

EQUALIBERTY

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POLITICAL ESSAYS

Duke University Press Durham and London 2014

his *practical* (even more than theoretical) internationalism, his unremitting quest for the meeting and communication between emancipatory movements beyond frontiers, illustrated particularly sharply by the opposition between the notions of communism and communitarianism:

his insistence, in the pure tradition of Marx's communism, on the necessity of overcoming the difference between manual and intellectual labor as a way of eliminating the roots of state and party bureaucracy and making possible an open dialectic, without foreseeable end, of representative, institutional democracy and direct, associative or popular democracy, without which there would be no new citizenship.

We must of course recognize that globalization, the concentration of economic and cultural power, and, in reaction to this, religious or secular nationalism, have multiplied the obstacles facing these two necessities. They are the same obstacles that block our escape from the crisis of the national-social state.

I will say, intentionally playing on the expression, that Nicos Poulantzas was a typical "internal communist," not only internal to his country (although he lived outside it), but internal to social, intellectual, and political practices, as we must be today, even if the idea of an external communism has lost all referents in the real (though not in the imaginary, since phantoms die hard). Poulantzas ironically theorized this highly particular topology of communist struggle as immanent within struggles and circulating among them (against the idea of "double power" that was emblematic of external communism of the Soviet type): "To imagine that political struggle can ever be located wholly outside the State" (260). It is a matter of the outside of the state, outside institutions, but still more outside the practices that underlie them. A bit later he in fact writes, dialectically: struggles for "radical transformations of the state"—or, as I would say myself, for active citizenship—and which, for this very reason, cannot be external to it, are nevertheless necessarily situated in a "global perspective of the *withering away of the State*" (262). Today Poulantzas and others are no longer there. But communist citizens, citizen communists or communists of citizenship, are always there—"invisible," since they are neither an army nor a camp nor a party nor a church. It is their way of staying alive.



HANNAH ARENDT, THE RIGHT TO HAVE RIGHTS, AND CIVIC DISOBEDIENCE

Every great oeuvre has its history, internal and external.¹ It reflects an intellectual development that sometimes includes ruptures. It responds to historical changes that force it to reorient itself. We could imagine that this is particularly so in the case of a philosopher like Hannah Arendt, who, trying to make intelligible (to herself) that political action deals with the unpredictable, the *new*, confers a central function on the category of the event.² More than any other contemporary thinker, we are tempted to say that she never wrote the same book twice, nor any two books from the same point of view. But this does not mean that we are not dealing with strong continuities, the recurrence of insistent questions, on which the expansion of her philosophical horizon and displacements of her analysis precisely depend. It is based on this conviction that I will take elements from moments in her work that are very far apart, inscribed in different contexts and heterogeneous styles—history, speculative reflection, politically engaged essays, journalism—in such a way as

to reconstruct what seems to me to be a central problem (perhaps *the* central problem) for her: that of the politics of human rights and its foundation, or rather its absence of foundation, its unfounded character.

A HIGHLY PARADOXICAL CRITIQUE OF THE RIGHTS OF MAN

Where does the persistent difficulty Arendt's discourse on rights, at least from a philosophical point of view, come from? First of all, it seems to me, from her combination of one of the most radical critiques of their speculative anthropology, and thus of the classical theory of human rights as a foundation of the juridical edifice and corresponding political practice, with an intransigent defense of their imprescriptible character (at least for some of them), which practically identifies their neglect with a destruction of the human. How is it possible at the same time to reject the idea that there are fundamental human rights (as well as the majority of our democratic constitutions and universal declarations that postulate their anteriority and primacy in the normative order) in theory and to place an intransigent politics of the rights of man at the very heart of the democratic construction? How is it possible to negate on one side what one seeks to put into practice on the other?

The discourse Arendt develops in what is, at least in appearance, her most systematic philosophical treatise, *The Human Condition* (1958), does not make the task any easier—quite the contrary. The word “condition,” which figures in the title, is the exact antithesis of “nature.”⁸ It doubly repudiates any metaphysical or speculative theorization of human nature. On the one hand, it does so by reiterating in its way the proposition announced by Marx in the sixth thesis on Feuerbach: there is no such thing as a universal or formal human essence housed in each human individual (for example in the modality of a cogito), but only, if one can put it this way, a plurality of human individuals, and thus a plurality of more or less conflictual relations among them, which are constitutive of their common “world.”⁹ On the other hand, this time at the antipode from Marx, it does so by allowing the deeply alienating conflict to be named that develops between two sets of conditions: those that could be called natural, since they concern the reproduction of life, and those that could be called political (or civic), since they concern the formation of a public space, where the common is recognized by the plurality of human beings as their end.⁵ Arendt sees, as we know, a typical characteristic of moder-

nity and of the alienation proper to it (alienation from the world, and not just from the self or the subject) in the fact that the growing technicization of processes for reproducing life in “mass society” allows humans to represent reproduction as their activity par excellence, and to substitute this for the pursuit of the good life—that is, the construction of political relations based on the irreducibility of each person's position.⁶ Paradoxically, the development of growing artificiality thus tends to naturalize the political domain at the same time that it socializes the world.⁷

To put it in Derrida's terminology, the counterpart of such a radical alienation seems to be the task of inventing a cosmopolitics “to come” as the sole modality of emancipation that offers humanity the means to reconstruct, differently, what has been lost in its history. But we must at the same time be careful here not to contradict Arendt's many warnings against any idealization of the past, including the Greek past, which is nevertheless the origin of our concept of the political, and the epistemological lesson implicitly contained in her historical pessimism and her reticence about prophesizing the future.⁸

We are thus led to reformulate the question posed by this concept of the politics of human rights, which links different moments of her practical philosophy, from the analysis of the tragedies of contemporary history to the republican ideal of the *vita activa*, by giving it the form of the most brutal possible dilemma: how to hold together an extreme form of institutionalism, explicitly connected to the critique of theories of natural right we can find in Burke, and a critique of world-alienation, which is hard to imagine without reference to an idea or model (*Urbild, Vorbild*) of the human, precisely by reversing the anthropological and metaphysical presuppositions of the Enlightenment?

ARENDT AND HER CONCEPT OF THE POLITICAL

It will be said that the escape from the verbal embarrassment is not so difficult, and can be found in the author's contemporary commentary in the essay *On Revolution*: it has in fact become a commonplace that for Arendt the rights of man cannot be conceived as an *origin* to be rediscovered or restored (as was postulated in their name by the revolutions of the Enlightenment), but only as an *invention* (one of the meanings of *autocritias*) or a continuous *beginning* (*arché*).⁹ It is by following this thread that we can most readily identify Arendt's trace in a whole current of

contemporary political philosophy (or nonphilosophy, even “antiphilosophy,” which rightly shares her concern with demarcating itself by means of a critique of the ordinary, conceived in historicist as well as transcendental terms).¹⁰ By criticizing the classical revolutionary ideologies and simultaneously vindicating the “lost treasure of revolution,” Arendt distanced herself from the explicit or latent representation that makes revolution a restoration, the rediscovery of a birthright or an ordinary state of freedom and equality while by the same stroke making constitutions essentially systems of guarantees for preexisting rights (as Locke had perhaps announced more perfectly than anyone else).¹¹ She sought to insist, to the contrary, on the idea that revolutions institute or, strictly speaking, invent what is human, including the principles of reciprocity and collective solidarity, and for this reason exert a durable effect or inaugurate a permanence in the life of republican political systems. They therefore do not derive from a foundation and do not derive their legitimacy from their universal, a priori character; rather, they introduce the universal into history. Philosophically, nothing is opposed to what we call the “groundlessness” (or the absence of foundation, *Grundlosigkeit*) of this way of articulating the practical and historical character of human rights, which precisely reverses a certain way of founding the political on a metaphysical essence. It is in fact such an idea of groundlessness that alone can authorize the identification of human rights with a practice (or a pure activity)—at the price, no doubt, of recognizing their historically contingent or aleatory character.¹²

I endorse this interpretation, which has become classic, without reservation, but I believe it is incomplete. We must take a further step to expose what gives Arendt’s thesis its extreme radicality. Following the dialectical model of the *coincidentia oppositorum*, she is not content to make the institution the source of positive law but sees it as a construction of the human as such, and pushes the idea of a politics of human rights so far as to make dissidence—in the specifically modern form of “civic disobedience”—the touchstone of the founding reciprocity of rights. She is therefore in no way “historicist” (or “relativist”), even if she presents the construction of systems of individual rights as entirely immanent to history. And, while legitimizing the notions of power and authority, she finds a means of lodging a paradoxical principle of *anarchy*—of “nonpower” or the contingency of authority—at the very heart of *arete*, or the authority of the political. We are thus led to reinterpret

the absence of foundation or groundlessness of rights not only as a logical thesis, but as a practical thesis that is itself political, even if in an essentially antinomic mode. Every political construction implies the combination of a contrary element (which we could call “unpolitical”), and thus—at least virtually—the permanent recreation of the political out of its own dissolution, and in the end the practical impossibility of separating once and for all the construction of the human through political institutions from its destruction or deconstruction (which results specifically from the historical collapse of institutions, but sometimes also from certain aspects of its most everyday, banal operation). For this combination of collective action with its own opposite is, in fact, the political itself.

I do not conceal from myself, of course, the fragility and imprecision of these formulations. This is why I would now like to return to Arendt’s texts (or at least some of them) to see if we can find in them such a dialectic of opposites that would coincide with her own concept of the political, her *Begriff des Politischen*. To begin, it will deep down only be a matter of naming or locating the problems in the hope that this basis will be sufficient to expand the discussion to other aspects of Arendt’s oeuvre. My point of departure will be the relation between the now-famous expression “right to have rights” and the critique of the nation-state, and what I call “Arendt’s theorem”—its position against the current of modernity when it comes to the relation between man and citizen. From there I will return to the highly particular way she lays claim to the Greek model of democracy, or rather (for she never stops reminding us of how important the original terminology is here) the concept of *isonomia*—which is not, contrary to what we still sometimes read, equivalent to “democracy” (which had strongly negative connotations in Greek debates), but rather the origin of a series that passes through the Latin translations *aequum ius* and *aequa libertas* and arrives at our “equal freedom”—not a regime, but the principle or rule of the constitution of citizenship.¹³ This detour will allow me finally to return to how Arendt uses antinomy, or develops an “unpolitical” conception of the political. I will insist in particular on the anti-theological modality of this usage, which has to be associated with the depth of Arendt’s moral and aesthetic connection to Greek tragedy, and consequently with a notion of law that is systematically detached from the heritage of sovereignty, even under positive and secularized juridical forms.¹⁴

ARENDT'S THEOREM

What, then, is what I called Arendt's theorem, and what is its relation to the notion of the right to have rights? We know that in the last chapter of part 2 of *The Origins of Totalitarianism*: "The Decline of the Nation-State and the End of the Rights of Man," Arendt developed a provocative thesis based on her observation of the tragic consequences of imperialist wars, which resulted in the appearance of masses of stateless refugees and superfluous human beings. The common characteristic of all these humans, who are in a sense "too many" but remain physically present in global space, is that they are progressively deprived of all personal protection by the destruction or dissolution of the political communities to which they belonged—despite the efforts of international organizations created precisely in an attempt to respond to this unprecedented situation—and permanently threatened with elimination. This must be seen as a perverse consequence of the history of the nation-state, which served as the historical framework for the universal proclamation of certain fundamental rights of the person, but also rigorously identified belonging to a community with possession of a nationality or the status of a national citizen. This situation refuted *de facto* the declared ideological foundation of the nation-state (at least in the democratic and republican tradition), whereby the rights of the (national) citizen appeared as a secondary construction, instituting or recognizing preexisting natural rights. In turn, human rights gave the political institution (in practice, the state) that transformed them into civic rights a universalistic principle of legitimacy—not in the sense of *extensive* universality, potentially including all humanity, but, much more significantly, in the sense of *intensive* universality, which corresponds to the absence of internal discrimination and the equal freedom of nationals. Under these conditions, we would have to admit—with practically the whole modern juridical and philosophical tradition—that human rights have a broader extension than civic rights. The former are logically independent of the latter and thus provide a basis for recognizing the dignity of people who do not belong to the same political community but only, so to speak, to the natural (or essential) community of human beings. This is why their protection would have to be organized internationally, since national solidarity no longer applies—especially in wartime, when national communities enter into conflict and exclude one another.¹⁵

But in practice the opposite happened: when the civic rights and corresponding guarantees are abolished or historically destroyed for whole

masses of individuals, so are their human or personal rights. Arendt speaks here of a "bitter confirmation of Burke's critique" of the rights of man in the name of a principled anti-individualism and the primacy of the historical institution over transcendental universalism.¹⁶ What we are offered here is a typical *elenchus* (or *reductio ad absurdum*), where the impossibility of the consequence refutes the theoretical premise. This is what I call Arendt's theorem, in order to emphasize that her argumentation does not only have empirical value but significance on the level of principle. It is by no means a matter of maintaining that since the consequences of war and imperialism are incompatible with the universalistic ideological claims of nations, we must find an equally practical compensation or counterweight (for example, an internationally recognized humanitarian politics), which would mean that at the level of principles or moral ideals, human rights could still be conceived of as the foundation for civic rights, whose evolution contradicted them in fact. The direction of the argument is exactly the reverse, and this is what makes it so provocative (a bit like how the arguments of the ancient Sophists appeared as provocations against reason and tradition). If the abolition of civic rights is also the destruction of human rights, it is because in reality the latter rest on the former and not the reverse.

Here there is an intrinsic reason, inherent in the very notion of rights and their relational character—or, better, in the idea of reciprocity that is inherent in them. Rights are not properties or qualities that individuals each possess on their own, but qualities that individuals confer on one another as soon as they institute a "common world" in which they can be considered responsible for their actions and opinions. From this comes the crucial importance of the formula "right to have rights": the right to have rights is precisely what the stateless, and more generally excluded individuals and groups who are multiplying in contemporary societies, are deprived of. And among the rights individuals are thus deprived of, we must of course include the fundamental political right to demand or claim their rights, the right to petition in the classical sense. The reciprocal thesis that follows from this is that the first right is precisely the right to have rights, taken absolutely or in its indetermination (I will return to this point), and not some particular statutory right. It is in this sense a matter of a right without an *a priori* foundation, as contingent as the political community itself—or, better still, the existence of a community of political actions, the simultaneous engagement of individuals in common

political action.¹⁷ Paradoxically (at least from the perspective of a metaphysical doctrine of foundations), this right to have rights is at once absolute and contingent. It is what in modern history the nation-state, in a violently contradictory way, has alternately guaranteed and suppressed, not only for distinct groups (for example, for the citizens of colonial powers and their colonial subjects) but sometimes for the same people (thus, in Europe, for Jews emancipated in the Enlightenment and denationalized and then exterminated in the twentieth century, but also to varying degrees for other categories of stateless persons).

To gauge the full weight of this proposition, we must turn to the next section of *The Origins of Totalitarianism* and its interpretation of how the totalitarian state became exterminist. Here Arendt draws all the consequences from the fact that, on the universalistic (and thus humanist) conception of citizenship claimed by nation-states, there was at bottom no means of excluding someone (or some category) from the enjoyment of civic rights other than excluding them from humanity itself. Let us recall that what she is discussing here is not the situation of foreigners insofar as they find themselves already (or from a certain point, following a rectification of borders) outside the political territory of the state, but the ongoing production of the excluded within the state itself—a process that begins with the deprivation of civic rights, continues with the systematic destruction of the moral personality of individuals who command the respect to which they have a right (and which they themselves bear), and culminates in industrialized mass murder that destroys individuality, or the “human face,” as such.¹⁸ So we understand why Arendt’s institutionalism has most deeply nothing to do with the long tradition that extends from Burke and Bentham to legal positivism. The idea implied in Arendt’s critique of human rights is not that only institutions create positive rights (along with obligations and sanctions), which would mean that outside institutions the notion of right has no meaning; individuals have no specific rights, only natural (biological, psychological, even cultural, etc.) qualities. Nor is it, despite certain appearances that are used to include Arendt in a neoclassical current that would also include Leo Strauss, a return to the ancient idea of the *zoon politikon*. It is a much more radical and philosophically opposite idea: outside the institution of the community—not, of course, in the sense of an organic community, another naturalist, symmetrical myth, but in the sense of the reciprocity of actions, what Kant called “commerce” or “reciprocal action”—there

are no human beings. Humans do not exist as such, and thus they are not, strictly speaking.¹⁹

Nothing is therefore more erroneous than reading Arendt as if she sought to abolish or relativize the connection between the idea of humanity and that of rights in general, for it is instead a matter of reinforcing it. Arendt does not seek to relativize the idea of rights (or human rights) but, to the contrary, to make it indissociable and indiscernible from a construction of the human that is an internal, immanent effect of the historical invention of political institutions. We must say that strictly speaking human beings *are* their rights, or exist through them. But this notion covers over a profound antinomy, for we are forced to note that the same institutions that create rights—or, better still, by means of which individuals become human subjects by reciprocally conferring rights on one another—also constitute a threat to the human as soon as they destroy these rights or become an obstacle to them in practice. This is made very clear in the history of the nation-state (and its imperialist, colonialist, and exterminist derivatives), but it is certainly also true of other political forms constituted in history—including the Greek *polis*, whose privilege does not reside in some immunity from this tragic contingency but perhaps from the fact that its way of presenting and justifying exclusion, which was not that of modern universalistic discourse, was much less ideological or dissembling.

ARCHE AGRISTOS

We thus find ourselves on the threshold of the questions posed by recourse to the notion of *isonomia*. This is precisely its first meaning: an institution by which individuals confer rights on each other in the public sphere, starting with the right to speak on a footing of equality (*isôgoria*, *parresia*), which allows them to claim or legitimize all the others and is thus the concrete anthropological figure of the right to have rights. Be it in *The Human Condition* or in *On Revolution*—in reality two complementary books written during the period that follows the Hungarian revolution against Stalinist dictatorship and ends in the triple catastrophe of the 1960s: the U.S. war in Vietnam, the global student revolts of ’68, and the Six Days War between Israel and the Arab countries, leading to the occupation of East Jerusalem and the Palestinian territories—she never stopped insisting on the typically “sophistic” idea that it is not the

case that social and political forms replace a natural human freedom and equality with such and such a degree of inequality and tyranny, but, to the contrary, that the institutions of the city, insofar as they rest on *isonomia*, give birth to equality in the public sphere and by the same stroke to freedom in relations with power and authority in place of preexisting hierarchy and domination. Not only is the institution the origin of a second nature. It is not preceded by any real first nature, or only by an indetermination and a possibility that remains virtual.²⁰

Here a philosophical and philosophical episode takes place that is at once subtle and rich in consequences. In both *The Human Condition* and *On Revolution*, Arendt does not refer initially to Aristotle's classic definition of citizen (*politês*) in terms of the reciprocity of command and obedience (*archên* and *archesthai*, whence proceed the places of the *archôn* and the *archonoi*), but to the (undoubtedly fictional) episode reported by Herodotus in book 3 of his *Histories*, concerning a debate among the Persians as they chose an heir and at the same time decided the form of government after the murder of the impostor who had taken power after the murder of Cambyses, following an aristocratic plot.²¹ Let us note first of all that the same episode plays a crucial role for Rousseau, who could be called Arendt's intimate enemy in her project of redefining the political against the tradition of political philosophy, in the negative moment of his critique of inequality prior to trying to imagine a constitutional order analogous to our lost nature.²² In the story, each of the three Persian princes who could be named to refound the state (Otanes, Megabyzes, and Darius, who is chosen in the end, definitively setting Persia on the opposite course to that of the Greek city-states) makes a plea for one of the typical regimes: *isonomia*, *oligarchia*, and *monarchia*.²³ The first is defined as "government of the mass of the people" (*plêthos archon*), in the sense, first of all, that "affairs [of state] are placed at the center" (*es meson katathêinai ta prôgmata*), and then that offices are drawn by lot with the obligation to account for how they are discharged, with the "public" retaining the say in the last resort (*boluênumata panta es to koinon anapherêi*). After the Persians nobles reject this extreme solution (a kind of anticipatory night of August 4), Otanes, in the form of a personal claim, delivers the formula that expresses his political ideal: *oute archên oute archesthai ethelô*, I want neither to command nor to obey.²⁴ Clearly, Aristotle (and, following him, the tradition of political philosophy centered around citizenship) never saw

the definition of civic virtue in such a formulation: for there to be citizens, there must be an *archê*, a principle of authority, even if that authority is divided or circulates among the citizens. Otanes's principle, taken literally, is thus an anarchist principle. When it is taken into consideration (by Arendt or others), we are obliged to ask ourselves what place the anarchist moment has in a determinate conception of the political.

What I am maintaining here is of course not that we should classify Arendt herself as an anarchist or that she did not differentiate between democracy and anarchy. (She defended herself on this charge, in particular in her essay "On Civil Disobedience," to which we will return, and in the German interviews she gave at the end of her life.) It is rather that she deflects all positivism by including, at the origin of political institutions—or, better, in the indeterminate neighborhood of this origin—an imprescriptible moment of an-archy that has to be constantly reactivated precisely if the institution is to be *political*. The construction of the political, and thus the definition of the citizen, can thus only be antimimic. No doubt disobedience and obedience to the law are not equivalent; they cannot put on the same level by institutions. But the fact is that without the possibility of disobedience, there is no legitimate obedience—a thesis that does not refer (as in classic formulations of a right of resistance) to an imprescriptible and inalienable human nature, but to the pragmatic experience of the birth, history, and decadence of democracies (and "constitutions of liberty" in general).

This thus leads directly to what Arendt argues in her essay on "civic disobedience," provoked by the debates around the Vietnam War and the dissidence it set off in American society.²⁵ Her thesis, as we know, is far from simple. It relates in particular to the relation she maintains with contemporary events that serve as a framework and within which she tried to intervene in a specifically theoretical way. It is not a matter of forging arguments for or against this policy, even if Arendt in fact takes sides, but of returning on the basis of conjunctural problems to the republican principles at stake, and by the same stroke—taking note of the contingency of the history to which they belong—correcting or reworking our understanding.

Arendt does not give the name "civic disobedience" to simple objections of individual conscience based on a subjective reaction to the abuse of power (or what is perceived as such).²⁶ She speaks of "organized

minorities" and even of "masses" (if not of mass movements) that present problems for public order and the recognition of state power.²⁷ But neither does she aim at the simple fact that a regime gripped by a legitimacy crisis has to face phenomena of insubordination and growing illegality. In a sense it is just the opposite: it is a matter of collective movements that, in a highly determinate situation with objective limits, abolish the vertical form of authority in favor of a horizontal association so as to recreate the conditions of free consent to the authority of the law. It is thus a matter, in the end, not of weakening legality but of reinforcing it, even if this way of defending the law against itself (or against its discretionary application by the government, the administration, the magistrates) can only be legally considered illegal, even criminal—at least from the classic institutionalist perspective for which there can be no difference between the legal order and the state order.²⁸ What is particularly striking in her analysis is her insistence on the idea of the risk civic disobedience implies. What is at stake is not the legal risk that is run (the punishment logically implied by breaking the law or disobeying the constituted authorities), which goes without saying, but the political risk—that is, of an error of judgment on the situation and the relation of forces that constitutes it, such that the aim of recreating the continuity of the *politeia* or the conditions for the existence of the active citizen could very well turn into their opposite, by a ruse of reason or rather of history, symmetrical to that of Hegel, resulting in their definitive destruction.

It is striking that here Arendt again cites Tocqueville's notion of "dangerous freedom" and refers to the "perils of equality" that are inseparable from democracy. These ideas are at the center of the political dilemma inherent in movements of dissidence and civil disobedience, caught between the authoritarianism and conservatism of the state and the possibility of an essentially totalitarian internal degeneration:

No doubt "the danger of civil disobedience is elemental," but it is not different from, nor is it greater than, the dangers inherent in the right to free association, and of these Tocqueville, his admiration notwithstanding, was not unaware. . . . Tocqueville knew that "the tyrannical control that these societies exercise is often far more insupportable than the authority possessed over society by the government which they attack." But he knew also that "the liberty of association has become a necessary guarantee against the

tyranny of the majority," that "a dangerous expedient is used to obviate a still more formidable danger," and, finally, that "it is by the enjoyment of dangerous freedom that the Americans learn the art of rendering the dangers of freedom less formidable." . . .

We do not need to go into the old debates about the glories and the danger of equality, the good and the evil of democracy; to understand that all evil demons could be let loose if the original contractual model of the associations . . . should be lost. Under today's circumstances, this could happen if these groups, like their counterparts in other countries, were to substitute ideological commitments, political or other, for actual goals. . . . What threatens the student movement, the chief civil-disobedience group of the moment, is not just vandalism, violence, bad temper, and worse manners, but the growing infection of the movement with ideologies (Maoism, Castroism, Stalinism, Marxism-Leninism, and the like), which in fact split and dissolve the association.²⁹

That is to say, it would deprive it of its capacity to gather together an internal pluralism of tendencies into a common dissidence, a distilled model of what could be a society of citizens, a public square. These problems are obviously far from obsolete today.

But the idea of contingency or indetermination (opening the necessity and risk of judgment) that inspires these considerations can also be formulated "in Greek," for example by retrieving the first definition of citizenship proposed by Aristotle in the *Politics*, which characterizes it as the bearer of an "indeterminate" or "unlimited" *arché*, according to the translation we choose of *arché aristos*. (But no doubt it is necessary precisely to retain both connotations, especially if we do not want to immediately return this to a simple institutional function, whose content would be participation in deliberative and judicial assemblies, and thus to the exercise of judgment in decisions and accounting, *bouleucin kai krinein*.)³⁰ This definition—the first of three—is fundamental; it commands the whole logic of what follows. What is more, let us not forget that it is precisely what Aristotle wants to get beyond as quickly as possible, no doubt because of the danger it poses of an uncontrollable oscillation of democracy and tyranny. Nevertheless, it does not disappear in favor of better ordered or better defined notions (especially the second definition of citizenship as the alternation of authority and obedience: *archein te*

kai archesthai diasthai) without leaving a trace that is periodically reactivated in the construction of the *politia* as the “balanced” or “perfect” regime (as far as is humanly possible) because it neutralizes the inconveniences and cumulates the virtues of the others (in practice just two: democracy and aristocracy).³¹ This is the case every time it is necessary to reactivate the foundation of the city in the “domination” or “mastery” (*kuriōs einai*) of that which constitutes it (the uniform mass of citizens), which means that every regime is in a sense democratic (or better: a regime cannot be antidemocratic).³² Arendt’s thesis, by comparison, would be that *archē* has to again become unlimited or indeterminate (*aristos*) in the negative form of civic disobedience, for this annuls the privilege of power, or returns judgment to the side of “what-ever” citizens. The problem that is by definition insoluble (as was constantly objected to by Arendt), which she treats as the challenge that is the test of the truth of democracies, is to incorporate into institutions their opposite: it is to institute disobedience as the ultimate recourse in the face of the ambivalence of the state, which makes it the destroyer of liberties and of lives at the same time that it is their guarantor.

HOW TO ESCAPE VOLUNTARY SERVITUDE?

It thus remains to take into account a crucial dimension of this anti-nomic conception that we can associate with a certain tragic model of the groundlessness of rights. The fact of combining in this way a negative thesis—what I have called Arendt’s theorem—that identifies the construction of the properly human relation with the possibility of a right to have rights in the framework of a political institution that takes the form of a historical community, with a positive thesis, which makes the inclusion of a principle of disobedience or dissidence at the heart of obedience itself the condition of the existence of the political (and thus reverses the idea of the closure, the completeness inherent in it into openness or incompleteness), places any purely legal (or legalistic) understanding of right itself in question. It is opposed to the sovereign tautology: the law is the law (*Gesetz ist Gesetz*), which also means that its own “nonviolence” (in the highly particular sense Arendt gives this notion) poses a limit to the violence of tautological propositions that descend from theology to the political.³³ What can seem strange here, at least for those with some familiarity with dialectics, is that the negative proposition (reduction

to absurdity or impossibility) in reality announces the sole condition of possibility of the institution, and the content of the positive proposition is the idea of a negative dialectic inherent in the life of the law, which accompanies all its existence to the point at which it is applied (and is not limited to a founding insurrection of the juridical order as a whole or to the exercise of a constituent power destined to be effaced in the constitution it produces).

Arendt did not meet the question of obeying the law and how it is conceived by the dominant positivism (which is organically united with the operation of the modern state, including the rule of law) abstractly, but in the course of what, for historical and personal reasons that are easily understood, was probably the “crucial experience” par excellence in her life as a public intellectual, namely the Eichmann trial. Here the chapter of *Eichmann in Jerusalem* on the “Duties of a Law-Abiding Citizen” must be very carefully reread, noting the effect of generality produced by the formula abstracted from its context, but also without prejudicing the relation Arendt finally establishes between the state of exception and the normality of the *Rechtsstaat*. The chapter closes with a provocative interpretation of Eichmann’s zealous behavior, which, during the decomposition of the Third Reich, while some Nazi leaders responsible for the Final Solution attempted to “moderate” its operation by negotiating the exchange of safe-passage for groups of Jews slated for extermination for strategic goods (or in hope of personal accommodations with the victors, which they sometimes obtained), led him to demonstrate an intransigent “conscience” in executing the Führer’s annihilation order, running the risk of coming into conflict with his immediate superiors. Arendt shows that we need not see here the signs of particular ideological fanaticism nor of Eichmann’s exceptional cruelty, but an illustration of the inevitable consequences of a certain conception of law and legal obedience constitutive of what she calls in the same work the “banality of evil.”

Three main traits seem to characterize the law understood in this sense: its *universality* (the fact that it cannot allow exceptions, and thus is “without prejudice” in its application); its *imperative* character (the fact that it requires unconditional obedience to the letter, not interpretation or discussion on the part of the citizen whose obedience it prescribes); and its *absoluteness* (this is the most problematic point, for in the case of the legal system of the Third Reich the ultimate source of law was not a constitutional order or the general will of the people expressed through

its representatives, but the very words of Hitler, including those that remained unwritten, which had the force of law, since he was supposed to be the incarnation of the German people). What Arendt described as “the moral, juridical, and political phenomenon at the center of our century” thus resides in taking to the limit certain intrinsic characteristics of juridical formalism that invert it: from a function of the construction (or conservation) of the common world to a function of destruction, without for all that altering its form. Neither the guarantees of juridical form itself (the fact that the law was promulgated according to rules) nor the mechanisms of moral defense—conscience and humanity—were sufficient defenses against this reversal. They presuppose, Arendt tells us, that the problem is solved, for the problem lies in the very significance of the idea of law as command or expression of sovereign will.

And just as the law in civilized countries assumes that the voice of conscience tells everybody “Thou shalt not kill,” even though man’s natural desires and inclinations may at times be murderous, so the law of Hitler’s land demanded that the voice of conscience tell everybody: “Thou shalt kill,” although the organizers of the massacres knew full well that murder is against the normal desires and inclinations of most people. Evil in the Third Reich had lost the quality by which most people recognize it—the quality of temptation. Many Germans and many Nazis, probably an overwhelming majority of them, must have been tempted *not* to murder, *not* to rob, *not* to let their neighbors go off to their doom (for that the Jews were transported to their doom they knew, of course, even though many of them may not have known the gruesome details), and not to become accomplices in all these crimes by benefiting from them. But, God knows, they had learned how to resist temptation.³⁴

What on one side (that of obedience) appears banal, as the sense of duty executed to the letter, thus appears on the other side as “radical evil,” following the critical usage Arendt makes of this Kantian category, simply by pushing the identification of the law with an expression of will whose autonomy can turn from good to evil, to the extreme.³⁵ And, in the same way, voluntary servitude (in which the individual’s “good will” in a way turns against the capacity to judge for himself) appears as the other side

of the totalitarian process of the institutionalized destruction of the human through the production and elimination of superfluous humans.

Here it would be necessary to attempt a genealogy of the expression *Gesetz ist Gesetz* or “the law is the law,” which furnishes the tautology of right with its typical expression. Its origins are murky, even if one could try to trace a line that goes back to certain maxims of Roman law (*dira lex, sed lex*), or, very differently, to debates in the Jewish tradition on obedience to the Torah (which Spinoza recalls in chapter 4 of the *Theologico-Political Treatise*). But the crucial problem seems to reside in the transfer of absolutism to the law itself, which was the work of jurists at the time of the institution of the nation-state, in particular Bodin (and, following him, Hobbes), and thus of the *internalization* of the sovereignty of the will to the form of law itself, which impersonalizes it or renders it independent of the particular person of the sovereign and the circumstances of his decision.³⁶ The important point is obviously the fact that in the conception of the law as expression of the sovereign will (be it that of a prince or of the people) that subjects “each and all” to a single juridical order, one is led to do without the subjects’ consent (and consequently their capacity for contestation through representatives or intermediary bodies, as they had been variously preserved by feudal monarchies). At the same time that the state acquires, according to the jurists’ expression, “decisional and procedural autonomy,” the law becomes *unilateral*, which means that it presumes the subjects’ obedience or makes it into a prior obedience. Not only is “the privilege of the law to be obligatory without the agreement of its addressees”; “the act of sovereignty is imposed unilaterally as soon as one is in a position to distinguish between its authors and its addressees (third parties), who are subjected to a prior obedience. It may be that the law of the Sovereign runs up against the active opposition of certain subjects, but in law it is valid as soon as it is juridically perfect, and thus it is valid if need be against the will of the addressees. It is essentially constraining since the refusal to obey it can imply enforcement.”³⁷ This holds more than ever as soon as the sovereign is no longer an individual prince but presents itself as the body of the citizens themselves, and thus independently of the modalities of the exercise of legislative power.³⁸ And this leads immediately to distinguishing between norms that are contestable (acts of magistrates, particular government decisions) and those that must always remain incontestable (laws against which, as soon as they are promulgated,

there can be no appeal—but can only be changed through a new act of sovereignty).³⁹

We can now return a last time to Arendt's analysis (here more than ever "thinking without banisters," as she claimed) in order to specify at once where the line of demarcation falls between the normal, conservative institution of law and its perverse or criminal institution, if it can even be drawn cleanly, and by which byway or change of paradigm Arendt tried to draw the political (and therefore also unpolitical) consequences of highlighting a grey zone where these two extremes paradoxically meet.⁴⁰ Here the notion of voluntary servitude is unavoidable, not because it would bring a solution (which would only be a repetition of the enigma), but because it poses the problem in a radical way—at least if we read it not as a simple empirical description of situations in which to varying degrees subjects consent to servitude or subordination—as soon as this cannot be explained simply by relations of forces, but as an interrogation without an immediate or definitive answer on the conditions of possibility, within the very constitution of the will, of unconditional obedience, or the *will to obey* without which there would be no absolute power.

It is precisely this problem that absorbed Arendt's attention as soon as she took seriously Eichmann's reference during his trial to the Kantian categorical imperative and how he applied it to his own "dutiful" obedience. Not only did she not see it as a ruse plain and simple; she related it to what in contemporary jargon would be called a process of subjectification inscribed in a certain way of interpreting the citizen's relation to sovereignty through the intermediary of the universality of the law.

And, to the surprise of everybody, Eichmann came up with an approximately correct definition of the categorical imperative: "I meant by my remark about Kant that the principle of my will must always be such that it can become the principle of general laws" . . . He then proceeded to explain that from the moment he was charged with carrying out the Final Solution he had ceased to live according to Kantian principles, that he had known it, and that he had consoled himself with the thought that he no longer "was master of his own deeds," that he was unable "to change anything."

What he failed to point out in court was that in this "period of crimes legalized by the state," as he himself now called it, he had

not simply dismissed the Kantian formula as no longer applicable, he had distorted it to read: "Act as if the principle of your actions were the same as that of the legislator or of the law of the land—or, in Hans Frank's formulation of "the categorical imperative in the Third Reich": "Act in such a way that the Führer, if he knew your action, would approve it" . . . Kant, to be sure, had never intended to say anything of the sort . . . But it is true that Eichmann's unconscious distortion agrees with what he himself called the version of Kant "for the household use of the little man." In this household use, all that is left of Kant's spirit is the demand that a man do more than obey the law, that he go beyond the mere call of obedience and identify his own will with the principle behind the law—the source from which the law sprang. . . . Much of the horribly painstaking thoroughness in the execution of the Final Solution . . . can be traced to the odd notion, indeed very common in Germany, that to be law-abiding means not merely to obey the laws but to act as though one were the legislator of the laws that one obeys. Hence the conviction that nothing less than going beyond the call of duty will do.

Whatever Kant's role in the formation of "the little man's" mentality in Germany may have been, there is not the slightest doubt that in one respect Eichmann did indeed follow Kant's precepts: a law was a law, there could be no exceptions. . . . No exceptions—this was the proof that he had always acted against his "inclinations," whether they were sentimental or inspired by interest, that he had always done his "duty."⁴¹

The expression "household use" that Arendt employs here is not, of course, secondary. It does not simply signify "personal" or "private," but is opposed to the *public* use of practical reason that, in the true Kantian doctrine as Arendt understands it, makes the discovery of principles (or maxims) of action conform to the law of the exercise of judgment. This is why invoking the "voice of conscience" cannot serve here as a banister, but finds itself carried away in the same movement of perversion as the categorical imperative itself. But the most delicate point of this interpretation (which tried to think to the extremes the virtualities of a certain concept of law) clearly resides in the proposition concerning the subject's ideal identification with the legislator. We can illuminate this by

connecting this passage to developments in the third part of the *Origins of Totalitarianism* on the relation between the Leader and the members of the movement:

The supreme task of the Leader is to impersonate the double function characteristic of each layer of the movement—to act as the magic defense of the movement against the outside world; and at the same time, to be the direct bridge by which the movement is connected to it. The Leader . . . claims personal responsibility for every action, deed, or misdeed, committed by any member or functionary in his official capacity. This total responsibility is the most important organizational aspect of the so-called Leader principle [*Führerprinzip*], according to which every functionary is not only appointed by the Leader but is his walking embodiment, and every order is supposed to emanate from this one ever-present source. This thorough identification of the Leader with every appointed subleader and this monopoly of responsibility for everything which is being done are also the most conspicuous signs of the decisive difference between a totalitarian leader and an ordinary dictator or tyrant. A tyrant would never identify himself with his subordinates, let alone with every one of their acts . . .

This total responsibility for everything done by the movement and this total identification with every one of its functionaries have the very practical consequence that nobody ever experiences a situation in which he has to be responsible for his own actions or can explain the reasons for them. . . . The real mystery of the totalitarian Leader resides in an organization which makes it possible for him to assume the total responsibility for all crimes committed by the elite formations of the movement *and* to claim at the same time, the honest, innocent respectability of its most naive fellow-traveler.⁴²

There is thus perfect symmetry between the way the Leader, the source of all legitimacy, incorporates the actions of the all the subjects, and the way they internally identify their will, in what distinguishes the “inclinations” and “sentiments” Kant called “pathological” (that is, deriving from the empirical arbitrariness of each) from those of the “legislator,” who is now the Leader.⁴³ But we are also closer to the way that de La Boétie, in his *Discourse on Voluntary Servitude*, questioned the mech-

anism by which, in a perfect tyranny (what he calls the power of One), “the despot subdues his subjects, some of them by means of others, and thus is he protected by those from whom, if they were decent men, he would have to guard himself.”⁴⁴ Here, too, we find a process of identification that makes each individual with a certain power a “little One”—or, as de La Boétie says, a “little tyrant” (*tyranneau*), an exact replica of the sovereign One:

whenever a ruler makes himself a dictator, all the wicked dregs of the nation—I do not mean the pack of petty thieves and earless ruffians who, in a republic, are unimportant in evil or good—but all those who are corrupted by burning ambition or extraordinary avarice, these gather around him and support him in order to have a share in the booty and to constitute themselves petty chiefs under the big tyrant. . . .

. . . For, in all honesty, can it be in any way except in folly that you approach a tyrant, withdrawing further from your liberty and, so to speak, embracing with both hands your servitude? . . . The tiller of the soil and the artisan, no matter how enslaved, discharge their obligation when they do what they are told to do; but the dictator sees men about him wooing and begging his favor, and doing much more than he tells them to do. Such men must not only obey orders; they must anticipate his wishes; to satisfy him they must foresee his desires; they must wear themselves out, torment themselves, kill themselves with work in his interest, and accept his pleasure as their own, neglecting their preference for his, distorting their character and corrupting their nature . . .

. . . What condition is more wretched than to live thus, with nothing to call one's own, receiving from someone else one's sustenance, one's power to act, one's body, one's very life?⁴⁵

To return to the situation Arendt describes—which, according to her, constitutes the difference between a tyranny, even an absolute one, and totalitarianism, strictly speaking—it is necessary that, on the one hand, the particular will (“pleasure,” “interest”) of the Leader is replaced by the universality (or, rather, the form of universality) of the law, and, on the other hand, that the process of identification extends to all subjects, in the minimal exercise of power each makes to command himself to obey, or to identify his will with that of the legislator.

We then better understand, perhaps, the dilemma that resides at the heart of the critique of law-as-expression-of-will as a political absolute that runs through all Arendt's reflections on contemporary history and her attempt to rediscover, with the help of the Greeks—and, more fundamentally, to invent, “without testament”—an interpretation of the institution (of *nomos*) on which the collective exercise of judgment, which is rooted in freedom of speech and tests itself to the point of risking disobedience, would not constitute just the ideal foundation of legislative power, but the everyday reality of its exercise and control by the community of citizens. The tautology of legal positivism (“the law is the law”) is essentially unstable. Either it requires a supplement of conviction or a sense of duty on the part of individuals, who can—under the extreme historical circumstances of totalitarianism—be transformed into zealous collaborators with the execution of legal crime, or it has to be corrected with all the risks this carries by incorporating a right to disobey into the constitution itself (in the sense of the material constitution, that is, a *practice* of public institutions, not a normative text). It would, to be sure, be a bit hasty to suggest that each of us, as citizen, only has a choice between becoming a potential “little Eichmann” and transforming himself by resisting authority (into a citizen against the powers that be)—just as it would no doubt be illusory to imagine that a state or a society in which civic disobedience figures among the fundamental rights would in itself be immunized against totalitarian degeneration. And yet, at least as a regulative idea, this is indeed the choice that, according to Arendt, should orient our understanding of the political.



POPULISM AND POLITICS: THE RETURN OF THE CONTRACT

The translation of Ernesto Laclau's book *On Populist Reason* is an important event to which I would like to do my best to call attention.¹ Coming after several others, sometimes very far removed from the publications that made for the author's international renown, it will give a new dimension to the reception of an important body of work in contemporary political theory. The work should provoke discussion. It is in fact rather rare to find a project of such ambition, aiming at nothing less than rethinking the coordinates of “the political” as such, combined to such a degree with a vast comparative inquiry covering two centuries of problematic articulations between democratic institutions and mass mobilizations, and finally an intervention that aims to reformulate the terms of debate on the most worrying phenomena on the current political scene. It arrives at a moment when the question of populism provokes heated controversies, whether concerning how we should evaluate the growing popularity of xenophobic ideologies in different parts of the world