

*HUMAN RIGHTS ANNIVERSARIES:
230 years since the Declaration of the Rights of Man and
Citizen and 330 years since the English Bill of Rights*

**THREE MEANINGS OF HUMAN RIGHTS: UTOPIA,
POLITICAL PROJECT, LAWFUL POLITICAL SHIELD**

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Abstract. *The paper argues the thesis of human rights as source of togetherness and interprets that the insistence on rights is socially beneficial, as opposed to the idea that rights are inducing an alienating form of individualism or social disintegration. Human rights are a meaningful foundation of political community. Thus, theoretical exercise should examine the forgotten connection between togetherness and rights more profoundly. In Claude Lefort's view, any individual right has meaning in relation to another individual right of someone else's. Pierre Manent considers that human rights are an intrinsic part of a more general common good, part of the experience of human goods and of the openness to others, which we should embrace in order to understand human experience. Jean-Marc Ferry brings to attention a dialectics between love and law, including the subject of human rights and their relation to public-private dichotomy, postsecularism, public reason and consensus. Ronald Dworkin's rights thesis completes and nuances the liberal perspective on human rights proposed by John Rawls in A Theory of Justice. Individual rights pre-exist in relation to social contract, to political community and to the system of law, as a grund for the lawful (liberal, democratic and just) political community. In this key, authorities and, especially, juridical decisions should not only observe, but also strengthen the previously existing individual rights. This is the reason why human rights are "trumps" – they are the foundation of political community, political aspirations and political goods and they are the backbone of any interpretation and decision of justice, their origin and their finality, too. As a consequence, human rights are both a political ideal and a lawful reality, an on-going project.*

Keywords: *individual rights; "ethical utopia"; political project; togetherness; "trumps".*

Introduction

Political philosophy as well as political practice have both tackled political relations and the political fabric of society in terms of a dynamics rights vs. power (and power abuse), aiming to lead society as far as possible from the war of all against all (Thomas Hobbes), far from oppression, injustice and cruelty.

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The history of the project of human rights begins with the modern ideas developed around the problem of political power, the relation between political power and reason and the legitimacy of power. *Magna Charta Libertatum*, in 1215, moved away from oral pledges and symbolic gestures, toward modernity, through written clauses, some of those limiting the powers of the king, noblemen, army and clergy, thus recognizing the “freedoms” of common men and, for the first time, a sense of justice was infused in the regulation of power relations. Then, the *Bill of Rights*, considered influenced by John Locke’s philosophy, in 1689, listed besides King James’s misdeeds, a set of specific freedoms, in 13 articles (such as, the freedom of speech in Parliament, the freedom from royal interference with the law, the freedom to petition the king, the freedom to bear arms for self-defence, freedom from cruel and unusual punishment and excessive bail, freedom from taxation by royal prerogative, without the agreement of Parliament, freedom of fines and forfeitures without a trial, freedom from armies being raised during peacetimes etc.). These ideas influenced the *American Declaration of Independence* (1776), the *U. S. Constitution* (1789) and the *U. S. Bill of Rights* (1791) establishing the freedom of speech, the protection from cruel and unusual punishment and the trial by jury.

The *Déclaration des droits de l’homme et du citoyen* (*Declaration of the Rights of Man and the Citizen*) stated on the 26 August 1789 the individual and collective rights of the human being rising to the political dignity of citizenship. Compared to all ancient charters of liberties, this document establishes explicitly and for the first time a new perspective on politics opened by the modern principle that all men have rights which are natural, universal and inalienable.¹

The human rights doctrine constituted a foundation for the “democratic logic”², a liberal logic, opposed to the “logic of domination”³ and, in our view, grounded on the politics of reason, inheriting all the political ideas of the Enlightenment. The rights attained feed a potential of vindication which further secures the rights already attained.

Claude Lefort emphasized that a philosophical analysis of the human rights brings to the fore three paradoxical aspects: 1. The society is conceived as formed out of free and equal human beings, that is, an ideally united and homogeneous society and yet, since such a society has no centre and since there is no longer a “body of the king” with which anyone can identify, new manners of existence, action and communication start to be recognized and their effects are incommensurable

¹ The *Déclaration des droits de l’homme et du citoyen* had as main author Marquis de La Fayette (1757-1834), a friend of Thomas Jefferson (1743-1826), who had in turn a deep admiration for the *Magna Charta Libertatum*. This main document of the French Revolution stated its specificity and novelty, as product of the revolutionary ideas and times defining the individual in modern terms – in opposition to power and authority. The document defines the individual as a self-determined being. However, indirectly, the *Déclaration* was the inheritor of a liberating tendency which begun with the *Magna Charta Libertatum*, representing the parting of the ways with the pre-modern political past. In the tradition established by *Magna Charta*, in the *Déclaration* also, the ruler was subjected to the rule of law, any accusation, arrest or punishment should be stated by law and no taxation could be increased without common consent.

² Claude Lefort, “La communication démocratique”, interview by Paul Thibaud *Ésprit*, nr. 9-10, September–October 1979, p. 34.

³ *Ibidem*.

and exit the orbit of power; 2. The rights belong to man, but man has to enunciate them, for it is impossible to detach the statement from the act of enunciation, yet, no one has a privileged place of authority from where to grant or ratify rights; 3. Human rights belong to individuals which appear as independent sovereigns over their private lives, although each right implies the others and the transversal dimension of the social relations, a source of identity and a constitutive origin: one's right to speak, write and print freely involves the other's right to listen, read, preserve and convey the printed text.⁴

Within the democratic logic both power and the state order function as a *guarantor of law*⁵, which has as consequences both the control over the individuals and the guarantee of collective and individual rights. However, in democracy, the value of human rights stays at the foundation of the legitimacy of any democratic state. "By taking with assault the state power through the vindication of rights, we are forcing the state the play its legitimacy card".⁶ Democracy is the home of human rights. At the same time, the human rights express the innate spirit of justice, freedom and dignity in man, but *they include as well the dignity of freely and rightfully approaching others, responding to others and relating to others.*

The utopia of human rights: an impossible dream, or a project?

The national and the international arenas offer numerous instances of the violation of human rights every day, making a compelling case for the interpretation of the human rights as a utopian dream. In a recent book, entitled *The soul of the marionette: a short enquiry into human freedom*, John Gray advocated the idea that, as important as they are, human rights will never be the solution to a conflict, the human rights question constituting actually a part of the contemporary idealized western ethical "myth" (in a more journalistic understanding of the notion).⁷ In his interpretation human beings are "stuck between the mechanical motions of the flesh and the freedom of spirit" – we may notice, a rather Hobbesian view.⁸ John Gray considers that our notion of freedom is deceiving because people see themselves as spirits captive inside the flesh (matter) and place their hope in some special knowledge to free them. Also, many people prefer the freedom from the turmoil of choice and doubt to freedom. There is no freedom unless people come to terms with a life in doubt, giving up their attachment to a "blind belief in ethical progress"⁹ and daring to think otherwise than the mainstream or the majority.

⁴ Claude Lefort, "Droits de l'homme et politique", *Libre*, n°7, 1980 part of the interpretation of state power in François Châtelet, Évelyne Pisier, *Conceptiile politice ale secolului XX*, translation by Mircea Boari and Cristian Preda, Humanitas Publishing, Bucharest, 1994, pp. 742-743. Reproduced in *L'invention démocratique*, Fayard, Paris, 1981, pp. 45-84.

⁵ *Ibidem*, p. 37.

⁶ *Ibidem*, p. 38.

⁷ John Gray, *The soul of the marionette: a short enquiry into human freedom*, Allen Lane, London, 2015.

⁸ *Ibidem*, p. 6.

⁹ See also Johannes Niederhauser, "Philosopher John Gray Believes Humanity's Desire for Freedom Is a Lie", interview with John Gray, *Vice*, April 6, 2015, available at https://www.vice.com/en_au/article/exmj3e/john-gray-freedom, accessed at March 5, 2019.

The argument of John Gray develops from the conception that we are entrapped inside our bodies and that people are their minds, which led to the idea of knowledge as a liberating force, in a way, the path of the spirit conquering matter. However, the opinion of John Gray is that knowledge is empowering but it is not in itself liberating, since everything that knowledge brings about is dual and it can be used for good or for evil, for the increase of the quality of life or for the increased control over people's lives (which is obviously not liberating).

The relation between knowledge, ethical progress and freedom is merely a possibility: it is neither direct, nor unproblematic. Ethics becomes more complicated and it is dependent on the requirements of the domain and on contexts that complicate things even further. Politics is erratic¹⁰ and this entangles things even more. In John Gray's view, "There are good events in history – there are genuine advances – but they are inherently fragile."¹¹ In the interview taken by Johannes Niederhauser John Gray gives this illustrating example for the non-linearity or non-existence of the ethical progress, depending on the interpretation and for frailty of the advances in treating the others well: "There are serious advances, but then they are regularly lost. And, unfortunately, good things are lost. For example, in the ancient world, pre-Christian Europe, there wasn't a persecution of gay people! That was then lost for 2,000 years. That's quite a long regression. People who believe in progress must allow the question, 'But what about those 2,000 years?' That's my key message."¹²

John Gray calls the attention upon the fact that we tend to assume that knowledge brings about responsibility and a stronger ethical commitment, but it does not. They are disconnected. And more knowledge might just as well bring more sophisticated manners to justify injustice and unethical decisions (or, the disconnection may imply simply using over and over again the same fallacies, the same sophisms and the same old justifications for the wrong doings). The "nuancing" concerning the ban of torture is another example that good things could be lost. The realist lesson of human rights and freedoms in John Gray's understanding is that these are not secured or achieved for eternity; therefore the citizens' and intellectuals' concerned care is essential. Since the authorities and the politicians are not so likely to assume responsibility for the human rights, then, the citizens should.

But this is also a point made by Samuel Moyn, in his 2010 book, *The Last Utopia: Human Rights in History* – human rights are not the "natural" conclusion of a process of moral development, but rather a wonderful "event", an idea that originated in the cosmopolitan vision of universal humanity in Greco-Roman philosophy and Judeo-Christian religion, finding "a good reception" in modernity in events associated rather to the history of the West (such as, the English Civil War, the French and American Revolutions, the antislavery movements, the Second World War and the struggles against colonialism and racism.¹³ So, the narrative of human rights is a utopia associated to distinct political, liberating projects.

¹⁰ *Ibidem.*

¹¹ *Ibidem.*

¹² *Ibidem.*

¹³ Samuel Moyn, *The Last Utopia: Human Rights in History*, Belknap Press, Cambridge, MA, 2010.

At the same time, according to Samuel Moyn, “contemporary historians have adopted a celebratory attitude toward the emergence and progress of human rights”. This interpretation emphasizes a linear progress to a “state of virtue and enlightenment”. Against this idea, not only that there are diverse paths open into the future and not one main celebratory avenue of human rights, but also, there was a neoconservative interest for the human rights as the best justification for military intervention on the international scene.

Human rights become central to international relations politics and it is often opposed to moral relativism. Against other opinions, Samuel Moyn does not consider that the importance of human rights in contemporary terms is a consequence of the international horripilation with Holocaust, but with the barbarian crimes of Nazism. The Universal Declaration of Human Rights adopted by the UN in 1948 represents a landmark for human rights, but not for the Holocaust condemnation.

The ideal of human rights as basic and universal political morality was present in the political thought of John Locke, John Stuart Mill and Immanuel Kant. For the utilitarian thinker Jeremy Bentham rights were “nonsense upon stilts”. The universalism of Aristotle and Thomas Aquinas did not include the idea of rights. Hobbes started from the natural rights only to argue for the benefits of a form of authoritarian regime. Historicists saw human values as cultural creations. For Isaiah Berlin’s value pluralism, certain values were universal, but also potentially clashing or contradictory and without a predetermined rational solution.

John Rawls placed rights at the foundation of society in *A Theory of Justice* (1971), although he envisioned a plurality of nations against a global state. This is more than discussing the social roles of rights, as J. S. Mill did. Rawls’s work helped promote a certain conception of liberalism connected with the idea of human rights and with the rule of law. The fact remains that we cannot conceive democracy without the human rights, nor the human rights without a democratic regime. In democracy, individuals enjoy the chance to live the life they want. This is why E. M. Foster honoured the variety and criticism allowed in democracy, favourable for the democratic appreciation of the human rights, in *Two Cheers for Democracy* (1938).

Michael Walzer identified a paradox of liberation in the fact that the secular revolutions of our times seem to be followed with regularity by religious counterrevolutions, so that national liberation does not bring freedom or human rights’ kind of freedoms, but traditionalism and religious rule, either fundamentalist or authoritarian.¹⁴ Michael Walzer noticed that the great majority of the movements of liberation follow a different universalism than the Marxist one. Usually the national liberation movement springs out of the admiration for the Enlightenment and the European democratic values, including an admiration for the human rights, aiming to build a secular and democratic state, only to arrive at a state based on the reinterpretation of a particular religious tradition, however, a tradition and a culture

¹⁴ Michael Walzer, *The Paradox of Liberation. Secular Revolutions and Religious Counterrevolutions*, Yale University Press, New Haven and London, 2015.

resistant and adverse to the discourse of human rights and democracy, which is overwhelmed and eventually cancelled by the national and traditional (Asian, Jewish or Islamic) discourse.¹⁵ The Marxist and Universalist type of criticism of nationalism creates minorities who sustain a concern for the others and a commitment to equality unapproved by their people.¹⁶ Nationalist political pathologies are triggered by the persistence of the equalitarian approach within nations with a heterogeneous structure (and non-equalitarian socio-political vision). The pathologies of the religious zeal come from the adherence for the religious justification for inequality (in Hindu, Jewish or Muslim doctrine) forgetting tolerance on the path of creating a state “entirely their”, to arrive at a “true” national liberation.¹⁷

By comparison to the French revolution, American Revolution was political, a revolution for rights and entitlements, not a social revolution. It was not a revolution of fury, like the French Revolution. The American Revolution was sanctioning a freedom already existing there and the weak ecclesiastical and socio-economic hierarchies led to anticlerical and anti-aristocratic policies.¹⁸ A certain religiosity which does not raise totalitarian pretensions and a radical secularisation is not compulsory. We see in the USA as well religious feminism, as a variety of denominations and also adversaries of the idea of a “Christian republic” – a great variety of convictions. Walzer concludes that liberation is an on-going process. The challenges met by the project of national liberation are the difficulties faced by the liberal left in matters of political hegemony and cultural reproduction of the ideals of the liberal left.

Similarly to the conclusion of *Just and Unjust Wars*, Michael Walzer underlines in his book dedicated to the *Paradox of Liberation* that there is no guarantee for the permanent victory of truth and good (and human rights). Moral strength is waging the fair fight, while accepting to lose playing by the moral rules. At the same time, fair fights should seek relations of cooperation without fearing to appear as compromises. Liberation as on-going process should imply attention to adequacy and thus the progressive forces should show a flexible and respectful understanding for their own culture, history and religion found in a strict dependency with their respect for pluralism, liberalism and rights. In a study signed with David Miller, Walzer underlines that pluralism is the key for a genuine liberal perspective on freedom and equality.

Therefore, successful revolutionary and liberation movements are only those movements which ensure respect for pluralism and which succeed to raise public consciousness in this respect, creating a culture of human rights, rule of law and democracy.

The Human Rights, a Lawful Shield

Pierre Manent underlines the conceptual, moral and political authority of “human rights” after more than two centuries after their “declaration”. Yet, there is a gap

¹⁵ *Ibidem*, pp. 93-94.

¹⁶ *Ibidem*, p. 94.

¹⁷ *Ibidem*, p. 103.

¹⁸ *Ibidem*, pp. 136-140.

between human rights and citizens' rights, between society and the state, creating certain difficulties of modern politics. Also, the citizen brings along the bourgeois and "while the bourgeois enjoys private enjoyments, the citizen finds his happiness in acting in society, in the public space"¹⁹. This is a contrast similar to the one identified by Benjamin Constant – the happiness of reflection of the moderns, against the happiness of action of the ancients. Thus, modern politics contemplates the uneasy mixture of the "world of the bourgeois, the world of the rights of man, of the man separated from man, as Marx said", the world of the citizen, the world of the producer, the world of industry, of work, "which in turn is divided between capitalists and proletarians". To make things even more complicated, in Pierre Manent's analysis, "the world of human rights mingles with what remains or is reborn from earlier worlds" (the Bourgeois, the Citizen, the Producer, the Soldier, the Priest, as well as "the unprecedented representations and hopes of a complete regeneration of humanity by economics, morality or science, of a metamorphosis that would enthrone a new man". The European affirmation of human rights was accompanied by "a prodigious variety of principles, referential concepts and ideas, ethical resources, which were at times compatible, but other times, divergent or even contradictory, although this mix within which they had to dwell became the source of the prodigious intellectual, artistic, social and political vitality of that period, the period of the democratic nation, or, of the national democracy."²⁰

Meanwhile, Pierre Manent emphasizes, the proletarians disappeared as a class, the Church is no longer an including and constitutive part of the civic body, as the necessity and possibility of salvation is mostly abandoned. Thus, citizenship is no longer a verb or a noun, but an adjective. And one cannot know with great precision a citizen of which city is she: of the French Republic or of the French nation, of Europe or of the world? The human rights undertake the role of unique, although pretty confused, ethical reference in public politics worldwide. But are they to be considered an extension of the rights of the citizen? The latter are the rights presupposing a civic body, a commonality nurturing common causes. Maybe what happened was an "absorption of the rights of the citizen in the human rights", the human rights of an individual who is neither entirely citizen (who vindicates her equal political right but adequate her subjective views to the "public light"), nor entirely bourgeois (who is interested first and foremost in her private jouissance). "The political institution has the sole reason of existence in protecting and guaranteeing the unlimited right of each (quasi-citizen, quasi-bourgeois) individual to define and lead her life as she sees suitable."²¹ Hence, the value and the legitimacy of the common good and, simply, the value of good vanish. This value of good gains a "dogmatic dimension" with a "religious aura" in contemporary times, almost as it endangers rights. Each person is entitled to decide what is good for herself.

¹⁹ Pierre Manent, "Les droits de l'homme et la question de l'action", *Raison – Publique. Fr.*, February 29th, 2016.

²⁰ *Ibidem.*

²¹ *Ibidem.*

Pierre Manent notices that the State should take responsibility in being just and the individual in being happy. The notion of rights is powerful because it is abstract and, at the same time, it is problematic for the same reason – this notion “dissociates the individuals from their context of action”, but it “grants rights equally, regardless of origin, opinion, social position” ensuring the togetherness, order and freedom of huge and diverse populations. At the same time, the meaningful content of human life becomes invisible, or, more precisely, it is cast away into the cultural or multicultural area. From this perspective, in order to alleviate the indeterminacy of human rights and to acknowledge their substantiveness we conceived a new right, the right at difference, cultural difference, fuzzier than social difference taken by socialists to be a truth. Cultural difference is called to cover nowadays the concrete content of the concrete life, which should be acknowledged by a functional society (at Manent, for a “reasonably competent political and social life”). “The principle of the right to difference forces us to say that nothing has changed, although everything, or almost everything, has changed. (...) the notion of ‘difference’ as that of ‘social construction’ are abstract in themselves – all things can be said to be ‘different’ and all social things can be said to be ‘constructed’ – and the two notions are applicable to the object under consideration only by resorting to a second degree abstraction, that of the ‘right to the difference’, or that of the society as ‘construction of the constructions’, abstraction of second degree which installs the object in an ideal network entirely independent of the reality of the object and indifferent to that reality. The abstraction of law, like that of the ‘social construction’ that responds to it, derails social substance. Citizens or scholars, we are faced with social facts as if they were things of little reality.”²²

Human rights offer a better foundation for the organisation of common life than the finalities or the goods (the multitude of forms of the social good), because they are more abstract and minimize the potential disagreement to a larger extent than do finalities and goods. But we do not agree with Manent when he disconnects the multitude of forms of social good from the rights. He states that “the goods cannot be deduced from rights”. We believe, on the contrary, that any right corresponds to a type of good and due to this relation we can deduce from a specific right a particular good and from a specific good a particular right. Due to this connection within each right and each good we should acknowledge an individual and a collective meaning that gives purpose each right and each good. None of the human rights is relevant only for a specific individual, without being relevant for society, too. We should underline that the individualism of the human rights is socially and democratically relevant and desirable, as opposed to a social narrow-minded validation of selfishness, or whim.

Also, due to the legitimating connection of good and right we have meaningful social, political and legislative actions taken for the improved clarification and implementation of rights in specific situations. The lawful society authorizes rights, but the law does not cover the content of the right. The lawful society

²² *Ibidem.*

validates the universal dimension residing in the human rights (“the most general, the most universal”) and the potential concreteness of the right to difference. In Manent’s perspective, “the individual with unlimited rights condensates social ontology” and “society is a composed consequence of the exercise of the individual rights, including the right to difference in which transpires the membership to a collective”. The indeterminacy of human rights becomes an incentive for action, because it requires for human rights “to be ever more rigorously defined, ever wider, always better implemented”.

Pierre Manent considers also that “The ordinary experience of practical life provides enough information to begin to guide us towards the common good of our communities. We must not allow ourselves to be demoralized and repelled by the bad day that the apparent rigor and absoluteness of the law throws upon the confused arrangements of effective social and political life. The only virtue that is still recommended today, we know, is ‘openness to others’. Well, as I tried to bring out, ‘the other’ today, and more and more, it’s us, it’s the society, or the society of societies, the community of communities that we are forming together, building up and at the same time collapsing before our eyes as an aggregate of individual rights. By leaving us a little less intimidated by the prestige of rights, we will look with more confidence, and, so to speak, with friendship, the experience of human goods in which human action consists”.²³

Jean-Marc Ferry discusses human rights, public-private dichotomy, post-secularism, public reason and consensus, starting from the perspective of a dialectics between love and law. He notices that the first article of the Universal Declaration of Human Rights states, after WWII that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must act towards one another in a spirit of brotherhood” and this is rather in the religious, or moral, not the law register.²⁴ We recognize here the spirit of the fight of Good against Evil and of the “atheistic religion” – captured by the discourse of human rights. Can we continue this reasoning to consider religious fanaticism a consequence of international human rights policy? We interpret that the link between brotherhood, human dignity and individual rights exemplified in the above mentioned article is one more argument for the more general, universal value, universally and socially meaningful good contained in all and each human right.

This is the basis for the implied duty to intervene that Jean-Marc Ferry also mentions. On the other hand, “The duty to respect the freedom and dignity of others can be unconditional because it is negative. To satisfy it, it suffices to abstain from actions which are prejudicial to the liberty and dignity of others; and abstaining from action is always possible. With regard, however, to the call to act towards one another in a spirit of brotherhood, the duty is conditional, because, being positive, it follows that its fulfilment is not required in all circumstances.”²⁵ The question of consciousness cannot be absent from this discussion. Jürgen Habermas

²³ *Ibidem*.

²⁴ Jean-Marc Ferry, “Droits de l’homme et raison publique en perspective post-séculière”, *Raison-Publique*, Fr, February 29th, 2016.

²⁵ *Ibidem*.

called the attention as well upon an “awareness of what is missing” suggesting a need for theological mediation in a postsecular world. Any common law of humanity seems to point toward the universal love, although, without any absolute expectations “to an indefinite widening of altruism”. Paradoxically, while institutionalization is a matter of law, sustainable right cannot be accomplished on the basis of the individuals’ indifference to each other. Jean-Marc Ferry notices:

“This is the speech made by Pope Francis on 25 September 2015 for the seventieth anniversary of the United Nations. In particular, there was celebrated the progress of the law, in which the Pope recognizes that they are ‘lights in contrast with the darkness of the disorder caused by uncontrolled ambitions and collective egoisms’. So the law is not a factor of selfishness.”²⁶

Gheorghe Dănișor investigates the relation between freedom and justice in human rights emphasizing the philosophical heritage that defends the primacy of togetherness and the strength of the social fabric.²⁷ Under the circumstances described by contemporary world the philosophy of human rights is nowadays re-evaluated from multiple perspectives. For instance, the topic of current interest proposed by terrorism brings to the fore as a principal value security, associated with specific public policies, sometimes, to the detriment of the value represented by the human rights and the political liberties associated with the former. Another example is occasioned by the situations created by the contemporary waves of migration, which exacerbate xenophobia in many European nations, casting a shadow on the irreducible value of the human being found as a core substantial philosophy at the basis of the very idea of human rights. The aim of the research is to emphasize the philosophical foundations of the human rights, namely liberalism and freedom, as well as the individualism that does not destroy but strengthen political community, a community that even since Plato attributes with necessity courage and moderation to the freemen, in order to preserve the social “fabric”. The author considers that human rights should not challenge this “fabric” of the good social relations, granting an exaggerate consideration to the individual, observing the phrase “freedom for each and justice for all”²⁸. In this respect, the interpretation identified three “generations” of the human rights. The first is marked by the struggle against the despotic power of the monarch (the 17th and the 18th centuries) finalized with the *Declaration of the Rights of Man and Citizen*. “The rights of the second generation are justified by the fact that those of the first generation should be extended to all the citizens and not only the favoured categories and they engage the state in their application”²⁹. The third generation of rights introduces in modern political thought “fraternal” concepts such as “the people”, “humanity” or “future generations”, a perspective on a well-balanced individualism, as well as theorizations of law which in the name of social harmony and future social development, tend to bring nuance and limitations regarding the substance of the human rights.

²⁶ *Ibidem*.

²⁷ Gheorghe Dănișor, *Filosofia drepturilor omului*, Universul Juridic Publishing House, Bucharest, 2011.

²⁸ *Ibidem*, p. 8.

²⁹ *Ibidem*, p. 86.

In conclusion, the author states: “This book pleads (...) for the rediscovery of the ontological Good and, implicitly, of the *zoon politikon* as a transposition at the human level of good. Only starting from this perspective, morals and law could vindicate their foundations”.³⁰

Returning to the perspective of Jean-Marc Ferry, we emphasize the idea that the Enlightenment is still consequential, namely, reason has consecrated the philosopher as “guardian of the right”. Now, theological mediation brings together reason, right, brotherhood, juridical progress and hope. Even more, juridical progress might just go hand in hand with the potential progress of “the spirit of brotherhood”.

Ferry acknowledges also the thesis of the divergence between love and law and interprets in this respect the verdict of Marcel Gauchet, who saw the exacerbation of right as the death knell of politics: more individualism, loss of the sense community, loss of civic solidarity. The opposite hypothesis of convergence between love and law triggers reticence due to its providentialism, although it is that one which sustained “the philosophies of universal history, as a mythological residue of the prophetic religions ...”³¹

On the one hand, we can see the individualism of our times and stop at that observation, or, we can also notice that global interdependence opens the path of a systemic integration, which is bound to bring out transcontinental solidarities and maybe spiritual progress, too.

The European situation is characterized by a political excommunication of the religious aspects, although in Jean-Marc Ferry’s opinion, between “political (public) and religious (private) reason a reciprocal path is recommended. I am talking about perlaboration. If the perspective of decompartmentalization removes the risks of identity crisis, it also raises delicate and important questions. Among them, the issue of public / private sharing and its fair criteria comes first. It has been relaunched by the recent ‘constitutional’ developments of the European Union, which invites (Article 17, EU Treaty) the religions of the European area to an ‘open, transparent and regular’ dialogue with the public authorities. The treaty further states that the religions of this area represent a ‘positive contribution to the Union’s identity base’. This official calls to the implication of religions in our democratic spaces, or supposed as such, confers a political topicality on the topic of the post-secularity, which was introduced in the academic circles.”³² Ferry mentions Karl Löwith, Eric Voegelin and Carl Schmitt who emphasized the transfer of sacredness into the symbolic foundations of modern society.

Postsecularism consonates with the radically open society: one which places equally importance on different experiences. Such a society finds ways to reconcile critical reason with faith. “The word arouses alarm, especially in environments where secularism is understood and used as a bulwark against the public expression

³⁰ *Ibidem*, p. 240.

³¹ Jean-Marc Ferry, *op. cit.* See also J.-M. Ferry, “Entre conviction existentielle et agnosticisme constitutionnel”, Eric Gaziaux, *Les Enjeux d’une théologie universitaire. Conférences du dixième anniversaire de Théodoc (20-21 novembre 2014)*, Peeters, Leuven – Paris – Bristol, 2016, pp. 103-116 and J.-M. Ferry, “Le dialogue interreligieux: confrontation ou conciliation?”, *Langage et religion. Vers un nouveau paradigme?* Thomas Alferi, Fred Poché, Frédérique Poulet (eds.), collection du Cerit, Presses Universitaires de Strasbourg, 2017.

³² *Ibidem*.

of religious beliefs. However, no more than secularity implies a secular constitution of our states, nor does postsecularity mean a rejection of the intention of secularism.”³³ This is a sign of the broadening of the deliberative arena and of the transformation of the public reason, the source of norms, reconciliation, principles of fairness and, eventually, justice. Public reason should not be limited by the same limits known by the liberal ethos. It has to accept both critical reason and spirituality of faith, both answering to the individual needs and freedoms. On the other hand, a particular synergy between critical thought and faith is specific for European humanism. This synergy paves the way toward a transversal consensus, which in our view is the consequence of transversal rationality, a concept proposed by Calvin O. Schrag.

The consensus attained via public reason might be confrontational or not, in Jean-Marc Ferry’s opinion, depending on the perfection of balance between “the pole of political justice and fundamental rights”, “the pole of civic autonomy and sovereign political will” and “the pole of patrimonial identity” (“the imaginary of a community”). As public reason derives meaning from fundamental rights and political justice and sustains the philosophical concept of public law (a system of rules based on a principle of justice that allows the compatibility of the varied individual liberties). Conflict of interests is still part of the normality of social, political and economic life. The system establishes and maintains order and, in this respect, Ferry relates to an idea formulated by Alasdair MacIntyre, as following: “the function of this system is to establish an order in which the resolution of conflicts can take place without invoking any comprehensive theory of the nature of the good for man”³⁴.

Ferry shows that the implications of an overlapping consensus (John Rawls), capitalizing the pluralist variety of opinions, values and views, target both the systemic order and the moral legitimacy of the liberal principle of public reason. Pluralism (in terms of beliefs, worldviews and values) indicates only the possibility of a minimal consensus, however, consensus is possible; and this translates into a systemic advantage (strength, adaptability, order), as well as into a moral advantage (by recognizing and regulating the plurality of opinions, worldviews and values) to create the stability of the moral sentiment along with the fundamental principled ingredients of political justice: “tolerance, reciprocity, distributive equity, non-discrimination, equality before the law, freedom of assembly, worship, association, expression, information and opinion”³⁵.

Liberal societies may be non-unanimous, but they are functional, stabile and enjoy a sense of moral finality and moral regulation of living together. There is a moral vision that sustains an overlapping consensus. Moral reasoning is the path to this result – consensus and peaceful existence. It is the consensus of the European treaties, at once based on and reminding of the “Union values”³⁶. Despite the relative “disaffiliation of the right to morality”, between faith and political

³³ *Ibidem*.

³⁴ Alasdair MacIntyre, *Quelle justice? Quelle rationalité?*, translation in French by Michèle Vignaux d’Hollande, Paris, PUF, 1993, chapter XVII, according to Jean-Marc Ferry, *op. cit.*, 2017.

³⁵ Jean-Marc Ferry, *op. cit.*

³⁶ *Ibidem*.

reason, with consequential dissociations “between morality of conviction and morality of responsibility, between private sphere and public sphere, between values and norms, between substantive ethics and formal law, between good life and just society”, overlapping consensus has ethical and systemic advantages.

Social criticism sustains the main view of deliberative democracy: social problems are to be discussed in open confrontation of the diversity of worldviews and of the particular conceptions of good. Resulting consensus is confrontational. Confrontation brings the hope of opening and expansion of public reason past legal arguments, and of convictions (even religious convictions) towards the responsibility of conviction. And, *mutatis mutandis*, the meanings of human rights could gain the logical extension of the responsibility of human rights.

In Ronald Dworkin’s perspective, law can be understood as interpretation and thus rights also should be interpreted in non-positivistic terms as pre-existent in relation to the legal rights. Even more, people can have other rights than these explicitly stated by the law.³⁷ Lawful and truly liberal political community should treat individual members as equally important. Rights can be regulated only through respect and equal concern. This is why the individual rights are “trumps”: “Individual rights are political trumps held by the individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them.”³⁸ Only principled collective decision-making, as is the act of justice, respecting the value that motivates the right may nuance but not limit a right. Rights are “trumps” in front of coercive, binding political action, imposed decisions, censorship, insufficiently justified collective goals, against utilitarianism and legal positivism, but they are not to be taken playfully. *Individual* rights are to be considered “trumps” in the sense that neither collective wellbeing, collective dreams, collective rights, nor political good intentions and genuinely good causes, could ever be more important if justice were to be served but, precisely for these same reasons, while individual rights are trumps they are not a game. As we have previously shown, for Ronald Dworkin the recognition of individual rights gives both the sense and the meaning of lawfulness, of due process and of the correct functioning of law.³⁹ Advancing a thesis of rights in a Rawlsian key, Ronald Dworkin shows that juridical decisions should not only observe, but also strengthen the rights existing previously to the decision that has to be made, which are also previous to the social contract and a *grund* for the lawful political community.⁴⁰ In this respect, applying the law always brings us to a moral and principled interpretation of facts, conducted so that individual rights are rightfully identified, defended and reinforced by the interpretative conclusions and by the decisions accordingly made.

³⁷ Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press, Harvard, 1977. Henrieta Anișoara Șerban, “Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press, 1977”, in *Enciclopedia operelor fundamentale ale filosofiei politice. Contemporanii 1971-1989*, Institutul de Științe Politice și Relații Internaționale “Ion I. C. Brătianu” (ISPRI) Publishing House, Bucharest, 2015, pp. 158-171.

³⁸ Ronald Dworkin, *op. cit.*, p. xi.

³⁹ Henrieta Anișoara Șerban, “Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press, 1977”, in *Enciclopedia operelor fundamentale ale filosofiei politice. Contemporanii 1971-1989*, ISPRI Publishing House, Bucharest, 2015, p. 163.

⁴⁰ *Ibidem*.

Conclusions

Political philosophy of political regime, state and society, as well as political practice can be interpreted according to a dynamics rights versus power (or, far too often, rights versus power abuse), in terms of rights as guarantees against oppression, injustice and cruelty.

The history of the project of human rights begins with the modern ideas developed around the problem of political power, the relation between political power and reason and the legitimacy of power. The main referential documents in this historical perspective are Magna Charta Libertatum, the Bill of Rights, the French and the American Declaration of Human Rights and the UN Declaration of Human Rights.

Authors like John Gray or Samuel Moyn see human rights as utopia or an “ethical myth”. However, the guarantee of human rights institutes a democratic logic in society, a limitation of power through the human rights and this limitation establishes a democratic legitimation of power. We may say that democracy is the home of human rights and that the human rights are an expression of the innate spirit of justice, freedom and dignity in man, but *they include as well the dignity of freely and rightfully approaching others, responding to others and relating to others*. The most profound togetherness is to be found in the social fabric sustained by human rights. People should recall and emphasize this forgotten connection between togetherness and rights more often. Togetherness is enhanced by the guarantee of rights and it is also the prerequisite of human rights demands.

As Claude Lefort has shown, any individual right echoes another right as well as a specific right associated to a particular individual has meaning only in tandem with somebody else’s individual right. Pierre Manent considers that human rights are an intrinsic part of a more general common good, part of the experience of human goods and we should sustain the openness to others, but not be intimidated by “the prestige of rights”, while we attempt to understand and embrace human experience and actions. Jean-Marc Ferry discusses human rights in relation to public-private dichotomy, postsecularism, public reason and consensus, starting from a novel perspective of a dialectics between love and law. Ronald Dworkin sees rights as “trumps”. His argument completes and nuances the liberal perspective on human rights proposed by John Rawls in *A Theory of Justice*. Individual rights pre-exist in relation to social contract, political community and the system of law, as a *grund* for the lawful political community. In this key, authorities and especially juridical decisions should not only observe, but also strengthen the previously existing individual rights. Thus, human rights are rather an on-going political project, not a utopia. As foundation of political community, political aspirations and political goods, they are “trumps”: the backbone of any interpretation and decision of justice, their origin and their finality, too. Paradoxically, insisting “to dream” the “utopia” of the human rights is precisely what casts the human rights project into reality and what maintains it in actuality, too.

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