balance that the Constitution

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<sup>150</sup> Camus, *The Rebel*, 113.

<sup>151</sup> Ibid.

<sup>152</sup> *Declaration of the Rights of Man and Citizen*, 1789.

<sup>153</sup> Israel, *Revolutionary Ideas*, 107.

<sup>154</sup> Ibid., 103.

<sup>155</sup> Nicolas de Bonneville, *La Bouche de Fer* 2 (1790-91): 5.; ibid., 1: 14.



of 1791 sought to capture.<sup>156</sup> It was not necessarily the people that needed to be sovereign, but their best interests, and because the people might not be capable of recognising their own best interests, enlightened republicans were to assist them in this endeavour. “Philosophical truth, ‘like the light,’ was bringing a properly connected sequence of ideas into the minds of those who for so long failed to understand their own situation.”<sup>157</sup>

The problem, however, was that the people did not always agree with this enlightened view of their best interests. Instead, Israel argued, they were best characterised by “the volatility and incoherence of populist sentiment, whether *Enragé*, *Hébertiste*, royalist, or *Robespierriste*.”<sup>158</sup> Despite the fact that all of these political standpoints decried the newly won freedoms of the French people, populism, royalism, and reactionary Catholicism thrived. The people, while supposed by the *philosophes* to be “naturally good,” were unfortunately rather naïve and gullible; they were “easily misled by those aiming to sow confusion and disorder.”<sup>159</sup> Indeed, given the space of press freedom—which had only been increased since 1787—there were plenty of authors aiming to sow confusion and disorder among the population. Conservative papers spoke continuously of the illegality of the actions of the republican upstarts and the need to reinstate the *status quo ante*, while republican papers invoked fears of counter-revolution which could only be quelled by popular violence. As Israel relates, the authors of the 1791 Constitution feared the influence the ‘misleading’ writings of populist agitators, and saw education as the only remedy to the people being misled to betray their own best interests.

*Full, unrestricted freedom of the press... became inextricably linked to the task of re-educating the population and teaching children to develop an independent and sound critical judgement. Needed above all was free public schooling that inculcated knowledge of the Constitution, civics, and the rudiments of science, geography, and history, where la morale universelle and la politique naturelle infuse what is taught.*<sup>160</sup>

Before the people were properly educated to resist anti-revolutionary propaganda from both the left and the right, however, there were plenty of calls to protect the Revolution and the rights it called into being by persecuting all who “in their

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<sup>156</sup> Israel, *Revolutionary Ideas*, 129.

<sup>157</sup> Amongst the ‘men of 1789,’ and articulated most clearly by Sieyès, the revolution was seen as a way of removing the influence of arbitrary power and, in its place, to “seat *la philosophie* on the throne.” See; Emmanuel Joseph Sieyès, *Des Manuscrits De Sieyès, 1773-1799*, ed. Christine Fauré (Paris: Honore Champion, 1999), 99.

<sup>158</sup> Israel, *Revolutionary Ideas*, 628-9.

<sup>159</sup> *Ibid.*, 147.

<sup>160</sup> *Ibid.*, 132.

writings incite the people to insurrection against the law, to bloodshed and the overthrow of the Constitution.” “Authors, printers and streetvenders of writings inciting such insurrection” endangered the fragile freedom of the French people; a freedom which could only be protected by shackling the press.<sup>161</sup>

While these proposed restrictions on the freedom of expression were defeated by the more radical deputies of the Assembly, to many constitutional monarchists and republicans alike, “ensuring that royalism and authoritarian populism were kept at bay appeared more immediately vital than any niceties of democratic theory.”<sup>162</sup> The constitutional monarchists who dominated the Assembly—led by Barnave, the Lameths, Bailly, and Lafayette—found other ways of curbing freedom of expression. For example, they successfully drew a line between ‘active’ and ‘inactive’ citizens in order to keep the voice of the uneducated—those supposedly most susceptible to populist demagoguery—out of the public sphere.<sup>163</sup>

One of those who disagreed with the wisdom of the Constitution, apparently, was Louis XVI himself. His attempt to flee France on June 21 astonished the entire country; supporters and opponents alike. Until this time, Louis was conflicted about the Revolution. He detested it in private, yet he resisted calls from his family, supporters, and advisors to flee the country and lead a counter-revolution from abroad.<sup>164</sup> When he risked all he had—not just his life, his family, and his wealth, but also the monarchy itself—by denouncing constitutional monarchism and joining the *émigrés*, he made the opening move on behalf of the counter-revolutionaries to which the republican response was rapidly escalating radicalism.

The Revolution continued to democratise itself at an unprecedented pace, right up to the moment where it had achieved a “despotism of liberty against tyranny.”<sup>165</sup> On 21 January 1793, Louis XVI was guillotined in the *Place de Révolution*, formerly known as the *Place Louis XV*. Yet the execution of the King was not enough to ensure liberty, Robespierre’s followers argued. “The only way to prevent the people from falling off a precipice, thundered Marat and others of Robespierre’s partisans, was to name a ‘*dictateur suprême*’ to assume control of the country” in the name of the people and “liquidate the ‘traitors’.”<sup>166</sup>

The absolutist monarchy was absolute not in the way that it utilised its power, but because this power was conceived of as undivided. The republic and the monarchy, therefore, were incompatible precisely because they had so much in common when

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<sup>161</sup> Pierre Victor Malouet, quoted in: *ibid.*, 131.

<sup>162</sup> *Ibid.*, 626.

<sup>163</sup> *Ibid.*, 106.

<sup>164</sup> *Ibid.*, 162-63.

<sup>165</sup> Robespierre, 10, 357.

<sup>166</sup> Israel, *Revolutionary Ideas*, 164.

it came to their conception of power. One placed absolute power in the hands of the people and the other saw it as manifest of God's will. "The new collectively shared image of politics was the exact reverse of that of the *ancien régime*."<sup>167</sup> Justice, it quickly became apparent, shares with grace the wish to rule alone; to be absolute. When the two come into conflict, one survives only if the other perishes. As Saint-Just noted, "to determine the principle in virtue of which the accused is perhaps to die, is to determine the principle by which the society that judges him lives."<sup>168</sup> Replacing grace with justice is replacing the King for the people. In both cases, the political entity which is proclaimed sovereign conceives of itself as divine.

*A moment comes when faith, if it becomes dogmatic, erects its own altars and demands unconditional adoration. Then scaffolds reappear and despite the altars, the freedom, the oaths, and the feasts of Reason, the Masses of the new faith must now be celebrated with blood. In any case, in order that 1789 shall mark the beginning of the reign of 'holy humanity' and of 'Our Lord the human race,' the fallen sovereign must first of all disappear. The murder of the King-priest will sanction this new age.*<sup>169</sup>

No sooner did Robespierre's Montagnards ascend to the throne than they began crushing all dissent. Whereas freedom of the press had been one of the revolution's first victories, newspapers which rejected the official line were suppressed. Now that France was under a truly 'popular' regime—one where the people were finally 'free'—the "press would never again be permitted to diverge from the proper path or fail to 'respect' the people. Anyone criticising the *Montagne* would be severely dealt with."<sup>170</sup> Under the Law of Suspects of 17 September, those "who by their writings have shown themselves partisans of tyranny and *fédéralisme*, and enemies of liberty," were considered criminals.<sup>171</sup> As Cochin portrayed it;

*Living in serfdom under the King in 1789, in freedom under the law in 1791, the people became master in 1793. Now that it governed itself, it did away with the public liberties that had only served to protect it against those who had ruled. If the right to vote was suspended it was because the people ruled; the right to legal defence because it did the judging; freedom of the press because it did the writing; freedom of*

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<sup>167</sup> Furet, 39.

<sup>168</sup> Antoine Saint-Just, quoted in: Camus, *The Rebel*, 114.

<sup>169</sup> *Ibid.*, 117.

<sup>170</sup> Israel, *Revolutionary Ideas*, 530.

<sup>171</sup> *Ibid.*, 460.

*speech because it did the speaking: the doctrine is perfectly clear; the proclamations and laws of the Terror are but an extended commentary on it.*<sup>172</sup>

Throughout the autumn and winter of 1793-94, an ever-increasing number of ‘suspect persons’ and ‘enemies of liberty’ were arrested under the Law of Suspects, and executions were held on a daily basis—“the victims an increasingly bizarre mix of supposedly scheming ‘aristocrats,’ counterrevolutionary priests, *Brissotins*, *Feuillants*, and associates of Mirabeau.”<sup>173</sup> Everyone who disagreed with the voice of the people—as embodied by Robespierre—stood in the people’s way on its road to freedom, and was to be dealt with in the most ruthless of ways.

In the name of defending justice and freedom, injustice and oppression become justified. “It contrives the acceptance of injustice, crime, and falsehood by the promise of a miracle.”<sup>174</sup> Ever more suffering and terror must be accepted so that the enemies of the Revolution may be vanquished; at which point the totalitarian police-state which was needed to achieve this will miraculously become its opposite; a free republic. “All freedom must be crushed in order to conquer the empire, and one day the empire will be the equivalent of freedom. And so the way to unity passes through totality.”<sup>175</sup> Consequently, the citizen of the French republic prostrated herself before the general will just as the subjects of the King did before her.

## **Non-Domination and Anti-Power**

Throughout the liberal approach to human rights politics, there is a sense that “any theory of negative liberty must in effect be a theory of individual (human) rights.”<sup>176</sup> As Ignatieff implied, it eschews any ‘positive’ rights of the citizen while embracing the rights of the abstract human.<sup>177</sup> Neo-republican thinkers, instead, argue that the rights of the citizen are much more meaningful; unlike the isolated liberal individual, the “republican citizenry is not armed against the state but *as* the state.”<sup>178</sup> Their argument, essentially, is that the best guarantee against the state actively trampling the people’s rights is if they, collectively, control the state.

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<sup>172</sup> Augustin Cochin, quoted in: Furet, 193.

<sup>173</sup> Throughout the Robespierist dictatorship, 16,594 people were officially executed by the government’s Revolutionary Tribunal, and thousands more were the victims of extrajudicial killings. See; Israel, *Revolutionary Ideas*, 536.

<sup>174</sup> Camus, *The Rebel*, 233.

<sup>175</sup> Ibid.

<sup>176</sup> Skinner, *Visions*, 211.

<sup>177</sup> Ignatieff, 57.

<sup>178</sup> Wendy Brown, “Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson’s *the Embarrassing Second Amendment*,” *The Yale Law Journal* 99, no. 3 (1989): 662.

Rather than embracing wholly the liberty of the either ancients or the moderns, they agree with Constant and Berlin that negative rights can only be maintained by a measure of positive liberty.

Philip Pettit, whose work I regard as emblematic of the neo-republican tradition, therefore does not believe that the 'modern' liberties of the individual necessarily conflict with the 'ancient' liberties of the citizen.<sup>179</sup> Instead, they guarantee and stabilise each other's continued existence.<sup>180</sup> If individuals can only utilise their individual freedom if they actively use their 'republican' rights, and citizens can only act on their political liberties if their 'liberal' rights leave them sufficiently independent, negative and positive freedoms are fastidiously harmonised; one is entirely dependent on the existence of the other.

The underlying reason for treating self-government as necessary for maintaining liberty is strongly related to what Philip Pettit calls 'republican freedom'.<sup>181</sup> Where traditional liberal thought treats liberty as the antithesis to interference, the neo-Roman tradition of republicanism conceives of freedom as diametrically opposed to domination or subjugation. They are worried not about actual interference, but about the potential for interference that stems from being subject to the whims of some greater power. "Liberty is," in this sense, "to live upon one's own Terms; Slavery is, to live at the mere Mercy of another."<sup>182</sup> Freedom, from this republican perspective, is lost whenever an actor "has such power over another... that (1) they have the capacity to interfere (2) with impunity and at will (3) in certain choices that the other is in a position to make."<sup>183</sup>

To be unfree, thus, does not mean that someone actively determines the course of your actions or your choices. Instead, individual liberties are forfeited even without such overt coercion; the mere possibility that someone could interfere in your life

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<sup>179</sup> Hobbes provides an epitomic example of this uncompromising form of liberalism; "The liberties, whereof there is so frequent, and honourable mention, in the Histories, and Philosophy of the Antient Greeks, and Romans, and in the writings, and discourse of those that from them, have received all their learning in the Politiques, is not the Libertie of Particular men; but the Libertie of the Common-Wealth." See; Thomas Hobbes, quoted in Skinner, *Visions*, 205.

<sup>180</sup> Pettit cautions us that we should not overestimate the difference between neo-republicanism and modern liberalism. Even though strict adherence to freedom as non-interference does not require a commitment to democracy, many liberal states do recognise the contestatory rights of its citizens (i.e. the rule of law, the separation of powers, and the freedoms of speech and expression). There are, therefore, some definite continuities between the two traditions. See; Philip Pettit, "Freedom as Antipower," *Ethics* 106, no. 3 (1996).

<sup>181</sup> *A Theory of Freedom: From the Psychology to the Politics of Agency* (Oxford: Oxford University Press, 2001).

<sup>182</sup> John Trenchard and Thomas Gordon, *Cato's Letters* (London: W. Wilkins, T. Woodward, J. Walthoe, and J. Peele, 1724), 249-50.

<sup>183</sup> Pettit, "Freedom as Antipower," 578. This power may stem from physical strength, financial prosperity, cultural legitimacy, social standing, and so forth.

already designates your condition to be one of dependence or subjection. When this power constantly hangs over your head, even if it goes unused, you are still at the mercy of the good-natured and benevolent instincts of its wielder.

The example that reappears as leitmotif throughout neo-republican literature is that of the master and the slave.<sup>184</sup> By treating freedom as the opposite of interference, any slave whose master is benevolent and respects her philanthropic ‘rights’ can be said to be free. Nonetheless, the slave will always be at the mercy of this benevolence. It does not matter whether the master is sadistic or saintly; she could change her mind at any time, suddenly rendering the slave without any freedom whatsoever. Republican freedom, consequently, can be thought of as a form of ‘anti-power’.<sup>185</sup> If the master is able to dominate the slave because she wields power over her, the slave would be free if she possesses some form of power of her own to neutralise that of the master.

Increasing anti-power, according to Pettit, entails compensating for any imbalances in power by protecting the weak from the resources the powerful have at their disposal. This may require regulating the ways in which the powerful utilise these resources, and providing the powerless with resources of their own to nullify those of their oppressors.<sup>186</sup> By having an equal share the power to make decisions, one is not at the mercy of the decision-makers. Rather than acting merely as a mechanism to prevent the powerful from redrawing their own circle of rights and freedoms, the state then becomes the means by which each individual is empowered to protect her own rights. In the liberal tradition, when one actor finds herself dominated by another, her liberty does not suffer as long as the power-wielder is benevolent. When it comes to the state, liberal freedom therefore has very little issues with benign dictators. As Hobbes argued, “whether a Commonwealth be monarchical or popular, the freedom is still the same.”<sup>187</sup> Republican freedom, in contrast, demands that a government is subject to a form of constitutional control that repels any attempts to use state power arbitrarily.

Most importantly, those in control of the state ought not to be able to act with impunity. It is not their interference that is an issue, but whether that interference happens to be arbitrary. By replacing the liberal focus on non-interference with the republican notion of non-domination, the philanthropic politics of the liberal human rights regime becomes inadequate as a guarantee of liberty. Instead, rights politics becomes the process of citizens ensuring their own freedom by sharing the state’s sovereignty. Liberty, therefore, concerns the rights of the citizen rather than

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<sup>184</sup> For example, see; *ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> Thomas Hobbes, *Leviathan* (New York: Touchstone, 2008), 167.

the ‘human,’ and its guarantee becomes a problem of organising the state in such a way that citizens have access to anti-power rather than one of paternalistic power-politics.

Not merely accepting the state begrudgingly so long as it is not overly interfering, neo-republican thinkers would argue that the people’s desire for freedom can only be fulfilled in a neo-republican polity. To prevent the powerful from taking control of the state and tyrannising their fellow men, it needs to be organised in such a way that the community as a whole remains in control of its institutions. Republican freedom, consequently, rests on Berlin and Constant’s appreciation of negative liberty being sustained by positive liberty. Thus far, Pettit’s focus on non-domination has led us to the point where arbitrary forms of power are inimical to public liberty, and, consequently, that in order to guarantee the rights of the citizen a democratic republic is required in which ‘the people’ are sovereign.

He argues, however, that there are two main ways in which we can conceive of such a ‘democratic’ polity.<sup>188</sup> On the one hand, we may see democracy as a means by which an entire people asserts its collective will—the uttermost interpretation of Constant’s liberty of the ancients. This is the case in which the people collectively replaces the King as the sovereign. In this sense, “the democratic people is an autonomous people: a people which gives laws to itself, rather than have them emanate from an alien or heteronomous source.”<sup>189</sup> The second conception of democracy Pettit discusses, on the other hand, is a form of government whose constitutional makeup guarantees that the state and its policies will track its citizens’ interests as “recognised by common deliberation.”<sup>190</sup> “This conception represents democracy not as a regime for the expression of a collective will, but as a mechanism for the empowerment of public valuation.”<sup>191</sup>

The former of these two views he links with what he calls the “Franco-German tradition” of republicanism—which he identifies with the work of Jean-Jacques Rousseau, Immanuel Kant, and Hannah Arendt—and the latter, on which neo-republicans focus, with the “Italian-Atlantic tradition” of republicanism.<sup>192</sup> Whereas both traditions presume that non-domination ought to be the central

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<sup>188</sup> Philip Pettit, “Two Republican Traditions,” in *Republican Democracy: Liberty, Law and Politics*, ed. Andreas Niederberger and Philipp Schink (Edinburgh: Edinburgh University Press, 2013).

<sup>189</sup> “Depoliticizing Democracy,” *Ratio Juris* 17, no. 1 (2004): 58.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> “Two Republican Traditions.” Including Hannah Arendt in this list requires a particularly uncharitable reading of her work. While Arendt does support a ‘positive’ understanding of liberty, her critique of sovereignty distances her significantly from the dictatorial tendencies Pettit identifies with Franco-German republicanism.

concern of the state, Pettit argues that the main difference between the two is that Franco-German republicanism demands crossing into the territory of positive freedom while Italian-Atlantic thought sees participation as instrumental to securing negative liberties.<sup>193</sup>

Rousseau, as an example of Franco-German thought, argues that popular sovereignty must be both absolute and indivisible. To be free, citizens need to rule themselves, as a unified community. Rather than dividing up the King's absolute sovereignty for the body politic to wield against itself, the people as a whole would step into the position of sovereign. The general will of the people, then, would reign supreme; allowing all of its individual members to be free. "Each, by giving himself to all, gives himself to no one."<sup>194</sup> Rather than leaving the symbolic seat of power empty, the citizen body would claim it for itself. Of a mixed constitution and the separation of powers he spoke thus;

*they turn the sovereign into a being that is fantastical and formed of disparate pieces; it is as if they were putting together man out of several bodies one of which had eyes, another arms, another feet, and nothing else. Japanese conjurers are said to carve up a child before the spectators' eyes, then, throwing all of its members into the air one after the other, they make the child fall back down alive all reassembled. That is more or less what our politicians' tricks are like; having dismembered the social body by a sleight-of-hand worthy of the fairground, they put the pieces back together no one knows how.<sup>195</sup>*

Rousseau's conception of the general will depends on a distinction between different aspects of a person's self. In the sense of Berlin's individual divided against herself, she is both a private individual as well as a citizen. As private individuals, we each have a particular set of interests, whereas, as a citizen, we have a common interest in the wellbeing of the republic. Consequently, each of us has a private will—which serves but our individual interests—as well as a general will. Since citizens all have share the same interest in protecting the republic, the common will is synonymous to the public good or the public interest.

Individuals' particular wills, therefore, are partial in two senses of the term; they serve but a part of the larger body of citizens and they are biased—promoting the wellbeing of oneself over, and sometimes at the expense of, others. The general will is impartial, however, in that it serves only the abstract 'citizen', yet serves all

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<sup>193</sup> Ibid.

<sup>194</sup> Jean-Jacques Rousseau, *Rousseau: 'The Social Contract' and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 50.

<sup>195</sup> Ibid., 58.



citizens equally. An individual's particular and general wills can easily come into conflict. If said individual, for example, followed her particular interests, thus harming her interest as a citizen—and the interests of all other citizens—she...

*would cause the ruin of the body politic. Therefore, in order for the social compact not to be an ineffectual formula, it tacitly includes the following engagement, which alone can give force to the others: that whoever refuses to obey the general will shall be forced to be free. For this is the condition that, by giving each citizen to the homeland, guarantees him against all personal dependence... and alone gives legitimacy to civil engagements which without it would be absurd, tyrannical, and subject to the most enormous abuses.*<sup>196</sup>

This does not mean, however, that the general will is merely the agglomeration of all private wills; little more than what the majority of particular wills want. It is a separate entity which represents the unified will of the people. While Rousseau argued that it is indeed more likely to be discovered by the majority, which is why it may be necessary to take a vote on what the general will wills at any given moment, "the spirit of the people may reside in an enlightened minority, who consequently have the right to act for the political advantage"—as Robespierre and his Reign of Terror illustrated.<sup>197</sup>

When the general will is discovered, citizens must obey it absolutely, regardless of whether they agree or not. Those who "would enjoy the rights of a citizen without being willing to fulfil the duties of a subject" must be "forced to be free."<sup>198</sup> By favouring her private interests, she is damaging the very state which allows her to be free from dependence; she must therefore be forced to act in accordance with her 'own' will as a citizen. This, Pettit argues, becomes an issue for dissenting citizens, because decisions now come draped in a certain sense of authority—by virtue of its embodiment of the general will—that will not indulge any criticism.<sup>199</sup> Because citizens participated in creating the law, they had no right to challenge it as individuals; meaning individuals may be coerced in the name of their own freedom.

Disagreement cannot exist—if one suffered from 'false consciousness' or was too ill-informed to correctly identify the general will, then she could either be liberated by accepting it unquestioningly, or—in remaining in disagreement—become an enemy of freedom and conspirator of tyrants. Consequently, while the people are

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<sup>196</sup> Ibid., 53.

<sup>197</sup> Jean-Jacques Rousseau, quoted in: Jean Matrat, *Robespierre: Or, the Tyranny of the Majority*, trans. Alan Kendall (New York: Angus and Robertson, 1975), 51.

<sup>198</sup> Rousseau, 53.

<sup>199</sup> Pettit, "Two Republication Traditions," 194.

sovereign, they may be forced to suffer the despotism of the general will if they were unable to identify it correctly. If the ‘people’, as a singular entity, wields unlimited sovereignty, then a single individual cannot have any ‘anti-power’ to wield against the community. Consequently, while the people might be free in the positive sense, the individual enjoys no negative rights.

Pettit contrasts this ‘despotism of liberty’—where the liberties of the ancients outweigh completely those of the moderns—to neo-republican thought, which he linked much more closely to the Italian-Atlantic tradition.<sup>200</sup> For the neo-republican, citizens are seen as contestors rather than participants—instead of *being* the government they are merely required to watch out for its wrongdoings. Where he describes “Rousseau’s citizens” as “law-makers” and “generators of law,” the neo-republican citizen is more of a “law-checker” or a “tester of law.”<sup>201</sup>

While participation in democratic politics is an important aspect of Pettit’s neo-republicanism, it is entirely instrumental; guaranteeing citizens’ freedom from domination is its only purpose. Democracy is the mechanism through which the state is forced to act with reference to the interests of its citizens—no more, no less. “It would represent a bizarre normative position,” he argued, “to think that [collective subjects’] freedom as discursive control mattered in itself, and not just in virtue of the correlated freedom that individuals may enjoy.”<sup>202</sup> Consequently, rather than thrusting unabridged sovereignty into the hands of the people, he deems a mixed constitution and a separation of powers to be the most effective way of maintaining the rights of the citizen. The citizens themselves need only to censure government; ensuring that the republic stays on track. “The price of liberty,” after all, “is eternal vigilance.”<sup>203</sup>

This treats political institutions not as negative forces which prevent arbitrary interference with the lives of individuals, but as positive constructions which “enhance the participation and balance the power of individuals to prevent oligarchy and tyranny.”<sup>204</sup> The neo-republican project, essentially, becomes one of system-building in order to create a set of institutions where individuals’ rights are guaranteed by anti-power. In practice, this is achieved by means of a non-voluntaristic rule of law that protect individual rights; constraints on the actions of power-holders, such as “requirements of regular election, democratic discussion, limitation of tenure, rotation of office, separation of powers, availability of appeal

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<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> *A Theory of Freedom*, 127.

<sup>203</sup> “Two Republication Traditions,” 170.

<sup>204</sup> Michael J Thompson, “Reconstructing Republican Freedom: A Critique of the Neo-Republican Concept of Freedom as Non-Domination,” *Philosophy & social criticism* 39, no. 3 (2013): 16.

and review, provision of information, and the like;” and interventions designed to empower individuals by providing them with the means to escape vulnerable situations, such as social welfare provisions.<sup>205</sup>

Pettit’s view of republican freedom, then, overhauls the liberal belief that “that law always... represent[s] a restriction, however benign, of freedom.”<sup>206</sup> The neo-republican vision does not understand constitutional authority as inimical to liberty, while judging asymmetric power relationships to be exactly that. Pettit summarises this by stating that where the liberal approach, in worrying about interference rather than domination, “is anxious about the authority-freedom connection and relaxed on the authority-power linkage. The second”—neo-republican approach—“is relaxed about authority and anxious about power, in particular, anxious about the informal sort of power that is not subject to constitutional check.” It is arbitrary power, then, that represents the problem.<sup>207</sup>

### **Arbitrariness and Anti-Political tendencies**

Pettit, given his antipathy to Franco-German republicanism, has some serious qualms about the risks involved in unadulterated popular sovereignty and the excesses of democracy. In taking rather seriously the warnings found in Berlin’s early work regarding the links between positive liberty and tyranny, he identified several areas where the electorate is “likely to militate against the deliberative quality of democratic decision-making, depriving considerations of the common good of the weight they are properly given.”<sup>208</sup> The people in a democracy, if the institutions of that polity are inadequate, may very well adopt an arbitrary form of rule. Constitutional structures capable of ensuring freedom as non-domination, therefore, must be devoid of opportunities for an ill-informed or unvirtuous citizenry to cause its self-destruction.

Much of what separates Franco-German and Italian-Atlantic republicanism, for Pettit, “turns on what is considered arbitrary interference and what is considered non-arbitrary. The standard response,” as Thomas pointed out, “is that control is not arbitrary so long as it serves the common good.”<sup>209</sup> Patchen Markell has argued that arbitrariness, in the way that Pettit described it, “suggests a fickle or capricious will.”<sup>210</sup> “When we say that an act of interference is perpetrated on an arbitrary basis, we imply that like any arbitrary act it is chosen or not chosen at the agent’s

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<sup>205</sup> Pettit, “Freedom as Antipower,” 591.

<sup>206</sup> Ibid., 596.

<sup>207</sup> Ibid., 598.

<sup>208</sup> “Depoliticizing Democracy,” 53.

<sup>209</sup> Christopher Alexander Thomas, “Globalising Sovereignty? Pettit’s Neo-Republicanism, International Law, and International Institutions,” *The Cambridge Law Journal* 74, no. 3 (2015): 573.

<sup>210</sup> Patchen Markell, “The Insufficiency of Non-Domination,” *Political theory* 36, no. 1 (2008): 13.

pleasure.”<sup>211</sup> At different points, however, Pettit uses arbitrariness in a different sense; namely, interference is arbitrary when it is “chosen or rejected without reference to the interests, or the opinions, of those affected.”<sup>212</sup>

*To be sure, any act that is arbitrary in the first, ordinary sense will also be arbitrary in Pettit’s second sense, since capricious acts, by definition, aren’t ‘forced to track’ anything. But the converse is not true: an act can fail to be forced to track the avowable interest of those it affects without being an expression of wholly unconstrained whim.*<sup>213</sup>

A monarch’s domination over her subjects, very clearly, falls into the first category of arbitrariness—her actions conform only to her whim—and therefore also into the second—her whim is not forced to track the best interests of her subjects. These two definitions of arbitrariness find themselves separated only when one actor is subordinated to rules and principles. It allows Pettit to condemn even non-capricious decision-making if it fails to track the interests of the interferee. He is able, for example, to condemn unconstrained democracy if the *demos* acts against its own interests.

Both traditions of republicanism placed freedom as non-domination as central to the public good, yet the descent into arbitrariness of Franco-German republicanism, was supposedly the inevitable result of thrusting sovereignty into the hands of the people. The people, Pettit argued, if left to their own devices, will nigh always fall into this trap; even if acting with pure intentions.<sup>214</sup> In fact, he identified three main reasons why the *demos* in a republican polity—or a liberal democratic polity, for that matter—might fail to act in its own best interests. First, popular passions—the unmoderated outbursts of emphatic beliefs—often leads to the “letting loose a rule of knee-jerk emotional politics that works systematically against the common good.”<sup>215</sup> Secondly, politicians taking the route of zero compromise in order to ride the high horse of aspirational morality are usually rewarded at the polls, even if such extremism does not imply good government. Lastly, he argues, sectional self-interest has a habit of getting in the way of good-faith deliberations about the common good.<sup>216</sup>

The second definition of arbitrariness, then, is related to interference which is not somehow forced to track the good—the “common avowable interests”—of the

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<sup>211</sup> Pettit, *Republicanism*, 55.

<sup>212</sup> Ibid.

<sup>213</sup> Markell, 13.

<sup>214</sup> Pettit, “Depoliticizing Democracy.”

<sup>215</sup> Ibid., 54.

<sup>216</sup> Ibid.

party who is being interfered with.<sup>217</sup> According to Markell, the recourse to the terms *common* and *avowable* in defining arbitrariness links it to concerns with whim and caprice—this time not of the power-wielder, but with the interferee. “Power is non-arbitrary when its exercise is forced to track the interferee’s interests and when those interests have themselves been validated, deprived of their arbitrary character by having been subjected to the standards of commonness and avowability.”<sup>218</sup> Essentially, it implies that there is an objectively identifiable ‘public good,’ and arbitrary rule can be avoided—and non-domination guaranteed—only if this public good guides decision-making.<sup>219</sup>

In all of these cases of the people acting arbitrarily, Pettit has argued that such affronts to the common good—which reasoned deliberation would undoubtedly have been able to identify more accurately—can be rectified by de-politicisation. He notes that there are numerous areas of public decision-making which many liberal democracies have already outsourced to unelected technocrats, mostly out of fear of what the electorate would have it do.<sup>220</sup> Central banks, for example, are given almost free reign when it comes to interest and exchange rates. Where self-government is valued for its own sake, as is the case with Franco-German thought, de-politicisation is obviously undesirable, yet to proponents of Italian-Atlantic republicanism, it is merely important that public valuations rule. De-politicisation, then, is not problematic in and of itself. Indeed, if it increases the responsiveness of government to the ‘public good,’ it can only be beneficial.

“The people,” as Machiavelli argued in a very similar vein to Pettit, “deceived by a false image of the good, very often will their own ruin.”<sup>221</sup> We tend to forget that if our actions follow the path which was signposted by our unmediated desires, we may actively be tearing down the very institutions that guarantee our freedom. “As Machiavelli puts it, we often think we are acting to maximize our own liberty when we are really shouting *long live our own ruin*.”<sup>222</sup> As Markell describes it;

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<sup>217</sup> *A Theory of Freedom*, 159.

<sup>218</sup> Markell, 15.

<sup>219</sup> Pettit has argued that deliberation amongst voters, ideally, is capable of guiding their views to a ‘rational’, ‘correct’ outcome. In a discussion on how deliberatively informed judgements can be aggregated into a collective judgement, he identified that there are two ways to do so; “one would ensure that collective judgments are maximally responsive to individual judgments but risk the rationality of judgments collectively maintained. The other would ensure the rationality of collective judgments but reduce the responsiveness of those judgments to individual views.” His discussion, underlining his inclinations towards totality, was solidly in favour of the latter. See; Philip Pettit, “Deliberative Democracy, the Discursive Dilemma, and Republican Theory,” in *Debating Deliberative Democracy*, ed. James Fishkin and Peter Laslett (Hoboken: Blackwell, 2003), 138.

<sup>220</sup> “Depoliticizing Democracy,” 53.

<sup>221</sup> Niccolò Machiavelli, quoted in: Skinner, *Visions*, 164.

<sup>222</sup> “Paradoxes,” 243.

*merely acting on the basis of the beliefs and desires we happen to have—that is, acting at our pleasure or arbitrarily—would leave us not free persons but ‘wantons’... As such... [neo-republican institutions] respond not to the problem of the arbitrariness of the power some people have over others, but to the problem of the arbitrariness of an agent’s own beliefs and desires. They help to convert wantonness into responsibility.*<sup>223</sup>

Pettit’s method of guaranteeing freedom as non-domination, consequently, does not directly provide the people with their own anti-power, but by ensures that institutions operated as if people did have access to anti-power and, more importantly, knew how best to wield it. Non-domination, as we have seen, requires institutions to be contestatory in nature. If the state decides to do something that citizens deem to be harmful to the common good, they need to be able to challenge it with “some prospect of success.”<sup>224</sup> However, “de-politicisation is even more obviously a part of the institutions necessary for forestalling contestation, reducing the contestatory burden.”<sup>225</sup> In other words, we must ensure that it never gets to the point where the state can carry out policies that would need to be contested. This involves implementing constitutional constraints which bluntly prevent the government from taking those actions that would definitely be contested, such as, for example, direct breaches of individual rights or freedoms; which the state exists to protect.<sup>226</sup>

In addition to constitutional constraints and an impartial legislature to give these constraints teeth—as well as making *ex-post* contestatory processes *ex-ante*, Pettit argued that de-politicisation will be at its most effective when officials are appointed to “operate at arm’s-length from elected representatives.”<sup>227</sup> They would, by means of non-partisan procedures, be given control over decision-making areas which “would be dangerous to leave in the hands of representatives: dangerous, because of the temptations that elected representatives would have to let the choices be dictated by inappropriate considerations.”<sup>228</sup> The anti-power of the citizenry, essentially, is entrusted to impartial institutions which have a better understanding of the common good than the citizens themselves.

If we wish to empower ‘public valuation’ rather than the ‘collective will’, then, we need to take decisions away from the people. “As war is too important to be left in

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<sup>223</sup> Markell, 17.

<sup>224</sup> Pettit, "Depoliticizing Democracy," 61.

<sup>225</sup> Ibid., 63.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

the hands of the generals, democracy—deliberative democracy—is too important to be left in the hands of politicians.”<sup>229</sup> As long as democracy is understood as an institution through which policy is made to track the common avowable interests of its citizenry, and not as an instrument for the empowerment of the collective will of the people, de-politicisation may not just be permitted, but required.<sup>230</sup> Neo-republicanism, then, seeks to move past the need for politics; progressively replacing the need for citizens’ participation in politics with expert administration. Citizens, thus, have more in common with the ‘passive’ citizens of revolutionary France than ‘active’ ones.

Pettit’s appeal to “common avowable” interests in defining arbitrariness, Markell argues, means that fickleness and caprice apply as much to the wielder of power as to those at the receiving end of its interference.<sup>231</sup> While Pettit’s republican freedom is undoubtedly a theory of negative liberty, he strays dangerously close to the tendency Berlin linked to positive liberty, whereby individuals’ ‘irrational’ selves need to be conditioned by their ‘rational’ selves. Power loses its arbitrariness as long as it tracks the interests of those affected by its use, but only if those interests have “been validated, deprived of their arbitrary character by having been subjected to the standards of commonness and avowability.”<sup>232</sup> Merely following one’s purest desires is arbitrary, for such unbounded selfishness applies less to freedom than to the unconstrained whim of “undisciplined children, ‘spoiled by over-indulgence and excessive leniency’.”<sup>233</sup> An important aspect of the neo-republican project, then, is to discipline not only arbitrary power that is held above an individual’s head, but also to temper her own arbitrary desires.

Where large governments that actively interfere with the lives of their citizens are necessarily deemed to be tyrannical by (classical) liberal scholars, small, non-interfering governments are said to promote freedom regardless of their constitutional makeup. If freedom is understood as non-domination, however, rather than judging “all restraint, qua restraint, [to be] evil,”<sup>234</sup> the rule of law may actually uphold liberty. As long as the state’s interference is forced to track the ‘commonly avowable’ interests of the citizenry as a whole, then it cannot be counted as arbitrary. The best way to achieve this, Pettit argues, is to establish a

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<sup>229</sup> Ibid., 64.

<sup>230</sup> Markell, 29.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid., 15.

<sup>233</sup> Ibid., 17.

<sup>234</sup> John Stuart Mill, *J. S. Mill: 'On Liberty' and Other Writings*, ed. Stefan Collini (Cambridge: Cambridge University Press, 1989), 95.

system where institutions which have a superior understanding of the nature of the common good, not the people, are sovereign.<sup>235</sup>

### **Universalising the Rights of the Citizen**

Thus far, neo-republican rights politics has focused solely on the citizen; leaving the human to suffer in her abstract nakedness. Pettit argues that the neo-republican polity ought to be “understood in this tradition to mean, roughly, a shared political system in which there is no direct personal rule of some people over others, but rather a condition of equal citizenship governed by the rule of law.”<sup>236</sup> This, however, does not outline a system of *human* rights. To extend “the right to have rights, or the right of every individual to belong to humanity,” so that the rights of citizens may “be guaranteed by humanity itself,” Pettit seeks to bridge the gap between the rights of citizen and those of man.<sup>237</sup> His approach to cosmopolitan citizenship has been to extend the jurisdiction of republican legal institutions to cover the globe.

In order to develop this vision of global non-domination—and to apply it both to peoples as well as to individuals—Pettit has developed a ‘republican law of peoples’.<sup>238</sup> Whereas, when discussing domestic institutions, Pettit contrasts non-interference with non-domination, on the international sphere he sees the principle of non-domination as standing in opposition to the Westphalian concept of non-intervention. States must not merely be free from intervention at any given moment, but they must—at a structural level—be free from the arbitrary domination of other states. Similarly to the way non-domination functions in the domestic sphere, then, it allows for interference so long as it is non-arbitrary.

This application of non-domination to the international sphere leads Pettit to redraft international justice and legitimacy in a republican format. International justice, to him, outlines a requirement that peoples “have sufficient resources as a group not to be subject to collective domination by agents such as states, multinational corporations or international organisations.”<sup>239</sup> Legitimacy, on the other hand, is about ensuring that the international order guards against domination within states while escaping being dominated by—or, for that matter, dominating—particular individuals or peoples. This is considerably more demanding than the current

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<sup>235</sup> Pettit, "Depoliticizing Democracy."

<sup>236</sup> Frank Lovett and Philip Pettit, "Neorepublicanism: A Normative and Institutional Research Program," *Political Science* 12, no. 1 (2009): 11.

<sup>237</sup> Arendt, *Origins*, 298.

<sup>238</sup> Philip Pettit, "A Republican Law of Peoples," *European journal of political theory* 9, no. 1 (2010).

<sup>239</sup> "Legitimate International Institutions: A Neo-Republican Perspective," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 142.



liberal order, which only hopes that states do not commit wholesale human rights abuses. Rather than philanthropically granting inhabitants 'rights', Pettit argues, states must be 'representative,' which means that they broadly serve republican ideals; meaning they "will be effective in protecting members against private domination and will be representative in doing this in an un-dominating way."<sup>240</sup>

Ultimately, the goal is to "establish conditions under which all populations can form legitimate states to act for them as peoples;" allowing each and every individual to enjoy the rights of the citizen.<sup>241</sup> Once this condition is reached, the problem of domination will supposedly be solved once and for all, because "the foreign policy of the neo-republican state naturally supports the promotion of what is now called the 'democratic peace' as the most viable means for protecting republican institutions and values."<sup>242</sup> In the meantime, however it is up to the international order to spread non-domination; for even the peoples of non-republican states are entitled to this republican liberty.<sup>243</sup>

The best hope for global protection of human rights, Pettit argued, can be found in the spread of regimes of international law which limits sovereignty when it is used in dominating ways. This is where we get to the crux of the argument; how we arrive at this non-dominating international order in the first place. The most likely way that this may be achieved would, Pettit argues, require the 'community of republican states' to "organise humanitarian intervention."<sup>244</sup> The insistence on intervention of a republican community of states, in turn, leads us to two pre-requisites which are required for the spread of republican rights; firstly, that there is an international order—a community of which all states are part which can form a global public—and secondly, that it is structured in a non-dominating way.

In the absence of a republican-minded, constitutional 'community of states,' it is unclear how we can break into the virtuous cycle in which republican states to actively push non-domination onto non-representative states. It is problematic, then, that state sovereignty often clashes with what could potentially represent this international order. As Pettit recognises in his discussion of the International Court of Justice (ICJ), one of the main problems with the existing international *status quo* is that it often represents "a semi-legal, semi-judicial, semi-political body, which nations sometimes accept and sometimes don't."<sup>245</sup> Secondly, even in cases such as the United Nations, where it may be possible to find an 'international order' of

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<sup>240</sup> "A Republican Law of Peoples," 71.

<sup>241</sup> "Legitimate International Institutions: A Neo-Republican Perspective," 153.

<sup>242</sup> Lovett and Pettit, 21-22.

<sup>243</sup> Pettit, "Legitimate International Institutions: A Neo-Republican Perspective."

<sup>244</sup> "A Republican Law of Peoples," 89.

<sup>245</sup> Ibid., 82.

sorts, Christopher Thomas has argued that Pettit displays a “baffling optimism about the non-arbitrary structure of decision-making in international institutions.”<sup>246</sup>

Arendt’s argument against the idea of a ‘world government’ is incredibly relevant here. While a unified world state may not be what Pettit is after, the attempt to build a republican regime of international law runs into similar practical issues with the existing world order. Even if we manage to find a global community of states, neither the states themselves nor the order they form together is built upon a foundation of non-domination.

*Contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organisations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being a sphere that is above the nations does not exist. Furthermore, this dilemma would by no means be eliminated by the establishment of a ‘world government’.*<sup>247</sup>

Arendt does not believe international law can hold back the problems of state sovereignty, mainly because it has emerged from a system of state sovereignty. Whereas Pettit saw in international institutions a set of valuable tools for preventing states from dominating each other, Arendt is more of the opinion, in agreement with Thomas, that “international law itself is the product of a long history of inequality and exploitation.”<sup>248</sup> Even the United Nations charter, for example, enshrines state sovereignty as one of its guiding principles.<sup>249</sup>

Consequently, the functioning of these institutions depends on the consent of these sovereign powers, and, in particular, the most powerful amongst them. As Pettit demonstrated regarding the ICJ, global powers have simply walked away when things did not go their way.<sup>250</sup> Extending the rights of the civilian to cover all of humanity, then, has the same problem as liberal attempts of turning human rights into a reality; it depends on the powerful to “organise humanitarian intervention” to implement it before willingly relinquishing their own power and conforming to republican principles.<sup>251</sup>

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<sup>246</sup> Thomas, 585.

<sup>247</sup> Arendt, *Origins*, 298.

<sup>248</sup> Thomas, 587.

<sup>249</sup> *Charter of the United Nations and Statute of the International Court of Justice*.

<sup>250</sup> I.e. the UN General Assembly or the UN Conference on Trade and Development.

<sup>251</sup> Pettit, “A Republican Law of Peoples,” 89.

Regarding the Franco-German tradition of republicanism, Williams pointed out that the establishment of the republic itself is based around a cruel paradox that mocks the efforts of humans to govern themselves.<sup>252</sup> Republics can only survive if their citizens act virtuously and forego their own interests for the public good, but they will only be able to learn their virtue in virtuous republics. A similar cycle can be found in the efforts to expand neo-republican institutions to cover the globe. The states that currently inhabit the international sphere—from liberal democracies to autocratic states—can only be guided down the path of non-domination by a global order that institutionalises a republican law of peoples. This non-dominating global order, in turn, can only be called into being by states that already adhere to neo-republican values.

One problem that quickly becomes apparent with the neo-republican approach to rights, then, is that it does not actually solve the problematic relationship between rights politics and power. Rather than leaving this problem in the hands of liberal human rights activists, it is passed on to institution-builders. Whereas the successful establishment of neo-republican institutions could potentially address the problems that human rights politics experiences with existing power imbalances, the institution-builders must first overcome this very problem. They still rely on the same states and international bodies as those liberal rights activists depended on, only this time to build a new order. If it is a folly to expect the wielders of power to behave graciously to those under their yoke, it is no less so to expect them to gracefully hand over their power instead. Consequently, “human rights politics remains a politics of the stronger, not of those whose rights are at issue.”<sup>253</sup>

Beyond these practical concerns, the new order which the neo-republicans have already drawn up in enough detail that it need not be further developed by the uninformed masses, lest they destroy its potential, hides some significant anti-political tendencies. Protecting negative rights, Constant and Berlin argued, required the use of political rights. To Pettit, however, guaranteeing the rights which the enlightened system-builders deem the people ought to have is achieved more effectively by impartial institutions than by citizens’ participation in politics.

While the Terror of 1793 may not be comparable to the constitutional monarchy of 1791 in terms of its methods—the regime of 1793 was much more bloodthirsty than its predecessor—the difference is one of scale, not of kind. In both cases, a group of individuals with a monistic understanding of what a democratic society

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<sup>252</sup> David C. Williams, “Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment,” *The Yale Law Journal* 101, no. 3 (1991).

<sup>253</sup> Ingram, “What Is a ‘Right to Have Rights,’” 407.

ought to look like set about de-populating the political sphere; denying citizens positive freedoms. Where the constitutional monarchists sought to install *la philosophie* as the undisputed sovereign, the Jacobins reserved this position for a unified, totalitarian ‘people’. One may have drawn the line at drawing a line between ‘active’ and ‘passive’ citizens while the other guillotined those who deviated from its wishes, but in the end both rejected plurality and human rights so that their ‘superior’ vision may become a reality; regardless of the opinions of those they are trying to help. An apt way to conclude this chapter, therefore, is with this—rather lengthy—quote from Albert Camus’ discussion of Prometheus’ journey to free mankind from the tyranny of the Gods.

*Here ends Prometheus' surprising itinerary. Proclaiming his hatred of the gods and his love of mankind, he turns away from Zeus with scorn and approaches mortal men in order to lead them in an assault against the heavens. But men are weak and cowardly; they must be organized. They love pleasure and immediate happiness; they must be taught to refuse, in order to grow up, immediate rewards. Thus Prometheus, in his turn, becomes a master who first teaches and then commands. Men doubt that they can safely attack the city of light and are even uncertain whether the city exists. They must be saved from themselves. The hero then tells them that he, and he alone, knows the city. Those who doubt his word will be thrown into the desert, chained to a rock, offered to the vultures. The others will march henceforth in darkness, behind the pensive and solitary master. Prometheus alone has become god and reigns over the solitude of men. But from Zeus he has gained only solitude and cruelty; he is no longer Prometheus, he is Caesar. The real, the eternal Prometheus has now assumed the aspect of one of his victims. The same cry, springing from the depths of the past, rings forever through the Scythian desert.<sup>254</sup>*

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<sup>254</sup> Camus, *The Rebel*, 244-45.

# 5.

## Arendt

*“Storytelling reveals meaning without committing the error of defining it.”*

- Hannah Arendt<sup>255</sup>

The system-building approach to rights, where the powerful and the powerless alike voluntarily accept the superior nature of the neo-republican social contract, appears to be a reversal of how, historically, individuals have come to be rights-bearers. Rather than Louis XVI being replaced by some greater power who wishes to gift the French people their human rights as a benevolent ruler—as the liberal story describes the process by which people achieve autonomy—or Louis XVI proposing that he be bound by constitutional strictures so the people may enjoy non-domination—as in the neo-republican version of events—it was political action on behalf of the French people themselves which prompted the Revolution and the *Declaration of the Rights of Man and Citizen*. This is where we turn from the neo-republicans’ to Arendt’s vision of human rights, which claims rights are generated by the direct action of citizens.

While Arendt agrees with Pettit that rights ought to be placed in the hands of the citizen in order to empower her against the state, she breaks with his approach at the point where the neo-republicans seek to actively limit the space where this newfound power of the citizen can be used, lest they misuse it. Instead, she sees individuals as “authors of their rights,” not in the sense that a constitutional framework is justified in their name but in that their practical engagement is what creates rights.<sup>256</sup> In the words of Jeffrey Isaac, Arendt’s rights politics recognises that “the most important focus of... a politics [of human rights] is neither the nation-state nor the international covenant or tribunal.”<sup>257</sup> Instead, “the primary

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<sup>255</sup> Hannah Arendt, *Men in Dark Times* (Boston: Houghton Mifflin Harcourt, 1970), 105.

<sup>256</sup> Ingram, "What Is a 'Right to Have Rights'," 408.

<sup>257</sup> Jeffrey C. Isaac, "A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights," *American Political Science Review* 90, no. 1 (1996): 70.

impetus for such rights will always come from elsewhere, from the praxis of citizens who insist upon these rights and who are prepared to back up this insistence through political means.”<sup>258</sup> Rights, for Arendt, are something generated and maintained through politics; meaning that only those participating in public life can obtain and guarantee freedom—it is not something to be outsourced to sovereign powers or utopian systems of law.

### **The Revolution of the Press**

In 1788, a year before the Estates-General convened, a “revolution in political culture” occurred in France.<sup>259</sup> Where previously, the nobility, clergy, and *parlementaires* faced negligible opposition from the peasants, the bourgeoisie, and the artisans, they lost control over public opinion throughout 1788. During the second half of 1788 in particular, the struggle between Crown and elites fell by the wayside as a third group, made up mostly of intellectuals, challenged the format of the Estates-General in which the three Estates of society—the clergy, the nobility, and the commoners—had three hundred representatives each. To replace this system which saw the nobility and the clergy—the privileged classes of French society—command twice the voting power of the rest of the population combined, they “wanted privilege curbed and the Third Estate’s representation doubled to ensure formal parity of voting power with the privileged orders.”<sup>260</sup>

In particular, the collapse of royal censorship of the press—partly as a result of the Crown’s bankruptcy—provided members of the Third Estate with a capacity to disseminate their message. Previously, those writers that fought for freedom of expression were persecuted by the privileged orders, but by 1788 “France’s ‘inquisition’ of thought, worn out by its burgeoning task, ground to a halt.”<sup>261</sup> Illegal pamphlets that skirted censorship laws were not new to France—enlightenment philosophy and other subversive ideas were published beyond the gaze of the royal censor for most of the 18<sup>th</sup> century—but their presence skyrocketed during the summer of 1788.<sup>262</sup> On the 5<sup>th</sup> of July that year, Brienne, Louis XVI’s Finance Minister, called for the public to submit suggestions to the Crown regarding the procedures of the Estates-General. “This was widely interpreted as an open invitation to air political views freely.”<sup>263</sup>

Although the Crown reaffirmed its regulatory structure and sought desperately to enforce it, the royal administration did not have the adequate resources to rein in

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<sup>258</sup> Ibid.

<sup>259</sup> Israel, *Revolutionary Ideas*, 34.

<sup>260</sup> Ibid., 33.

<sup>261</sup> Ibid., 50.

<sup>262</sup> Hugh Gough, *The Newspaper Press in the French Revolution* (New York: Routledge, 2016), 2.

<sup>263</sup> Ibid.

the vast numbers of pamphlets that were being printed.<sup>264</sup> This *de facto* liberty of the press, and the opening up of political discourse it engendered, symbolised the first major phase of the Revolution. These writings gained a following of proportions theretofore unknown; it opened up a place within society for critical opinion—that of authors and readers of the pamphlets alike—to judge, as a popular tribunal, the way in which the King and his ministers governed.

As Brissot argued in 1789—several years before his rise to power as leader of the Girondins—“the necessity to render the press, and especially political periodicals, free from this moment on” was not merely a matter of the right to freedom of expression, but it was the only way to recreate the public-sphere of the classical city-states in a country the size of France.<sup>265</sup> “Newspapers would permit the conduct of a public debate on a national scale, would allow the continual transmission of the public’s opinions to their elected representatives, and would also allow intellectual leaders to enlighten the voters.”<sup>266</sup> As Brissot argued; “one can teach the same truth at the same moment to millions of men; through the Press, they can discuss it without tumult, decide calmly and give their opinion.”<sup>267</sup> This discursive theatre where different voices could partake in the shaping of the revolutionary society, therefore, marks the moment where language was freed from its authoritarian constraints.

The propaganda and the edicts of Louis XVI and the privileged orders—the monologue they dictated to a society of mutes—was overthrown and replaced by a public dialogue. Where “the gospel preached by totalitarian regimes in the form of a monologue [is] dictated from the top of a lonely mountain,” democracy and the *Rights of Man* became a reality when the people found their own voices and began to participate in the discourse on public affairs.<sup>268</sup> Moreover, this liberty was not a gift from the powerful to the powerless; it was something that was taken through direct action. With the complex systems of regulation and censorship of the royal government collapsing, “writers and printers rushed to occupy the void” left by the King’s monologue; replacing it with different voices and opinions.<sup>269</sup>

The anticipation of the upcoming Estates-General gave rise to an enthusiastic public debate in newspapers and pamphlets. A large number of writers published

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<sup>264</sup> Carla Alison Hesse, *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810* (Oakland: University of California Press, 1991), 21.

<sup>265</sup> Jacques Pierre Brissot, quoted in: Jeremy D Popkin, “Journals: The New Face of News,” in *Revolution in Print: The Press in France, 1775-1800*, ed. Robert Darnton and Daniel Roche (Oakland: University of California Press, 1989), 145.

<sup>266</sup> *Ibid.*, 141.

<sup>267</sup> Jacques Pierre Brissot, quoted in: *ibid.*, 145.

<sup>268</sup> Camus, *The Rebel*, 284.

<sup>269</sup> Popkin, 141.

pamphlets which employed the rhetoric of liberty and equality. As this discourse caught the attention of the masses, “the demand for ‘doubling’ the Third Estate’s representation rapidly caught on. As the struggle intensified, an unprecedented wave of militant anti-aristocratic and anticlerical discourse, denouncing privilege, nobility, clerical influence, and the *parlements*, began affecting the course of events.”<sup>270</sup> The Crown was forced to submit to the demands for voting parity within the Estates-General, and in April 1789, six hundred elected deputies represented the Third Estate at Versailles. The royal acquiescence to these first demands did not satisfy the Third’s growing thirst for liberty, and the Revolution intensified when its deputies refused to follow the Estates-General’s established procedures; let alone the royal agenda for what it was to debate and accomplish.

On 17 June, “contrary to all precedent and quite illegally,” the Third estate unilaterally declared itself to be the ‘National Assembly’; claiming to represent the entire French people. They invited the First and Second Estates to join them, and sizeable parts of the nobility and clergy did indeed desert their ranks.

*This declaration of 17 June 1789, as has often been noted, took onlookers by surprise and constituted a stunning revolutionary act in itself, signifying not just rejection of noble and ecclesiastical privilege but also France’s entire existing institutional structure.*<sup>271</sup>

It took Louis XVI three days to react to this existential threat to his kingdom. Only on June the 20<sup>th</sup> did his troops make a move. When the deputies of the Assembly arrived at their meeting hall, they found its doors locked and guarded by soldiers. A proclamation was posted up informing them that the King would hold a *séance royale* two days later, and that all Assembly meetings would be suspended until then. Upon this provocation, and shut out of their debating chamber, the Assembly convened instead in a nearby tennis court, where they vowed “never to separate” until France had a new constitution.<sup>272</sup>

Meeting on June 22, the Crown and the Assembly failed to reach a compromise. Even though the King ceded much ground, he rejected outright some of the demands made by the Third on which they were not willing to compromise. While the King was willing to give up the fiscal immunity of the privileged classes, arbitrary arrests, and forced labour, and would even discuss how it might be possible to reconcile “the liberty of the press with the respect due the religion, morality and the honor of citizens,” he would not go as far as accepting the legitimacy of the unilaterally declared National Assembly. Instead, he insisted that

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<sup>270</sup> Israel, *Revolutionary Ideas*, 34.

<sup>271</sup> *Ibid.*, 55.

<sup>272</sup> *Ibid.*



the Estates should “remain separate entities with separate rights and, in part, separate functions... Louis also vigorously reaffirmed his sole sovereignty and control over police powers and the military.”<sup>273</sup>

The tense standoff between the Assembly and the Crown lasted until June the 27<sup>th</sup>, when Louis was forced to back down. As Thomas Jefferson, who was present at Versailles, noted, large numbers of the King’s troops “began to quit their barracks, to assemble in squads, [and] to declare that they would defend the life of the King, but would not cut the throats of their fellow citizens;” leaving “no doubt on which side they would be in case of a rupture.”<sup>274</sup> The sovereignty proclaimed by the hermit atop her castle, then, became meaningless at the moment the public sphere—which she had claimed for herself—was invaded by alternative voices whose mere presence delegitimised solitary rule. Moreover, this anti-power, these rights, which sprang forth from the revolutionaries’ participation in public life, was not something that was voluntarily given; freedom had to be taken.

## **Rights and Sovereignty**

In concordance with Pettit, Arendt believes that rights could only be guaranteed through citizenship within a republican polis. For Arendt, rights are deeply intertwined with political action, “or to be more precise:... the act(ion) of legislation. Someone only has a right because he or she has acquired it by means of someone else’s promise, or by means of a contract with someone else, or, if it is to be a generally acknowledged right, because he or she has been endowed with it by means of law.”<sup>275</sup> The fact that the *Declaration of the Rights of Man and Citizen* speaks of two entirely different subjects and situations—the human as such, an abstract individual without an identity or place in the world, and the citizen, the member of a political community—becomes highly problematic from Arendt’s perspective. It had the effect, particularly in cases where individuals who are not citizens of any state are denied access to rights, she wrote, “of confronting the nations of the world with an inescapable and perplexing question: whether or not there really exist such ‘human rights,’ independent of all specific political status and deriving solely from the fact of being human.”<sup>276</sup>

While this double appellation leaves it unclear whether one must always also be the other or whether one has access to rights the other does not, Arendt argued that the

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<sup>273</sup> Ibid., 56.

<sup>274</sup> Jefferson to John Jay, Paris, 29 June 1789, in: Thomas Jefferson, *The Papers of Thomas Jefferson*, ed. Charles Cullen and Julian P. Boyd, vol. 15 (Princeton: Princeton University Press, 1958), 221-2.

<sup>275</sup> Christoph Menke, Birgit Kaiser, and Kathrin Thiele, "The 'Aporias of Human Rights' and the 'One Human Right': Regarding the Coherence of Hannah Arendt's Argument," *Social Research* (2007): 742.

<sup>276</sup> Hannah Arendt, "The Rights of Man: What Are They?," *Modern Review* 3, no. 1 (1949): 25.

situation cleared itself up in the years leading up to the second world war.<sup>277</sup> “The rights of man,” she pointed out, “supposedly inalienable, proved to be unenforceable... whenever people appeared who were no longer citizens of any sovereign state.”<sup>278</sup> Human rights claims became meaningless at the very point where all other aspects of an individual’s identity disappeared; when they are purely human and as close as possible to the ideal bearer of human rights.

*The conception of human rights based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships except that they were still human.*<sup>279</sup>

Even though it is this very statelessness that, in stripping individuals of their communal identities, leaves them to be human beings in their purest form, they have lost all forms of legal protection when they found themselves in this predicament.

*The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general—without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself—and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.*<sup>280</sup>

The *Rights of Man* were meant as protection for those who were dragged out of the social relationships into which they were born. In revolutionary France, the abstract ‘man’ had only just been emancipated from feudalism until she became one of the ‘people’.<sup>281</sup> “The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one’s own people, seemed to be able to ensure them.”<sup>282</sup> Human rights, consequently, were never dealt with as such; only ever as the rights of the citizen. The totalising term ‘people’ was a means of addressing the rights of men in the plural—of individuals with a social identity—

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<sup>277</sup> As we have already seen, the union between man and citizen had already come to a violent disengagement during the French Revolution, but Arendt wrote with particular regard to statelessness in the 1930s.

<sup>278</sup> Arendt, *Origins*, 173.

<sup>279</sup> *Ibid.*, 299-300.

<sup>280</sup> *Ibid.*, 302.

<sup>281</sup> ‘Man’, in this case, signifies a gender-neutral subject.

<sup>282</sup> Arendt, *Origins*, 370.

rather than of the human as isolated from her community. The plight of the human was solved by concealing her amongst the citizenry. The problem with this appeared when the rights of those without any social identity became a practical issue; when individuals were cast out from their political community.

*If a human being loses [her] political status, [she] should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided.*<sup>283</sup>

Our experiences, however, have largely deviated from this standard; the loss of human rights went along with the loss of national rights. “The world found nothing sacred in the abstract nakedness of being human.”<sup>284</sup> This is definitely not a new concern. When human rights were first institutionalised in 1789, Edmund Burke had been afraid that these ‘inalienable’ rights would become the ‘right of the naked savage’.<sup>285</sup> As a consequence, this would reduce civilised nations to savagery also. When an individual is forsaken by all political communities, they survive not as a result of their rights, but of charity. In the many cases where they do not it is similarly due to a ‘savage’ lack of charity that they perish. Even though the *Rights of Man* may demand it, “no law exists which could force... nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool’s freedom, for nothing they think matters anyhow.”<sup>286</sup>

Arendt echoes many of Edmund Burke’s criticisms of the *Declaration of the Rights of Man and Citizen*. Both of them see human rights as no more than a vacuous abstraction, and regard only the ‘rights of Englishmen’—civic rather than human rights—as effective.<sup>287</sup> The only useful rights are those that are guaranteed by membership within a political community that can and will protect them; not the abstract rights of man. “The former are contextual, political in origin, concrete, and carry weight; the latter are empty universal postulates open to manipulation.”<sup>288</sup> All of the deprivations of the rightless arise, first and foremost, from a loss of place; from a loss of community membership. “The calamity of the rightless,” Arendt argued, “is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion—formulas which were

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<sup>283</sup> Ibid., 300.

<sup>284</sup> Ibid.

<sup>285</sup> Edmund Burke, quoted in: *ibid.*

<sup>286</sup> Ibid., 296.

<sup>287</sup> Ibid., 176.

<sup>288</sup> Jean Cohen, “Rights and Citizenship, and the Modern Form of the Social: Dilemmas of Arendtian Republicanism,” *Constellations* 3, no. 2 (1996): 169.

designed to solve problems within communities—but that they no longer belong to any community whatsoever.”<sup>289</sup>

Arendt’s problem with the rights of man belonging either to man as such—in her full, apolitical lack of glory—or to the citizen, is that human rights discourse does nothing to guarantee the freedom of either of the subjects it discusses. The rights of the citizen stem from her membership to a polity, whereas the rights of man are unenforceable.<sup>290</sup> As Rancière summed up Arendt’s charge, you either end up with the rights of man as the rights of those who do not have any rights or as the rights of those who have rights; the former makes them meaningless, the latter tautological.<sup>291</sup> When you turn rights into a tautology, however, they can still be called upon, but only in the sense that there are “equal rights for political members, which are thus not *human* rights.”<sup>292</sup>

Arendt, then, is on the same page as Pettit when she writes that “we are not born equal, we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.”<sup>293</sup> Pettit, given this outlook, answered Arendt’s paradox by creating effective, sovereign republics so that the citizen and the human may be one and the same.<sup>294</sup> Where the neo-republicans see democracy as purely instrumental, and are therefore relatively happy to de-politicise democracy, participation is much more closely tied to rights and liberty for Arendt. “Rights,” for Arendt, “are not in the first instance a matter of philosophical or moral ideals, state guarantees or legal declarations, but are created from the bottom up, through practices of communication and interaction. They are part and parcel of, emerging with and thorough, political activity itself.”<sup>295</sup>

For Arendt, the right to have rights, that project through which we seek to guarantee the dignity of humanity, is essentially the claim that politics precedes rights; that rights stem from politics. The right to have rights, then is something of a “claim to politics, the demand that there may be something like politics.”<sup>296</sup> It is a claim to a community where the individual escapes sovereignty and instead “becomes a subject of decisions and judgments by speaking with others and listening to

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<sup>289</sup> Arendt, *Origins*, 295.

<sup>290</sup> Whereas Burke and Arendt agree that rights are always a political construct, they part ways where Burke insists that human beings are but an abstraction and that only the rights of the citizen ‘exist’. Arendt is much more interested in how rights can be granted to humanity as a universal principle. See; Peg Birmingham, *Hannah Arendt and Human Rights: The Predicament of Common Responsibility* (Bloomington: Indiana University Press, 2006).

<sup>291</sup> Rancière.

<sup>292</sup> Menke, Kaiser, and Thiele, 746.

<sup>293</sup> Arendt, “The Rights of Man,” 33.

<sup>294</sup> Thomas.

<sup>295</sup> Ingram, “What Is a ‘Right to Have Rights’,” 410.

<sup>296</sup> Hamacher and Mendoza-de Jesús, 188.

them.”<sup>297</sup> This is linked closely to her understanding of freedom as *isonomia*. She sees it as a form of “no-rule;” a political state “without a division between rulers and ruled,” where “the notion of rule... was entirely absent.”<sup>298</sup> Rather than harnessing rule to guarantee rights, Arendt argues that sovereignty is inimical to the freedoms that rights represent.

For Arendt, allusions to sovereignty—and that includes popular sovereignty—are claims to “jurisdictional supremacy by an undivided single political instance within a territorial body politic.”<sup>299</sup> Illustrative of Arendt’s understanding of rule as solipsistic is her characterisation in *the Human Condition* of ‘*Homo Faber*’ as emblematic of the sovereign agent.<sup>300</sup> As Cocks pointed out, “the craftsman violates [her] material to give it a new form (thus doing violence to a passive object) according to an idea that both precedes and survives the productive process.”<sup>301</sup> In turning her idea into a reality, both the tools at her disposal and the task she set out to do are entirely instrumental; her work is a means to a predetermined end. Throughout this process, moreover, she is the only actor with agency; she is the sole individual making decisions regarding both the end and the means to it. “*Homo Faber*,” Arendt points out, “conducts [herself] as lord and master of the whole earth.”<sup>302</sup> This monopoly of power and violence the craftsman has within her sphere of influence denotes her isolation from the rest of society. The voice that speaks through her work is a monologue. It carries only her voice; the words of others have no place there.

Sovereignty, therefore, necessarily involves the process of asserting one’s will over society; refashioning it according to one’s wishes. It is “the ultimate discretion of an uncommanded commander who is *legibus solutus*—the source of law and so unbound by law.”<sup>303</sup> The singularity of sovereign power, to Arendt, is anathema to her understanding of what politics is. For Arendt, plurality is *the* defining characteristic of the human condition. Since no one person perceives the world from the same perspective—each is influenced by their own place in the world. By replacing these different perspectives with a single vision, sovereign power places

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<sup>297</sup> Ibid., 191.

<sup>298</sup> Hannah Arendt, *On Revolution* (London: Penguin, 1990), 30.

<sup>299</sup> Andrew Arato and Jean Cohen, “Banishing the Sovereign? Internal and External Sovereignty in Arendt,” *Constellations* 16, no. 2 (2009): 307.

<sup>300</sup> Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 2013), 139.

<sup>301</sup> Joan Cocks, “Is the Right to Sovereignty a Human Right? The Idea of Sovereign Freedom and the Jewish State,” in *Silencing Human Rights: Critical Engagement with a Contested Project*, ed. Gurinder K. Bhambra and Robbie Shilliam (London: Palgrave Macmillan, 2009), 109.

<sup>302</sup> Arendt, *Human Condition*, 139.

<sup>303</sup> Arato and Cohen, 307.

itself in direct opposition to the fact that “not one man, but men, inhabit the earth.”<sup>304</sup>

Such craftsman-esque domination over society, Arendt would argue, is inherently anti-political. It seeks to remove all voices that oppose it from political life with its logic of unification. By associating liberty and sovereignty, freedom becomes a monological concept which subordinates plurality to uncompromising mastery over one’s fellow men. “It rests everything on the singularity of the willing agent and the present moment of the willing act.”<sup>305</sup> Consequently, where the concept of sovereignty denotes a political monologue, politics, to Arendt, is about communication and interaction between multiple voices.

The way that the (neo-republican) system-builders treat the political sphere around them undoubtedly denies plurality. It “treats people and their interrelations as objective material to be refashioned and governed according to an idea imposed on them from the outside.”<sup>306</sup> The reduction of the number of voices that inhabit the political to one necessarily entails doing violence upon the sources of those other voices. The reduction of individuals from active participants to helpless pawns to be sacrificed for the designs of the craftsman denies those without voice their autonomy; their agency is dispossessed by means of force.

Once the craftsman has finished his product, it is no longer open for re-interpretation. The project is now complete, and any changes to it would destroy its purity and perfection. Having achieved that which it wished to, the craftsman’s utopia enters an era of stagnation—it traps its subjects in “natural cycles, mechanical routines, and fatalistic sequences of cause and effect in which humans are passively and repetitively caught up.”<sup>307</sup> Political action, Arendt points out, is necessarily inimical to such a finished product, since to act is to “call something into being which did not exist before.”<sup>308</sup>

Multitudinous voices making themselves heard in the political, then, can only be interpreted by the craftsman as “interruptions of [her] natural series of events, of [her] automatic process, in whose context they contribute the wholly unexpected.”<sup>309</sup> If the system-builder wishes individuals to be free only to the extent of doing that which she wants them to do, she is forced to remove all possibilities of action on behalf of individuals—a project which can only be

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<sup>304</sup> Arendt, *Human Condition*, 234.

<sup>305</sup> Alan Keenan, “Promises, Promises the Abyss of Freedom and the Loss of the Political in the Work of Hannah Arendt,” *Political Theory* 22, no. 2 (1994): 302.

<sup>306</sup> Cocks, 110.

<sup>307</sup> *ibid.*, 110-11.

<sup>308</sup> Arendt, *Human Condition*, 151.

<sup>309</sup> *Ibid.*, 153.

effective if it uses the sovereign violence at her disposal. As Cocks put it rather lugubriously, yet not gratuitously so, given how well it links Arendt's dislike for totalitarian unity to Robespierre's Terror;

*short of murdering everyone subjected to it and so committing suicide itself, sovereign power cannot help inciting acts of defiance against its control, which will require punitive reactions on its part, which are likely to incite new defiant acts.*<sup>310</sup>

Plurality, however, is linked to significant amounts of uncertainty over the future. As Pettit's support for de-politicisation alluded to—and as the instability of the French Constitution of 1791 further illustrates—it may be useful to have a vision of what a democratic community ought to look like, but if the other members of said community disagree, they may work towards other ends. This uncertainty of even the outcome of one's own actions—the fact that action may run directly counter to one's intentions if other actors can influence the path that is followed—can be hugely frustrating; particularly if one feels that her ideas hold the key to eternal liberty. It may therefore seem enticing for theorists and politicians to silence those 'uninformed' citizens who have the potential to destroy their models of political perfection; reducing plurality to a singular will out of a desire for control. Seeking recourse to "sovereignty, the ideal of a free will, *independent* from others and eventually prevailing against them," is an understandable response to the frustration at the lack of control over the future of one's own actions—which may be diverted at the hands of other actors if they have as much of a stake in decision-making as the craftsman.<sup>311</sup>

*If a political action that does not stand under the sign of brute force does not achieve its goals—which it never does in reality—that does not render the political action either pointless or meaningless. It cannot be pointless because it never pursued a "point," that is, an end, but has only been directed at goals, more or less successfully; and it is not meaningless because in the back-and-forth of exchanged speech—between individuals and peoples, between states and nations—that space in which everything else that takes place is first created and then sustained.*<sup>312</sup>

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<sup>310</sup> Cocks, 111.

<sup>311</sup> Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (London: Penguin, 1993), 163.

<sup>312</sup> "Introduction into Politics," in *The Promise of Politics*, ed. Jerome Kohn (New York: Schocken Books, 2005), 193.

Being open to plurality, then, might mean that one's ideal polity might never be achieved. In this process, however, citizens find their rights respected precisely because their voices were not silenced. Participation in public life fills the worldly spaces between individuals with dignity. The recognition of equality is a mutual promise to secure rights. Arendt argues that "the meaning of a thing, is always contained within the thing itself. . . . It is just the opposite with ends; an end does not begin to become a reality until the activity that produced it has been concluded"<sup>313</sup> We cannot, therefore, reduce politics to the pursuit of a certain end in the same way that the neo-republicans do. "Even when the end is freedom, the meaning contained within such action [one employing brute force] itself is coercion by violence."<sup>314</sup> The instrumentalisation of politics reduces it to violence and rule. Arendt herself, on the other hand, does everything to walk away from this means-ends way of thinking.

According to Arendt, "freedom and sovereignty are so little identical that they cannot even exist simultaneously." If "men wish to be free," she argued, "it is precisely sovereignty they must renounce."<sup>315</sup> Given Arendt's critique of sovereignty in the political sphere, one can read Arendt's work as a theoretical project that attempts "to purify politics of a whole host of supposedly non-political phenomena, such as rule, violence, sovereignty, embodiment, sentiment, and many others."<sup>316</sup> And indeed, she often presented her work as part of a process of policing the boundaries between the different spheres of life that make up the *vita activa*; ensuring that each—in this case the politics that she links with freedom and the pre-political violence that destroys it—remains in its "proper location in the world."<sup>317</sup> As the French rebels who, in 1830, dragged a corpse through the Tuileries palace before installing it on the throne, proclaimed symbolically, Arendt wanted to leave the principle of sovereignty bereft of life.<sup>318</sup>

Direct political action "involves us in a seamless and boundless web of interrelationships; our deeds, enormously productive, often escape us, in surprising and often grotesque ways that we neither intend nor even imagine."<sup>319</sup> It is the distinctive capacity that humans have to reflect upon, discuss, and alter our common, highly vulnerable condition. "It is only in concert, on the basis of claims

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<sup>313</sup> *Human Condition*, 193-94.

<sup>314</sup> "Introduction into Politics," 198.

<sup>315</sup> *Human Condition*, 164-65.

<sup>316</sup> Patchen Markell, "The Rule of the People: Arendt, Arche, and Democracy," *American Political Science Review* 100, no. 1 (2006): 4.

<sup>317</sup> Arendt, *Human Condition*, 73.

<sup>318</sup> Camus, *The Rebel*, 130.

<sup>319</sup> Isaac, 65.



that are mutually recognised and agreed to, that human dignity can be secured and continually re-secured in a recalcitrant world.”<sup>320</sup>

## Beyond Arendt

Hannah Arendt, while strongly supporting rights as a means of guaranteeing human freedom and dignity, steadfastly held on to the belief that human rights “were claimed only by people who were too weak to defend their ‘rights as Englishmen’ and to enforce their own laws.”<sup>321</sup> From this perspective, it is an impossible task to generate rights if you do not already have them—universalising the rights of the citizen is out of the question. “A citizen,” for Arendt, “is by definition a citizen among citizens,” and this very fact of political (inter)action guarantees their rights.<sup>322</sup> Without participating in political life you cannot generate rights. Thus, the human—in her full, apolitical lack of glory—cannot have rights. The rights of man, then, become the rights of those who do not have any rights, while the rights of the citizen become the rights of those who do have rights.

While Arendt shows how rights come forth out of the actions of their potential bearers, this is relevant only to those citizens within a polity.<sup>323</sup> If one wants to develop a theory of *human* rights on the basis of Arendt’s work, it is necessary to look beyond her thinking. Jean Cohen contends that this paradox in which Arendt’s rights politics is stranded derives from her negative judgements of the “modern form of the social.”<sup>324</sup> The social sphere—civil society—in Arendt’s view, is “a degenerate hybrid realm characterised by the dedifferentiation of public and private, [and] the intrusion of intimate concerns along with bodily needs onto the public stage.”<sup>325</sup> The modern arrangement of the social, to her, privatises political life by admitting the violence associated with survival.

*To force people by violence, to command rather than persuade, were pre-political ways to deal with people characteristic of life outside the polis, of home and family life, where the household head ruled with uncontested, despotic powers, or of life in the barbarian empires of Asia, whose despotism was frequently likened to the organisation of the household.*<sup>326</sup>

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<sup>320</sup> Ibid.

<sup>321</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking Press, 1963), 271.

<sup>322</sup> *Men in Dark Times*, 81-82.

<sup>323</sup> See; Ingram, "What Is a 'Right to Have Rights'."

<sup>324</sup> Cohen, 178.

<sup>325</sup> Ibid.

<sup>326</sup> Arendt, *Human Condition*, 27.

Arendt was mortified by the social being prioritised over, and undermining, the political. She deemed it the “fateful blunder of the men of the French Revolution”—alongside the fact that they conceived of the sovereign people as the foundation of, and therefore as above, the law—that guaranteeing the ‘necessities of life’ was elevated from the private sphere into the public.<sup>327</sup> As Cohen summarises Arendt’s view; “the transformation of the Rights of Man into the rights of *sans-culottes* constitutes the beginning of a line of development that reduces the political to the social, and *au fond* undermines all prospects of freedom and stable constitutionalism.”<sup>328</sup> It confuses discursive political life with the violence characteristic of private life—the realm of *Homo Faber*.

This negative view of the social, however, prevents us from seeing “the pluralism, flexibility, and creativity of modern society,” and in particular the roles it could play in generating and protecting rights.<sup>329</sup> Rancière, for example, believes the dichotomy between rights of private individuals and the political citizen to be false. Instead, he notes that there is a third option; namely, “the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not.”<sup>330</sup> Human rights, Rancière argues, as they are declared in the *Rights of Man*, “are written rights;” the “inscriptions of the community as free and equal.”<sup>331</sup> It is this inscription that Arendt saw as the empty promise of human rights discourse; being ineffectual in practice.

Rancière, however, pointed out that they are simultaneously “the rights of the *demos*, conceived as the generic name of the political subjects who enact—in specific scenes of dissensus—the paradoxical qualification of this supplement.”<sup>332</sup> By illegally invading the political sphere, they generate the rights of the citizen which they did not have—or, in the case that they had them as ‘written rights’ that were denied in practice, actualised the rights they ought to bear. Consequently, and this is where he deemed Arendt to have gone wrong, “there is no man of the rights of man, but there is no need for such a man. The strength of those rights lies in the back-and-forth movement between the first inscription of the right and the dissensual stage on which it is put to test.”<sup>333</sup> It is direct action on behalf of civil society—consisting of individuals barred from the political—which give them the same *de facto* rights as the citizen enjoys *de jure*.

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<sup>327</sup> *On Revolution*, 212-13.

<sup>328</sup> Cohen, 173.

<sup>329</sup> *Ibid.*, 180.

<sup>330</sup> Rancière, 302.

<sup>331</sup> *Ibid.*

<sup>332</sup> *Ibid.*

<sup>333</sup> *Ibid.*, 305.

Rancière believes that Arendt's desperate attempts to keep the political free of apolitical, private affairs, would effectively have the exact opposite effect; it would lead to the suspension of politics.<sup>334</sup> By casting out the, often ambiguous, actors that partake in the political, you quickly depopulate it. The very attempt to protect the political from state power and private life is the very reason it eventually succumbs to these forces. Therefore, he treats politics not as a 'sphere' to which you either belong or do not, as Arendt does, but as the 'process' of joining that sphere.<sup>335</sup>

By seeing politics as a process of gaining inclusion within the political sphere through action, rather than merely action within that sphere, political predicates such as 'man' and 'citizen' no longer belong to definite subjects—whether they be citizens within the political or mere *humans* forever condemned to remain outside. Instead, they become 'open predicates,' belonging to anyone willing to test the boundaries of democracy by pitting their 'written' rights against reality. The subject of the *Rights of Man* is disputable precisely because its predicates are political. There is no definite border between what the *Rights of Man* signify and who they concern in any given scenario. If you say that all men are born free and equal—that all have the same rights—then the logical next question is what 'men' signifies. Arendt distinguishes between citizenship and humanity, but fails to recognise that the very act of drawing this line determines the answer. Where you decide to draw this distinction is the point of the matter. "Politics," Rancière claims, "is about that border."<sup>336</sup>

Outlining a steadfast division between the political and non-political—by providing each action with its proper place in life—creates a self-perpetuating cycle which reasserts who is and who is not worthy of partaking in certain actions. This identification of actual subjects with rights is an active form of de-politicisation; of making certain voices politically irrelevant. De-politicisation closes off all areas where dissensus might appear; turning an imagined, and highly arbitrary, delineation between political and non-political subjects into reality. It takes *abstract* human rights and turns them into *real* rights; giving them a designated location and attaching them to a certain, actual part of the population; predetermining their role in public life.

While Arendt sees civil society as scandalising the political by admitting violence—she was highly critical of the *sans-culottes* and their demands for bread forcing the convention to make "food, dress, and the reproduction of the

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<sup>334</sup> Ibid., 306.

<sup>335</sup> Ibid., 305.

<sup>336</sup> Ibid., 303.

species'... the ultimate end of government and power"—the social may be used against the mechanical routines of de-politicisation.<sup>337</sup> Civil society is capable of generating new forms of political legitimacy that defy pre-determined roles barring individuals from the political. It can provide a platform for people who were forcibly denied access to political life to create a new political community within which to act out their rights.

*Civil society establishes connections and relations, as the proliferation today on the national and international levels of a wide and highly articulated range of associations, nongovernmental organisations, committees, interconnected publics, and social movements witnesses.*<sup>338</sup>

These proto-political spaces, in turn, can create the trust necessary for civil rights to become tautological. The way in which civil society establishes new theatres for political action provide Arendt's politics of rights with the universal dimension required for them to be seen as *human* rights. "These developments," as Cohen argues, "give weight and body as it were to the idea of universal human rights, institutionalising them in a number of instances without reincorporating right and power on a single level."<sup>339</sup>

Claude Lefort has argued that it is just this indeterminacy that surrounds human rights discourse that makes them capable of inspiring political action. The line between citizen and the 'abstract' subject that is man, as well as the line between which rights ought to exist and which not, is continually being redrawn by different political actors. Consequently, it is impossible for any single actor to claim to occupy a position where she has authority on making these determinations with any certainty and granting others the rights she determined they are entitled to. The indeterminacy of what human rights are and who their bearers are, become the greatest advantage for rights discourse; they provide a "groundless ground" which inspires ever more creativity and action.<sup>340</sup>

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<sup>337</sup> Arendt, *On Revolution*, 109.

<sup>338</sup> Cohen, 181. It is surprising that Arendt did not recognise the potential of civil society in challenging established political predicates, especially given her own background as a stateless person, which saw her barred from politics. Nonetheless, she challenged this expulsion as a member of civil society. The "period when she had no political rights—between her flight from Nazi Germany in 1933 and her receipt of American citizenship in 1951—was her most active politically." See; Elisabeth Young-Bruehl, *Hannah Arendt: For Love of the World* (New Haven: Yale University Press, 1982), 113.

<sup>339</sup> Cohen.

<sup>340</sup> Claude Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, ed. John B. Thomson (Cambridge: Polity, 1986), 257.

As a ‘generative principle’ of politics, Lefort argues, human rights have a ‘symbolic efficacy’.<sup>341</sup> Even if only imagined, the clout given to principles like human rights can legitimise those regimes that guarantee them while inspiring the contestation of those that do not. For Lefort, unlike for the system-builders, what is important about these principles is not their constitutional availability, but the impetus they give to action. Rights, in this sense, are not pre-political—as for the liberals—or anti-political—as for the neo-republicans—but they are “the product of past struggles and the object of present ones.”<sup>342</sup> Beyond emanating from the actions of their bearers, they inspire further action to defend these rights, expand them, or even claim new ones.

Because this discourse remains ever open, it allows all those who are marginalised and excluded from the political to claim inclusion in its name; it gives the silenced a voice with which to speak in public. Because neither rights nor bearer are set in stone, those deprived of them are able to contest their exclusion from the community of rights-bearers. Take, for example, the liberation of the French press. The French people—or, at least, a vocal republican minority—simply played out in practice its political rights and freedom of expression; through this very act contesting their denial. This performance of the rights they did not legally have made it clear that, in fact, they did.

Regardless of the fact that only on August 26, 1793, when the *Rights of Man* were declared, the admission of multiple voices to the public sphere became legal, the right to free speech existed as a *de facto* right ever since 1788, when civil society opened up a political space. “Rights,” then, “are not established in principle and then protected by power, be it by that of one’s state or another; they are invented and reinvented by particular actors through the very practice of claiming them.”<sup>343</sup>

*Human Rights have thus become a central site of the emancipatory logic of modern politics, an expression of how the principle of equal freedom cannot be contained with existing institutions or conceptions of rights but rather invites its extension to new domains, settings, and scales.*<sup>344</sup>

Arendt’s view of rights politics, with rights emanating directly from people acting in concert, means rights, as social constructs, are open to reconstruction. This can be further developed by looking beyond her negative view of the social. Human rights as a principle, Lefort argued, “eludes all power which would claim hold of

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<sup>341</sup> Ibid., 260.

<sup>342</sup> Ingram, “What Is a ‘Right to Have Rights’,” 411.

<sup>343</sup> Ibid.

<sup>344</sup> Ibid., 411.

it.”<sup>345</sup> Instead, “these rights go beyond any particular formulation which has been given them; and this means that their formulation contains the demand for their reformulation.”<sup>346</sup> Human rights *as* action—*as* politics—necessarily extends beyond its own preconceived frameworks.

### **A New Guarantee on Earth**

For Philip Pettit, the main problem with existing international institutions, through which he hopes to universalise the rights of the citizen, is not only that they are insufficiently geared towards non-domination, but also that they currently lack the enforcement power to overcome the sovereignty of nation-states.<sup>347</sup> Consequently, neo-republicans seek to vest more sovereignty in a republican community of nation-states. By turning the globe into a confederation or union of neo-republican states, overseen by a patchwork of international legal institutions, the difference between man and citizen would be eradicated. This would imbue every individual on earth with the rights of citizens. Although Pettit struggled to link up this end with a politics to facilitate it, using Arendt’s conception of rights politics as direct action could provide this means.

Seemingly, such thinking would not be unreasonable given Arendt’s stance on rights politics. Whereas she objected to anything resembling a world state from a practical perspective, Canovan mentions that Arendt was insistent that the actions and agreements of political actors are what give legitimacy and authority to political and legal institutions.<sup>348</sup> Additionally, Cohen pointed out that Arendt’s conception of law was heavily influenced by Roman classicism; understanding it as “establishing connections and relationships (instead of law as the will of the sovereign)... Taken together, these ideas would allow for a conception of international law whose foundations lie in agreements and whose authority derives from the public commitments that give rise to them.”<sup>349</sup> Declarations of rights, backed up by treaties, international law, supranational courts, and projects of federalisation, then, could serve to temper state sovereignty; ensuring that “in matters of emigration, naturalisation, nationality and expulsion,” states would not have the power to cast citizens out into the cold that is a-political life.<sup>350</sup>

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<sup>345</sup> Lefort, 258.

<sup>346</sup> Ibid.

<sup>347</sup> Although unconditional national sovereignty is no longer a fact of international relations, with international law restricting states’ actions in many areas, including human rights. See; Karen J Alter, “The European Court’s Political Power,” *West European Politics* 19, no. 3 (1996).

<sup>348</sup> Margaret Canovan, *Hannah Arendt: A Reinterpretation of Her Political Thought* (Cambridge: Cambridge University Press, 1994), 195, 221.

<sup>349</sup> Cohen, 176.

<sup>350</sup> Arendt, *Origins*, 278.

While Arendt had all the theoretical tools needed to advocate a system of international law to constrain state sovereignty, she instead regarded such an approach not only as “a forbidding nightmare of tyranny,” but also as “the end of all political life as we know it.”<sup>351</sup> Such a global project of institutionalisation, she argues, will inevitably “overcome and eliminate authentic politics, that is, different people getting along with each other in the full force of their power.”<sup>352</sup> Arendt doubted that ‘authentic politics’ would be possible on so large a scale, “for that would entail extending this specifically political form of recognition and interaction to literally everyone.”<sup>353</sup> Unlike the neo-republican thinkers—who see democracy as an entirely instrumental arrangement—Arendt understands action as a good in and of itself. Consequently, the anti-political tendencies that system-building entails pose an existential danger to the very actions that generate rights. The loss of human rights during totalitarian outbursts like the Terror, first and foremost, involved the loss “both of language and of the political life that is opened up and borne by language.”<sup>354</sup>

For Arendt, “the appearance of freedom... coincides with the performing act... To be free and to act [in the public realm] are the same.”<sup>355</sup> However, as we have seen, action and plurality are deeply intertwined with uncertainty, meaning that the occurrence of political action is never guaranteed to happen. Language and action resist identification and understanding; we cannot explain their occurrence because it is not determined that individuals will take up the call to speak. Freedom’s fleeting nature means that it requires a form of foundation if it wishes to continue its own existence; necessarily entangling it with non-political practices.<sup>356</sup>

While the freedom to shape our own reality always exists, it is but a potential force unless it is actualised. Arendt describes this by using a metaphor of theatre. Whereas a work of art created independently, such as any literary or painted masterpiece, can only be appreciated as a finished object, performance arts such as music and theatre are appreciated as a process. These art forms exist only in action and are utterly dependent on the presence of others; meaning that an organised public stage is needed to guarantee their existence, and particularly their *continued* existence. Similarly, the manifestation of freedom depends on its performance in a public sphere, which needs to be built on a more stable foundation than the mere

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<sup>351</sup> *Men in Dark Times*, 61.

<sup>352</sup> *Origins*, 142. (at n. 38).

<sup>353</sup> Ingram, “What Is a ‘Right to Have Rights’,” 410.

<sup>354</sup> Hamacher and Mendoza-de Jesús, 192.

<sup>355</sup> Arendt, *Between Past and Future*, 153.

<sup>356</sup> Keenan.

possibility of action occurring. Therefore, “without a politically guaranteed public realm, freedom lacks the worldly space to make its appearance.”<sup>357</sup>

To Arendt, promises such as constitutions, treaties, and laws hold the political together by guaranteeing such a space for future action. “Binding oneself through promises, serves to set up in the ocean of uncertainty, which the future is by definition, islands of security without which not even continuity, let alone durability of any kind, would be possible in the relationships between men.”<sup>358</sup> Institutions are the framework for political life, as well as one of the more important results of politics, for it sustains future politics. Because new beginnings are indeterminate and difficult to explain and remember, political foundations are needed if we wish freedom to be more than a random, occasional occurrence. “Yet such foundations, unless they somehow are able to build within themselves a respect for the fragile, unpredictable temporality of freedom, threaten to assist in... forgetting” the importance of free action.<sup>359</sup>

To continue Arendt’s metaphor, while a constitution is necessary to provide a permanent stage for action, constitution-building runs the risk of being treated like a work of fine art. The neo-republican exercise of system-building, for example, is very much an artwork which is to be unveiled as a finished product; denying the actors on stage the freedom to create new beginnings and adapt the system they inhabit. Where institutionalisation undergirds claims to future politics, it can just as easily deny it. As Markell argues, reducing democratic politics either to a finished product that is identified with public good—and should therefore not be tampered with—or to the faith that citizens will act spontaneously will ultimately fall short of all expectations.<sup>360</sup> From the perspective of the stage-designers...

*for democratic government to be genuinely autonomous self-government, the citizen body must form a “people” that possesses and displays a general will, without lapsing into irrationality or partiality—but the prior work of molding and forming that this requires may belie the autonomy it is supposed to produce... Likewise, for democratic critics of rule, genuinely democratic agency lies in a power of spontaneous interruption that needs somehow to be awakened or instilled in those who are subject to the controlling force of regimes—but the very nature of spontaneity so conceived makes it difficult in principle to locate or produce.*<sup>361</sup>

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<sup>357</sup> Arendt, *Between Past and Future*, 149.

<sup>358</sup> *Human Condition*, 237.

<sup>359</sup> Keenan, 300.

<sup>360</sup> Markell, “The Rule of the People,” 12.

<sup>361</sup> *Ibid.*



Arendt, rather than choosing between the two poles of determination and spontaneity, or searching for the golden middle between them, discusses how the two interpretations provide opportunities for action in different ways. For Arendt, rather than institutionalism in and of itself, “the most fundamental threat to democratic political activity lies in the loss of responsiveness to events: the erosion of the contexts in which action makes sense;” where language is deprived of its judgement.<sup>362</sup> From Arendt’s perspective, understanding democracy as a system in which the people rule over themselves reduces it to little more than a dictatorship. Where the people as a collective or a detached institutional system have assumed absolute sovereignty, totality follows. Conceiving of it as perpetual interruption of orderly processes, however, reduces freedom to ‘liberation’. It inverts the idea of politics as rule into spontaneous violent convulsions against the *status quo*; nothing but sporadic fits of action to overthrow a tyrant which quickly devolve into tyranny once more.<sup>363</sup> The most fundamental threat to democracy, then, is a loss of contexts that inspire action.

Attempts to pry open that space of indeterminacy where the worldly interactions between individuals generate rights depend, therefore, on establishing constitutional limitations to sovereignty. Meanwhile, they must recognise that “the primary impetus for such rights will always come from... the praxis of citizens who insist upon these rights and who are prepared to back up this insistence through political means.”<sup>364</sup> The only way to counter the threat sovereignty presents to rights and freedoms, Arendt argues, is through such an associational politics of direct action. Because this represents “a completely different principle of organisation;... one which begins from below, continues upward, and finally leads to parliament,” it is inherently unpredictable. Consequently, it is nigh-impossible to develop a blueprint or a plan for such politics to follow.<sup>365</sup>

Consequently, Isaac remarks, Arendt is quick to point out “that the details of such a politics are less important than its civic spirit, a spirit that resists the deracinating tendencies of modern political life.”<sup>366</sup> The direct action that Arendt encourages does not gift citizens a voice; instead, it is the embodiment of citizens claiming their own voice and empowering themselves by acting in concert. The process of claiming rights is what generates them, yet to claim their continued existence

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<sup>362</sup> Ibid.

<sup>363</sup> Arendt, *On Revolution*, 142.

<sup>364</sup> Isaac, 70.

<sup>365</sup> Hannah Arendt, *Crises of the Republic: Lying in Politics; Civil Disobedience; on Violence; Thoughts on Politics and Revolution* (Boston: Houghton Mifflin Harcourt, 1972), 231-33.

<sup>366</sup> Isaac, 71.

despite, or in spite of, further action, destroys them. It is only through the continued use of a shared political language that they persist. Thus, as Hamacher argues...

*the right to have rights should not be misunderstood as the coercion to have rights [through institutions]; to be able to remain this 'right,' it must be thought of and used as such a right that would not exhaust itself in any positive right and in any series of rights, however long it may be. For this reason, it must also embrace the refusal or the inability to demand, posit, and use rights.*<sup>367</sup>

Human rights, as Arendt argued, will always be the “tenuous results of a politics that seeks to establish them, a vigorous politics intent on constituting relatively secure spaces of human freedom and dignity.”<sup>368</sup> The Revolution of the Press, which preceded the French Revolution proper, only underscores this. Rather than being granted the right to express oneself freely, the revolutionaries simply spoke up in public, creating the right to do so where none existed and none had been bestowed upon them. The attainment of negative liberties then, requires acting out positive liberties—whether the powers that be deem this to be ‘legitimate’ or not. Those that wish to give life to their ‘written’ rights—those unicorns which exist only as mythical entitlements of the abstract human—can but take responsibility for those wishes. In order to claim the rights of citizens, putting them to work like mules, they must act as citizens; building on promises a stage where their voices can be heard.

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<sup>367</sup> Hamacher and Mendoza-de Jesús, 190.

<sup>368</sup> Isaac, 72.

# 6.

## Conclusion

*“Human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities.”*

- Hannah Arendt <sup>369</sup>

### **Acting out the rights one has not**

The Revolution was able to reinvent France’s political structures mainly because revolutionary actors invaded an empty political space and proliferated within it. While it may seem like “the Revolution mobilised society and disarmed the state,” Furet argues that, since 1778, France had essentially been anarchic.<sup>370</sup> Although the people did need to be mobilised, there was very little that needed to be disarmed. For years, “Louis XVI continued to rally the consensus of his subjects round himself, but behind that traditional façade lay panic and disorder; while royal authority was nominally still respected, its legitimacy no longer extended to the agents of the Crown.”<sup>371</sup> Society, left only with the symbols of royal authority, had only to rid itself of those symbolic powers; there was no actual power structure standing in its way.

This situation of an abjectly powerless monarchy was not entirely new. It can be argued that it had persisted for decades without serious challenges from civil society. The *ancien régime* was best characterised, Furet argued, as a system whereby, “from above, extraordinarily minute regulations for everything were handed down; [while] below, disobedience was chronic, a situation reflected in the fact that the same edicts or arrest were promulgated every few years.”<sup>372</sup> Similarly,

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<sup>369</sup> Arendt, *Origins*, ix.

<sup>370</sup> Furet, 24.

<sup>371</sup> Ibid.

<sup>372</sup> Ibid., 143.

Tocqueville, writing about pre-revolutionary France, observed; “rigid rules, lax practices; such is its character.”<sup>373</sup> The only reason the monarchy had not collapsed earlier was that no collective action was organised against it.

Until the commons successfully revolted against the King in 1789, it had not been discovered quite how weak the King’s position was. While speech had enjoyed *de facto* liberation from censorship for several years, internal inhibitions created a voluntary consent to the institutions that everyone believed still wielded power. “1789 opened a period when history was set adrift, once it was discovered that the actors in the theatre of the *ancien régime* were mere shadows.”<sup>374</sup> Essentially, the Revolution merely gave itself the mythic status of having defeated a state which barely existed. “Repression became intolerable,” Furet observed, “only when it became ineffectual.”<sup>375</sup>

Although the weakness of Louis’ position became evident after the revolutionaries challenged political predicates, regrettably, rights politics does not always play out so fruitfully. Take, for example, Olympe de Gouges; one of the Revolution’s most noteworthy feminist activists, in whose work some of the most absurd contradictions of the Revolution were illuminated. The Constitution of 1791—which reconciled its commitment to liberty with a fear of democracy—deemed only independent men of measurable wealth over the age of 25 to be ‘active’ citizens capable of partaking in public affairs.<sup>376</sup>

Gouges, however, claimed her “status as an active citizen by rushing into the fray, writing and speaking on behalf of a number of causes.”<sup>377</sup> She became emblematic of Camille Desmoulins’ claim against the distinction between ‘active’ and ‘passive’ citizens that “the active citizens are those who took the Bastille.”<sup>378</sup> Her very presence in political life asserted her status as an active citizen. She displays in action Rancière’s conception of human rights as the “the rights of those who have not the rights that they have and have the rights that they have not.”<sup>379</sup> Her participation in political life is an example of the acting out of rights she is prohibited from having, while at the same time her writings make clear that women

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<sup>373</sup> Alexis de Tocqueville, quoted in: *ibid.*

<sup>374</sup> *Ibid.*, 45.

<sup>375</sup> *Ibid.*, 24.

<sup>376</sup> These requirements were later reduced to all self-supporting men over the age of 21. ‘Passive’ citizens were guaranteed the protections of the rights of man, but were not allowed to be ‘active’ in public life. See; Joan Wallach Scott, “French Feminists and the Rights of ‘Man’: Olympe De Gouges’s Declarations” (paper presented at the History Workshop, 1989).

<sup>377</sup> *Ibid.*, 8.

<sup>378</sup> Camille Desmoulins, quoted in: Michael John Sydenham, *The French Revolution* (London: BT Batsford, 1965), 67.

<sup>379</sup> Rancière, 302.

are arbitrarily denied the ‘written’ rights affirmed by the *Rights of Man*.<sup>380</sup> Her *Declaration of the Rights of Woman and [Female] Citizen*, for example, protested that because “woman has the right to go to the scaffold; she ought equally to have the right to mount the rostrum;” drawing attention to the fact that women were simultaneously treated as inherently political subjects and denied participation from politics.<sup>381</sup>

Nonetheless, her political identity proved vulnerable and contested at best when those willing to tolerate her unilaterally-declared status as active citizen were themselves cast from the political by those who did not. Those who believed that all have a right to speak in public—apart from women—“eventually lost the struggle for the Revolution and for France... because they did not believe you must ‘immolate human victims on the altar of liberty,’ because they were less ruthless and dishonest than their rivals.”<sup>382</sup> As, by means of popular and police violence, the number of voices that were politically relevant were whittled back down to one—that of Robespierre speaking for ‘the people’—de Gouges was sent to the guillotine in November of 1793.

It was not for her feminism, in the end, that she was executed, but for plastering the walls of Paris with posters and petitions that questioned the legitimacy of Robespierre as companionless sovereign. Her mere presence in the public sphere proved as much a threat to the unitary voice of the sovereign ‘people’ as the revolutionaries of 1789 had been to the King. The ‘people’, however, in the guise of Jacobin partisans, responded with unrelenting force where the King’s power crumbled.

“The Revolution,” as Furet puts it, marked “the beginning of a theatre in which language [was] freed from all constraints,” yet this language found “a public characterised by its volatility” which right away placed new constraints on who was eligible to partake in this public discourse.<sup>383</sup> Demands for women’s rights, for example, were not to be taken seriously as *real* politics.<sup>384</sup> As Chaumette wrote of de Gouges a few days after her death, in a clear warning to those women we dared question the roles they had been assigned because of their sex;

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<sup>380</sup> Man, here, representing a political subject without a specific gender.

<sup>381</sup> Olympe De Gouges, “Declaration of the Rights of Woman and the Female Citizen,” (1791).

<sup>382</sup> Israel, *Revolutionary Ideas*, 280.

<sup>383</sup> Furet, 45.

<sup>384</sup> As Joan Scott pointed out, feminists’ claims for women’s rights were seen more as an illness than a form of politics. “In 1904, a Dr Guillois analysed de Gouges as a case of revolutionary hysteria. Her abnormal sexuality (caused by excessive menstrual flow), her narcissicism (evinced by a predilection for daily baths), and her entire lack of moral sense (proven by her repeated refusal to remarry) constituted the definitive signs of her mental pathology. A defective femininity, in short, had led to her unfortunate interest in politics.” See; Scott, 17.

*remember that virago, that woman-man (cette femme-homme), the impudent Olympe de Gouges, who abandoned all the cares of her household because she wanted to engage in politics and commit crimes. This forgetfulness of the virtues of her sex led her to the scaffold.*<sup>385</sup>

A woman's place was not in politics, and woe betide those who question their roles using politics. One's rights may be generated by partaking in public discourse, but if others are willing to resort to extreme violence to keep individuals out of the political, the rights of the citizen may remain elusive. Action becomes severe and demanding without the solidarity of one's community. To return to Arendt's metaphor of the theatre, the performance of an actress has more efficacy if her fellow actors support her role and the audience is willing to watch. Acting becomes infinitely more difficult when the audience beheads anyone who mounts the stage.

## **Discussion**

In this thesis, I have outlined the contemporary liberal image of human rights politics and two republican alternatives; the neo-republican model of institutionalisation and the Arendtian politics of direct action. The three different visions all propose alternative visions of human rights politics in an attempt to solve Arendt's paradox; the contradiction that rights borne in theory are so often neglected in practice. There are several lessons for practical human rights politics that have become clear discussing these different approaches. We can, moreover, draw from this analysis several conclusions regarding the relationship between rights and liberty.

Firstly, in regards to human rights politics, the liberal view associated with Ignatieff seeks to utilise power politics in ridding the world of human rights abuses. It regards human rights as inalienable and merely seeks to guarantee them in practice by whichever means most readily available. It can be understood as an attempt to directly bridge the gap between morality and power politics. In practical terms, this implies a heavy reliance on humanitarian intervention; if individuals are deprived of their rights, then it is the duty of the powerful to stop the perpetrators of these abuses in their tracks. This knee-jerk reaction in the face of undisputable wrongs, however, embraces a form of politics which further empowers arbitrary forces in an attempt to protect the powerless. Those intervening on behalf of human rights achieve a position of power where they are constrained by the very same strictures which their predecessors disregarded so effortlessly.

In seeking to overthrow a malevolent power committing human rights abuses, this pragmatic liberal politics replaces it with an even more powerful, equally

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<sup>385</sup> Pierre Gaspard Chaumette, quoted in: *ibid.*, 16-17.

unaccountable actor, and hopes that it remains benevolent. Human rights, consequently, can only be guaranteed by those wielding power; reducing rights to little more a gift which the powerful may choose to give to the powerless. While this paradigmatic liberal approach to human rights politics may be well-intentioned, they are unable to link the means they use to guarantee rights to an effective end; both before and after the intervention, the powerless will remain dependent on the good-will of the sovereign. Regardless of whether this sovereign power is benevolently-minded, it will always be a philanthropic entity; those under its yoke have no (anti-)power of their own.

The neo-republican alternative to the current liberal framework, rather than entrusting the protection of rights to the whims of those wielding power, seeks to immortalise them in institutions. While this presents us with a view of how rights ought to be institutionalised, it provides us with no means of achieving this beyond the power-politics of the *status quo*. It is, thus, as incapable of thinking means and ends together. Pettit's critique of the liberal human rights regime is centred on the assertion that freedom is not something that is given to the powerless by the powerful when they feel particularly benevolent. Instead, they only deem rights to be available when they have their foundations in effective citizenship. Rather than depending on the powerful to magnanimously protect the weak, they seek to replace the highly unequal *status quo* with a more balanced distribution of power.

Their focus, consequently, is on the establishment of a well-ordered republic where human rights are guaranteed institutionally rather than through a kneejerk response to human rights crises. Where the liberal tradition struggled to conceive of an end to which their means could work, the neo-republicans, while constructing an end to work towards, leave unanswered the question of how to get there. It does not actually solve the problematic relationship between human rights politics and power that the liberal conception suffered from; instead, it places this problem in the hands of those who building the neo-republican constitution. Whereas the successful establishment of neo-republican institutions could address the problems that human rights politics experiences with existing power imbalances, the institution builders first have to overcome this very roadblock; introducing a brand new paradox.

Both the liberal story of philanthropy and the neo-republican account of 'voluntary' submission to impassive institutions do not explain how, historically, individuals have achieved autonomy. In fact, the Arendtian model is the only model discussed here which—by focusing on the actions of those fighting for their liberty—provides us with both the means and ends of human rights politics. "What democratises politics," as Ingram characterises her argument, "is a durable transfer of power from those who have too much of it to those who have too little. The only

reliable agent of such a transfer is the claimants themselves, which Arendt helps us see is a matter not of advocacy but of action.”<sup>386</sup> While, similarly to Pettit’s neo-republicanism, Arendt sees citizenship to be the cornerstone of guaranteeing one’s rights, she warns us of attempting to maintain a rights regime through nothing but institutions. Instead, to her, these relatively safe spaces of dignity and liberty are the fragile and tenuous results of direct participation in politics. Consequently, we should “regard rights as secure only when they are based on shared understandings and practices” which are consistently renewed through action.<sup>387</sup>

These three images of rights politics are not exclusive when attempting to guarantee ‘written’ rights in practice. Instead, depending on the context, each can be appropriate. There may, for example, be some truth to the claim that the power-politics of humanitarian intervention is at times ‘the most we can hope for’. As the case of Olympe de Gouges demonstrated, active participation depends on solidarity from fellow citizens, especially when faced with a tyrannical government willing to resort to violence. Her rights, generated through activity in the public sphere, were but tenuous achievements that collapsed when Robespierre’s dictatorship was no longer willing to tolerate her participation. Seeing as in today’s liberal democracies—where action is not met with brutality—one is hard-pressed to find responsiveness to events, it may seem utopian to expect sustained solidarity with those who are deprived of their rights under oppressive conditions.

The unpredictability of action means that it does not need to occur even when the conditions are favourable, as under a sovereign power that has made the active decision not to resort to violence. It is the more violent alternative that is most problematic; under unfavourable conditions, it may become much more difficult to claim a space in political life. Where the French Revolution of the Press managed to develop a space of freedom for its participants, we know retrospectively that this was aided by the fact that the *ancien régime* had all but collapsed, and was incapable of using force against the revolutionaries. Under the Jacobin Reign of Terror, however, because those that tried to assert their voice faced the harshest of penalties, many may have been deterred from ‘illegally’ speaking in public. Consequently, in the case of gross rights violations, it is easy to see how the ‘gift’ of protection by an overbearing military power may be preferable to being left at the mercy of those violating one’s rights—hoping that isolated individuals will begin to act *en masse*. Nonetheless, it must be recognised that action is the only guarantee of rights—while it may be possible to support action through intervention, intervention cannot replace action.

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<sup>386</sup> Ingram, “What Is a ‘Right to Have Rights’,” 413.

<sup>387</sup> *Ibid.*, 414.



Where liberal pragmatism may provide us with a means of combating tyranny, the neo-republican vision of human rights politics can provide us with a standard against which to criticise defects in existing institutions; it provides us with a blueprint to work towards if gaps remain between norm and fact. Furthermore, given the unpredictability of action, an institutional stage, such as that promoted by neo-republican thinkers, may assist in its remembrance and perseverance. Finally, the Arendtian approach reminds us of the dangers of using violence on behalf of unmediated moral claims as well as of the problems involved with establishing, as if in one fell swoop, a set of institutions which must remain forever frozen in time.

The pursuit of a truly enlightened system of institutions can, similarly to the liberal aversion to standing by while human rights violations occur all around us, justify a politics which themselves facilitate rights violations. Where action without an institutional stage—such as the radical democratic politics that may stem from Lefort and Ranciere’s work or Ignatieff’s intuitive rights politics—leads to uncoordinated fits of liberation, an over-developed institutional stage—such as that advocated by Pettit—may stifle action completely.<sup>388</sup> As Arendt argued, contexts which inspire action require a ‘stage’ on which citizens can perform, yet their work must remain akin to performance art. The stage exists to facilitate citizens’ appearance; it ought not to be interpreted as a piece of fine art, lest it suppresses the artistic freedom creativity which produces rights.

Untangling the human rights regime from Arendt’s paradox requires taking responsibility for one’s own rights and supporting others when they do the same. While rights-as-politics may explain more effectively than liberal and neo-republican approaches how liberty, as a political phenomenon, occurs, it does not close the book on human rights theory. Since political action does not need to happen, and, as Berlin argued, liberty is but one end among many principles of value to a society, it is difficult to rely upon it as a steadfast guarantee of rights and freedoms.<sup>389</sup> An important issue that the Arendtian model leaves wide open, and which may require more research, regards the development of a theory outlining what drives the voiceless to make their voices heard. Without being able to explain action, it may seem utopian to interpret Arendt’s model of rights politics as anything more than random, occasional fits of action. While there has been significant research into questions of how plurality can be fostered and how direct action can be encouraged, they are far from being answered satisfactorily.<sup>390</sup>

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<sup>388</sup> "The Politics of Claude Lefort."

<sup>389</sup> Berlin, 321.

<sup>390</sup> For a roadmap of some of these discussions, see; Markell, "The Rule of the People."

The democratic, Arendtian approach insists on the importance of positive freedom to the process of generating rights. Her conception of human rights politics can be understood as individuals and groups claiming the anti-power needed to meaningfully participate in making decisions about their collective futures. We should view human rights, then, as the range of capacities that citizens possess, rather than merely the institutional guarantees of their rights. Since rights are at their most secure as expressions of autonomous action—as the creation of those who are willing to work for them—conceptions of rights as moral absolutes may lead to attempts to impose them without the input of those being oppressed. In the end, individuals must take responsibility for their own rights; no matter how difficult the situation they find themselves in. “The political power of humanity,” as Isaac suggested, has...

*produced a world of competitive nation-states concentrating human allegiances and mobilizing enormous human energies into causes that [are] all too often exclusivist and hostile. In the face of these terrific, terrifying feats of human initiative, what seemed most obvious, and most disturbing, was less the power than the frailty of humankind, the vulnerability of humans, who have created an enormously complex, interdependent world and now must learn to assume responsibility for living together in this world.*

While the paternalism involved in ignoring the fact that direct action cannot be superseded by humanitarian intervention is clear enough, a much more dangerous side-effect is that it undermines the politics which guarantees rights. As Brown argued, “human rights activism is a moral-political project and if it displaces, competes with, refuses, or rejects other political projects, including those also aimed at producing justice, then it is not merely a tactic but a particular form of political power carrying a particular image of justice.”<sup>391</sup> This is as true for laws and institutions as it is for humanitarian intervention. While the institutionalisation of rights is undoubtedly important, if they are imposed by outsiders or elites, rather than as the result of shared understandings and promises between citizens, they serve to disempower the individuals they were meant to benefit. Thus, while it may be possible to aid others in securing their rights, one cannot secure the rights of others *for* them by intervening in their politics.

While anti-political projects may indeed secure human dignity, the same cannot be said for freedom. If we treat the human rights regime as the implementation of “a

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<sup>391</sup> Brown, “The Most We Can Hope For...” 453.

particular image of justice” which somehow is more enlightened than countervailing images, then the despot, in the words of Le Corbusier;

*is not a man. It is the Plan. The correct, realistic, exact plan, the one that will provide your solution once the problem has been posited clearly, in its entirety, in its indispensable harmony. This plan has been drawn up well away from the frenzy in the mayor's office or the town hall, from the cries of the electorate or the laments of society's victims. It has been drawn up by serene and lucid minds. It has taken account of nothing but human truths.*<sup>392</sup>

It is here that several important conclusions can be drawn on the relationship between human rights and freedom, and it is on that note that I wish to finish this discussion. Human rights, throughout the latter half of the twentieth century, have represented a global project linked closely to negative freedom. As we saw in the first section of this paper, Berlin argued that negative freedom “seems to be a truer and more human ideal than the goals of those who seek in the great disciplined, authoritarian structures the ideal of ‘positive’ self-mastery by classes, or peoples, or the whole of mankind. It is truer, because it does, at least, recognise the fact that human goals are many.”<sup>393</sup> In his later work, however, he revised this critique; no longer blaming positive freedom, but the totalising discourse that was attached to it by the fascist and communist regimes that flourished in Europe early in the twentieth century.<sup>394</sup>

Consequently, rather than opposing negative and positive freedom when discussing human rights, he pitted pluralism against monistic, totalitarian tendencies. Berlin argued that attacking pluralism—reducing the number of voices that are able to make themselves heard in public life—is inimical both to positive as well as negative liberty.<sup>395</sup> Because human beings are “unpredictably self-transforming,” those at the helm of any anti-political project always end up facing a choice between accepting a plurality of voices and enforcing the singularity of their own vision.<sup>396</sup> As Berlin argued;

*if the facts—that is, the behaviour of living human beings—are recalcitrant to such an experiment, the experimenter becomes annoyed and tries to alter the facts to fit the theory, which, in practice, means a*

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<sup>392</sup> Charles-Édouard Jeanneret, *Radiant City: Elements of a Doctrine of Urbanism to Be Used as the Basis of Our Machine Age Civilization* (London: Orion Press, 1930), 154.

<sup>393</sup> Berlin, 216-17.

<sup>394</sup> *Ibid.*, 322-30.

<sup>395</sup> *Ibid.*, 216-17.

<sup>396</sup> *Ibid.*

*kind of vivisection of societies until they become what the theory originally declared that the experiment should have caused them to be.*<sup>397</sup>

Promoting human rights as an attempt to secure liberty cannot, as the system-builders do, deprive men in the name of an arbitrary ideal, of their capacity to decide on their collective futures. It is this very positive freedom, through participation in human affairs, which begets freedom and dignity in the worldly spaces between citizens. Human rights politics and advocacy, then, requires seeing democratic politics and the actions of political subjects as the generative force of rights; limiting rights activists to supporting and enabling such a politics. Indispensable to it, in the words of Berlin, is the maturity “to choose ends without claiming eternal validity for them.”<sup>398</sup> Without these insights, one may well organise human life in such a way as to guarantee human rights while undermining the autonomy they stand for. Sovereignty and totality may well guarantee human dignity, but it leaves liberty by the wayside. Liberty, itself, can only be the product of turning human rights from unicorns into mules through direct participation in politics.

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<sup>397</sup> Isaiah Berlin, quoted in: Scott, 347.

<sup>398</sup> Berlin, 217.

# 7.

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