A Democracy Without a People? The 'Rights of Man' in French Contemporary Political Thought

Justine Lacroix

Université libre de Bruxelles

At the end of the 1970s, philosopher Claude Lefort emphasised – against the excessively restrictive Marxist vision – the political dynamics attached to the affirmation of human rights. This theme has remained predominant in theoretical debate about democracy in France until the present day. A first strand of thought considers the primacy of human rights as a driver of depoliticisation. Authors such as Marcel Gauchet and Pierre Manent have argued that the vitality of the plural society described by Lefort could ultimately backfire on democracy itself. This article argues that this school of thought rests on a narrow conception of rights and an insufficiently dialectical conception of the relationship between rights and practice. Consequently, it defends Lefort's position by relying heavily on a second strand of thought that conceives human rights as the way forward for a radicalisation of democratic ambitions.

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In a short publication of 1991 analysing the concept of 'rights', Michael Freeden stated that 'the concept of right has become one of the most reputable and positively connoted in political theory'. He added that 'only a minority of viewpoints, such as the Marxist critique and some extreme versions of consequentialism, point to the possibility that adherence to rights might cause social and human damage' (Freeden, 1991, p. 1). This argument, already controversial twenty years ago, certainly needs to be reformulated today.

To be sure, rights – and above all human rights[1] – have become the main criterion by which political legitimacy is judged, and the common idiom of social criticism in global politics (Beitz, 2009; Moyn, 2010). 'Rights liberalism', however – and particularly its emphasis on the supremacy of individual rights – has provoked significant objections from political theorists, expressing what Jeremy Waldron described as 'the shadow cast by the prevalence of rights discourse in our modern political language' (Waldron, 1987, p. 2).

More precisely, the *use* allegedly made of human rights in contemporary democracies is the subject of vehement critiques. The primacy accorded to individual rights, above and beyond a sense of belonging or loyalty that ties citizens to their political community, has given rise to significant objections. In other words, the issue is less whether human rights exist or are coherent – the question raised by their eighteenth- and nineteenth-century critics analysed by Waldron, or by certain facets of Alasdair MacIntyre's work (MacIntyre, 1981) – than the political effects of human rights, understood here not only as an abstract normative idea but also as an emergent political practice (Beitz, 2009, p. xii).[2]

If the various critiques made in the Anglo-American sphere have already generated a large literature, less attention has been paid to the growing scepticism about the primacy of human rights discourse in certain strands of contemporary French political thought. In a recent book on twentieth-century philosophy in France, Frederic Worms structures his final chapter – devoted to the present debates – around two key issues, the first of which is the

debate on the concept of human rights that flared up towards the end of the 1970s. Worms emphasises that the debate deserves our attention 'because it is not just one theme among many; it is about the very principles of politics, or rather about whether we should put the "human rights question" at the heart of politics' (Worms, 2009, p. 557). In the same vein, this article argues that one of the main angles taken by the French debate in political theory has been to ask whether human rights are a driver of depoliticisation or an instrument of radical democracy.

I proceed in four steps. First, I explore the significance of what I propose to call the 'Lefort Moment' at the end of the 1970s with some historical contextualisation of the discussion on human rights in recent French political thought. Second, I examine critiques of the primacy of human rights and oppositions to Claude Lefort's arguments in the writings of two leading figures of French contemporary political thought, Marcel Gauchet and Pierre Manent. In the third part, I qualify and emphasise the limitations of these critiques. Finally, I defend Lefort against them by relying heavily on a second strand of thought that conceives human rights as the way forward for a radicalisation of democratic ambitions.

The 'Lefort Moment'

French theoretical work on human rights has proliferated since the early 1980s, following a long period in which dominant theoretical models either neglected or eschewed the concept. For twenty years or so before, critiques of subjectivity, strains of Marxism and various types of structuralism had combined forces to discredit the very idea of human rights as a coherent theoretical discourse (Colliot-Thélène, 2009, p. 1). On the left, this was compounded by profound misgivings about human rights, which many saw – following early Marx – as nothing but 'the rights of the member of civil society, i.e. egoistic man, of the man who is separated from the other men and from the community' (Marx, 2007, p. 44). Indeed, much of Marx's critique of human rights was ultimately premised on the accusation that human rights were in fact subsumed by individual rights, that the rights of man as such are different from the rights of the citizen.[3]

Of course, Marx's interpretation is not fully representative of socialist thought on human rights. A hasty and perhaps superficial reading of *On the Jewish Question* and *The Holy Family* (1844) has certainly fed a general denigration of the concept of rights by the French left, a 'vehement, ironic or "scientific" condemnation of the bourgeois notion of human rights' (Lefort, 1986, p. 47). But Marx and Engels' sarcastic jibes about human rights have not blocked the development of a form of socialism known as '*garantiste*', so called because it is stubbornly attached to individual liberties (Audier, 2006). In France as elsewhere, the rejection of bourgeois rights – demonised by the 'revolutionaries' for their abstraction, their individualism and their coercive and/or moralising nature – went hand in hand with a 'reformist' or 'republican' trend which took the rights that had emerged from 1789 as the first base for a truly socialist political order. If the early writings of Marx have had such a marked influence, then, it is not because they discredited the idea of human rights as such, but rather because they pioneered the idea that the rights of man represent a distinct sphere of the political, a sort of moral inner sanctum to which only the individual has access.

It is precisely this interpretation – and, ultimately, the distinction between supposedly 'political' and 'non-political' rights – that was given a solid shaking at the end of the 1970s

by Claude Lefort's seminal article 'Droits de l'homme et politique' (Lefort, 1981) ('Politics and Human Rights' – Lefort, 1986). Lefort's work was part of a particular intellectual and political context, one in which the political weight of human rights in France was being re-established after decades of indifference and rejection. The renewed place of the individual and his rights was above all a legacy of May 1968, which played midwife to a wealth of social movements ranging from women's rights to gay rights by way of prisoners' rights, and which would lead a new generation of intellectuals to conclude that structuralist and post-structuralist attacks on the 'subject' were counterproductive and self-defeating: 'during the late 1970s, the "rebirth of the subject" became an omnipresent topos' (Wolin, 2006, p. 175). Also significant was the enormous impact of the 1974 translation of Alexander Solzhenitsyn's *The Gulag Archipelago*, which in France more than anywhere else awakened affinities with the leading lights of dissident movements: 'The new exemplar of moral politics were a generation of Eastern European dissidents who had risked life and limb on "speaking truth to power": figures like Russia's Andrei Sakharov, Czechoslovakia's Václav Havel, and Poland's Adam Michnik. Among French intellectuals, the ethos of *droits de l'homme* – human rights – had been reborn' (Wolin, 2006, p. 176).

To be more precise, it was not so much the well-known content of Solzhenitsyn's work as the French Communist party's attacks on Solzhenitsyn himself that incensed the intellectuals. The prospect of a Communist leadership of the Union de la Gauche, established by François Mitterrand around the 1978 elections (Christofferson, 2004, pp. 89–113), was seen with particular apprehension. 'It was therefore not an accident that a new intellectual anti-Communism – though phrased in the language of antitotalitarianism – peaked at precisely this moment' (Müller, 2011, p. 208). Combined with some major developments on the international scene – the revelation of Cambodia's killing fields, the exodus of Vietnamese boat people in 1978 and the Soviet invasion of Afghanistan in 1979 – these domestic concerns explain why, for a generation of engaged intellectuals, human rights at the end of the 1970s became the 'incontestable benchmark – the alpha and omega – of any future politics' (Wolin, 2006, p. 178).

Born in 1924 and the co-founder with Cornélius Castoriadis of the journal *Socialisme et Barbarie*, Claude Lefort is rightly seen as one of the French intellectuals who offered the most timely and lucid responses to the reality of totalitarianism. His 1975 work *Un homme en trop*, presented as a commentary on *The Gulag Archipelago*, is thus considered as one of the seminal texts of the anti-totalitarian movements that would prosper at the École des Hautes Études en Sciences Sociales during the 1980s. In reflecting on the totalitarian regimes of the Soviet world, Lefort also proposed a new interpretation of Western democracy. In contrast to totalitarian regimes in the Soviet bloc, liberal democracy, he argued, was premised on the erosive power of fundamental rights and disembodied politics.

More precisely, in 'Politics and Human Rights', Lefort struggled against the common interpretation of human rights as mere individual rights, which correspondingly reduced democracy to the relation between individuals and the state. Lefort argued that, by refusing to conceive of human rights as anything other than individual rights, Marx had allowed himself to become the 'prisoner of the ideological version of rights, without examining what they meant in practice, what profound changes they brought to social life' (Lefort, 1986, p. 248). For human rights are not a veil: far from concealing a dissolution of social

bonds that turn all of us into monads, rights in fact affirm social bonds and give birth to fresh networks of connections between individuals. This is certainly true of freedom of opinion, which is clearly a 'freedom of relationships' since it suggests that 'man cannot be legitimately assigned to the limits of his private world, that he has a right to public speech and thought' (Lefort, 1986, p. 250). In Lefort's view, Marx took the bourgeois language of human rights – the discourses of individualism and private property – too literally, concluding that *this was the reality of human rights* without grasping the fact that rights are also the vehicle for a new mode of social relations. In other words, the problem for Lefort was not so much what Marx saw in human rights as what he failed to see.

Lefort believed, then, that we could only understand the evolution of democracy if we recognised the institution of human rights as signalling the emergence of a new kind of legitimacy and a new public sphere, one that both shapes individuals and is shaped *by* them. For this reason, the idea of man without determination could not be dissociated from the idea of the indeterminable. 'The rights of man reduce rights to a basis which … is without shape, is given as interior to itself and … eludes all power which would claim to take hold on it' (Lefort, 1986, p. 258). Lefort described a history of rights as a constant erosion of the boundaries that the state has attempted to draw around itself, forcing the state to 'open to question' established rights. What is more, this history was more open-ended than ever – as witnessed by the growing demands of numerous and varied groups from women to children, homosexuals to consumers, and so on. In this sense, campaigns for human rights had an eminently political significance:

> A politics of human rights and a democratic politics are … two ways of responding to the same need: to exploit the resources of freedom and creativity, which are drawn upon by an experience that accommodates the effects of division; to resist the temptation to exchange the present for the future; to make an effort, on the contrary, to discern in the present the signs of possible change which are suggested by the defence of acquired rights and the demand for new rights, while learning to distinguish them from what is merely the satisfaction of interests (Lefort, 1986, p. 272).

The Ideology of Human Rights and the Sapping of Democracy

Just at the moment when this French reinstatement of human rights seemed to be at its apex – the start of the 1980s – it swung back, no less abruptly, in the other direction (Worms, 2009, p. 558). One influential strand of thought in particular has expressed significant reservations about Lefort's thesis of a political dimension to human rights. Two key players in the French intellectual debate, Marcel Gauchet and Pierre Manent, have argued that the vitality of the plural society described by Lefort could ultimately backfire on democracy itself.

At first glance, these two authors – today both members of the Centre Raymond Aron at the École des Hautes Études en Sciences Sociales – may seem to have little in common. A former student of Lefort in Normandy, Gauchet – after a series of flings with several post-1968 ultra-leftist journals – made a long transition from anarchism towards a type of republicanism that looked with anxiety on the decline of social cohesion (Behrent, 2004; Moyn, 2005). In 1980 he was named co-editor of *Le Débat*, one of the most influential

French journals of the last two decades. It was in the pages of this journal that he published an article whose title became a sort of mantra for neo-republican French thought – 'Human Rights are Not Politics' (1980, reprinted in 2002) – and that he would return to and develop further twenty years later in 'When Human Rights become Politics' (2000, reprinted in 2002). In these texts, Gauchet argues that although human rights may be crucial for denigrating tyrannies, they are of little use when it comes to constituting groups capable of political action in their own right (Müller, 2011, p. 210). Moreover, if the implementation of democratic principles spends all its force in a politics of human rights, this could lead to a devitalisation of democracy – if not, more radically, to the collapse of its frameworks and means of exercise (Gauchet, 2002; 2007a; 2007b). Lefort's mistake, he argues, lay in failing to recognise that putting individuals with their interests and rights before all else would invalidate the political references that have made the modern democratic process possible.

In this argument, Gauchet speaks in concert with an article in which Manent (1981) accuses Lefort of underestimating the 'atomising' capacity of human rights – a theme that he has tackled much more thoroughly in recent works (Manent, 2001; 2007a; 2007b). The Catholic philosopher Manent, however – former assistant to Raymond Aron and a key figure in the birth of the journal *Commentaire* in 1978 – is of very different political and philosophical stock from Gauchet since he is considered to be the disciple and the pioneer in France of the thought of Leo Strauss and his school.

Yet beyond their significant differences, these two authors unite in their resistance to what they call a certain kind of 'democratic fundamentalism' and the ideology that accompanies it: the elevation of human rights as the universal regulating principle of social life. More precisely, both share the idea that the triumph of liberal democracy is in fact a Pyrrhic victory since the democratic principle, if diverted into a sort of radical individualism, would turn against itself. Indeed, threats to democracy come not only from its conventional enemies – those who reject the principle of democratic equality – but also, and perhaps most importantly, from its 'overzealous friends' – that is, those who attempt to impose equality as a formal and abstract concept on the whole of society, refusing to compromise with the requirements of collective life or moral norms inherited from pre-democratic times. Thus one sees how consecration of the democratic principle comes to turn against the reality of democracy. A 'triumphal, exclusivist and self-destructive' democracy could, in the name of its highest principles, end up sucking the life out of its own roots (Gauchet, 2002, p. ii). In this sense, the democracy of rights is a 'democracy cut short', which loses sight of its strictly political dimension (Gauchet, 2007a, p. 17). It is, in Manent's words, a 'pure democracy', a 'democracy without a people' which is 'very respectful of human rights but detached from any collective deliberation' (Manent, 2007b, p. 7).

Put differently, Manent and Gauchet arrive at the same conclusion about the nature of the transformations under way. The original democratic problem had been that of how citizens should participate in the exercise of power. Now, these authors say, the key issue has become the preservation of individual liberties. Conventionally, the term 'democracy' referred to the capacity of political entities to govern themselves. Today, it has arguably been reduced to the point of designating the mere protection of individual rights. If such a thing as 'democratic faith' still exists, it is no longer faith in self-government but rather a faith in the law that arbitrates among aspiring individual identities (Gauchet, 2002, p. viii).

We are now witnessing a new social disease, that of individual disaffiliation – in sharp contrast to the totalitarian age, which refused to acknowledge the individual. All in all, says Gauchet, we have lurched 'from one extreme to the other: after the threat of the total state, that of the total individual – the individual who owes nothing to society yet demands everything of it – has risen up in its place' (Gauchet, 2001, p. 314). This is the source of the new marriage of 'profound depoliticisation' with 'radical demands', which is according to these authors the spectacle played out by contemporary society. It is also the source of the continued expansion of legal norm making that comes at the expense of the domain of political will (Gauchet, 1998, p. 115).

For these authors, the clearest sign of this transformation of democracy is thus the contemporary recognition of individual rights. 'Individual' they are indeed, since they refer to a very particular notion of human rights – which now, according to Gauchet, 'mobilise the individual inherence of rights against a sense of civic belonging, instead of using one to prop up the other as in the original republican version' (Gauchet, 1998, p. 111). More precisely, the argument of these authors postulates the existence of a human rights utopia, moving towards the gradual absorption of political life into law. In refusing to be contained by the contingent boundaries of state territory, rights are now pushing towards a global society of pure individuals stripped of any political dimension. The danger now is not so much that of politics destroying individual rights as that of individual rights destroying any political reality. The logic of rights exhorts democracy to reject a spatial existence 'whose limits are an insult to the universality of principles that democracy claims as its own' (Gauchet, 2007b, p. 47). The result, runs the argument, is a radically new configuration in which 'democratic fundamentalism' ends up depriving democracy of the means of its own realisation in the name of the purity of its principles (Gauchet, 2005, p. 241).

In other words, we have moved from the 'alliance between rights and power' to the 'demand for an empowerment of rights' (Manent, 2007b, p. 16). For two centuries, Europeans have sought to realise human rights in the framework of and by means of the sovereign national state. Today, says Manent, they no longer have any hesitation in imagining a world in which rights would be guaranteed without the intermediary of the national state, comforting themselves in the illusion that rights could work as the sole regulatory mechanism of all social life.

Ultimately, Manent and Gauchet agree that Lefort did not grasp the full significance of the development that he had been the first to observe. In Gauchet's terms, the argument runs thus:

> Whereas, in the face of Marxist reductionism, it was essential to defend the definitely 'real' dimension of 'formal' rights and liberties, establishing human rights as the ultimate reference was bound to lead to a dynamic social process that would estrange us from the most desirable forms of heightened democracy. Admittedly, there might be more leeway for individuals, but undoubtedly less freedom to deliberate and make decisions in common. Taking human rights onto a proper political platform has implied collective impotence (Gauchet, 2002, p. 330).

Manent goes even further in describing the effect of human rights politics as a straightforward challenge to the idea of political community: 'the insistence placed on human rights today has an incontestably antipolitical flavour. The notion of human rights is preferred to

that of the citizen and there is a tendency to reject the collective restraints linked to citizenship' (Manent, 2006, p. 99). Pushing this argument to its limit, Manent returns to the Marxist critique that Lefort had railed against. Marx, according to Manent, was in fact right to interpret the modern democratic project as inherently contradictory, since at its roots lies a denial of the human political condition. Thus Manent judges Lefort's critiques of Marx to be 'pertinent' but 'not entirely convincing'. Indeed, if Marx is blind to the binding effects of human rights in the new society, 'no doubt Lefort is not sensitive enough to the separating effects of these rights, and in particular of those he approvingly calls the "new rights" ' (Manent, 2006, p. 108).

Consequently, there is according to Manent something 'profoundly true' in the Marxist analysis of the freedom of modern man as the 'freedom of isolated monad, withdrawn into himself'. Manent thus cites the example of women's rights, and the fact that women no longer need the bond of marriage to have status in society: this confirms in his view that the logic of human rights is indeed a 'separatist' one (Manent, 2006, p. 109). Gauchet's intellectual framework appears very similar, though less openly conservative in tone, when he discusses the same idea: that the primacy of human rights is leading to the birth of a new type of individual, focused exclusively on his or her own achievements at the expense of any concern for public life or social responsibility.

In Lefort's view, the fact that democracy occupies an 'empty locus' – presided over by neither god nor master – represents a vast step forward from traditional forms of society. Manent and Gauchet, on the other hand, see this rather as a loss: 'we have moved from an empty locus to an age of emptiness' (Lindenberg, 2002, p. 80) – the 'Age of Emptiness' being the title of a book by Gilles Lipovetsky (1983) in which, following in the footsteps of Christopher Lasch, he drew attention to the 'culture of narcissism' that he saw as the outcome of the 1960s. Gauchet's recent work is inspired as much by Lipovetsky's analysis as by Lasch and his conception of an individual who has become incapable of making meaningful connections with the world around them (Audier, 2008, p. 314).

French Liberalism and the Political Dimension of Human Rights

This school of thought may be called 'neo-Tocquevillian', following Serge Audier who coined the label to describe a specifically French intellectual trend that draws out the key theme of individualism from its interpretations of Tocqueville (Audier, 2004). Audier reminds us that this is by no means the only possible way of reading the author of *Democracy in America*. This interpretation diverges from Lefort's, and indeed has no counterpart outside France – particularly in the United States, where the focus tends to be more on the importance of political participation in Tocqueville's thought. Lefort, indeed, emphasises that Tocqueville's misgivings over individualism are only one aspect of his analysis of democratic societies. He argues that Tocqueville distinguished between two facets of individualism: isolation – which drove individuals into themselves – but alongside it independence, which made society more dynamic, public debate more lively, and the fabric of individual and group relationships richer (Lefort, 1988, in Morin *et al.*, 2008, p. 282).

Above all, widespread reference to Tocqueville neglects the fact that the latter considered rights a key factor for maintaining freedom in the democratic age. 'After the concept of virtue', wrote Tocqueville, 'I can think of none more splendid than that of rights; or rather,

these two ideas are one and the same. The concept of rights is nothing other than virtue brought into the political sphere' (Tocqueville, 1986, p. 357). Far from treating the reference to 'rights' and the exercise of democratic debate as two opposites, Tocqueville considered the 'legal spirit' one of the most important bulwarks against a potential tyranny of the majority, and thus a means of protecting democracy from itself. The French authors discussed in this article are therefore called 'neo-Tocquevillian' only in the sense that they share the same core concern of understanding the particular nature of modern societies through the lens of individualism (Lacroix, 2008).

Paradoxically, these authors are often considered as 'liberals', both by part of the intellectual left in France (Colliot-Thélène, 2009) and in the English-speaking world. This interpretation was introduced notably by Mark Lilla's *New French Thought* (Lilla, 1994) which pointed to a French return to liberalism after decades dominated by Marxism and structuralism. Tony Judt equally considered Manent and Gauchet as members of a 'tiny minority' of liberal thinkers in his book on the French intellectuals (Judt, 1992, p. 315). In the same vein, several foreign observers of the French intellectual scene have thus affirmed the theory of a French 'return' to liberalism in the 1980s, taking the place of the anti-liberalism of the 1960s (Christofferson, 2004). Indeed, the idea that the revival of French thought at the end of the 1970s passed by way of a rebirth of liberalism – which had long been in the shadow of Marxist and then structuralist intellectual hegemony during the 1960s – has become something of a cliché (Audier, 2008, p. 113).

However, to put the 'liberal' label on views such as those of Gauchet, Manent or their followers is misleading. It is true that these authors contributed to the rediscovery of major liberal thinkers such as Benjamin Constant and Alexis de Tocqueville. But they cannot be called 'liberal' beyond that – unless one considers that anyone who does *not* support an authoritative state or an ethnic conception of democracy qualifies as a 'liberal'. In fact, their work reveals the difficult relationship of certain strands of French political thought with some of the central premises and building blocks of political liberalism – in particular the commitment to rights-based individualism, the openness and the untidy compromise at the heart of a liberal political order. Moreover, if liberalism also consists in the ability to elaborate rigorous concepts, one cannot help thinking that some French thinkers cherish style in a way that leads them to value words more highly than empirical reality.[4]

And indeed, what is most striking in this repeated criticism of the supposedly destructive effects of the primacy of human rights in political discourse is its disconnection with any empirical representation. The basic premises of the argument, as well as its assumed consequences, are advanced as abstract postulates rather than anything empirical. One might therefore ask: has the discourse of human rights really become the exclusive political premise of our democracies? Are its effects really those claimed by its critics? The assertion that the triumph of human rights (if, indeed, there has been such a triumph) has emptied civic commitment of its meaning seems so self-evident to the authors discussed above that it is never supported by any empirical data on new modes of sociability, civil society or protest movements.

Yet this apparent victory of human rights – which have, in Gauchet's view, become the 'foundation and guiding principle of our modern societies' (Gauchet, 2002, pp. 330–1) – obscures the fact that adherence to the concept nevertheless remains the exception rather

than the rule on a global scale; that the rhetorical triumph of human rights is far removed from the progress of their implementation in practice – as witnessed, from within France itself, by the lack of public concern over issues directly linked to fundamental rights such as the appalling state of prisons (Audier, 2008, p. 313). Above all, one could argue that the best way to offset the temptations of consumer hedonism and flaccid individualism is the democratic self-organisation of civil society. 'The activation and expansion of existing civic and political freedoms, rather than being a symptom of cultural disequilibrium, is an essential part of the solution' (Wolin, 2006, p. 189).

It is certainly true that group activism led by 'minorities' who challenge the public sphere to recognise their rights has neither the permanence nor the power enjoyed by parties or trades unions to provide their members with a living environment and an interpretive framework (Colliot-Thélène, 2011, p. 6). Yet these struggles for rights, for respect, to expand rights already won and win new ones, always pass by way of groups uniting individuals who mobilise forces *together* to obtain recognition of rights they feel are missing from their lives. There is therefore no justification for excluding such groups from the political sphere.

More precisely, these authors entirely neglect the contributions of legal sociology; they never question the idea that the primacy of rights discourse automatically results in a loss of civic autonomy and increased judicialisation. These consequences should be qualified in the light of research which has illustrated 'that taking rights seriously in political practice has opened up more than closed debates ... and nurtured more than retarded the development of solidarity among workers and their allies' (McCann, 1994, p. 14). Many empirical findings have shown that the dominant individualistic bias in the discourse about rights has coexisted with other subordinate discourses affirming collectivist, communitarian or relational views of rights (McCann, 1994, p. 301).

These works also show, counter to received wisdom, that critiques of the alleged expansion and invasiveness of justice into various public and private domains are significantly exaggerated (Haltom and McCann, 2004; Israël, 2009, p. 128). In this view, the supposed crisis of the judicial system, described as all-powerful and submerged by claims, is in fact an artificial construct used to invalidate assertions of rights by citizens (Israël, 2009, p. 129). These conclusions are of course far from unanimous, but the critique of human rights discourse as giving rise to a loss of civic autonomy and the corresponding growth of possessive individualism would benefit from some empirical underpinning at the very least. Authors who argue for these destructive effects have also ignored the political theory corpus which attempts to demonstrate that rights scepticism may rest on a narrow conception of rights and an insufficiently dialectical conception of the relationship between rights and practice (Baynes, 2000, pp. 451–68).

In Defence of Lefort and His Followers

In addition, the criticism made of Lefort – that he failed to see that a 'politics of human rights' would lead to collective powerlessness – is unjust on two counts.

First, it is too often forgotten that Lefort's critique was directed not only against the Marxist interpretation of human rights but also against that put forward by the so-called New Philosophers. The latter, 'a loosely affiliated group of thinkers' (Bourg, 2007, p. 16) including people like Bernard-Henri Lévy and André Glucksmann, burst on to television

screens and the popular press in 1976–7. Even if their thinking was judged simplistic by many, they inspired an extraordinary debate among the French intelligentsia. Building on the wave of interest in Eastern European dissidence, New Philosophy embodied what has been justly described by Julian Bourg as the '1970s ethical turn' or 'the depoliticization turn to ethical dissidence' (Bourg, 2007, p. 237). Cultivating a specific kind of ethic rooted in the figure of the rebel opposed to the state, these authors – though very different in many aspects – converged on a number of key themes such as the defence of the rights of man, the rehabilitation of the individual and ultimately the 'rejection of politics as such' (Bourg, 2007, p. 252), since they equated all forms of power with a will to domination that culminates logically in the totally administered world of the Gulag (Wolin, 2006, p. 179).

In this context, human rights were considered as a 'kind of minimalist moral–default option after so many other ideological blueprints for the future seemed to have failed' (Müller, 2011, p. 209). In this respect, New Philosophy can be seen as part of a more general depoliticisation of Western societies in the 1970s, when human rights flourished as other utopias seemed to be disintegrating. As pointed out by Samuel Moyn, after the Soviet crackdown in Prague and the assassination of Salvador Allende in Chile had dashed hopes of a 'socialism with a human face', human rights assumed the status of a provisional, minimal and simple morality situated above and beyond politics (Moyn, 2010).

Now what Lefort sets out to reinstate against this anti-totalitarian vulgate is, precisely, political thought. In other words, while he recognises the merits of the New Philosophers – especially their success in giving voice to dissident figures – he refuses to fall in with their vague bird's-eye view which, in his view, reflected an inability to face the true political challenge of human rights. More precisely, he insists that the unconditional defence of human rights in the name of a religion of resistance to all power shared with Marxism 'a pure and simple refusal to think about politics' (Lefort, 1986, p. 244). Despite their radical differences, these readings both anchor human rights in the individual and consequently miss their true political significance. Lefort's angle of attack on the neglect of the political sphere evinced by so many who have attempted to reinstate human rights, then, is to show that fighting for human rights actually opens up a new relationship with politics. He is particularly adamant in his refusal to follow the new apostles of human rights into the trap of a 'religion of resistance to all power' (Lefort, 1986, p. 44) and to see the state as a newly universal force of oppression – an approach that reduces the true difference between democracy and totalitarianism to a mere difference in degree (Lefort, 1980, in Lefort, 2007, p. 408).

A few years later, in a text in which he returns to the objections raised by 'Politics and Human Rights', Lefort once again affirms his rejection of a type of 'liberal humanism' that is incapable of seizing the true significance of group identities and of taking full account of their historical dimension (Lefort, 1988, p. 4). The 'disentangling of right and power' (Lefort, 1988) that he sees at work in modern democracy does not mean rejecting either the necessity or the legitimacy of power: 'power does not become alien to right; on the contrary, its legitimacy is more than ever affirmed, it becomes more than ever the object of juridical discourse' (Lefort, 1986, p. 246). It is true, on the other hand, that the nature of the distinction drawn between rights and power changes inasmuch as human rights appeal to a sphere that lies beyond power, and can never as such be completely controlled by it.

Second, Lefort insistently called attention to the fact that winning new rights was always conditional on a public recognition guaranteed by collective debate. The criticisms levelled at Lefort do not do justice to his analysis, which emphasised that the quest for recognition of new rights depended for its legitimacy on a public acknowledgement achieved through social debate. For Lefort, exploring the political scope of human rights did not mean disqualifying civic participation or the sense of a common good: quite to the contrary, it meant underlining that struggles to win new rights, if they are part of a collective struggle for justice and liberty, are possible and desirable only in a public sphere that opens up channels of communication between citizens without exception (see also Audier, 2008, p. 312). In elaborating on the meaning of his original text on human rights, Lefort reminds us that his 'primary concern was to promote recognition of a public space which is always in gestation and whose existence blurs the conventional boundaries between the political and the non-political' (Lefort, 1988, p. 35). More precisely, for a claim to receive juridical recognition, it must first meet at least tacit approval from a broad section of public opinion – 'it must be inscribed in a public space' (Lefort, 1988, p. 36). In other words, recourse to human rights has never, for Lefort, meant tying democratic dynamics into the straitjacket of the legally constituted state; instead, it leads towards a 'removal of all limitations' on the dynamism of democracy (Artous, 2010, p. 38). It is in this sense that democracy always retains its 'untameable' nature (Lefort, 1979, in Lefort, 2007, p. 389): it is precisely the protests and the claims of those excluded from the benefits of democracy that make democracy so resilient.

We can see here that Lefort, in spite of his differences with Marx, solidly situates his analyses within a democratic logic understood as a process of emancipation. He sets out to underline the radically innovative character of the very principle behind the Declaration of Human Rights. In other words, the articulation of rights is in his view even more important than their content (Colliot-Thélène, 2009, p. 4): rights cannot be dissociated from the awareness of rights, and it is in this sense that they can be considered as a generative principle of democracy. To be sure, as pointed out by James Ingram, this view is incompatible with a 'defensive' conception of democracy such as the one promoted by Gauchet: democracy not only legitimises the use of power, it also provides a basis for challenging it (Ingram, 2006, p. 43). The very idea of a 'democracy against itself' (the title of Gauchet's work of 2002) therefore has little meaning, in Lefort's view, other than as a rhetorical figure. One might almost say that democracy is always working 'against itself' in some way for Lefort, since human rights are always fleeting: even once a right is established, it refuses to be fixed. 'Where rights are called into question, it is the established order that is in question; it is this that gives democracy one of its most important definitions' (Lefort, 1980, in Lefort, 2007, p. 419).

This might be the reason why, in contrast with this first trend, a second French intellectual variant extends Lefort's proposal by giving value to the definition of democracy as an 'empty locus'. Indeed, if many French theorists of the radical left still marry a revolutionary angle with a certain anti-juridical strain, some authors are the pioneers of a conception of democracy which – in addition to its incorporation of the Marxist legacy – also emphasises the emancipatory potential of human rights (Lacroix, 2008; 2010b).

In Jacques Rancière's words, for instance, democracy is the 'very principle of politics, the principle that institutes politics in founding "good" government on its own absence of

foundations' (Rancière, 2006, p. 38). It is 'anybody's government', contrary to totalitarian or oligarchic forms of government that capture profit for the benefit of a single social stratum. Social pluralism, breeding resistance to domination by a self-elected elite, is the source of a democratic process conceived as a constant reconfiguration of social cleavages. It is this perpetual motion that is the inherent character of democracy. This is why Rancière attacks the so-called liberalism displayed by the French intelligentsia since the 1980s which, behind its reverence for the Enlightenment and for the Anglo-American tradition of liberal democracy, in fact only revives 'a very French denunciation of the individualist revolution tearing apart the social body' (Rancière, 2006, p. 15). The same reasoning lies behind Rancière's rejection of a reinterpretation of Tocqueville that he considers 'very simplistic', one that consists in making of Tocqueville the prophet of democratic despotism by reducing his two large books to the two or three paragraphs of the second book that evoke the risk of such despotism (Rancière, 2006, p. 20).

In fact, the 'democratic scandal' means that there can never, under the name of 'politics', be a unitary principle legitimating the action of governors on the basis of the laws inherent to humankind. This is the political value of the language of rights: at the heart of the democratic process one ultimately finds the actions of subjects acting to reconfigure the distribution of the public and the private, of the universal and the particular (Rancière, 2006, pp. 61–2). This is Rancière's response to Hannah Arendt's notorious dilemma of human and citizens' rights arguably representing either 'a void' – the rights of those who have no rights, which amounts to nothing – or a 'tautology' – the rights of the citizen, and thus of those who already have rights (Rancière, 2004, p. 302). What Arendt failed to see is a third possibility: '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'. This process is exemplified by the action of women during the French Revolution, who could simultaneously demonstrate that they were deprived of the rights they had (thanks to the Declaration) and that they had (through their action) the rights that the Constitution denied them (Rancière, 2004, p. 302).

One can find the same interpretation again from Étienne Balibar, who today seems one of the most faithful to Lefort's hunch that rights exist independently of any specific established meaning given to them. In this regard, it may seem ironic that some proponents of human rights were initially Marxists. There is a connection, however. In the era of globalisation, Balibar considers human rights rhetoric as the major instrument for democratic struggle, since it both opposes social violence and challenges the limits of the constitutional state. Speaking out for human rights is a

> radical discursive operation that deconstructs and reconstructs politics. It begins by taking democracy to its limits, in some sense leaving the field of instituted politics ... but in order to mark, immediately, that the rights of man have no reality and no value except as political rights, rights of the citizen, and even as the unlimited right of all men to citizenship (Balibar, 1994, p. 212).

Arguing against those who posit that human rights are always beyond or above politics, Balibar argues that what is missing is a specific politics of human rights, that is, not a politics that proclaims them but one that realises and implements them. Like Lefort, Balibar sees

human rights first and foremost not as an attribute of self-constituted individuals facing the state, but rather as a means of giving body to the political space of modern democracy (Artous, 2010, p. 6).

For Balibar and Rancière, valuing the politics of human rights is thus inseparable from a conception of democracy understood, by its very nature, to be 'limitlessness'. In other words, human rights thus recover their revolutionary meaning of 1789, when they prevented rather than promoted a stabilisation of the social order. These arguments in political philosophy are confirmed by sociological research on the social conditions for mobilising rights which shows that even if rights remain a force of hierarchy, they can also be 'in the hands of defiant citizens, a source of disorder and egalitarian reordering' (McCann, 1994, p. 7). Several authors oppose the Manichean vision of rights as necessarily weighing down one side of the domination scales and instead draw attention to what creates the 'political force of rights': their 'potential for turning the tables' (Israël, 2009, p. 13).

Conclusion: A Democracy without a Demos?

Pierre Manent, as we saw above, worried that the primacy of human rights could lead to the birth of a 'democracy without a people' (Manent, 2007b, p. 7), 'a kratos without a demos' (Manent, 2006, p. 16). But we might well wonder, as Catherine Colliot-Thélène proposed in a recent work – whose title reclaimed this concept of a 'democracy without a demos' – whether today's legal pluralism does not force us to discard the classical notion of a 'demos', that is, as a united community whose supposed will guarantees the legitimacy of power (Colliot-Thélène, 2011, p. 8). The proliferation of different powers that deal with claims for rights – regional, national, European, global – irrevocably saps the meaning of the demos: 'the pluralisation of the kratos makes the demos indefinable' (Colliot-Thélène, 2011, p. 21).

In Rancière's terms, this comes down to saying that discontent and the claims of society's 'have-nots' are now the dynamic element of politics; which implies in turn that a democratic people must be conceived not as a community already constituted or to be constituted, but rather as the 'surplus' that constantly returns to disturb the provisional order of any constitution. Perhaps it is exactly this fear of a sort of 'disorder' – which is nonetheless inseparable from any process of democratic emancipation – that one can glimpse behind the recurrent critique of the isolating effects that some argue follow from human rights. In this sense, the fear of 'disaffiliation' is perhaps no more than an implicit rejection of the defining characteristics of our democratic societies – that is to say, the individualisation of social cohesion, the growing differentiation of lifestyles and the proliferation of minority mobilisations.

About the Author

Justine Lacroix is a Professor in the Department of Politics at the Université libre de Bruxelles and an Associate Professor at Sciences Po Paris. She has recently edited, with Kalypso Nicolaïdis, *European Stories: How Intellectuals Debate Europe in their National Contexts* (Oxford University Press, 2010) and published *La pensée française à l'épreuve de l'Europe* (Grasset, 2008). In 2010, she was awarded an ERC Starting Grant for her project 'Human Rights versus Democracy? Towards a Conceptual Genealogy of Skepticism about Human Rights in Contemporary Political Thought' (RESIST). Justine Lacroix, Department of Political Science, Université libre de Bruxelles, CP 172, Avenue F. D. Roosevelt 39, 1050 Brussels, Belgium; email: *jlacroix@ulb.ac.be*

Notes

1 The term 'human rights' has not really been adopted in French. However, *droit de l'homme* is most often translated as 'human right' in English versions of books and articles initially published in French. Consequently, I use the two terms interchangeably in this article. The question of whether there is or is not a strict line of demarcation between the 'rights of man' and 'human rights' is an issue that I do not address here (see Lacroix, 2010a; Moyn, 2010).

2 I owe this remark to an anonymous referee.

3 For a discussion of Marx's critique of human rights, see Lacroix and Pranchère (2012).

4 This remark was suggested to me by Antoine Garapon.

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