

RIGHT-WING AND LEFT-WING CRITICISMS OF HUMAN RIGHTS

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Human rights, which were born in modern times out of the bourgeois revolutions, particularly the French Revolution, soon met with strong ideological opposition that continues to this day from thinkers on the right and the left. As Bobbio states, human rights have been subjected to two opposing criticisms: they have been accused of excessive abstraction by reactionaries and conservatives in general; and of excessive connection with the interests of a particular class, the bourgeoisie, by Marx and Marxists in general. In this essay we analyse some of the most significant authors in the critical tradition of human rights: Edmund Burke and Michel Villey on the right; Marx and Engels, Giorgio Agamben, Slavoj Žižek and Costas Douzinas on the left.³

1. RIGHT-WING CRITICISM OF HUMAN RIGHTS

Edmund Burke (1729-1797). From conservation to counter-revolution.

Edmund Burke was a British thinker and political leader (Irish by origin) who made the first and most profound criticisms of the French Revolution from a conservative point of view. Burke is a complex character, who can be considered a reactionary (in the literal sense, because he was one of the first to react radically against the French Revolution), a counter-revolutionary, because he fought against the very concept of revolution, and more generally a conservative, because he defended the importance and need to preserve the past and tradition.

Burke, despite having opted for the ruling *establishment* in England, was a defender of his homeland, Catholic Ireland, and of the revolution of the North American colonies against England; to the point that the English revolutionary, Thomas Paine, who had taken part in the independence struggle of the United States of America, and considered him a political and ideological reference, felt betrayed when Burke criticised the French Revolution, to which Paine had adhered. This inspired him to respond to Burke in a pamphlet called *Rights of Man* (PAINE, 1988).

We won't go into Burke's complex thought here, but we will limit ourselves to his critique of the French Revolution expressed in his most famous book: *Reflections on the Revolution in France* (1790), which is not an organically structured book, but a collection of articles and parliamentary speeches, focusing above all on the themes that will become the most important in the future,

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³ Milton Meira's essay on "The critical tradition of human rights" served as the basis for this article: NASCIMENTO, 2010.

recurrent in the critical tradition of human rights with a conservative matrix, and which is still relevant in the contemporary debate (BURKE, 1997).

Burke's theses must be placed in the context of the permanent confrontation that the politician makes between the English Glorious Revolution of 1688/89, which he exalts as a model, and the French Revolution of 1789/93, which he execrates.

Burke's polemic was directed against the theses of the *Whig* MP Richard Price, who supported the French Revolution and interpreted the Glorious Revolution in a way diametrically opposed to Burke's, stating that "the people of this country [France] have acquired, thanks to the principles of the Revolution, three fundamental rights which, he says, are inseparable from each other, and which can be expressed in a short sentence. They are: 1. to choose our own rulers; 2. to depose them for unworthiness (*misconduct*); 3. to establish a government for ourselves" (BURKE, 1997, p. 57). This was an obvious reading of the English Revolution in the light of the principles of the French Revolution.

Revolution or restoration?

Burke's central thesis regarding the relationship between the two revolutions is that the glorious revolution was not a revolution *stricto sensu*, but a "restoration"⁴. In fact, he argues, formally the principle of dynastic succession had been preserved, because Prince William of Orange's wife, Queen Mary, was the daughter of the deposed King James. So it wasn't a question of the King being chosen by the people, as Price claimed, but of dynastic succession, although not strictly speaking, as an exception to the rule, as he recognizes:

There was, undeniably, at the time of the Revolution, in the person of King William, a **small and temporary** deviation in the narrow order of a regular hereditary succession; but it is contrary to all the elementary principles of jurisprudence to derive a principle from a law made in a special case, and concerning an isolated person. *Privilegium non transit in exemplum* (BURKE, 1997, p. 58).

However, there is clearly a certain difficulty in this argument, because in the Glorious Revolution there was not a simple and ordinary dynastic succession, but a break with tradition, which created a monarchy that was no longer absolute, but parliamentary through the *Bill of Rights*, which King William of Orange was forced by Parliament to sign to take the throne.

Burke explains this "novelty" in this way:

According to this principle, the order of succession to the Crown has always been what it is today: an order of hereditary succession fixed by law. In the old system, it was a succession by *common law*; in the new system, by *statute law*, which operates based on the principles of *common law*, without having modified its substance, regulating only the manner of its exercise and determining the persons to whom it should apply. These two types of law have the same *force* and derive from equal *authority* that emanates from the common agreement and original pact of the people.

⁴ The English were the first to use the word "revolution", which they transferred from astronomy to politics. With the glorious revolution of 1688/89, the King signed a *Bill of Rights* (a declaration of *rights*) that harked back to the famous *Magna Charta Libertatum*, which the English barons had obtained from King John the Landless in 1215. The English thus understood their struggle to be a "revolution", i.e. a return to the old *freedoms* of the English achieved since the Magna Charta and usurped by absolutist monarchs. In fact, the meaning given to this word was more of a "restoration" than a "revolution", as it would be understood by the French revolution.

State: *communi sponsione reipublicae*. As such, they bind the king and the people equally, if their conditions are observed; and they serve to perpetuate the *same body politic* (BURKE, 1997, p. 60).

Therefore, the freedom of the subjects depends on obedience to the pact with the King.

With regard to the second principle, i.e. the right to depose rulers on the grounds of unworthiness, Burke states that he is opposed to it, because: "No government could subsist, even for an instant, if it were possible to overthrow it by something as elastic and ill-defined as the opinion one might have of its dignity" (BURKE, 1997, p. 64).

In fact, says Burke, the Glorious Revolution did not justify what he calls a "virtual abdication" (which was a real deposition of King James) because of indignity, but because it "subverted the Protestant Church and State, as well as the indisputable laws and liberties that constitute their foundation" (BURKE, 1997, p. 65). For this reason, Burke argues, the revolutionaries "left the Crown in the same position it had always been in the eyes of the law: perfectly *irresponsible*".

What English law and tradition allow and encourage is, says Burke: "That no grace, under the great seal of England, could oppose an indictment against ministers (*impeachment*), carried out by the *Commons* assembled in Parliament," which he considers something much more feasible to guarantee the liberties of subjects than the deposition of a ruler.

As for the third principle, that is, the right to establish a government for ourselves, rights that Rousseau before and then Kant considered the fundamental principle of any republican constitution, Burke expresses his firm opposition.

The mere idea of fabricating a new government is enough to fill us with disgust and horror. We wanted, at the time of the (glorious) Revolution, and we still want today, to derive from the past all that we possess as an *inheritance from our forefathers*. [...] In the famous law of the third year of King Charles I, called "the petition of rights", Parliament says to the King: "Your subjects have inherited this liberty", thus claiming their franchises not by virtue of abstract principles, such as "the rights of man", but as the rights of the men of England, and as a heritage bequeathed by their ancestors" (IDEM, p. 67-68).

Freedom is conceived here as a franchise snatched by the barons in the *Magna Charta Libertatum* of 1215 and then by Parliament from the King, and not as an intrinsic and natural characteristic of every human being. To reinforce this idea, liberty refers only to the English and not to "men" or humanity, as the French revolutionaries wanted.

Burke makes the same reading of the *Bill of Rights* that led to the reign of William and Mary: "The two chambers do not say a single word about 'the right to establish a government for ourselves'. On the contrary, they took every precaution to secure the religion, laws and liberties which we had long possessed, and which had been jeopardised" (IDEM, p. 68).

It is curious to note, however, that, at least in this writing, there is no reference to the fact that it was the English who were the first, more than a hundred years before the French, to try a king (*Charles I*) and cut off his head after a bloody civil war. This violent break with dynastic succession and tradition is not mentioned here. It is true that it was a momentary rupture, since after Cromwell's dictatorship, the monarchy was restored, and from that moment onwards, in effect, the monarchy was restored. The English parliamentary monarchy guaranteed an enviable political stability that continues to this day. But this stability was the result of a civil war against the absolutist monarchy that was bloody and lasted more than 40 years.

From these initial attacks, Burke went on to radicalize his criticism of the French

Revolution and all revolutions, with observations that went beyond the contingent debate and were intended to have a more general value. Let's summarize some of the main points of this critique.

Criticising the abstract or metaphysical nature of human rights

After stating that government was not created by virtue of natural rights, but to fulfil *human* needs, that man is a complicated being, that the objectives of society are of the utmost complexity, that the exercise of power requires a profound knowledge of human nature and needs to guarantee freedoms, but also to restrict and subdue passions, Burke states that:

Freedoms and restrictions vary according to the times and circumstances and are subject to infinite modifications, which is why they cannot be fixed by establishing some abstract principle; and it becomes frivolous to discuss them based on such a principle (IDEM, p. 89).

Concluding that: "What is the point of discussing man's abstract right to food or medicines? [...]. In such deliberations I would always advise them to seek the help of a farmer or a doctor, and not that of a professor of metaphysics", because:

These metaphysical rights, when they penetrate into practical life like rays of light through a dense medium, are diverted [...] The rights that these constitutional theorists want to obtain are all absolute: despite their metaphysical truth, they are morally and politically false [...] Political reason is a calculator; it is moral, not metaphysical or mathematically adding, subtracting, multiplying and dividing the true moral quantities" (IDEM, p. 91).

Politics is not an exact science, but a practical wisdom that must know how to measure and calculate the pros and cons of any situation and not deduce conclusions from abstract principles or axioms. This criticism will be taken up, as we shall see, by Michel Villey.

Critique of revolutionary violence

From this critique of the abstract and metaphysical character of human rights comes the critique of the revolution's pretence to build a totally *new* man and society on these "metaphysical rights", which leads to the justification of revolutionary violence.

These professors, having no way of applying their extreme principles to cases that lack only a qualified, or one could say, civil and legal opposition, don't oppose it at all. With them, it's either a war or a revolution, or nothing at all! [...] The worst thing about these revolutionary speeches is that they harden and insensitive hearts, so as to prepare them for the desperate blows that are only used on extreme occasions. [...] For some people, plots, massacres and assassinations become a small price to pay to achieve a revolution (IDEM, p. 92).

As the preface to *Reflections*, the Irishman Conor Cruise O'Brien, states, these observations about the revolution were used by conservatives and reactionaries not only against the French Revolution, but against Marxism and communist revolutions, emphasising Burke's importance for contemporary militant anti-communism:

The spirit of total and radical renewal: the destruction of all the rights enshrined by tradition: the confiscation of property, the destruction of the Church, the nobility, the family, customs, veneration of ancestors, the nation - this is the catalogue of everything that Burke hated in his dark moments, and all these elements he would find in Marxism (O'BRIEN, 1997, p. 3).

Criticising the "atheist" Enlightenment and the need to link the state to religion

In the name of tradition, Burke is also a declared enemy of the Enlightenment:

Thanks to our obstinate resistance to innovation, thanks to the cold slowness of our national character, we still bear the mark of our ancestors. I don't think we've lost the generosity and dignity of the 14th century way of thinking, and so far, we haven't turned into savages. We have not been converted by Rousseau; we are not disciples of Voltaire; Helvetius failed among us. Our preachers are not atheists, nor our legislators' madmen (BURKE, 1997, p. 107).

From the Enlightenment, Burke rejects, above all, the critique of historically determined religion. One of the fundamental differences between the *Glorious Revolution*, but also the Revolution in the North American colonies, and the French Revolution (a theme already highlighted by Tocqueville and Hannah Arendt) was that the former was not anti-religious, while the latter wanted to destroy not only historical religions, but the religious spirit itself. This is the terrible accusation of atheism that Burke levelled at the French Revolution.

For Burke, religion is part of human nature: "We know, and it is our pride, that man is, by his nature, a religious animal; that atheism is not only against our reason, but also against our instincts, and that it cannot long prevail". If this is the case, the attempt to replace the Christian religion, which "until now has been our glory and our pride and the great source of civilisation" will lead to some "crude, pernicious and degrading superstition, because we know that our spirit would not know how to endure emptiness" (BURKE, 1997, p. 112).

Burke criticises the revolutionaries' attempts to replace the Christian religion with a civic religion (à la Rousseau) since human nature cannot bear the void created by the destruction of religious principles; a religion that can only lead to the destruction of the principles of tradition.

For this reason, Burke defends the maintenance of the link between religion and the state, in the case of England, based on the Anglican tradition:

Let me first talk to you about the English ecclesiastical establishment, which is the first of our prejudices: not a prejudice devoid of reason, but one that involves deep and extensive wisdom. I'll talk about this prejudice first. In the minds of the English, it is the beginning, middle and end. For, basing ourselves on this religious system, to which we now belong, we continue to conform our actions to the primitive and uniformly constant sentiment of mankind (IDEM, p. 113).

Religion must therefore be linked to the state, both to govern the people, who would otherwise be restricted to their private affairs and would not be interested in public affairs; and to frighten the rulers who "must be imbued with this terrible idea that they act as mandataries and will have to give an account of the way in which they have fulfilled their mandate to the One who is the one great master, author and founder of the Society" (IDEM, p. 114).

Religion, therefore, as a necessary *instrumentum regni* for the government of men, and a religion, as Machiavelli had already said, that is worthwhile for politics more for the fear than the love of God.

Criticising democracy as the tyranny of the majority

Having made these criticisms, Burke's polemical armoury could not lack a few arrows against democracy, against the regime in which the "bottom-up" power of the

people has no limits: this is the well-known thesis of democracy as tyranny.

However, when popular authority is absolute and unrestrained, the people have infinitely greater confidence in their own power, since it is much better founded. [...] A perfect democracy is therefore the most shameful thing in the world. Because it is the most shameful, it is also the most fearsome. [...] The people must therefore be persuaded that, for their own safety, they have absolutely no real right to exercise any arbitrary power and that they must not [...] exercise it from the bottom up.] exercise domination from the bottom up, against nature, in order to drag those who hold state office into tyranny, thus extinguishing every moral principle, every feeling of dignity, every use of reason, and every consistency of character while they give themselves up as easy and despicable prey to the servile ambition of popular slanderers and courtly flatterers (IDEM, p.114.).

This criticism is part of the long tradition that considers democracy to be a form of demagoguery or tyranny; but its virulence, which is quite unusual, is because the ideals of the French Revolution, inspired by Rousseau's "metaphysical" concepts of "popular sovereignty" and "general will", were being put into practice by the Jacobins on a large scale. Burke was aware of this anti-democratic tradition:

Far from seeing absolute democracy as a healthy form of republic, they [the classical authors] saw it as a form of degeneration and corruption. If I remember correctly, Aristotle observed that democracy bears a great resemblance to tyranny in many respects (*Pol.*, IV, 4). I am sure, however, that in a democracy, the majority of citizens are capable of exercising the cruellest oppression on the minority, whenever great divisions occur, which can often be the case (IDEM, p. 135).

Burke returns here to a classic theme that will be the object of criticism and concern, not only from reactionaries, but also from 19th century liberal thinkers such as Alexis de Tocqueville and John Stuart Mill, and which still has repercussions today: democracy as demagoguery and tyranny of the majority.

Criticising the social contract as the foundation of the state

Burke's armoury also included a critique of the central aspect or "founding myth" of modern jusnaturalism, which was one of the pillars of human rights: contractualism, i.e. the doctrine that men are born free and equal by nature and that the state is the result of the will of individuals, which is expressed through a pact or social contract to guarantee these natural rights.

Burke, as Hegel will later do in more depth, criticises the social contract because it is a figure of private law, of an inferior nature, and cannot be the foundation of the state:

A company is certainly a contract. Contracts of a lesser nature, having as their content objects of simple temporary interests, can be cancelled according to the will of the parties. However, should the State be put on an equal footing with an association for the trade in pepper, coffee, cotton, tobacco or any other commodity of such little relevance? [...] The State is an association that considers every science, every art, every virtue and every perfection; and since the ends of such an association are achieved over many generations, the State becomes an association not only between the living, but also between those who are dead and those who will be born (IDEM, p. 116).

And he adds a rhetorical phrase that emphatically defines what we would call today the "naturalisation of social relations":

The contracts that govern each state are clauses of the great primitive contract of eternal society, which links the lowest natures to the highest, links the visible world to the invisible world, according to the inviolable law that maintains all moral and physical natures, each in its determined place! (IDEM, p. 116).

The need to fight revolution with force: counter-revolutionary Burke

Finally, Burke does not limit himself to a theoretical critique of the principles of the French Revolution, but his main concern is to contain the influence that these "fanatical" principles exerted in France and beyond, above all in England, as demonstrated by the sympathies of Price, who wanted England to imitate France.

We cannot ignore the spirit of atheist fanaticism propagated by many writings distributed with unbelievable activity, a spirit that can also be seen in the speeches frequently pronounced in the streets and public meetings of Paris. [...]. Incidentally, the fanatics of France are also apostates. They have societies established both in France and abroad to propagate their doctrines (IDEM, p. 155).

And he concludes with a fear, which was actually a prophecy, that was historically realised with the victory of the ideals of the French Revolution far beyond its borders and its momentary defeat after the monarchical restoration: "I am certain that the principles that currently reign in France are destined to be applied in all countries, to a large number of people, to entire classes, who believe that their calm indolence is the pledge of their security" (IDEM, p. 156).

For this reason, he calls on the European powers to take up arms against these fanatical ideals that are spreading throughout the world, with both defensive and aggressive actions to prevent them from spreading. Burke thus became a fervent militant counter-revolutionary, like the anti-communist intellectuals after the Soviet revolution, and his ideas fuelled the conservative critiques of all time, such as those of Michel Villey.

1.1. Michel Villey (1914-1988). Human rights as a degeneration of the concept of law.

Michel Villey was one of the greatest French legal philosophers of the 20th century. A conservative Catholic, he was brilliant and controversial in his always clear and profound exposition. He wrote several fundamental works on the history and theory of law, many of which have been translated in Brazil⁵. We will only deal with one aspect of his thought, which is central and recurrent throughout his work, namely his criticism of human rights, as found in the pamphlet entitled *The Law and Human Rights* (VILLEY, 2007).

Villey starts from the realisation that, in contemporary times, human rights are so widespread and installed in the most different ideological environments that "it is unthinkable to dislodge them" (IDEM, p. 2). However, this is precisely the task he sets himself: against the *consensus omnium gentium* of his time, he shows the legal and political inconsistency of human rights doctrines.

The critique of human rights is part of the broader critique of modernity and modern idolisation of the idea of progress:

Human rights are a product of the modern age. Idealism, a peculiarity of modern philosophy, and one from which it is not certain that we have been cured, erects this great idol in the place of God: Progress - which must ensure the enjoyment and happiness of all, a myth much cultivated in the time of the Enlightenment;

the purpose of modern politics (IDEM, p. 2).

Villey knows that this task is not only impossible given the unanimity and consensus that human rights enjoy in our time, but also that his criticisms place him in the company of reactionaries:

Who would wish to remain uninvolved in these just causes and would not be ashamed to disassociate themselves from *Amnesty International*? Since information is now universal, it's hard to ignore the fate of the starving people of Calcutta, the torture of El Salvador and Soviet dissidents. Then there's Poland. Everywhere, the inadequacy of laws. Human rights would be the recourse. This relatively new idea is perhaps our only hope of pulling the law out of sclerosis, and the only instrument for its progress. Only reactionary imbeciles could be found to fight it. (IDEM, p. 4).

Villey shows that he knows these "reactionaries" well and feels comfortable in their company. He brings together both right-wing and left-wing criticism, such as that of Marx:

But the human rights debate wasn't born yesterday. It erupted soon after 1789. While Paine in England, Kant in Germany, Fichte and the young Hegel (who later backtracked) were enthusiastic about the rights of man in the French Revolution, Burke was denouncing their evils. [...] At the same time, Jeremy Bentham believed the "rights of man" would be a contradiction in terms. As for the Catholic Church, Pope Pius VI labelled the seventeen articles of the French Declaration "contrary to religion and society". Only very recently (since John XXIII and Paul VI) has the papacy given up on this reproach. Marx also criticised it in *The Jewish Question* (IDEM, p. 5).

And here begins a long petition against human rights, which, according to him, are:

- a) They are uncertain and indeterminate in their wording: "They grant us 'freedom': a term whose definition we exhaust ourselves searching for. It's true that the texts specify, they gratify us with freedom 'of expression'. Another impossible promise!" (IDEM, p. 6).
- b) They are inconsistent in that "they are not rights in the sense of legal positivism, but an ideal: models for the realisation of individual freedom (for Kant, the supreme legal value) and equality" (IDEM, p. 6).
- c) They are ethnocentric: "The dream of universalising the *American way of life*: the regime of free elections of the so-called Western democracies does not seem exportable to Uganda" (IDEM, p. 7).
- d) Finally, they are contradictory:

In any case, the programme of the Declarations is contradictory. They collect a profusion of rights of heterogeneous inspiration - to the "formal rights" or freedoms of the first generation, some "substantial" or "social and economic" rights have been added. To make them the rights of all people, the rights of women, the elderly, children (in which the anti-abortion leagues will include the rights of the foetus), homosexuals, pedestrians and motorcyclists are codified. Each of these is broken down into its components. [...] Each of the so-called human rights is the negation of other human rights, and practised separately, they generate injustice" (IDEM, p. 8).⁷

Based on these considerations, Villey makes a long and erudite historical and conceptual *excursus* to find the roots of this unfortunate situation in which the law finds

itself, a journey that we cannot delve into in this brief essay, but which we will try to summarise in its central aspects.

The subject of human rights interests Villey as an example of what he calls the degeneration of law, which occurred in the passage "from law (*jus*) to human rights (*jura*)", from the objective law of the Greco-Roman tradition, which finds its most exact formulation in the Aristotelian-Thomist tradition, to the subjective rights of the modern world.

According to Villey, the objective concept dates to Roman law. For Roman jurists, law is an art (*ars*), which "has no analogue in the Eastern Empires, in the biblical world of the Old Testament, in the Indies or in China (IDEM, p. 31). An art, an invention that arose in Rome under the influence of Greek philosophy and the dialectical method, in the ancient sense of the term, as "the art of defining and distinguishing the precise meanings of the general terms of language", developed by Aristotle (IDEM, p. 31).

The purpose of civil law is defined by Roman authors, particularly Cicero, as: "The establishment of a just proportion in the distribution of goods and in the judgement of disputes between citizens". Law (*jus*) is exercised to do justice (*justitia*), understood as "giving each person what belongs to them or is their due" (*suum jus cuique tribuere* or *unicuique suum tribuere*), where *tribuere* should be understood as the judge's act of attributing, that is, determining the respective right (*jus*) of each citizen (IDEM, p. 62).

In this objective conception, law is what is just (*id quod justum est*) or the just thing (*res justa*) and refers to an objectively just order according to which everyone receives their due in the distribution of goods and positions.

This conception of law began to be questioned from the end of the Middle Ages and the beginning of the Modern Age. The main culprits in what he calls the "degeneration" of the Aristotelian-Thomist science of law were William of Ockham and the nominalists who followed his school, and later the Spanish *theologians* of the School of Salamanca, such as Francisco de Vitoria and Francisco Suárez, who ended up following the lead of the *theologi moderni* who defended a subjective conception of law⁸.

In these authors, the concept of *dominium* (i.e. property) acquires a breadth that it didn't have before and tends to be identified with the concept of law as a whole (*jus*). A nominalist like Jean Gerson and his followers had affirmed that *dominium* is identical to *ius* and had defined it in these terms: "Property (*dominium*) is understood to be the power (*potestas*) or faculty (*facultas*) of taking over things that are close at hand in order to make lawful use of them in conformity with the law and the rights (*iura*) rationally *instituted* (*rationabiliter institutas*) (apud TOSI, 2005, p. 42-56).

The modern theologians, identifying the two concepts, tended to consider the subject as the sole holder of rights and to conceive of the right as the property and appropriation of a subject over a series of rights (*iura*), whose only limit was given by the law. As a scholar of medieval law, Paolo Grossi, comments: "My freedom coincides with the property I have over myself and my actions, my existence as a free subject consists in a series of 'domineering' behaviours, in short in the property I have of myself" (GROSSI, 1973, p. 135).

⁸ VILLEY, Michel. *Formation of Modern Legal Thought*. São Paulo: Martins Fontes, 2005.

Grossi defines this tendency as "the inclusion of my in the sphere of the self" (IDEM, P. 187-188): the individual is only free when he is the owner (*dominus*) of himself and his possessions, and it will be followed by Spanish theologians, including Bartolomé de Las Casas to defend the rights of the indigenous people, as legitimate owners (*veri domini*) of their possessions (TOSI, 2005).

This subjective conception of rights would later be radicalised, secularised, taken out of its religious context by the moderns, in particular Hobbes and Locke, to whom Villey devotes his attention.

For it is the source of "human right", of his "natural right" (*jus naturale*). What, in this hypothesis, is taken to be the right of everyone, what should be attributed to them (*suum jus cuique tribuendum*)? Logically, "freedom", since in this "state of nature" it is assumed that no law restricts the individual's freedom. The Hobbesian notion of law is linked to the tradition of Gerson and William of Ockham, which reduces law to morality, or to the absence of a moral law that generates freedom. The right is a licence, permission to act (*of doing*). [...] Let's look at the distance that separates this "natural right" from the *dominium* naturale of the Spanish scholastics. The *dominium* is a power of government granted by God; a fraction of the power granted to men. Hobbes' *jus naturale* is an unfolding of the free action of the individual that no law can hinder: an emanation of the subject himself, an authentic subjective right. Every man possesses it by himself (VILLEY, 2007, p.145-146).

And he concludes that:

The emergence of human rights attests to the decomposition of the concept of law. Their advent was the correlate of the eclipse or perversion, in modern individualist philosophy, of the idea of justice and its instrument, jurisprudence. The purpose of jurisprudence was to measure just relationships. This autonomous art fulfilled its own irreplaceable function. The philosophies of modern Europe have cast it aside. The concern for a just distribution disappeared from their works. These non-lawyers, who were the inventors of human rights, sacrificed justice, sacrificed law (IDEM, p. 163).

The consequences are what we showed at the beginning: a proliferation or inflation of rights without efficacy: "'Men were born equal and free'. Can we be surprised that an image so contrary to reality, so deliberately fictitious of our 'natural' condition, still lingers in our subconscious and is inscribed, in the middle of the 20th century, in the first line of the Declarations of Human Rights?" (IDEM, p. 145).

⁶ And he doesn't miss a subtle irony about the right to happiness: "The Soviet dissident Bussowski marvelled when he saw the 'right to happiness' proclaimed in the United States. What are we to think, he asked, if Mr X's happiness ... is to kill his wife?" (IDEM, p. 6).

⁷ I would like to emphasise that most of these criticisms are very close to those made by Bobbio in his essay "On the Foundations of Human Rights", collected in *Era of Rights*, particularly the vague, contradictory and indeterminate nature of the concept of human rights, without, however, drawing Villey's drastic conclusions from these criticisms (BOBBIO, 2004).

⁸ On this subject I refer to my essay: TOSI, Giuseppe. Theological roots of modern subjective rights. The concept of *dominium* in the debate on the indigenous question in the 16th century. *Prima Facie*, Year 4, N° 6 -jan/june 2005, pp. 42-56. One author who debates with Villey, taking a critical stance is: TIERNEY, Bryan. *The idea of natural rights*. Diritti Naturali, legge naturale e diritto canonico 1150-1625. Bologna: Il Mulino, 2002, p. 29-70.

2. LEFT-WING CRITICISM OF HUMAN RIGHTS

Today's left-wing criticisms of human rights are all based on what Marx wrote. Some of them try to add to, or rather update, Marxian criticism by reflecting on or from historical events (11 September) or contemporary situations (terrorism). They appropriate the inflections of different thinkers (Benjamin, Arendt, Foucault, Derrida) but remain on their original axis. We will therefore start with a general characterisation of the critiques of Karl Marx and Friedrich Engels and then address the current state of their critiques through the pen of three of today's main - or most famous - left-wing thinkers: Giorgio Agamben, Slavoj Žižek and Costas Douzinas. It is not a question of exhausting them or reducing current left-wing positions to the thinkers mentioned; we will deal with them as emblematic and influential representatives of the Marxist tradition.

2.1 Marx and Engels: Human rights as bourgeois ideology

Although it was written and published after *The Jewish Question* (1843) and almost simultaneously with *The Holy Family* (1845), we will take *The German Ideology* (1845-46) as our starting point because we believe that, philosophically, it provides conceptual contexts that contribute to a deep understanding of Marx's criticisms of human rights.

In *The German Ideology*, to show that the so-called revolutionaries of the Hegelian left (Ludwig Feuerbach, Bruno Bauer and Max Stirner) were nothing more than conservative thinkers, Marx and Engels reveal how they continue to reflect the orthodoxy of the tradition of thought to which they are attached: Hegelianism. With this, Marx ends up indicating how, instead of critically revisiting and overcoming German ideology, these thinkers endorse it and, consequently, consolidate it. Marx and Engels state that:

The Hegelian philosophy of history is the ultimate consequence, taken to its "purest expression", of all this German historiography, for which it is not a question of real interests, not even political ones, but only pure thoughts [...]. The purely national character of these questions and their solutions can also be seen in the fact that these theorists seriously believe that hallucinations such as the "God-man", "the man", etc. have presided over the different epochs of history [...] All nations, all real events are forgotten, *the theatrum mundi* is limited to the Leipzig book fair and the reciprocal controversies of "Criticism", "Man" and the "One". [...] These pretentious and arrogant purveyors of thought, who believe themselves to be infinitely above all national prejudices, are in practice much more national than the brewery philistines who dream of German unity. They do not recognise the acts of other peoples as historical (MARX, ENGELS, 2007, p. 44-5).

Ideas reflect concrete material reality and, consequently, they cannot be the pure place par excellence for philosophical enquiry: facts are steeped in ideas, ideas irrigated by facts. So, when German thinkers, or rather ideologues, talk about a universal history, they only do so from a strictly German point of view. It's not a question of universal history; it's at most a German interpretation of history as universal history. Thus, mannerisms and characteristics specific to the culture that proposes the expansion of German history into a universal one will dominate this universality.

Marx is especially interested in how historical interpretation is comfortably emptied of facts, of the specific conditions of their production, and left under the rule of ideas and concepts (man, good, freedom, justice, etc.). The material emptying of ideas, the pure abstractions so dear to idealism, do not allow for a direct perception of how "German ideology" is arbitrarily transferred to all cultures the moment it is disguised under the mantle of the pure idea. Apart from German idealism, each culture will tend to

interpret history without considering the weight of the concrete historical basis and according to the perception of internal cultural unity, that is, how, in general, a given culture interprets itself (MARX, ENGELS, 2007, p. 44). This blunts the perception of how the material conditions of production of reality and ideas affect cultural realities in very specific ways. In this sense, if there is to be universality between different cultures, it must be established through rigorous research that takes materiality and material relations (historical, economic, etc.) as the mediating criterion; that starts from the idea in the direction of matter and returns to the idea in order to understand it in a richer way that is more pertinent to the culture.
complexity of human reality.

When talking about the history of the development of the productive forces of individuals, Marx and Engels provide an example of how historical research and understanding must not do without its specific material conditions of production. They consider that:

[The development of the individual's own forces] takes place naturally, that is, it is not subordinated to a general plan of freely associated individuals, so it starts from different localities, tribes, nations, branches of labour, etc., which initially develop independently of each other and only gradually meet each other. Moreover, this development takes place very slowly; the different phases and [different] interests are never fully overcome, but only subordinated to the winning interest, and they drag on alongside it for centuries. It follows that, even within a nation, individuals also have different developments (MARX, ENGELS, 2007, p. 69).

Marx and Engels don't just talk about the specific circumstances of historical production; they deal with the particularities inherent in cultures; cultures that, roughly speaking, are dealt with by as if there were no internal dissent. They also address the mismatch of rhythm between historical processes and the dominance that the victorious class establishes in the cultural orientation of a people. What interests us here is the specificity, or rather the locality, of social phenomena.

This is Marx's main criticism of human rights: human rights are not universal, they are particular; they have specificities originating in time, place and class; they express the interests of the bourgeois class in its antagonistic moment against Absolutism. They are not the fruit of a necessity derived from human nature - in the sense of *jusnaturalism*; nor are they the work of some metaphysical entity that confers the same essence, the same nature, on all men. In short, human rights are the work of a specific culture, class and history.⁹

In *On the Jewish Question*, Marx asks:

Who is this *homme* that is differentiated from the *citoyen*: none other than the *member of bourgeois society*. Why is the member of bourgeois society called "man", pure and simple, and why are his rights called *human rights*? How can we explain this? From the relationship between the political state and bourgeois society, from the essence of political emancipation. First, let's note the fact that the so-called human rights, the *droits de l'homme*, as opposed to the *droits du citoyen*, are nothing more than the rights of the *member of bourgeois society*, in other words, the selfish man, the man separated from man and the community (MARX, 2010, p. 48).

Diving deep into his critique, Marx distinguishes between *homme* and *citoyen*. The *citoyen* is the man who formally enjoys political equality, but materially lives in economic inequality and the *homme* is the bourgeois who achieves freedom because he possesses, in addition to formal rights, substantial rights, in other words, economic power.

The former is simply a citizen; he is a member of political society, defined by his communal relationship with the state. To enjoy rights, he needs to become a man, in other words, a member of bourgeois society. The bourgeois are the real emancipators of themselves; the latter, the citizens - covert emancipators treated as emancipated passives - must communally serve the interests of the former (MARX, 2010, p. 50).

By taking on the tones of this reflection, Marx is trying to show that the free, equal, fraternal, property-owning citizen is nothing more than a spectre, an abstraction, constructed by the bourgeois to appease the spirits of the exploited and oppressed. At most, the citizen is a condition of possibility for the next step: becoming a man, becoming a bourgeois and, finally, becoming the subject of human rights. Thus, the bourgeois state does not establish equality or any other human right for the *citizen*; it reinforces and deepens inequalities because it makes its structure appear as the "ideal of universal man".

Bourgeois "ideology" and its abstract phraseology levels humans in every way, giving them a metaphysical nature and natural rights. For Marx, it masks the historical-dialectical conditions of the domination of one class over another, making people believe that rights are universal and not particular. In this case, the particularities are both class-based and those of certain cultures and their historical moments: French (Declaration of the Rights of Man and of the Citizen, 1791), the Americans (Declaration of Independence of the State of Virginia, 1776), the British (*Bill of Rights*, 1689).

As well as being bourgeois, human rights are Western; originally Western. In *The Holy Family*, Marx and Engels conclude: "Human rights do not liberate man from religion, but only grant him *religious freedom*, they do not liberate him from property, but only grant him the *freedom of property*, they do not liberate him from the filth of profit, but, much rather, grant him the *freedom to profit*" (MARX, ENGELS, 2003, p. 132).

These statements, taken up in *The Jewish Question*, are the strongest and most forceful against the inevitably bourgeois character of human rights, and are reinforced by what Marx goes on to add, comparing ancient slavery with the modern slavery of labour as the foundation of bourgeois society:

We have shown how the modern state's *recognition of human rights* has the same meaning as the *ancient state's recognition of slavery*. In fact, just as the ancient state had slavery as its natural foundation, the *modern state* has bourgeois society and *the man of bourgeois society* as its natural foundation, in other words, independent man, intertwined as man only by the bond of private interest and *unconscious* natural need, the slave of profitable labour and selfish need, both his own and that of others. The modern state recognises its natural basis, as such, in the *general rights of man*. But it didn't create them. Being, as it is, the product of bourgeois society, driven by its own development even beyond the old political bonds, it in turn recognises its own birthplace and its own basis through the *proclamation of human rights*¹⁰ (MARX, ENGELS, 2003, p. 132).

⁹ We can see here an agreement with Burke's criticism of jusnaturalism and its "abstract and metaphysical" conception of the rights of man; both authors thus place themselves on the terrain of historicism. On the other hand, there is a profound disagreement between them, in that Marx identifies these metaphysical rights as ideologies of a particular class, the bourgeoisie, and Burke's difference proposes a vision of history based not on tradition, but on progress.

The state, as an organised political community, was supposed to overcome simply private life (the private interests of civil society) in the direction of the common interest, in which everyone would have equal rights and no privileges. However, it allows for the consolidation of a specific class: the bourgeoisie. From this perspective, for Marx there is an inversion of values, since the political community, in which man behaves as a communal entity, is debased and placed at the service of the interests of selfish man:

This fact becomes even more enigmatic when we see that citizenship, the *political community*, is relegated by the emancipators to the condition of a mere means for the conservation of these so-called human rights and that, therefore, the *citoyen* is declared to be the servant of the selfish *homme*; when we see that the sphere in which man behaves as a communal entity is inferior to that in which he behaves as a partial entity; when we see, finally, that not man as a *citoyen*, but man as a *bourgeois* is assumed to be the *true* and *proper* man.

"*Le but de toute association politique est le conservation des droits naturels et imprescriptibles de l'homme*" (*Déclaration des droits* etc. of 1791, article 2). "*Government is instituted to guarantee man the fulfilment of his natural and imprescriptible rights*" (*Déclaration* etc. of 1793, article 1).

Therefore, even in the moments of his youthful enthusiasm taken to the extreme by the pressure of circumstances, political life is declared to be a mere *means*, the end of which is the life of bourgeois society (MARX, 2010, p. 50).

The solution, which Marx only outlined in a very general way at this time, is that mere political emancipation is not enough, i.e. the proclamation of the legal equality of all citizens before the law, but the contradictions of bourgeois society must be removed, first and foremost property.

The solution to this conundrum is simple: [...] Political emancipation simultaneously represented the emancipation of bourgeois society from politics, even from the *appearance* of a universal content. Feudal society was dissolved in its foundation, in man, only in the kind of man that really constituted that foundation, in *selfish* man. This *man*, the member of bourgeois society, becomes the basis, the presupposition of the political state. It recognises him as such in human rights. However, the freedom of selfish man and the recognition of this freedom are, rather, the recognition of the *unbridled* movement of the spiritual and material elements that make up his vital content (MARX, 2010, p. 51).

The "political" emancipation promised by the bourgeois revolutions thus proves to be insufficient; what is needed is a true "human emancipation", the traits of which are not yet defined and clear at this early stage of Marx's thought, but which will be clarified in later writings, starting with the *Manifesto of the Communist Party*, which points to the need for a much more radical and profound socialist revolution than that of the bourgeoisie.

But human emancipation will only be fully realised when the real individual man has recovered the abstract citizen for himself and has become a *generic entity* in the quality of an individual man in his empirical life, in his individual work, in his individual relationships, when man has recognised and organised his '*forces propres*' as *social forces* and, as a consequence, no longer separates the social *force* from himself in the form of the *political force*" (MARX; ENGELS, 2010, p. 50-54).

¹⁰ All italics are in accordance with the originals, except where expressly indicated.

For Marx and Engels, in short, if on the one hand human rights "go beyond the old political bonds", on the other hand they express the antagonism of a markedly abstract universality in the ideological-idealist sense: they are "vague" enough for everyone to identify with them and, at the same time, protect the interests of specific classes and cultures to the detriment of others, masking the dominated and oppressed even from themselves.

Marx wrote these considerations between 1843 and 1846, at the height of the primitive accumulation of capital caused by the industrial revolution, a time when the contradictions between capital and labour, bourgeoisie and proletariat, were very well defined. Even the French Revolution's promises of political emancipation were unfulfilled, since only the bourgeois class enjoyed political rights while social inequalities grew ever greater, and the great mass of workers and proletarians were excluded from the most basic rights. We can therefore understand the relevance of Marx's criticisms in the face of a political emancipation that was clearly insufficient to promote true human emancipation.

But Marx's youthful pages were followed and repeated, often without further questioning, by many Marxists, creating a mistrust of Marxism towards the doctrines of human rights, a mistrust that lasted for more than a century, until the fall of communism in the Soviet Union and the socialist countries allied to it which is still very strong, at least in the academic circles in which Marxism found refuge after the crisis, as we will see below.

2.2. Giorgio Agamben (1942): Naked Life and Human Rights

The criticisms of the Italian Giorgio Agamben deepen the interpretation of Marx's split between *homme* and *citoyen* and Hannah Arendt's reflection on this theme. To do so, he returns to the *Declaration of the Rights of Man and of the Citizen* and hermeneutically presents the way in which soil (*jus soli*; in German, *Blut*) and blood (*jus sanguinis*; in German, *Boden*), as well as the transition from *divine regal sovereignty* to *national sovereignty*, are imbricated in the segregation of the human as man-bourgeois ("authentic" man) and man-citizen (oppressed: man-middle, half-man). It is on the basis of this reflective structure that Agamben also briefly takes up Walter Benjamin, in his eighth thesis on the concept of history, when he stated that "The tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule" (BENJAMIN, 2013, p. 13). The Italian philosopher "denounces" and tries to explain how the state that we think of as democratic and governed by the rule of law is actually a state of exception.

In *Homo Sacer*, Agamben tries to explore the grey, fuzzy areas indicated by Hannah Arendt in *The Human Condition* (ARENDT, 1994, p. 299) and in the chapter of *The Origin of Totalitarianism* dedicated to "The Decline of the Nation-State and the End of Human Rights" especially on the figure of the stateless person, as the "refuse of the world" (ARENDT, 2007, p. 325-327).

Agamben endeavours to take the perception that when refugees leave their home territory, they lose the legal citizenship conferred by their country to its ultimate consequences:

The paradox from which Hannah Arendt (...) starts is that the figure - the refugee - who was supposed to embody the man of rights par excellence, instead signals the radical crisis of this concept. "The conception of human rights," she writes, "based on the supposed existence of a human being as such, fell into ruins as soon as those who professed it found themselves for the first time faced with men who had lost every specific quality and relationship - except the sheer fact of being human". In the nation-state system, the so-called

sacred and inalienable rights of man are stripped of any protection and any reality at the very moment that it is not possible to configure them as rights of the citizens of a state. This is implicit, if we think about it, in the ambiguity of the very title of the 1789 declaration: *Déclaration des droits de l'homme et du citoyen*, where it is not clear whether the two terms denote two autonomous realities or instead form a unitary system, in which the first is already contained and hidden in the second from the outset; and, in this case, what kind of relationship exists between them (AGAMBEN, 2002, p. 132).

The loss of citizenship reveals a curious condition of the human being: without citizenship, the essential humanity of the human being is not enough to found and sustain their rights. Human life is naked, unprotected; the sheer fact of its humanity, instead of blatantly explaining its rights ("the existence of the human being as such" according to the cries of natural law), reveals that its life only as human life is as unprotected as the life of any other animal. Agamben realises that the images of the human and the citizen are not only split, but also blurred. And, like Marx, he realises that this "blurring" is constitutive of the documents themselves. It is the blurred nature of this distinction that serves the neoliberal ideological use; it continues to make the citizen a means to its ends when, according to Marx, he should be a means to its ends the citizen should be the end of all community life insofar as everyone is a citizen; insofar as the separation between *homme* and *citoyen* has not been ended.

The relationship between soil and blood, the emergence of a "body" in the space of a given territory becomes the new status of legal inscription and legitimisation; it is thus the turning point in relation to divine regal sovereignty and, consequently, the founder of national sovereignty. Agamben considers that:

When, after the upheavals in Europe's geopolitical system that followed the First World War, the residue that had been removed between birth and nation came to light as such, and the nation-state entered a lasting crisis, fascism and Nazism emerged, two biopolitical movements in their own right, which therefore made natural life the place par excellence for sovereign decision-making. We are used to summarising the essence of National Socialist ideology in the phrase "soil and blood" (*Blut und Boden*). When Rosenberg wanted to express his party's worldview in a formula, it was in fact this hendíadis that he resorted to. "The National Socialist worldview (...) is based on the conviction that soil and blood constitute the essence of Germanness, and that it is therefore with reference to these two datums that a cultural and state policy must be orientated" (...). But it has too often been forgotten that this politically determined formula actually has an innocuous legal origin: it is none other than the expression that compiled the two criteria that, since Roman law, have served to identify citizenship (i.e. the primary inscription of life in the state order): *ius soli* (birth in a given territory) and *ius sanguinis* (birth from citizen parents). These two traditional legal criteria, which in the *ancien régime* had no essential political significance because they only expressed a relationship of vassalage, acquired a new and decisive importance with the French Revolution. Citizenship now does not simply identify a generic subjection to royal authority or to a particular system of laws (...) nor does it embody the new egalitarian principle: it names the new status of life as the origin and foundation of sovereignty and identifies (...) *les membres du souverain*. (AGAMBEN, 2002, pp. 135-6)

Agamben's statement brings the worldview of National Socialism into line with the legal universe that is unveiled by the French Revolution: what is categorically affirmed by the National Socialist worldview comes to the fore with the bourgeois revolution. But before that, Agamben agrees, the phrase "soil and blood" had already appeared in the background in the *Ancien Régime* and in even more distant Roman law.

However, both in pre-revolutionary monarchist France and in ancient Roman law, the "sons of the soil" did not have a political, or rather biopolitical, dimension.

Marx saw the new legal reality that emerged with the revolution as the legalisation of bourgeois domination. In turn, Agamben points out how citizenship comes to be defined based on the legal-political link between two biological elements: the soil and the blood; and that the "rights of man" are born under the arch of this syntagmatic link. So, let's keep in perspective that freedom, property, equality and security are human rights for "authentic humans": the bourgeois (MARX, 2010, pp. 47-50). In the *Ancien Régime*, the link between soil and blood only delimited hierarchical relations between lords and vassals, with secondary gains for the latter. From the French Revolution onwards, *ius soli* and *ius sanguinis* became the founding legal criteria for citizenship: being a citizen meant being a "son of the soil", i.e. being born in a territory to parents who were also born there (citizens). However, there is a distinct link: the bourgeois is the "true" son and owner of the land; the citizen, only generically, is the son of the land.

Agamben's critical inflection seems much more radical than Marx's. If universalised, every member of the state without the soil-blood relationship - be it the authentic bourgeois man or the mere citizen - would be reduced to the condition of mere human animality. On the legal chessboard, the game between life (*bios*) and culture (*colere*) plays a fundamental role. However, a bourgeois refugee cannot be equated with a poor proletarian refugee. A poor refugee is no longer a citizen; he loses all the vital legal and cultural apparatus that underpins his belonging and defines his identity. A bourgeois, being "the man" par excellence, remains a man, that is, a bourgeois, anywhere in the world.

If the conceptual basis of bourgeois man is the abstract "universal man" of a Kant or a Hegel, cosmopolitanism would ultimately be, in one way or another, the universalisation of the bourgeoisie. And this is not possible, because bourgeois society depends on the exploitation of the working class and the general services provided by the exploited. So, it's not a question of Marx overcoming the bourgeoisie. Rather, it is a hermeneutic unfolding of the foundations laid by the Prussian thinker to recognise the radically bourgeois character of human rights. For Marx and Agamben, human rights are nothing more than bourgeois rights. The documents that declare such "human rights" are a mark of the transition from divine regal sovereignty to national sovereignty, in other words, from the *Ancien Régime* to the modern state.

Agamben asserts that:

Declarations of rights should therefore be seen as the place where the transition from regal sovereignty of divine origin to national sovereignty takes place. They ensure the *exceptio* of life in the new state order that will follow the collapse of the *ancien régime*. That, through them, the "subject" is transformed, as has been observed, into a "citizen", means that birth - that is, natural bare life as such - becomes here for the first time (...) the immediate bearer of sovereignty (AGAMBEN, 2002, p. 135).

The understanding that the immediate bearer of national sovereignty is the citizen is established by the Declarations. From a documentary point of view, sovereignty is invoked and founded on the binomial of soil and blood. The Declarations seek to naturalise the relationships between individuals by defining them as "sons of the soil". Although there is a double sense of naturalisation - of the documentary discourse through the appeal to *ius soli* and *ius sanguinis*; and of the individual through the document that establishes and recognises their link with the soil - the question is posed. Both the figure

of the refugee (Arendt) and Marx's reflections reveal the dangers and pitfalls of the double meaning of naturalisation that appears in bourgeois documents. We only must remember that Marx practically states that the documents produced by the French and Americans are nothing less than the legalisation of the power relations established by the victors (*bourgeoise*) as documents of universal emancipation.

Declarations are the place of transition from divine regal sovereignty to the national sovereignty. National sovereignty closes the circle because it is originally, or rather etymologically, linked to the birth of the individual. Agamben proposes that:

A simple examination of the text of the 1789 declaration shows that it is precisely natural bare life, i.e. the pure fact of birth, that is presented here as the source and bearer of law. *Les hommes* - states art. I - *aissent et demeurent libres et égaux en droits* (most convincing of all, from this point of view, is the formulation of the project drawn up by la Fayette in July 1789: *tout homme naît avec des droits inaliénables et imprescriptibles*). On the other hand, however, the natural life which, inaugurating the biopolitics of modernity, is thus placed at the basis of the order, is immediately dissipated in the figure of the citizen, in whom rights are "conserved" (art. 2: *le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme*). And precisely because it inscribed the native element at the very heart of the community of politics, the declaration can at this point attribute sovereignty to the "nation" (art. 3: *le principe de toute souveraineté reside essentiellement dans la nation*). The nation, which etymologically derives from *nascere*, thus closes the circle opened by the birth of man (AGAMBEN, 2002, p. 134).

Birth lays the foundations for freedom and, with the act of vital irruption, affirms its inalienable and imprescriptible permanence; in modern times, simple human life becomes the foundation of politics. As a result, the political order is its "natural" unfolding. Natural life, on the other hand, spreads out diffusely, almost entirely hidden, in the figure of the citizen.

A little further on, Agamben states:

The principle of nativity and the principle of sovereignty, separated in the *ancien régime* (where birth gave rise only to the *sujet*, the subject), are now irrevocably united in the body of the "sovereign subject" to constitute the foundation of the new nation-state. It is impossible to understand the development and the "national" and biopolitical vocation of the modern state in the 19th and 20th centuries if we forget that its foundation is not man as a free and conscious political subject, but, above all, his bare life, the simple birth which, in the passage from subject to citizen, is invested as such by the principle of sovereignty" (...). "The fiction implied here is that birth immediately becomes nation, so that there can be no residue between the two terms. Rights are attributed to man (or spring from him) only insofar as he is the foundation, immediately dissipating (and which, moreover, must never come to light as such), of the citizen (AGAMBEN, 2002, p. 135).

Beyond the *bourgeoise* and the *citoyen*, there is invariably the human; even if, according to Marx, the bourgeois pretends to be "*l'homme par excellence*". Naked human life, radically vulnerable, is the "dissipating" foundation of the citizen. As it emerges, citizenship fades away. Politicised man, free, equal, endowed with a critical spirit, is neither the foundation nor the support of national sovereignty. From Agamben's perspective, it is possible that this man either doesn't exist or is closer to the revolutionary activist.

From this perspective, the origin of national sovereignty is deeply rooted in the soil of the French Revolution; national sovereignty is nothing more than bourgeois

sovereignty. The fragile skin of bourgeois human rights falls off at the same time as the conditions that sustain citizenship begin to break down. Without citizenship, the human being, the subject of inalienable and imprescriptible rights, is lost. The *mere humanity of humans* is not enough to make them subjects of rights. Bourgeois society lays the foundations for the democratic rule of law as a state of exception.

A state in which the norm is founded on the silence of the force that can suspend it at any time. Here, human emancipation and political emancipation remain separate and are pertinent according to the convenience of the established power; a power that continues to make the citizen a means instead of taking them as the end of the State.

In this sense, Benjamin's saying echoes again: "For the oppressed, the state of exception is the rule"; human rights are not rights for those who live in a state of exception. In *State of Exception*, Agamben states that:

The state of exception is, in this sense, the opening of a space in which application and norm show their separation and in which a pure force of law realises (i.e. applies by disapplying) a norm whose application has been suspended. In this way, the impossible union between norm and reality, and the consequent constitution of the scope of the norm, is operated in the form of the exception, that is, by the presupposition of their relationship. This means that to apply a norm, it is ultimately necessary to suspend its application, to produce an exception. In all cases, the state of exception marks a level where logic and praxis are indeterminate and where pure violence without *logos* aims to realise an enunciation without any real reference (AGAMBEN, 2004, p. 63).

Once again, Agamben appeals to radical hermeneutics to show, in a different way, what Marx had already pointed out. In a bourgeois society, human rights only really exist for those who are or become bourgeois. The silent power that reigns and operates through the norm and even beyond it is the power of the "free market". At any time, it can apply the norm by suspending the norm. Then, by producing an exception, it blindly exercises the pure violence that sustains all its chains of operation, as we have seen in right-wing dictatorial regimes.

2.2. Slavoj Žižek (1949): Human Rights, Bourgeois Pathos

Also working in the sphere unfolded by Marx, Žižek thinks of human rights within the two-dimensional structure arched by two understandings - poles of force: (i) human rights are particular: they are bourgeois rights; therefore, they were made by bourgeois and for bourgeois. (ii) human rights are the axiological-ideological cement of bourgeois culture, that is, of the ruling class. In this sense, to fulfil the "moral" function of the *bourgoise*, they must sustain, reinforce, defend the bourgeois value system(s), their material and "spiritual" relations with the world and with other people - case by case: bourgeois or citizen. In addition, it must provide mechanisms for "absorbing the impact" of criticism, showing itself to be flexible to the most diverse needs, conflicts and interests that may arise in bourgeois "reality". Consequently, it will always work towards conquering, stabilising and expanding its *modus vivendi* in relation to "non-bourgeois" realities, which are considered non-legal-democratic.

At a certain point in *The Vision in Parallax*, Žižek states that:

[...] the universal and unconditional rule of law can only be maintained by a sovereign power that reserves the right to proclaim a state of exception, that is, to suspend the rule of law in the name of the Law itself; if we deprive the Law of the excess that sustains it, we lose the Law itself (the rule of law itself). In the 20th and 21st centuries, [the] link between power and invisible threat is, in a way, redoubled or reflected in itself: it is no longer only the existing power

structure that, in order to maintain efficiency, dominance over subjects, has to rely on the phantasmatic dimension of the potential/invisible threat; the place of threat is instead externalised, shifted to the Outside, the Enemy of Power - it is the invisible (and, for that very reason, all-powerful and omnipresent) threat of the Enemy that legitimises the permanent state of emergency of existing Power (the fascists invoke the threat of the Jewish conspiracy and the Stalinists, the threat of the class enemy - right up to the "war on terror" of nowadays, of course). This invisible threat from the Enemy legitimises the logic of the pre-emptive strike: precisely because the threat is virtual, it's too late to wait for it to materialise, we have to strike first, or it will be too late... In other words, the omnipresent invisible threat of Terrorism legitimises protective and highly visible defence measures (which represent the only real threat to democracy and human rights, of course) (ŽIŽEK, 2008, p. 487).

Before talking about terrorism as the current "phantom threat" to democracy and human rights, in the wake of Agamben, Žižek refers to the state of the legal order after 11 September 2001, in other words, the state of exception that made the whole set of "preventive" arbitrary actions by the US government possible. It was a reaction aimed at keeping the universal rule of law protected; it was therefore a security measure and, as we have already seen with Marx, security (*sureté*) is one of the four primordial - read: bourgeois - human rights. The movement to defend oneself, in other words, to "ensure security" ends up showing in a paradigmatic way the relationship between the Power that decrees the state of exception - and at the same time founds and upholds the Law that it itself repeals - and human rights: one is rooted in the structure of the other.

Power needs security as a resource to maintain itself as such and security only exists as a function of Power; security demands the use of force, of rationalised violence; impersonal, institutional barbarism, with which the bourgeois empire originated and covered itself. Step by step, it adapted to what was required to perfect its exercise of power, between logic and sensation. Therefore, "legally", Power is the first holder of rights in general and human rights in particular. In this sense, human rights are the perfect alibi for military interventions. Such interventions have had different functions - or justifications -. The vast majority have justifications that appeal to the promotion of democracy, the end of totalitarian regimes, the promotion of better living conditions, freedom, etc.; all speak from within the broader perspective of human rights.

However, Western gestures towards the universalisation of the reign of freedom, equality, property and security - let's not forget the old Marx: human rights are private - have produced the terrors that today serve to expand the interventionist actions of neoliberal governments to the detriment of the consequences for the population. The world of "Arab" terror is not born because Arabs carry "terror" in their souls. Žižek emphatically states that:

Western Europe has *Balkanised* the Balkans: "So where did the fundamentalist traits - religious intolerance, ethnic violence, fixation on historical trauma - that the West now associates with 'the Balkans' originate? Clearly, in the West itself. In a clear example of Hegel's "reflexive determination", what Western Europeans observe and deplore in the Balkans is what they themselves have introduced there, what they are fighting is their own uncontrolled historical legacy. Let's not forget that the two great ethnic crimes blamed on the Turks in the 20th century - the genocide of Armenians and the persecution of the Kurds - were not committed by traditionalist Muslim political forces, but by the military modernisers who sought to separate Turkey from its ballast in the ancient world and turn it into a European nation-state" (ŽIŽEK, 2005, P.13).

It is Western interventions that have largely shaped the terror that affects their populations. Invisible terror has served the most diverse economic, political-ideological

and demagogic uses. Beyond ethnic, religious and territorial conflicts, already existing in much of the Middle East, is nothing like what began to form in terms of militarist-terrorism after the Western interventions in the region. Žižek emphasises that the massacres, the most intense violent phenomena that have occurred in or from the region, are not the responsibility of "traditionalist" Muslims; they are the work of Muslims who have begun to be shaped by the West. Žižek considers that:

However, the question is: among those who intervene in the name of human rights, what kind of politicisation do they set in motion against the powers they oppose? Are they in favour of a different formulation of justice or do they oppose collective justice projects? For example, it is clear that the US led overthrow of Saddam, legitimised in terms of putting an end to the suffering of the Iraqi people, was not only motivated by pragmatic political-economic interests, but also relied on a determined idea of the economic and political conditions under which the Iraqi people were to be given "freedom": liberal-democratic capitalism, insertion into the world market economy, etc. The merely humanitarian and anti-political policy of merely preventing suffering therefore amounts to an implicit ban on drawing up a genuine collective project for socio-political transformation (ŽIŽEK, 2010, pp. 23-4).

In addition to problematising human rights as an alibi for military interventions, the "creation of terror", the false character of neutrality, the paradox between intolerance and tolerance, and the questioning of cultural disrespect on a domestic level, Žižek highlights two fundamental elements in the critique he develops in his seminal article *Against Human Rights*. These are (i) the use of human rights as an instrument for the "sacralisation of the market" and (ii) the social illusion of freedom of choice. In the abstract world of consumer relations, commodity fetishism and what the individual becomes, in relation to my concrete social and cultural experiences, is experienced as contingent, because what fundamentally defines me is the "abstract" universal capacity to think or to work.

He considers that:

The essential force of the ideological notion of "free choice" in capitalist democracy was well illustrated by the fate of the Clinton administration's ultra-modest health reform programme. The medical lobby [...] succeeded in imposing on the public the idea that universal health care would somehow threaten freedom of choice in that field. (...) Here we are at the very nerve centre of liberal ideology: freedom of choice, founded on the notion of the "psychological" subject, endowed with propensities that he or she strives to realise. [...] If the flexibilization of work means that you have to change jobs every year, why not see this as a release from the constraints of a permanent career, a chance to reinvent yourself and develop the hidden potential of your personality? If there is a reduction in your standard health insurance and retirement plan, what does it mean that you must opt for extra cover? Why not see this as an additional opportunity to choose between a better lifestyle now or long-term insurance?" (ŽIŽEK, 2010, P.15).

Žižek shows how capitalist, bourgeois society tries to undermine the very meaning of social life by affirming the natural contingency of existence as part of the social dynamic. It naturalises this contingency by appealing above all to the subjectivism that drives freedom of choice. Society is also constituted out of the need to respond to the contingencies of a life that is less articulated from the point of view of the social system, material needs have mobilised human forces to mitigate them; hence the historical, growing systematisation of health procedures and practices, not to go too far. However, contingencies are brought back into the market dynamic by an ideological-financial mechanism that needs to convince the citizen that this is the same contingency as in other

times or living conditions; life is simply full of contingencies and if we can have the "freedom" to choose how to deal with them, so much the better.

However, the realisation of this freedom depends on the incorporation of the values of capitalist society: you can choose when you can afford it. Thus, the ideological-financial aspect is fuelled and strengthened by the false realisation of subjective freedom. On the other hand, when finance isn't enough to "establish" the right to choose, it must be seen as natural. And, as Marx pointed out, the meaning of community life is reduced to a selfish universalism in which the state is at the service of power, of the invisible hand of the market, in short of the ruling class.

It ends up founding a policy of current socio-economic relations. Citizens will oppose a universal healthcare system because it could reduce or even end the possibility of choosing medical care in the event of complete nationalisation of the system. Others will defend the state's responsibility towards its citizens and point out that universalisation broadens the humanitarian spectrum of freedom of choice. Pay more or pay less for human rights. That's the question here. So, groups begin to form within the capitalist structure and operate within it, politically, without questioning it.

From Žižek's point of view, organised civil society movements can perfectly well be considered in this way. Other developments in relation to housing and education can also be considered in terms of both the politicisation of socio-economic relations and political correctness. They can also be treated as a defence against excessive power: the fight against corruption and for transparency. For Žižek, these elements are all tools for controlling and perfecting the capitalist machinery. They feed and strengthen the system itself.

Especially in Žižek, much of the criticism focuses on how capitalism creates ways to entangle subjects in its fibres; to make the fibres of capital the very fibres of subjects. On the battlefield for subjective control, the *basic right to seek pleasure (Jouissance)* appears. Žižek explores it in the aporetic dimension of conflicting interests, effects and freedoms, confronting it within the framework of the East-West critique. However, he does so by emphasising the desire to control pleasure, a desire that is one of the obsessions of today's politics. Žižek ponders that:

Both sides, of course, mystify their positions ideologically and morally. For the West, women's right to expose themselves provocatively to male desire is legitimised as their right to enjoy their bodies as they please. For Islam, control over female sexuality is legitimised by the defence of women's dignity as opposed to their reduction to objects of male exploitation. Thus, when the French state forbids Muslim girls from wearing the veil at school, it can be argued that they are then allowed to dispose of their bodies as they wish. But it can also be said that the real traumatic point for critics of Muslim "fundamentalism" has been the fact that there are women who have not participated in the game of making their bodies available for sexual seduction, or for the circulation and social exchanges involved in this.

The right to enjoy one's own body as one pleases is confronted with cultural values and, at the same time, the "freedom" to assume other values despite one's own traditions. Western culture, which allows and often recognises provocative female exposure to male desire, is one side of the male drive to determine femininity. The effort to control female sexuality in the East is another. In both countries, women take up or reject discourses and practices in different directions. However, especially in the East, with clear official limits. In this sense, Western liberalism curiously finds its limits in the case of the ban on veiling in French schools. To freely dispose of one's body implies spontaneously "preserving" it from the sexist-expositional logic or freely assimilating it. However, for Žižek, in the West, there is a colossal torrent that entangles people in this

logic, constraining them to "natural" acceptance. Meanwhile, he treats the East with more complacency because it is a cultural tradition that is less close to the logic of capital and claims to defend female dignity.

Žižek continues his critique by leaving the East in the background, emphasising the "right" to keep the other at a safe distance and then ending by pointing out a "strange" Midas touch that bourgeois human rights can make the unacceptable praiseworthy. He asserts that:

One way or another, all the other issues - gay marriage and the possibility of adoption, abortion, divorce - refer to this fact. What the two poles share is a strict disciplinary approach, directed in different ways: the "fundamentalists" regulate female self-exposure to prevent sexual provocation; the politically correct feminist liberals impose no less severe regulation of behaviour, with the aim of curbing forms of harassment.

Liberal attitudes towards the other are characterised both by respect for otherness, openness to it, and obsessive fear of harassment. In short, the other is welcomed insofar as their presence is not intrusive, insofar as they are not, in fact, the other. Tolerance, therefore, coincides with its opposite. [...] This is increasingly emerging as the central human right of advanced capitalist society: the right not to be harassed, that is, to be kept at a safe distance from others. The same goes for the emerging logic of humanitarian or pacifist militarism. War is acceptable insofar as it seeks to bring peace, or democracy, or the conditions for distributing humanitarian aid. And isn't the same true of democracy and human rights themselves? Human rights are fine if they are "rethought" to include torture and a permanent state of emergency. Democracy is fine if it is free of its populist excesses and limited to those who are mature enough to practise it (ŽIŽEK, 2010, p. 16).

Harassment and the strategies to prevent it show three movements of the liberal attitude: (i) respect and (ii) openness to otherness, as well as (iii) the obsessive fear of harassment. For Žižek, these dynamics end in one: tolerance and intolerance go hand in hand. According to Žižek, this characteristic is increasingly taking root in every advanced capitalist society and can be seen in the West's recent militaristic attitude. The unacceptable, war, becomes praiseworthy when it is waged to "bring" peace. If torture, the state of exception, are formulated as necessary to maintain or improve democracy or human rights, it would be "all right" with and for the West.

Are human rights, after all, an ideology for "political correctness fundamentalism"? You can't criticise freedom, equality, property, the safety, among many other things? But what is "political correctness" all about? The richest aspect of Žižek's critique is the realisation that there is, as Douzinas would say, an aporetic aspect to the structure of human rights. What is the limit of culture in the face of the right to self-determination? What is the limit of individual and subjective freedom? How does the market influence habit, personalities, personal and group values? Is "sexual seduction" just the result of a patriarchal society?

In the mutual tensions of the unfolding of (human) rights, interdictions and liberations feedback on each other. As Žižek says, tolerance and intolerance are absurdly close. The war for power and greed is very close to the war for human rights and democracy. And in politics, it has long been known that political correctness and incorrectness are part of such a diffuse zone that it is often difficult to draw the line between them.

Žižek claims that there has been a fundamentalist ideological use of human rights to defend political correctness. However, the question arises: what is political correctness? If we think in the sense of capitalist society, they are based on basic, bourgeois human rights and their consequences: freedom, equality, property and security.

Political correctness would therefore be the set of common bourgeois values derived from their basic rights. Officially, they are politically neutral: their function is to defend humans and their demands and needs. As Marx also pointed out in relation to the supposed universality of human rights, there is no neutrality. Žižek concludes:

(...) we must remember the distinction between symbolic public law and its obscene complements. The notion of this obscene double complement of power implies that there is no power without violence. The political space is never "pure", but always implies some kind of trust in pre-political violence. Of course, the relationship between political power and pre-political violence is one of mutual implication. Violence is not only the necessary complement to power, but power itself is always at the root of every apparently "apolitical" relationship of violence. Accepted violence and the direct relationship of subordination within the army, the church, the family and other "apolitical" social forms are in themselves the reification of a certain ethical-political struggle. The task of critical analyses is to perceive the hidden political process that underpins all these "a" or "pre" political relationships. In human society, politics is the all-encompassing structural principle, so any neutralisation of some partial content by describing it as "apolitical" is a political gesture *par excellence* (ŽIŽEK, 2010, pp. 22-23).

In his criticisms, Žižek still talks about a return to universality; only a universality of the individual, of the monad, so to speak. And a universality in which politics is no longer done, but a "post-politics", a politics of interests as opposed to the Marxist politics of common interests. Once again, "selfishness", the capitalist social split already criticised by Marx, comes to the fore. This new universal is an empty place to be filled in accordance with what desire demands; and what desire demands is contingent. Because, subjectively, the capitalist system tries to create empty spaces in individuals; spaces that are vital for the system's vigorous survival. If an "abstract universality" is formed in the subjectivity of the individual, they can assume any needs, any identities and change, *refresh* their consumption habits by putting all the determination of their social reality into the set of things they consume.

Žižek then defines human rights and does so in accordance with the general lines already defined by Marx: first, human rights are, very particular. The Slovenian thinker goes on:

Universal human rights are, in effect, the right of white male property owners to trade freely on the market, exploit workers and women, and exercise political domination. (...) How - under what specific historical conditions - did abstract universality become a "fact of (social) life"? Under what conditions do individuals experience themselves as subjects of universal human rights? Here lies the crux of Marx's analysis of "commodity fetishism": in a society in which commodity exchange predominates, individuals, in their daily lives, refer to themselves and the objects they encounter as contingent embodiments of abstract universal notions. What I am, in relation to my concrete social and cultural experiences, is experienced as contingent, because what fundamentally defines me is the "abstract" universal capacity to think or to work. In the same way, any object that can satisfy my desire is experienced as contingent, because my desire is conceived as an "abstract" formal capacity, indifferent to the multiplicity of objects that can, but never completely succeed in satisfying it (ŽIŽEK, 2010, pp. 26-7).

Marx's citizen (*citoyen*), in a process of postmodern alienation, is revised from the subjective matrix favoured by Žižek; he is now a citizen-consumer-formal. The citizen is caught between the disappointment of a previously frustrated desire and the desire for an object that frustrates him more and more, so that the cycle between the empty man, the

sterile destiny and the pursued object remains an endless journey to the same place.

2.3. Costas Douzinas (1951). Human Rights as an *aporia*

As we tried to do with Žižek, we will not present a complete analytical exposition of the criticisms of the Greek philosopher Costas Douzinas, but a commentary on some points that we consider to be more relevant or original; points that, in one way or another, remain tributaries of the thought of Marx and Engels.

Although he has a similar inclination to Žižek, that is, to see human rights as a capitalist ideology and therefore committed to capitalist values, relations and practices, Douzinas still leaves room to deal with human rights as a cultural expression that, in some way and to some extent, goes beyond the logic of capital. In today's political landscape, human rights are used for everything and everyone. They are treated as a panacea; however, they may be nothing more than a placebo.

In his book *The End of Human Rights*, Douzinas ponders the transition from classical natural law to modern subjective rights, referring to two trends that are analytically separate but historically linked. Douzinas reflects that:

The first [trend] transferred the standard of law from nature to history and, over time, to humanity or civilisation. This process can be called the positivisation of nature. Its inverse side is the - incomplete - legalisation of politics, which makes Positive Law the terrain not only of power, but also of its critique. The second trend, entirely related to the first, was the legalisation of desire. Man was transformed into the centre of the world, his free will became the principle of social organisation, his infinite and irrepressible desire won public recognition.

This double process determined the trajectory that historically united, but politically separated, the classical discourse of nature and the contemporary practice of human rights (DOUZINAS, 2009, p. 38).

However, this is what differentiates Douzinas from the Marxist critiques presented above: because of their intrinsically paradoxical and aporetic character, human rights can serve as a critique, antidote and resistance to the capitalist state:

But human rights are also a weapon of resistance to the omnipotence of the state and an important antidote against the inherent capacity of sovereign power to deny the autonomy of the individuals in whose name it has come to exist. Human rights are internally fissured: they are used as a defence of the individual against a state power constructed in the image of an individual with absolute rights. It is this paradox at the heart of human rights that both drives their history and makes their realisation impossible. Human rights only have "paradoxes to offer"; their energy derives from their aporetic nature (DOUZINAS, 2009, p. 38).

Douzinas points to (i) the positivisation of nature, which has as its opposite side the partial legalisation of politics, making Positive Law not only the terrain of power, but at the same time, the terrain of the critique of power. He also points out that (ii) the legalisation of desire is the inaugural mark of the "age of desire". We therefore have on the one hand, the positivisation of nature/legalisation of politics and, on the other, man at the centre/legalisation of desire. These two movements, according to the Greek thinker, were responsible for the current political rupture between the discourse and practice of human rights.

If positive law respectively becomes the centre of power and the ground for its

critique and, at the same time, endorses free will as the principle of its social organisation, it will happen that between the centre and the critique of power, free will will occupy a central position in the determinations of power. The question of private interest games comes up again; the subjective field and the processes of subjectivisation of reality also play a decisive role in Douzinas' social dynamics and, specifically, in the field of human rights.

The political rupture that has occurred in the field of human rights has polarised the classic discourse of nature in relation to the contemporary practice of human rights. The understanding of the human being as endowed with a nature is emptied and practice is now guided by the positive aspects of the positivisation of nature/legalisation of politics and of desire as a primary, individually legitimate impulse. Against the backdrop of this process, the strength of human rights appears with an authentic agenda of resistance against the arbitrary exercise of state power and its abuses.

For Douzinas, the dynamics of the two processes end up showing the most characteristic feature of human rights: their intrinsically aporetic and therefore paradoxical character. We will now consider some problems that can be taken as exemplary in the sense of a critical overview elaborated by Douzinas.

In the article *What are Human Rights?* Douzinas, in the same vein as Marx, Arendt, Agamben and Žižek, joins the chorus that mere "humanity" is not enough for a person to have rights. At stake is the discussion about the supposed "metaphysical status of rights", their universal or local/particular foundation and their political relevance (DOUZINAS, *What Are Human Rights?* p. 1). Douzinas hints that, for moral realism, human rights do have a metaphysical status like that proposed by jusnaturalism; they can be universally founded - consequently, they can be locally founded; and, undeniably, they have crucial political importance.

However, from a positivist perspective in general, the world of practice differs from the world of theory and theoretical guarantees. To explore this paradox in human rights, Douzinas uses the example of two people - Jami and Barzo - who were frustratingly seeking asylum in the UK. "We both have two hands, two eyes, two legs. They are human like me" (DOUZINAS, *What Are Human Rights?* p. 2); Jami and Barzo are human like everyone else. But they don't have "papers", they sleep in parks, they don't receive "humanitarian" aid, in other words, they don't seem to be human even though they are human. The emphasis on the fact that they don't "have roles" indicates what Arendt and Agamben have already pointed out: without the nation-state, simple humanity is not enough.

But for Douzinas, what causes this paradox? Douzinas believes that human rights are a hybrid category and therefore vulnerable to ideological uses and paradoxes. Therefore, they encompass law and morality, state discourse (ideological aspect) and real human demands (from everyday struggles and challenges), advanced legal formalism and low realisation in terms of public policies, the concrete culture of human rights and their general and abstract disposition, etc.

In any case, Douzinas proposes starting with the legal aspect, the most instrumental aspect of human rights. The Greek thinker returns to the basic human right of the capitalist reality: property. He states that:

Let me start with the legal aspect, the part that really matters in dealing with people's power. Private property and contractual rights were introduced at the beginning of modernity. Both were the result of the emergence of a market economy and contributed to its victory. Culturally, they originated in what Alasdair McIntyre has called a 'moral catastrophe': the destruction of pre-modern communities of virtue and duty. Because the capitalist society of individualism and free will has no universal moral code, restrictions on private

selfishness must be externalised. This is exactly what crime, offence and rights achieve. The law empowers individuals to assert their rights, but it also limits their exercise so that, in theory, we can all have an equal number of rights. When conflicts arise, it is up to lawyers and judges to resolve them. These rule *experts* have spread a common view that laws and rights are like facts: they have an 'objective' meaning that can be discovered by professionals. Legal norms and rights, however, don't come with their meaning hidden up their sleeve. They must be interpreted in order to be applied, and most disputes over rights involve at least two plausible but contradictory meanings (DOUZINAS. *What are Human Rights?* s/d, p. 3-4).

Douzinis points out that there is a legal aspect to the invention of modern property. The legalisation of property as an expression of the emergence of a market economy is linked to a double movement: on the one hand, the legalisation of land taken from pre-modern communities - a legalisation that later takes on the air of justification. Secondly, the legal definitional cut that throws the issues into the mere field of law; the very bourgeois law that endorsed property will have to discuss it and mediate its conflicts. Even today, there are lawsuits and more lawsuits in the courts involving descendants of colonisers and indigenous people over the true "ownership" of the land.

This is an exercise in bourgeois egoism-individualism, as pointed out by Marx, which, lacking an internal moral sense, tries to realise it externally, in the law. The *experts* of the law are then called upon to settle conflicts. The bourgeois sense of justice has been largely externalised: justice is what is decided from the outside and, in the case of Jami and Barzo, through documents. These decisions are strongly linked to ideological positions of decision-makers. Neutrality is a completely compromised notion. And since the provisions on human rights are general and abstract, silence hangs over them. Decisions remain in the hands of the *experts* who, coincidentally, are the decision-makers.

Think of the 'right to life', which opens most constitutions and human rights treaties. Its affirmation does not answer questions about abortion, the death penalty, euthanasia, or even whether this right protects the necessary prerequisites for survival, such as food, shelter or health insurance. In most cases, a human rights claim is the beginning and not the end of a dispute about the meaning of the right or its relative position in relation to other conflicting rights. At this point, moral, political or ideological considerations inevitably enter the legal argument directly or indirectly. Deciding conflicts between freedom and security, for example, involves assumptions about the way a democratic society works (DOUZINAS. *What are human rights?* n.d., p. 4).

The whole of democracy is in doubt because the rules that structure and coordinate its many spheres are caught between formal security and factual insecurity.

Among other paradoxes, Douzinis cites that, whether or not they are recognised by law, human rights are first and foremost moral claims, that is, "the moral claims of human rights are always in potential conflict with their legal status" (DOUZINAS, *What Are Human Rights?* s/d, p. 5), for example: a Chinese dissident can claim the right to freedom of expression: it is morally valid, but legally, in today's China, an interdict.

In another article entitled *Are Human Rights Universal?* after pondering the proliferation, and consequent increase in inefficiency, of human rights, Douzinis voices a suspicion that comes across as criticism. She states:

The horrors of the Second World War and the Holocaust made it clear that democracy and national legal and constitutional traditions cannot prevent large-scale atrocities. As Hannah Arendt said, 'it is perfectly possible that one fine day, a highly organised and mechanised humanity will come to the conclusion in a democratic way - that is, by the decision of the majority - that for humanity as a whole it would be better to liquidate some of its parts'.

International human rights have been conceived as a kind of higher law that takes precedence over national policies. In this sense, human rights are intrinsically undemocratic as they act in defence of the vulnerable and oppressed against the prejudices of the majority. They try to impose restrictions on governments and legislators to prevent them from acting brutally against the 'others' of each era and society. To paraphrase Nietzsche, if God, the source of natural law, is dead, he has been replaced by international law (DOUZINAS, *Are Human Rights Universal?* s/d, pp. 9-10).

Human rights would be anti-democratic insofar as they oppose and make the policies of minorities prevail over those of majorities. Interference in the internal affairs of a nation would be paradoxically paradigmatic insofar as it opposes the right of peoples to self-determination. But, if we remember the old Marx once again, it would be the policies of the bourgeois minorities that "dictate" the destinies of the majority; that is if, by minorities, we mean the class that concentrates most of the wealth produced, communally, throughout the world. So, if human rights are, in fact and by "right", bourgeois, they are, as Marx had already pointed out, anti-democratic by nature because they only defend the rights of disproportionately empowered minorities.

Finally, Douzinas emphasises the fragility of a human rights culture. And to symbolically exemplify the impossibility of historical-cultural guarantees for a more peaceful and harmonious existence, he turns to the horrors of the Second World War and its holocaust. Nothing, neither the most brilliant jusnaturalist theory nor the most refined legal system, could prevent a nation - or a group of nations - from deciding to eliminate others as a humanitarian act in its own favour and in the name of its most authentic humanity.

In these terms, Douzinas, like the other thinkers considered, continues to honour the rich theoretical-philosophical field that once wanted to take philosophy out of the office to transform the world. However, Douzinas goes further by realising that human rights have gained a dimension that cannot be "trained". Leaving aside the naivety of superficial understandings, Douzinas lays bare both their ideological "appropriation" and the emancipatory logic that marks the action and reflection of human rights thinkers and activists who refuse party-political ties because of their critical and transformative role.

Despite these criticisms, Douzinas is placing his "bets" on the decisive role of human rights in today's political and social sphere.

FINAL COMMENTS

The authors we have analysed above, and we could choose many others, show that despite their apparent unanimity and universality, human rights, from the French Revolution to the present day, have received and continue to receive strong criticism. A key to understanding the criticism of the French Revolution from the right and the left, and human rights more broadly, is offered by Bobbio in his essay *The legacy of the Great Revolution* in *The Age of Rights*: "From then until today, the Declaration has been subjected to two recurrent and opposing criticisms: it has been accused of excessive abstractness by reactionaries and conservatives in general; and of excessive attachment to the interests of a particular class, by Marx and the left in general" (BOBBIO, 2004, p. 45).

As for conservative criticism, Bobbio comments:

The accusation of abstraction has been repeated infinite times: moreover, the abstraction of Enlightenment thinking is one of the classic motifs of all the anti-Enlightenment currents. I don't need to repeat the famous statement by De

Maistre, who said he saw Englishmen, Germans, Frenchmen and, thanks to Montesquieu, also knew that Persians existed, but man, man in general, he had never seen and, if he existed, he ignored him. But it is enough to cite - less well known, but no less drastic - a judgement by Taine, according to which most of the articles of the Declaration "are nothing more than abstract dogmas, metaphysical definitions, axioms more or less literary, that is to say more or less false, sometimes vague, sometimes contradictory, susceptible of more than one meaning and of opposite meanings (.... a kind of pompous, useless and heavy insignia, which (...) is in danger of falling on the heads of passers-by, since every day it is shaken by violent hands" (IDEM, p. 45).

As for left-wing criticism, Bobbio comments

The opposite criticism - according to which the Declaration, instead of being too abstract, was so concrete and historically determined that it wasn't really the defence of man in general, which would have existed without the author of the Rights of St Petersburg knew it, but of the bourgeois, who existed in the flesh and fought for his own class emancipation against the aristocracy, without worrying too much about the rights of what would be called the Fourth Estate - was made by the young Marx in the article on *The Jewish Question*, [...]. In no way was this about the abstract, universal man! The man spoken of in the Declaration was, in fact, the bourgeois; the rights protected by the Declaration were the rights of the bourgeois, of (Marx explained) selfish man, of man separated from other men and from the community, of man as an "isolated monad closed in on itself" (IDEM, p. 46).

These two criticisms are somewhat specular: human rights are both abstract and concrete. The strength of human rights lies precisely in their abstract nature, which has allowed them to be recognised by a series of different social subjects from different historical periods, who have filled this apparently empty concept with a well-determined historical and social content.

Because, as Bobbio says, quoting Mirabeau, human rights are the expression of social struggles and conflicts:

Those apparently abstract rights were really, in the intention of the constituents [of the French Revolution], instruments of political polemic, each of which had to be interpreted as the antithesis of an abuse of power that they wanted to combat, since the revolutionaries, as Mirabeau had said, more than an abstract Declaration of Rights, had wanted to make an act of war against tyrants" (IDEM, p. 46).

Marx's criticism is plausible and valid for the time in which it was made, in the 1940s, when effectively only the bourgeoisie enjoyed the rights proclaimed by the French Revolution and the political momentum of the bourgeois revolutions was running out. But the mistake that not Marx, but Marxism after him, made was not recognising that the rights that emerged as bourgeois ideology in each historical period and social context could be and were reappropriated by other social classes and in other historical contexts.

This was the case with the struggle for civil and political rights and universal suffrage by proletarians and feminists, which extended political rights and broke with the restricted and censorial citizenship of bourgeois societies.

This was the case with the struggle of those excluded from the bourgeois capitalist system, which led to the conquest of economic and social rights *against* liberalism, spearheaded by the socialist movements (LOSURDO, 2010).

So, it was with the struggle of the abolitionists that allowed slavery to be overcome, as can be seen at the end of Steven Spielberg's film *Amistad* in Vice President

John Quincy Adams' speech.

Thus, in the name of the ideals of liberty and fraternity, the Haitians, led by Touissant Louverture, rebelled against slavery and created the first free black republic, which was suffocated in blood by Napoleonic troops (LOUVERTURE, 2011).

It was the same ideals of liberty, equality and fraternity that mobilised the intellectual elites of colonial countries such as Algeria and Vietnam, who went to study in the French metropolis and realised that they too, as human beings, deserved to live in an independent country.

This is how civil rights campaigners such as Martin Luther King and Malcom X mobilised in the United States against racism and racial discrimination to legally eliminate it, and Nelson Mandela to ban Apartheid from South Africa.

Human rights are indeterminate, uncertain, ethnocentric and contradictory, as critics claim. They are a rhetoric that covers up differences and inequalities, they are ideological justifications for imperialist policies and domination, they are the rights of bourgeois individualism. Reactionaries and conservatives criticise them for their excess of utopia, left-wing critics for their lack of utopia.

But despite all these criticisms, many of which are pertinent, human rights continue to be the language of the voices of our time that cry out for justice; and just as every language creates its own world, the language of human rights creates (in the literal sense, in that it points towards its realisation) the world of human rights, as a regulating idea and a horizon to be pursued.

That's why, to paraphrase a famous phrase by Sartre, they are the insurmountable ideology of our time.

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