

A Human Rights Policy

by Christian Nadeau

Since their declaration in 1789 human rights have been the subject of numerous critiques. Even nowadays, they are accused of being detrimental to democracy and of favouring individualism. But these accusations, J. Lacroix and J.-Y. Pranchère explain, are not founded.

Reviewed: Justine Lacroix et Jean-Yves Pranchère, *Le procès des droits de l'homme. Généalogie du scepticisme démocratique*, Seuil, « La couleur des idées », 2016, 352 p.

The larger part of the critiques formulated against human rights since they first appeared in the political vocabulary of philosophers and constitutionalists revolves around their universalism. According to these critiques, human rights represent abstract, disembodied and moralizing general norms that dominate democracies and dictate them strict rules of conduct regardless of each nation's specific political choices. Today such critiques are heard as much in the left as in the right wings. Human rights' claim to universality is seen as something that impairs the conduct of any political project generated by the distinctive values of each historical community.

Should this be seen as a mere reaction to democratic modernity? J. Lacroix and J.-Y. Pranchère think not. As evidence, they mention the hostility of many politicians in Europe and elsewhere to human rights requirements, as well as the growing number of intellectuals – among them, Pierre Manent, Marcel Gauchet and Jean-Claude Michéa – who claim to be part of a democratic response to the increasing number of appeals for human rights. According to these authors, the overzealous individualism of contemporary societies – which is contrary to the commitment needed for any collective project – generates an ever-growing number of human rights claims. Contemporary democracies, these authors literally say, cannot claim to be automatically supportive of human rights requirements when these weaken historical social relations within communities by linking individuals to what protects them from one another rather than strengthening the ties that unite them.

These critiques do not come out from nowhere. They emerged at the end of the 17th Century and evolved into their present form in the current debate. J. Lacroix and Y.-Y. Pranchère set themselves the task of presenting an intellectual map of the most important objections formulated against human rights over the last centuries, in order to shed light on the elements that foster scepticism towards them. They examine the works of seven authors: Edmund Burke, Joseph de Maistre, Louis de Bonald, Jeremy Bentham, Karl Marx, Auguste Comte and Carl Schmitt. A political defence of human rights following the thought of Hannah Arendt is presented in response to this “historical cartography”.

A historical cartography

Edmund Burke's *Reflections on the Revolution in France* is one of the first expressions of a fundamental disagreement with the moral logic of human rights. For him, the specificity of the French Revolution lies in its claim to universality. By contrast, the American Revolution couldn't, by nature, aspire to reach beyond the limits of North America. After the French Revolution, every European State finds itself compelled to take up a position for or against human rights. If the British Revolution of 1688 or the American War of Independence could not have the same effect, it is because they both took place in response to a particular set of circumstances. On the contrary, the French Revolution is accompanied by a universalizing discourse that erases all kinds of historical determination. According to Burke, an abstract and depoliticized norm makes it impossible to recognize a people's specific claims.

Jeremy Bentham's critique of human rights is first reflected by his refusal of a state of nature or of a pre-political moral status. For Bentham, any expression of a legal norm emanates from the human will and cannot precede it. Bentham rejects the thesis of a primacy of rights over interests, since the latter define the needs and therefore set the limits of the use of legal norms. In saying this, Bentham ignores the aspects of human rights corresponding to the needs of individuals and can, as such, be their source. J. Lacroix and J.-Y. Pranchere clearly show how Burke and Bentham's critique of human rights come from two diametrically opposed considerations: for Burke, human rights gloss over the historical constitution of communities, as they are foreign to each nation's peculiarities; for Bentham, on the contrary, these same rights hamper all future prospects, because they precondition the choices of social groups. But ultimately, their reasoning is based on the same view: universalism sacrifices the political community on the altar of rights. A similar reasoning can be found in Auguste Comte's theory: for him, the very idea of human rights is fallacious because it implies that duties are subordinate to rights. Now, he says, the duties are what make social bonds of solidarity possible, the idea of individuality inherent to human rights being a source of disorganization. Moreover, he thinks, a person is not protected from others by the rights he or she holds, but by the mutual obligations existing between them.

In his criticism of Burke's thought, Thomas Paine reckons that it is not possible to speak of rights without regards to those whose rights they are. A government cannot derive its authority from itself. Governments work in order to safeguard the rights of the people they have the mission to protect. To this, the counter-revolutionaries Joseph de Maistre and Bonald respond that there is no other source of authority than God. Men simply cannot be dispossessed of what lies beyond them. That is the reason why neither the divine neither the political authority can be called into question, since they do not derive in any way from a contractual artefact. Any agreement emanating from the will of men needs to be founded on an external power. And since religion and politics are founded on each other, there can be no human standard of law undermining their authority.

Unlike Bentham, for whom human rights can only correspond to needs, Marxism is presented as a theory that forbids taking rights seriously since they ultimately protect nothing but the "selfish calculations" of particular interests. In his early writings, and especially in *On the Jewish Question*, Marx's views concur with those of conservative critics of human rights, as he describes them as conveying a form of morality independent of the social conditions of existence – that is, class struggle. In this perspective, opposing the atomist logic inherent to human rights, Marx is seen as being critical of the so-called defence of persons by rights that leave the social order and the alienation of individuals unchanged, and subordinate everything to the inviolable ownership principle. In a world of social inequalities, the uniformity of human rights is seen as compounding injustice instead of overcoming it. But, as J. Lacroix et J.-Y. Pranchère rightly point out, Marx is paradoxically compelled to assign some value to the rights he denounces, since their inadequacy does not mean they are invalid. The social emancipation gained through class struggle first, and then through socialism, requires prior recognition of human rights – such as the freedom of assembly, of association, of press, as well as the right to universal suffrage and to free, public education – all of which represent the necessary steps towards a genuine social transformation.

For Carl Schmitt, the sovereignty of the state does not emanate from its component political subjects, but from the unity and the identity of a people. Thus the equality of all citizens cannot be attributed to the alleged universality of human rights, because this would mean that rights precede the political order. Conversely, for Schmitt, a main characteristic of democratic equality among citizens lies in a people's ability to distinguish itself from other peoples, both within and outside its borders. Against the moral uniformity involved in the human rights perspective, in which every human person deserves respect regardless of his or her origins, he promotes – even before supporting Nazism – the idea of a national homogeneity diametrically opposed to any kind of universality. Therefore it cannot be possible to accept human rights that would deny the general will of the people – a will that cannot emerge from an agreement among the parties.

A political reconstruction of human rights

J. Lacroix et J.-Y. Pranchère start responding to all of these authors, building on the work of Hannah Arendt. At the end of the second volume of the *Origins of Totalitarianism*, Arendt suggests that human rights are themselves based on political struggles, which constitute the “right to have rights”. The reflection on the rights must, in order to support such a view, start by considering what conditions them – that is, the belonging of individuals to communities. Without political institutions, without social organizations, without a state, human rights can refer to nothing but wishful thinking. It would be possible – as numerous commentators have already done – to liken Arendt to other despisers of human rights, for whom these rights are, because of their abstract character, reduced to empty shells and constitute an apolitical normative space. But J. Lacroix and J.-Y. Pranchère, though they consider human rights to be rooted in the life of communities, do not promote a nation-state model in which political rights are conditioned to national imperatives.

This interpretation of Hannah Arendt’s views on human rights, J. Lacroix and J.-Y. Pranchère share with authors such as Étienne Tassin or Étienne Balibar. In this perspective, human rights are part of the sphere of citizenship and are not independent of it. However, it is not the citizenship of the nation-state the authors are referring to. Rather, what they have in mind is a citizenship derived from a political status under construction, independent of borders, and forged by the struggles for emancipation – in short, the “practical realization” of rights (p. 303), achieved namely by building counter-powers in the face of the hegemonic claims of the political and economic elites. This is the most promising path in the book, but unfortunately it remains undeveloped.

Towards new lines of research

Despite the undeniable qualities of this book, which deserves close reading and will hopefully be the subject of many research seminars, there are a few shortcomings in its overall structure, which make its reading a bit frustrating. These few caveats are more intended to be suggestions for a possible follow-up to a book whose importance and value cannot be overestimated.

In the first place, the absence of contemporary English-speaking authors – whose views, while not in line with Arendt’s thought, are maybe closer to the ideas suggested by J. Lacroix et J.-Y. Pranchère – is surprising. Think, for instance, of the work of Thomas Pogge, Seyla Benhabib and, in particular, of Carol C. Gould, who argues that our conceptions of democracy need to be expanded in a cross-border decision-making process, in relation to a conception of human rights in which socio-economic and cultural issues would be central.

Secondly, the way the democratic critique of human rights – exposed in the first chapter – is articulated with the conceptual and historical cartography that makes up for the largest part of the book, proves disappointing. If it is possible share the intuition that the conceptual history of ideas sheds light on the terms of the current debates, it is on the other hand trickier to trace the actual lineage of Marcel Gauchet or Jean-Claude Michéa’s ideas – who refer to the idea of democracy in order to criticize the deadlocks of human rights – back to Burke, Marx or Schmitt, for whom the very notion of democracy doesn't have the same meaning. Are they merely reiterating their arguments, with some shifts? If yes, which arguments are they taking up? As a result, what is also lacking is the direct confrontation between the perspective of the authors – influenced by Arendt – and the contemporary democratic critique of human rights, which mostly appears indirectly in the book, when the authors mention its alleged origin. In the end, it is perhaps difficult to see how two critical traditions clearly distinguished by the authors are connected to each other. The first one rejects the very modernity of human rights or criticizes it for its incapacity to think beyond the individual; the other sees these same rights as a moral screen concealing the failure of the political project of social emancipation required in order to achieve equal respect of each person. However, in defence of J. Lacroix and of J.-Y. Pranchère, what they observe in past theories isn't always a systematic critique – whose consistency would allow it to be a fully-fledged counter-theory of human rights which could then be taken up in the current debate. What is possible to do today is to trace back some elements of these past critiques, and the great value of the book is to point out the hidden aspects of these critiques that often escape our attention. In short, if it is possible to have a debate on human rights, we must be aware of the history and the implications of the conceptual tools used to criticize them or to defend them.

And lastly, and this is a much more important element, law – as it is institutionalized in international treaties – is almost absent from the book. This linkage between the abstract character of human rights and their implementation is precisely what calls for the normative reflection which the book of J. Lacroix and J.-Y. Pranchère initiates. Indeed, a political philosophy of law cannot ignore the institutions and treaties which give reality to law. Consider the *Convention against Torture*, the *International Covenant on Civil and Political Rights*, the *Conventions on the Rights of the Child*, or institutions such as the *UN Committee on Economic, Social, and Cultural Rights*. Similarly, it is difficult to find a philosophical foundation for the “right to have rights” thesis without linking it to the social struggles for rights. There are thousands of organizations throughout the world who, with very limited means and in a real political struggle, are watching and fighting for the respect of fundamental rights. But most of the time, they operate without a clear normative framework – hence the importance of a philosophy of the democratic foundations of human rights. The task of such a political philosophy would be to formulate explicitly the norms that found the interdependence between rights and the struggles – and without which their existence is uncertain. Without such an overall logic, rights will not be interdependent, and can only assert themselves as an infinite list of queries, which is precisely what M. Gauchet criticizes

them for. Now it is entirely possible to take into account the various kinds of injustice suffered by vulnerable individuals and populations, and still think the consistency of human rights. It is clear that human rights will only appear as empty, depoliticized concepts if they do not refer to their necessary corollary, that is, the struggle against inequalities of access to the exercise of rights recognized as universal. This brings us back to the fundamental meaning of the article 28 of the *Universal Declaration of Human Rights*, which states that everyone has the right to a social and international order ensuring the full effectiveness of rights.

To this it would be possible to respond that this was not the ambition of J. Lacroix et de J. Y. Pranchère's book, and that their historical cartography must be seen as a first step towards a political reconstruction of the rights. But the actual philosophical flaw of human rights might be found in the way we conceive their realization within our societies. The best way to answer the democratic critiques of human rights might be to think philosophically of the struggles and political institutions committed to their realization. As Pablo Gilabert has recently shown, this doesn't mean abandoning all pre-institutional perspective. It is rather a question of showing the complementarity of that which needs to be conceived in the general terms of the interests of mankind – without regards to any kind of institutional structure – and that which is a matter of institutions and political struggles for the recognition of rights, while taking their singularity – and the fact that they belong to a local or international scale – into account. This junction between the abstract character of rights and the contingent nature of struggles and institutions indicates the presence of an activity that organizes social bonds, which testifies to the dynamism of the practical realization of human rights.

Further reading

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