

Modern Citizenship: a Dilemma for the Realization of Human Rights

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Abstract

The human rights crisis began with the experience of the 20th century, in which everyone who did not count as a citizen of a particular state was not only deprived of his civil rights but also of his human rights. If the nation-state, through citizenship, constitutes the only legal authority that recognizes and realizes human rights, this discourse becomes meaningless for those experiencing processes of expatriation, emigration, or any other type of resignation from membership of a political entity. In this respect, the reconceptualization of the "right to have rights" within the framework of a non-centralized state will be crucial in the period since the 1948 Declaration of Human Rights, in which strictly international issues have been shifted towards cosmopolitan standards of justice. This article is based on the assumption that modern citizenship involves a dilemma that prevents the realization of human rights by confining this right to those who belong to an organized community. To this end, two moments of crisis of human rights mediated by the idea of human dignity, assumed as a political principle of universal legitimacy, are analyzed with the aim of tracking the possibilities afforded by cosmopolitan citizenship to overcome the aporia of human rights.

Keywords: "Right to have rights", human dignity, freedom of action, communicative freedom, cosmopolitan citizenship

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1. Introduction

While for many, the 1948 Universal Declaration of Human Rights is a cornerstone for curbing the atrocities of mass killings committed, particularly in mid-20th century Europe (Eleanor Roosevelt, René Cassin, and John Humphrey), Arendt believes that the confusion and loss of reality regarding the meaning of human rights attached to this doctrine, which from the outset, identified an abstract human being, a subject of rights, with the people rather than the individual, make it responsible for many of the things that have happened. The assumption on which the arguments in this article are based is drawn from the fact that modern citizenship constitutes a limit on the realization of human rights, since it confines this right solely to those who belong to an organized human community, excluding those who for various reasons become stateless persons. In this respect, it explores cosmopolitan citizenship as an alternative for re-thinking the *right to membership* and the *right to be a member* in volatile times. To this end, the sections in this essay analyze two moments of the human rights crisis mediated by the concept of human dignity.

The first is based on Arendt's criticism of the perplexities of human rights linked to the declarations of human rights, in which general human rights were granted to an abstract man, who does not exist, with attributes that a real man does not possess, obviating the course of events where the loss of national rights took the form of discrimination, expulsion and expatriation, with the consent of national and international laws. The second, preceded by the presentation of the concept of human dignity, posited by Arendt, discusses the notion of cosmopolitan citizenship proposed by Benhabib, in which the incorporation of the rights of citizenship to a universal human rights regime would make it possible to bridge the gap Arendt opens in the assertion of the "right to have rights". It arises from the disparity between the diagnoses of our contemporary condition in which predictions ranging from a worldwide civil war and a permanent state of emergency (Hardt and Negri, 2001, 2004; Agamben, 2005), to the Utopia of a citizenship beyond the state and transnational democracy (Balibar, 2004, Held 2004) are posited. Despite these profound differences, the article clearly shows that changes in the security situation in the wake of September 11, 2001, have destabilized the principle of state sovereignty, questioning the role of the nation-state as the final, indivisible place of authority with the jurisdiction to control not only the "monopoly of legitimate violence" but also to distribute and direct the economy.

In this respect, Benhabib's cosmopolitan citizenship emerges from a crisis in which the world is advancing towards a new form of post-Westphalian² politics of global interdependence, where the tension between universality and particularity requires reframing citizenship in the present.

2. The Perplexities of Human Rights

Hannah Arendt's skeptical criticism of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December 1948, stems from the fact that in its attempt to reformulate human rights, it repeats the spirit and attitude of traditional late 18th century declarations, without considering the profound crisis that demolished the idea of human rights as a result of totalitarian politics. In her short text "The Rights of Man: What Are They?" published in English shortly after the announcement of the Declaration, she underlined the conceptual confusion arising from a visible "loss of reality," since it involved an order regarding a duty that was impossible to implement (Arendt, 1949a: 37).³ In her book on *The Origins of Totalitarianism*, she continues discussing "The perplexities of the rights of man," to analyze the confusing situation into which totalitarian politics plunged human rights. She stresses her criticism, in the sense that an appropriate response to the totalitarianism implemented in the 20th century seems impossible (Arendt, 1968: 290-302).

The harshness and skepticism with which Arendt structures her critical diagnosis of human rights corresponds to a German-Jewish thinker who survived the denationalization and persecution of Jews in Nazi Germany.

² In this context, the term "post-Westphalian" refers to the moment of tension and at certain times of open contradiction between human rights and the principle of national sovereignty of the nation-state system.

³ That same year, a second version was published in German in *Die Wandlung* journal, directed by Karl Jaspers and Dolf Sternberger, entitled "Es gibt nur ein einziges Menschenrecht" ("Is There Only One Human Right?") (Arendt, 1949b: 754-770). Menke examines the implications of changing the title of the essay from one version to another. He points out that the ambivalence contained in the English and German names does not simply reflect a strategic reason for the publication in different media at the same time and place but that there is a connection between the two titles in terms of Arendt's argumentative structure referring to the perplexities contained in human rights in general, which constrain human right in particular (Menke, 2007: 739-762).

She was an observer and participant witness of the global diaspora of the Jewish community and a coexisting expert on other minorities (Germans in Russia; Slovaks in Czechoslovakia; Muslims in Yugoslavia, gypsies and many others) in 20th century Europe, whose mark of identity was systematic denaturalization, persecution and death. This practice took place within the structures of national and international laws in the context of modern times, as Arendt warns. But what is the basis of the impossibility of converting the realization of human rights enshrined in both the traditional declarations issued in the late 18th century and the 1948 declaration? Indeed, answering this question involves abandoning the traditional way of thinking about the concept of "Man, Citizen and His Rights" (Agamben, 2000:16) and even ruling out the universal argument and reconstructing a universal principle of justice (Cohen, 1996: 183). Arendt's aporias investigate the "broken" link between man's rights and human rights, summarized in the phrase "the right to have rights," whose premise is not dependent on natural modern law, anchored to liberal thought, and instead, questions the basic assumptions of this tradition (Menke, 2007: 41). As Arendt writes in *The Origins of Totalitarianism*,

We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation. [...] The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth-century because they presume that rights spring immediately from the "nature" of man...the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. (Arendt, 1968: 296-298).

Arendt's first objection to the 1948 Universal Declaration of Human Rights involves the visible "loss of reality," derived from the impossibility of performing a *duty* to which *it cannot correspond* due to its inability to act (Menke, 2007: 741). To analyze this loss of reality, it is necessary to return to the notion of the "right to have rights". This statement evokes two interconnected areas in Arendt's thought: (*right*)-to-(*have rights*). The first part of the phrase, as Benhabib points out, refers to a moral imperative. It is a moral right to membership and, therefore, to a type of relationship compatible with membership.

This first structure of *right*, directed at the identity of (the) other (s) who demand recognition as (a) rights holder(s), is open and indeterminate. It does not depend on the precondition of whether or not one is a citizen, but rather on the right to recognition due to the simple fact of being a "human being" (Benhabib, 2004: 56). In Arendt, this recognition is primarily a *right to membership* and to belonging to an organized human community. In this respect, humanity itself becomes the target of this recognition, "However, it is by no means certain that this is possible" (Arendt, 1968: 298). Thus, personhood is contingent on being recognized as a member, which allows one to introduce the notion of the second sentence of the discursive structure, *having rights* (Benhabib, 2004: 57), whose actions stem from the prior right to membership and means the right (and its respective duties) to live as a member of an organized human community in which one is judged by his actions and opinions. This double assignment of the "right to have rights" breaks the *a priori* forms of belonging to an organized human community based on the transcendental Kantian ego logic in which, thanks to a prodigious decision, human rights are conferred on citizens, leaving individuals and peoples unprotected from the arbitrariness of state sovereignty. On the one hand, it postulates a civil-legal community of joint partners in a relationship of reciprocal duty. And on the other, it posits the duty to recognize each other as members, as individuals protected by the political and legal authorities who should be treated as persons entitled to enjoy rights (Benhabib, 2004: 57-58). Recognition, in this respect, is the fundamental referent for achieving the right to membership, but also to living as a member of a political entity.

The fictional and obtuse symbiosis of the right to membership and the right to live as a member of an organized human community is what characterizes traditional human rights declarations. This particularity is reproduced by the Universal Declaration of Human Rights, promoted by the United Nations General Assembly in December 1948. Arendt notes that from the outset, referring to the late 18th century Declaration of the Rights of Man, it depicted an "abstract" human being that did not exist anywhere (Arendt, 1949a:31). Inexplicably, the issue of human rights quickly became attached to national emancipation, which soon led to the idea that the sovereignty of an emancipated people was the only one that seemed to guarantee "inalienable" rights, limiting their access to those who belonged to the new organized community. Since the French Revolution, the human being was conceived of through the image of a family of nations. However, along the way, it became clear that the people, rather than the individual, constituted the image of Man (Arendt, 1968: 291).

The principle that all rights depend on the law and that all political legislation is necessarily tied to a specific form of "locality", according to Edmund Burke's realistic claim (1987:9),⁴ shows Arendt the boundaries of the rights we exercise when we circumscribe ourselves to a nation, where no natural or divine law, or any concept of humanity, is required as a source of law (Arendt, 1949a). Instead, referring to the rights of man -to the fact of being a man- obliges every individual or organized human community to respect them always. If we make them contingent on being a citizen, they will only be respected when the nation that gives them citizenship has the will to do so. The aporia derived from this identification of human rights with the rights of peoples in the European nation-state was expressed when a growing number of individuals and peoples, before and after World War II, were expelled from the communities to which they belonged and forced to live outside the scope of any tangible law (Arendt, 1968: 293).

The rights of man, proclaimed "inalienable" in the Declarations issued by the French and American Revolutions, showed their inapplicability since they could not be claimed, even in countries whose constitutions are based on them, by those who were not citizens of any state. Their inability to be realized is the result of the order of a "duty" that cannot be fulfilled, given that it coincides with the decline of the mid-20th century European nation-state. This weakening is associated with the "end of human rights," rather than the loss of national regulatory power, at least with their initial erosion that would subsequently lead to their total devastation, and of the principle that all citizens of a territory are also citizens of the state that legislates over the territory (because they are members of the same people and the same nation) (Menke, 2007: 743). Under the logic of a sovereign nation-state "responsible" for safeguarding the individual rights of its people, policies began to be implemented against minorities, predominantly in Europe, targeting the Jewish people and refugees. The loss of national rights took the form of discrimination, expulsion and expatriation and in any case, as Arendt says, implied the loss of human rights (Arendt, 1949b:31). In this context, what is termed as human rights was the equivalent to citizens' rights. Therefore, the moment citizens' rights were lost, human rights were derailed.

⁴ The Conservative English thinker Edmund Burke opposed any theory of human rights, on the grounds that only the rights emanating from "inside the nation" would enjoy recognition (Burke, 1987). Arendt's criticism of this objection to the human rights derived from the French Declaration of 1789 allowed her to consider that if an individual or a people is not a member of a nation, no right is valid (Arendt, 1968; 1949a).

The attempt to reformulate the new Universal Declaration of Human Rights in 1948 was intended to solve the crisis of the concept of human rights based on the nation-state (Menke, 2007: 344). However, it was not able to destroy the “nation state/citizenship/rights” triad due to the confusion and loss of reality attached to the Declaration’s list, in which rights did not refer to human beings but to individuals who enjoyed belonging to a political entity. The concept of “Rights of Man,” based on the alleged existence of human beings as such, actually repeated formulas designed to solve problems within given communities (Arendt, 1949b:28). This is an abstract conception of the human being in which the nakedness of being nothing more than human is his greatest danger. This is why stateless individuals and peoples were seen as wild, considerate beasts. Survivors of concentration camps, refugees, asylum-seekers and immigrants, therefore insisted on their nationality, the last sign of their previous citizenship, as the only tie that bound them to humanity. Experience had shown them that a person who is stripped of his nationality ceases to belong to the human species. When a human being loses his political status, according to the implications of the supposedly inalienable rights of man, he would have to appeal to the *general rights* granted by the declarations, which leads to the aporia of human rights (Arendt, 1968: 300). From the outset, Arendt identifies the impossibility of achieving the “rights of man” due to their restriction to citizenship and, therefore to belonging to the political community based on one’s place of birth. She therefore underlines the confusion created by the last Declaration, in which it is proved that in its attempts to create a new framework of reference for this question, it is unable to define with any certainty what *human rights in general* mean or distinguish them from citizens’ rights (Arendt, 1968: 293).

Arendt’s diagnosis of human rights crisis begins with the experience of the 20th century, in which everyone who did not count as a citizen of a particular state was not only deprived of his civil rights but also of his human rights. Those who lost their nationality also stopped belonging to the human race. They were faced with the impossibility of having a new home, and the impotence of not enjoying the benefit of the protection of either their or another government. This radical loss meant being deprived of the social fabric of the space in which they had been born and the disappearance of the place they had occupied in the world.⁵

⁵ In Arendt’s work, the concept of plurality and world play a fundamental role in the analysis of public space as a space of appearance. In her definition, the world is shared with others insofar as plurality is the fundamental characteristic of the “human condition” and the basic condition of all

Although throughout history, various groups and individuals have been forced to leave their everyday places, for political and economic reasons, the calamity of the early 20th century knows no precedent. However, what is unprecedented is not the loss of a home but the impossibility of finding a new one (Arendt, 1968: 293). The conception of human rights is broken at the moment when those who professed to believe in it were for the first time confronted with people who had lost all their qualities and specific relationships except that they were human (Arendt, 1949: 31). If the nation-state is the only legal authority that recognizes and realizes human rights, this discourse loses its meaning for those undergoing processes of expatriation, emigration, or any other type of resignation from membership of a political entity. The fundamental deprivation of human rights is expressed in the loss of a place in the world where opinions and collective action take shape. This deprivation, like no other, strips a person of the right to action and without it, no right is realizable (Arendt, 1968: 296). This point is crucial to understanding the implications of the "right to have rights" in terms of the *moral right to membership* and *having rights as a member within an organized human community*. The importance of this complex dimension remains absent in human rights declarations of the 18th century and its subsequent amendments. Speaking of human rights lightly leads to confusion and the "loss of reality" expressed in the contents of these instruments. As Reyes Mate notes, stating that human rights "exist" assumes a double dispossession: they grant an abstract man, who does not exist, attributes that the concrete man does not have and refuse to grant the harsh reality (of men without rights) the capacity for theoretical significance. Lastly, a doctrine of human rights is constructed, which does not take the real man into account but rather an abstract man who has invented philosophy, but has the disadvantage of not existing (Mate, 2010: 243).

At the conclusion of her text, "The Rights of Man: What Are They?" Arendt outlines two solutions to the aporias of human rights. In the first, she projects a programmatic concept, noting that the concept of human rights can become significant if it is redefined in light of these experiences and circumstances (Arendt, 1949b: 34). This statement acquires value, particularly when one observes the perversions to which an interpretation of human rights based on *human rights in general* leads.

political life. Appearance constitutes the reality that comes from being seen and heard by others. Living together in the world means that the world of things is found among those who have it in common (Arendt, 1998: 50-58). Thus, when someone is evicted from his "home", he loses his human condition.

This is exemplified by the suggestion of the distinguished American lawyer Alan Dershowitz, after the September 11/2001 attacks, in which he argues for the legalization of torture as a counter-terrorist measure. In this regard, we would have to say that since the writing of the Declaration, the post-colonial period has witnessed the erosion of belief in the universality of human aspirations (Falk, 2004: 18). Redefining the concept of human rights requires a response that combines *membership rights* with the *right to be a member* "in light of experiences and the present circumstances." However, it also requires a definition that prevents a return to the 18th century category of "natural rights". To answer this question, Arendt offers a second solution to overcome the perplexities of human rights through the concept of "human dignity".

3. Freedom of "action," a Condition of Human Dignity

Two arguments are explored in this section. The first assumes that the notion of "human dignity" in Arendt's thought is preceded by the principle of freedom, coined by the ancient pre-philosophical tradition and its politics. The second indicates that this epistemological dimension of freedom reconstructs a conception of human dignity that enables one to emerge from the aporia of human rights, since it lends the "right to have rights" a new political principle.

The aporetic nature from which the notion of "human dignity" arises in Arendt's work suggests a way to re-think the structure of the concept beyond the historical shift in which generality and advisability had become its identity mark. Michel Ignatieff, in his book *Human Rights as Politics and Idolatry*, responding to his critics about his resistance to the concept of dignity in the context of human rights, says that while one cannot entirely dispense with this idea, dignity as action is the most pluralistic, open definition of the word. However, it is the only one he thinks of for exploring this principle (Ignatieff, 2001: 164). Although there has been a philosophical concept of human dignity since antiquity, we owe Kant the current canonical expression. It was not until after the Second World War that it was enshrined in international law texts and recent national constitutions. Conversely the notion of human dignity as a legal concept did not appear either in the classic 18th century statements on human rights, or in the 19th century codifications. The meaning of "dignity" jumped from medieval language to the modern era, not without adding a high cost.

For a long time, it was believed that man and nature were the only ones who had dignity, although it was also thought that nature would be eventually be dominated by the former. The power that man acquired over nature proved to be the power that a few men had over others, but also over women, children and animals (Lewis, 1947: 80). Later on, the dignity of the individual was identified with the ability to think rationally and act independently. However, by itself, this principle has not proved very useful for those whose power to think and act has been restricted. Arendt's brilliance in linking the term "dignity" to human beings enables one to chart a course to build its significance and escape from the generality of the action indicated by Ignatieff. Dignity and human beings, two everyday concepts of political life, are called, within conventional understanding, to be thought of once again, "In the light of experiences and present circumstances." In the last part of the preface to the first edition of *The Origins of Totalitarianism*, Arendt notes that

[...] *human dignity* needs a new guarantee which can be found only in a *new political principle, in a new law on earth*, whose validity this time must comprehend the whole of humanity, while its power must remain strictly limited, rooted in and controlled by newly-defined territorial entities (Arendt, 1968: ix) [emphasis added].

Two elements may be drawn from this statement: the need to rethink human dignity on the basis of *a new political principle* that will guarantee its realization and the validity of this principle based on a *law that links the universal to the particular*. Although both propositions are closely linked, I will begin with the second part of the sentence in order to investigate the epistemological thread guiding Arendt's proposal. In her criticism of human rights within the context of the experiences of the Second World War, Arendt wonders why the concept of natural and inalienable rights failed humanity precisely when they were most needed, even though they had been declared a century and a half earlier in France. To which she responds by saying that when the individual does not belong to a political community, his rights are not as sacred as the concept of individual rights would suggest (Arendt, 1968: 293). The political faculty is simply unable to be realized among the dispossessed if they are not recognized as equal members of humanity. Two aspects of the same idea.

In Hegel, there is a “tension” between the law of the singular and the universal, as an intrinsic feature of unity⁶, to which he appeals in a contiguous dialectical unfolding to achieve a different approach from which the idea emerges that unity is not only cut through by the resolution of opposites, but also by the perplexity that contains them. Likewise, Arendt clearly identifies the tension between the two dimensions suggested in the “right to have rights”, from which her concept of human dignity emerges. She also knows that the latter should foreshadow a move that will lead to the action of political life, if the point is to destroy the aporia of human rights. To demonstrate this, I will refer to Arendt’s discussion of the dualism between the practice and theory of freedom attached to modern political philosophy.

If we begin with Isaiah Berlin’s liberal position on the famous distinction between negative and positive freedom, we could say that Arendt was a positive theorist for whom the problems of political participation and civil action occupied a central place in the framework of her reflection. Conversely, the legal strategies designed to limit the power of the state and favored by the liberals were not the focus of his attention (Berlin, 1969, Shapiro, 1986). Arendt believes that in many respects, modern practical reality was the result of the practical and theoretical duality of freedom postulated by Western political philosophy. To prove this, she refers to classical antiquity where freedom was considered an exclusively political concept, the quintessence of the city-state and citizenship.

In contrast, she explicitly frames the philosophical tradition of political thought, which began with Parmenides and Plato, in opposition to the *polis* and citizenship. The way of life chosen by the latter was understood in opposition to the political way of life. In this respect, freedom, whose idea was the center of politics for the ancient Greeks, was almost by definition outside the framework of Greek philosophy. Only when the early Christians, particularly Paul, discovered a kind of freedom detached from politics, did the concept enter the history of philosophy. Free will and freedom became synonymous while freedom was experienced in terms of an exercise of complete solitude (Arendt, 2006: 156).

⁶ Hegel ends *Phenomenology of the Spirit* by stating that not only is the spirit of man destined to achieve an absolute form of self-consciousness, but it *is also attached to the potential of achieving his independence* (Hegel, 1984: 473). This reflects the permanent interplay and tension between the realm of the universal and the particular as a means of realizing the ethical community.

The concept of freedom did not enter the vocabulary of philosophy until late antiquity and when it did, it was used by thinkers such as Epictetus and Augustine to formulate the condition in which an individual would retain his freedom within himself, despite being deprived of it in the physical world. Arendt emphasizes the historical fact that the emergence of the problem of freedom in the philosophy of Augustine was preceded by the conscious attempt to divorce the notion of freedom from politics and thereby arrive at the formulation that one can be a slave in the world and yet preserve one's freedom (Arendt, 2006: 146). The Christian tradition played a decisive role in the problem of freedom. It made the meaning of freedom and free will synonymous, while equating the experience of freedom with the realm of utter solitude. Even today, when we think of freedom, we automatically establish the equivalence between these two notions, which was a virtually unknown faculty in ancient Greece (Arendt, 2006: 156). Meanwhile, Epictetus' concept of freedom, in which he claims that he who begins by stating that a person who does whatever he wishes is free, is exactly the opposite of the notion of freedom of the old political notion and the political foundation on which popular philosophy based the obvious decline of freedom in the late Roman Empire, expressed in the notions of power and domination (Arendt, 2006: 146).

Classical antiquity was inexperienced in the phenomena of loneliness. It was well aware that the solitary man is not one, but two-in-one, since the relationship between me and myself begins at the point where *my* relationship with *my peers* has been interrupted for some reason. Since Plato, the dualism of classical philosophy has emphasized the dichotomy between body and soul, assigning the motion of the human faculty to the soul. This duality, housed within the capacity of the self, is known as a feature of thought, the dialogue in which one engages with oneself. However, Arendt would say, the two-in-one of loneliness generated by the thought process has the exact opposite effect on the will: it paralyzes and blocks it. Arranged in solitude, it is always and at the same time located between wanting (*velle*) and not wanting (*nolle*). The paralyzing effect of the will that has an effect on the self configures the true essence of ordering and being obeyed. Plato insisted that only those who were able to set rules for themselves had the right to establish rules for others, who would be free from the obligation of obedience (Arendt, 2006: 156-157).

In the rebirth of political thought, which was accompanied by the rise of the modern age, Arendt distinguishes between the thinkers known as the fathers of political "science", Hobbes being their greatest representative, and those who traced their concern to the political thought of antiquity, not because of any fondness for the past, but simply because the separation between Church and state had produced an independent secular sphere, unknown in politics since the fall of the Roman Empire. The representative of this secularism is Montesquieu, who, although indifferent to strictly philosophical problems, was deeply concerned about the inadequate conception of freedom for the political purposes developed by Christian philosophers. To settle this issue, he proposed a distinction between philosophical and political freedom. From his perspective, philosophy demands no more freedom than the exercise of will, regardless of the circumstances and the achievement of the objectives that the will has set. Conversely, political freedom is the ability to do what the will desires. For both Montesquieu and the ancients, it was clear that an agent ceases to be free the moment he loses his ability to do so.

It is therefore irrelevant whether this failure is caused by internal or external circumstances (Arendt, 2006: 159). The Greeks never turned the concern of the will into a different faculty from man's other capacities. Historically, man first discovered will when he experienced his impotence and lack of power. This is important for realizing that the early testimonials of the will were not defeated by the overwhelming force of nature or the circumstances and that its appearance did not cause a conflict between them, or a struggle between the body and the mind. The link between thought and body in Augustine is a quite different approach. It has its source in the enormous power inherent in the will. Thought gives order to the body, which obeys immediately. In this context, the body represents the outside world and in no way is considered identical to itself. Epictetus considered that within the inner sphere, within himself, man becomes the absolute master and that the conflict between man and himself is solved by the will. The force of Christian will discovered this way as a means of self-liberation, which it immediately adopted. Thus, my will (*I-will*) instantly paralyzes my ability to-do (*I-can*). The moment man desires freedom, he loses his ability to be free. Arendt remains attentive to the fatal consequences of this process for political theory, since in the equation of freedom with the human capacity of the will, it is possible to find the reason why nowadays, we automatically equate power and oppression (Arendt, 2006: 160-161).

Arendt revealed that philosophers expressed interest in the problem of freedom when they discovered they could uncouple it from politics, experience it outside the scope of performance and partnership with others, and limited to the link between the will and oneself. In other words, once it was assumed as free will, the question of freedom became a major philosophical problem and as such, a problem concerning the political sphere. The philosophical shift from action to willpower and freedom linked to a way of being expressed in the action of free will, transformed the ideal of freedom into an ideal of will, independent of the others, which subsequently adopted the form of sovereignty. From Arendt's point of view, this philosophy would prevail until the 18th century. Thomas Paine argued that, "Being free is enough [for man] who wants it," words Lafayette would apply to the nation-state: "For a nation to be free, it suffices for it to wish to be so." These ideas resonated in the political philosophy of Jean-Jacques Rousseau, considered the most important representative of the theory of sovereignty, derived directly from the will. In his theory, he does not spare the consequences of extreme individualism that the principle of the will assumes, regardless of others. Indeed, he argued, against Montesquieu, that power should be sovereign and indivisible because a division of power would be unthinkable. Moreover, he notes that in an ideal state, citizens would not have communication with others and in order to avoid confrontations, each citizen should only think his own thoughts. Arendt refutes this approach, based on the statement of Carl Schmitt, one of the leading advocates of sovereignty among modern political theorists, saying that it is absurd to require the will to commit to the future. All political issues are performed within an elaborate framework of relations and links with the future, such as laws and constitutions, treaties and alliances, whose purpose ultimately derives from the power to promise and keep a promise despite the uncertainty of the future. A state in which there is no communication between citizens and where each one only thinks his own thoughts, is by definition a tyranny. Therefore, the political identification of freedom with sovereignty is the most pernicious and dangerous consequence of the philosophical equation of freedom and free will, since it leads to a denial of human freedom (Arendt, 2006: 162-163).

Arendt re-visits Antiquity, the pre-philosophical traditions and their politics, in order to recover the experience of freedom in the process of acting (together). To illustrate this, she emphasizes the meaning of the verb "to act" in the Greek and Latin languages, which, unlike modern languages, have two different but interrelated words to describe the verb "to act."

The Greek words *archein* (start, lead and eventually rule) and *prattein* (cross, perform, conclude), correspond to the Latin verbs *agere* (set in motion, guide) and *gerere* (carry). Later on, the terms that originally designated the second part of the action, *prattein* and *gerere*, referring to the conclusion, defined action in general, while the initial term marked by the words *archein* and *agere*, assumed specifically political meanings. Since then, the term *archein* has meant to guide and govern while *agere* has meant to guide, rather than set in motion. When Arendt claims that the concept of freedom did not play a role in Greek philosophy, it is only because of its political origin. Freedom is the beginning of the realization of something, the start which encourages and inspires all human activities, action as the beginning of political life. Freedom does not refer to a way of being, a virtue or virtuosity, but to a supreme gift man received from all earthly creatures, expressed in all the activities he undertakes. *Freedom is only achieved when its action creates the space for man to appear* (Arendt, 2006: 164-168).

Christian traditions and anti-philosophical policies, reiterates Arendt, stripped freedom of the attribute of acting (*together*) (Arendt, 2006: 163). To her regret, this conception was the one that filtered through the thought of modern philosophers. Hobbes, Spinoza and even Kant understood freedom outside politics (Hansen, 1993: 55). This theoretical slip led humanity to the justification that men only have the ability to live together legally and politically when some are entitled to command and others are forced to obey (Arendt, 2006: 222). For Arendt, the modern experience of totalitarianism, stateless people and genocide is the result of this slide that led to the loss of political power, which the concept of human rights, both natural and inalienable, was unable to identify and reverse. And it is precisely at this point that her conception of "human dignity" can be seen.

The term "human dignity" used by Arendt is derived from her criticism of Kant and Burke, while linking it to politics through Aristotle. The term is based on the Kantian proposal that an activity, or a form of life has dignity when it is intrinsically valuable and worthy of being carried out "for its own benefit".

It proposes a link with politics through the use of Aristotle, the only political philosopher who defines politics as an intrinsic value to humans, distinguishing them from other animals on the basis of which they are the only ones to define the course of their lives through a social process of the political and, finally it incorporates Aristotle's conception of the political community of human rights through Burke, who believes that the only rights emanating from within the nation are those that enjoy recognition (Helis, 2008: 74). This combination led Arendt to reject the idea of natural and inalienable right based on birth. Since her approach, human rights have acquired a relative or culturally specific nature while human dignity, preceded by freedom of action-will be granted by the principle of universality. When she points out that human rights are specific to each culture, it is precisely because they are an object of debate and brought to life in a political community. However, human dignity remains a universal element, since it is the only thing able to ensure participation in a political community, since its definition is contained in the condition of freedom that promotes and encourages the start of all human action. Therefore, although the actor is stripped of his state and home, he cannot be deprived of the fundamental right to appear, because the first law, the law of the principle -referring to birth- contains both the start and its principle within itself (Birmingham, 2006: 57). The birth rate is linked to action because, "It is just action," and, as such, allows a person to use his birth for a higher purpose to provide it with the ability to start something *again*. Living as a human being rather than a mere body requires acting, speaking and interacting with others (Benhabib, 2006: 110). Humans need a public sphere in which they are able to develop their full potential through politics, the activity that involves conduct the affairs of the community through speech. As Arendt points out, by acting and speaking, man shows who he is, actively revealing his unique personal identity and making his appearance in the human world, while his physical identity appears without any activity, merely showing the uniqueness of the shape of his body and the sound of his voice (Arendt, 1998: 179).

The conception of human dignity proposed by Arendt paves the way for overcoming the contemporary controversy over human rights and citizenship. Its importance lies in the fact that it shifts the debate over whether human rights are universal or based on a particular development of the West, to freedom understood as the beginning of all human action performed by the act of creating a setting for man to act and speak, a condition for the development of political life. And in this respect, it positions human dignity as a new political principle that guarantees the "right to have rights".

This notion destroys the logic of abstract man and monolithic state-citizenship-human-rights relations, which the human rights declarations fail to glimpse -since the pre-condition for being judged by actions and opinions, requires *tearing from the outside* the principle of modern citizenship through the *right to belong* and thus resuming the *right to be a member*. This right to belong to a political community is therefore the only universally valid right for Arendt. The remaining rights arise through the controversy surrounding the dichotomy between natural law and positive law. (Helis, 2008: 75). However, this task requires a universal protection of human dignity; the right of humanity to belong to a real political community to solve the problems of rights. Despite Arendt's reluctance, this condition drives a form of cosmopolitanism "beyond universalism," which combines the tension between the law of the universal and the particular. Seyla Benhabib will continue this reflection through her proposal of cosmopolitan citizenship, which emerged in the context of the spread of human rights norms and deterritorialized legal regimes (Benhabib, 2011, 2004, 2002).

4. Cosmopolitan Citizenship, an Alternative for the Realization of Human Rights?

Near the end of the introduction to the book *Dignity in Adversity. Human Rights in Troubled Times*, Benhabib writes:

The collapse of the European interwar state system constituted the political and human disaster from which a renewed cosmopolitanism emerged in the 20th century, which insists on the principles of the *right to have rights* and *crimes against humanity*. In order to understand the tragic origins of contemporary cosmopolitanism, it is necessary to understand it more fully through "a negative ideal destined to prevent false totalizations" (Benhabib 2011: 17).

This brief quote outlines Benhabib's debt to the solutions put forward by Arendt to overcome the aporia of human rights. It is a program in which she places the issue of the *right to have rights* and *crimes against humanity* at the center of the debate on cosmopolitanism derived from the collapse of the interwar state system. It is a cosmopolitanism that she understands in light of the present and summarizes in terms of a "negative ideal aimed at preventing false totalization," since it refers to an experience that links universality to particularity.

This particularity leads her to a second solution to the perplexity of human dignity –preceded by freedom of action- whose conception is reformulated by Benhabib in terms of human rights -under the principle of *freedom of communication*- and constitutes the basis of cosmopolitan citizenship. This third and final section is based on the assumption that the “Other universalism” suggested by Arendt acquires meaning in Benhabib’s notion of normative cosmopolitanism, on the basis of a strategy of justification in which communicative freedom constitutes the basis of action that allows the realization of human dignity, prefiguring it as a new political principle of the “right to have rights”, whose theoretical and practical form is expressed through cosmopolitan citizenship. Two terms guide this argument: communicative freedom and democratic iterations.

Benhabib appeals to the “Other universalism”, arguing that it is necessary to consider the strategy of justification as the contents of human rights⁷ rather than a minimalist concern and move towards a solid understanding of human rights based on the “right to have rights” (Benhabib, 2011: 57-76). While Arendt raises this principle, primarily in terms of the political rights identified with the “right to membership of a political community” and “the right to be a member,” Benhabib goes further. She states that “the right to have rights” will be understood as *the claim of every human being to be recognized and protected in terms of legal status by the world community and the right to communicative freedom person through which the person projects himself as a “maker” of a social world he shares with others*, whose action moves him to participate in a “setting of reasons” in which others recognize him as someone capable of and responsible for certain courses of action. This reconceptualization of the “right to have rights”, referring to a non-centralized state, will be crucial in the period after the 1948 Declaration, in which the strictly international was shifted to the rules of cosmopolitan justice (Benhabib, 2013: 39, 2011 9, 2006). The critical approach of cosmopolitanism is understood as “a negative ideal destined to prevent false totalization”, since it proposes to explore it on the basis of the tensions contained, by focusing on the unity and diversity of human rights; the conflict between democracy and cosmopolitanism; the vision of a world with porous borders; and the closure demanded by democratic sovereignty (Benhabib, 2011: 3).

⁷ It should be noted that Benhabib’s proposal regarding her theory of human rights draws on the criticism of the traditional, functional model. In other words, she rejects them but takes them up. This is the complicated philosophical method she uses in her work, which it is necessary to elucidate (Benhabib, 2013).

For Benhabib, cosmopolitanism involves the recognition that human beings are moral persons with equal rights under the legal protection of the rights deriving from the latter, not as members of a particular group, but simply because they are human beings. However, what are the reasons for defending this moral claim? Would the reasons put forward reach a consensus in a world full of religious and cultural differences and multiple worldviews? Benhabib would say that no political justification of human rights presupposes the use of a justificatory universalism. This task must be carried out on the basis of the recognition of the *freedom of communication*. It is important to note that the way Benhabib proposes to clarify the idea of freedom –a precondition of human dignity- posed by Arendt, is based on the normative presuppositions of what it means to be an active agent through “speech.” (Benhabib, 2013: 41). From her point of view, human rights should be considered moral principles for protecting the exercise of communicative freedom, whose structure involves setting up legal forms. The exercise of this freedom defines the formulation of the means and ends one wishes to achieve and realize. Their procedure shows the human agent as an individual contained in contexts of communication and interaction, where his ability to set goals of action does not precede the ability to be capable of justifying these goals with the reasons of others.⁸ In this respect, the ability to provide explanations presupposes the internalization of the point of view of others in *whose eyes and ears my actions will achieve something and my words mean certain things* (Benhabib, 2013: 39-40).

Thus, for Benhabibian cosmopolitanism, communicative ethics is a fruitful framework for moral theory, particularly because it is directly linked to the values of democracy. Under this principle, the rules of moral respect and egalitarian reciprocity are explicitly expressed in the ordinary situations of discussion in which people try to reach an agreement; and moral and political norms are tested through the dialogue in which multiple interests, needs and perspectives are represented.

⁸ Based on Arendt's interpretation of Kant's category of “enlarged thought,” Benhabib says that all communicative action, which involves a moral judgment, demands *to be put in the other's place*. The implications of this principle have been strongly criticized by Young (1994), Nagl-Docekal (1997) and Forst (1997).

In sum, ethical communication opens up a space for a discourse of moral respect and egalitarian reciprocity, where universality calls for the reversal of perspectives among members of a moral community, and judging from the point of view of others –an essential reversibility for achieving reciprocal relations on which the unity of communities is based.

Every communicative action involves symmetrical reciprocity of normative expectations among group members (Benhabib, 1992: 32). Benhabib therefore states that first and foremost, as moral beings capable of communicative freedom, we have the fundamental right to have rights. Although her point of view is very close to Arendt's, her proposal extends beyond the sense of political belonging. Indeed, exercising communicative freedom requires recognition as a member of an organized human community in which our words and actions place us within a setting of social interaction and communication. Everyone has the right, in the sense of a moral claim, to be recognized by others as "a rights holder" with right to legality instituted in an agenda of rights (Benhabib, 2013: 56-61). However, the right to have rights also involves the recognition of identity, both in terms of a "generalized other" and a "concrete other". These categories, crucial to Benhabib's thinking, show that the point of view of the "generalized other" is achieved by making an abstraction of what constitutes our personal idiosyncrasy to retain structures that are common to us as rational beings. Conversely, the "concrete other" responds to the inverse, complementary abstraction. That is, the capacity to bracket what is common to us and retain that which, due to our individuality, is discernible and irreducible with respect to others. From her point of view, traditional moral theories were constructed by only taking into consideration the perspective of the generalized other (Benhabib, 1992: 35-37).

In this configuration, the cosmopolitan citizenship primarily implies the creation of a new global legal order and a public sphere in which human beings would only be entitled to rights by virtue of their humanity (Benhabib, 2011: 8). However, is it possible to imagine a citizenship in the world? How does one deal with a citizenry that questions the justice, equality and freedom of the singular and the plural or, to use Benhabib's concepts, of the "concrete other" and the "generalized other"? Two problematic areas open up when one refers to these questions: that of people who enjoy the status of citizens and that of those who are on its margins: illegal aliens, foreigners, migrant workers, refugees and asylum seekers.

The point is to identify alternatives that enable one to recognize people as "rights holders", even though they lack citizenship status, since the discourse of rights always runs next to "the legal, the political and the moral," assuming that this occurs in the statutory area of citizenship. Benhabib's diagnosis shows that today we are not only witnessing the reconfiguration of sovereignty, but also the reconstitution of a citizenship that has traditionally been exceeded. We are moving towards a *citizenship of residence* in which multiple links to the locality, region and transnational institutions are strengthened. The perplexities of the "right to have rights" begin to elicit a response from those who exercise their rights of democratic-republican participation with or without the right documents. The local is no longer the only place for post-national citizenship. New forms of citizenship and a nascent public sphere are emerging at the global level (Benhabib, 2011:110-112). Inevitably, however, the deployment of a cosmopolitan legal order entails its own problems. What is the point of defending a cosmopolitan position when one is required to be a member of a sovereign political organization in order to become a rights holder? A central argument for Benhabib is that most interpretations of contemporary developments regarding the law of human rights and cosmopolitan norms misunderstand their *jus-generative* effect—a term borrowed from Robert Cover, whose meaning refers to the ability of the law to create a normative universe of meaning which can often escape the "origin of formal legislation" to expand the meaning and make the law itself grow. "The uncontrolled nature of meaning exerts a destabilizing influence on power" (Cover, 1983/4: 18). Benhabib states that these jus-generative effects of human rights declarations and treaties allow new actors, such as women and ethnic, linguistic and religious minorities, to enter the public sphere to develop new vocabularies to claim public decisions and anticipate new forms of justice posited by processes of democratic iteration (Benhabib, 2011, 2004).

The term "democratic iterations" is used by Benhabib to describe how the unity of the diversity of human rights is presented and represented in public spheres, both strong and weak, not only in legislatures and courts but often -and more effectively- through social movements, civil society actors and transnational agencies working across borders. Herein lies the particularity of the Benhabibian approach. based on communicative freedom. It understands that freedom of expression and association are not confined to the political rights of citizens, where the content merely varies from one system of government to another.

It involves more fundamental conditions for the recognition of people as beings living in a political order whose legitimacy lies in the conviction based on "good reasons". Rights of expression and association are realized by processes of democratic iteration that underpin freedom of communication and, in this respect, strengthen fundamental human rights. When people are seen and assumed, not only as subjects of law, but also as authors of the law itself, the contextualization and interpretation of human rights gains credibility. This contextualization achieves democratic legitimacy when it is perceived as a result of the interaction between legal and political institutions within free public spaces in civil society (Benhabib, 2011: 15-16). It is important to emphasize that for Benhabib, democratic iterations are a normative concept with empirical importance that makes it possible to judge macro processes of polemic discourse according to criteria derived from their justification based on a program of communicative ethics (Benhabib, 2011: 138-165; 2004).

Lastly, recognizing that Benhabib opens up multiple ways of rethinking the boundaries of modern citizenship, in light of her critical diagnosis from which cosmopolitan citizenship emerges, we could conclude with the assumption that just as for Arendt, human dignity, preceded by freedom of action, becomes the premise of human rights, for Benhabib, human rights, under the principle of communicative freedom, constitute the basis of cosmopolitan citizenship. This assumption breaks the aporia of human rights, while questioning traditional citizenship as the only space for the realization of man's rights, which often becomes an obstacle for their implementation.

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