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## The promise of human rights

On the occasion of 70 years since the proclamation of the Universal Declaration of Human Rights

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*Translated by John White*

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Since 1948, seven decades have passed. Even though this is said to be the “fastest time” in the history of time, these seven decades are probably too short a period to enable us to draw a line under and truly and thoroughly re-examine the heritage of the most ambitious charter in the history of human rights. Too little time has passed to understand *how* to realize the promise of the Universal Declaration: that world peace is necessary for each member of the human community to have the right to life. Finally, it is possible that such a request can never move further than a promise, and the decades which are behind us can perhaps do nothing other than confirm that this promise stands firstly as a warning, rather than as any kind of model for use.

The Universal Declaration is often presented as the last in a series of great charters of liberties. Its language and framework do indeed lean on aspirations which gained their first shape in the Magna Carta and were further articulated in well-known declarations in the 17<sup>th</sup> and 18<sup>th</sup> centuries. The Preamble also confirms this: in it we find the various bases of attempts thitherto to reach binding formulations of freedom and equality – the equal and inalienable rights of all members of the human family which are taken as the foundations of freedom, justice and peace in the world; the right to rebellion against tyranny and oppression and the requirement that human rights be protected by the “rule of law”; the belief in the inherent dignity and value of a human person and the equal rights of men and women. The context in which the Universal Declaration was composed resulted in the Preamble already stating the necessity of friendly relations among nations, as well as the freedom from fear and want which every human being should enjoy. The spirit of fraternity – the spirit of the French Revolution – echoes from the first article onwards. The third article which asserts the right to life, liberty and personal security, is a variation on the famous American formulation in which the final place is occupied by the pursuit of happiness. The fourth article appears to assert that none of these three rights can be realized in conditions of slavery, conditions which were valid at the time when the Declaration of Independence was proclaimed.

The Universal Declaration thus represents the sum of various rights which historically gained their attestation in struggles for greater freedom and broader fields of equality. In them were also deposited the great hopes of that time: that the rule of law is realizable, that no-one further should be exposed to torture, that national and international frameworks are permeable, that people have the right to migration, to a certain nationality. It is likewise a list of freedoms which human beings should enjoy in the conditions which it was believed would of necessity appear *after* 1945, in conditions of lasting peace. This refers to the right to independent decision-making and equality

in the sphere of private relations (marriage and family); to the right to possess and retain property (especially eloquent in view of the division into blocs which awaited the world in the subsequent decades); to freedom of opinion, conscience and religious belief and freedom to change that according to conscience; to the freedom to be justly informed, which implied free media; to freedom of assembly and association, accompanied by the certainty that everyone has the right to belong to the community he or she chooses. The Universal Declaration unifies civil, political and social forms of citizenship with special emphasis on the non-discriminatory right to work, equal and worthy pay, and the right to fight for workers' rights. The rights to guaranteed leave, to the protection of the state and to free and compulsory education are the herald of the welfare state, which also continues to retain its liberal framework – the only limitations are embodied in the rights of others and the violation of those, while a superior community, a 'democratic society characterized by morality, public order and general prosperity', announces itself in institutional arrangements which guarantee the feasibility of the rights of the individual.

One should not forget the most important and, possibly, the most utopian article of this declaration, article 28, which states that everyone has the right to a social and international order in which these rights and freedoms can be fully realized. It is not only that history up to then had not known a world in which all, without exception, had a right to education, or to paid leave, or to a change of religious belief, or to circumstances in which children born in or out of wedlock were accorded equal rights, but that the history which directly preceded the bringing of the Universal Declaration had destroyed the social order and frustrated the international one in which the rights generally had sense. The Second World War brought about a thorough re-evaluation of two ideas contained in the concept of right: universal and basic. In conditions in which human life has no value whatever – or rather, in which some lives have no value whatsoever – the question was posed, it seemed once and for all, what is it that gives the basis for talking about *all* lives and what are the *elementary* circumstances in which such talk is not empty.

What does the Universal Declaration contain in the form of promises? Apart from the fact that it never became a legally binding document, it could be said that it is its spirit, rather than its letter, which is what is being left as a pledge to a world which is yet to come. Its implicit assumption, arising from the specific circumstances in which it originated, is that *world peace* is necessary for every person in the human community to be able to have the right to life. To have the right to life, the right to live it, is a condition of possibility of any other right, and then of any obligation towards the communities which we choose and to which we belong. But, for any of those rights to be fully and completely realized, being equal in the right to life is not sufficient. The equality which human rights promise is based on a more complex demand than that we are *born* as equals. In order to *live as equals*, as persons who are graced by inherent dignity and value, a social and international order to which everyone has rights is necessary. I would suggest that this kind of order presupposes three necessary dimensions: an absence of war, an absence of gradation of humanity and an absence of poverty or, as the Universal Declaration calls it, want.

Is our world today closer to that than in the year 1948? In this essay, I will try to show that the answer to this question is a negative. In order to do that I will focus only on one aspect for which it is key to separate two concepts which at first sight appear identical: the rights of man, and human rights. Namely, before the Universal Declaration, *human rights did not exist*: there existed only the rights of man. Equally important is the fact that the imaginary community in which the rights of man were realized was the nation, while the imaginary community – the name of which we can, on the basis of the Universal Declaration, vary – born from the inventing of human rights – is some trans-national, trans-territorial space which is inhabited by *all* men as men. That is, it is inhabited by those whose lives are, in their dignity, equally worthy. This kind of imaginary, universal community we can call mankind. The answer to the question posed above is therefore negative, because we are today further away from mankind, and closer to some contemporary form of nation in a world which almost deliberately forgets the promises of mankind.

The Universal Declaration mentions a democratic society and an international and social order in which human rights can be realized in full. In the absence of precise naming, we could perhaps follow the French philosopher Jacques Derrida and name one such order democracy, thus wresting that concept away from its currently numerous enemies. Derrida wanted to think that the “democracy to come” is authentic in its promise of equality, in spite of never having been embodied in forms which had appeared thitherto. That equality – because equality is the very heart of democracy – truly encompasses everybody: all are equal whoever they are, and whoever we are, what and how we are – our irrefutable singularity, irrefutable heterogeneity – is not the basis for abolishing equality but for continuing to respect it.<sup>1</sup> That space of the equality of all, the space of democracy, exceeds the frontiers of the nation and the nation-state.

But, who are the *equal ones* in this kind of democracy? Who are the “all”? If one leaves the frontiers of the nation-state, one also leaves the apparently simple possibility that under “all” we are thinking of all citizens, nationals or representatives of one nation who inhabit its territory. However, if mankind is the imaginary community in which human rights are valid – in such a way that they outweigh civil and nationally specified rights – is not then the answer obvious in itself? Are not then all humans, each and every *man*, equal?

Apparently, there is no more suitable candidate for the equality than man. However, historically speaking, as the highest instance of abstractness man represents a revolutionary discovery of a more recent time. Before the Stoics and their “citizen of the world”, the old Greeks and Romans did not recognize it, despite the Greek origin of democracy. For the Greeks, men existed as Greeks (Athenians, Spartans, Thebans, etc.) or barbarians; for Romans as *hominum humani* and *hominum barbari*, where the former were the educated, learned in fine skills or simply aware of the laws of their *politeia* and skilled in (political) speech.<sup>2</sup> “Natural” inequality was derived from unequal capacities for politics/citizenship. The specific linkage, almost incomprehensible to us today, between the structure of the *polis* and the individual agency, left some on the side as mere living creatures (women, children, metics, slaves), and automatically

granted others the rank of citizen. This division into men who are citizens and for that reason only, men, and those who lack humanity because they lack civility or political virtues (the virtues of life in the *polis*), is reflected in the fundamental differentiation of bare life (*zoe*) and life (*bios*), the good life or political existence, such as we find in Aristotle.<sup>3</sup> The figure of the barbarian likewise stayed for a long time in the political imaginarium, albeit not always under that name: let us recall Sepulveda's Latin American "barbarian", Montaigne's cannibal, Rousseau's good "savage". All these are characterized by the absence of "civility", all of them are "men of nature", with lives outside the community or outside (political) speech – as indicated by the word *barbaros* itself. Hence one should not be surprised that theories of the social contract, modern political fictions *par excellence*, rest precisely on imagining a situation *before* civility, society, state and culture, a situation which was characterized by nothing except nature. The *natural* state is therefore a state in which men are reduced to bare lives, to sheer barbarism which in the Hobbesian variation is so stripped down that one could rather talk about wolves than men. Thus, even in theories which have invented natural *rights* to which the rights of man (and then also human rights) are attached, we have less to do with man and more with some unusual living creature who is yet to learn what is the good life or political existence. The city or the state or the political community transform wolves, barbarians with animal faces, into men.

A text in which man would become a political subject is the key forerunner to the Universal Declaration. This is the *Declaration of the Rights of Man and of the Citizen of 1789* (*La Déclaration des Droits de l'Homme et du Citoyen de 1789*) in which man appears for the first time as equal to the citizen, even separable from the citizen. That separating of man *and* citizen – an unusual separation by a conjunction which as a rule joins – points to the existence of man who does not have to be a citizen in order to enjoy certain rights: those rights belong to it solely based on the fact that man is a man. To be a man, thus, means not to be defined as Athenian or foreigner, merchant or slave, female or male, African or European. All those characteristics are secondary, although they were historically of fundamental importance for positioning the individual in the structures of the political community, as a "measure" of their citizenship. This inversion of the general and the particular, where the general, comes before the particular, opens the possibility for a completely new understanding of equality.

The signatories of the American Declaration of Independence, invoking the Creator and laws of nature in order to oppose the "absolute despotism" of the British crown, a tyrant who is "unfit to be the ruler of a free people", established, almost incidentally, the equality of all men. In the same way the representatives of the French people (*peuple français*) exposed the "natural, inalienable and sacred rights of man" in order to protect them from "ignorance, forgetfulness or contempt", "in the presence and under the auspices of the Supreme Being",<sup>4</sup> establishing man as a politically relevant figure. This is truly an act of postulating a notion of man, reached by renaming older ideas of natural rights as the rights of man. That "man" who in the political thought-experiment of the 17<sup>th</sup> century existed before the social contract by which society was only to become founded, suddenly began to exist in parallel, or at the same time, with the man who was formed by society and whom society accorded or denied certain rights.

In contrast to the divinely inspired creatures of the American Revolution which are symbolically unborn, which simply exist as “created equal”, man is born in the French tradition – “*les hommes naissent et demeurent libres et égaux en droits*” [“*Men are born and remain free and equal in rights.*”]. And as that unusual conjunction in the title of the *Déclaration* both joins and separates man and citizen, so its first article introduces multiplicity into the very meaning of the idea of man: man is *both* born *and* remains *both* free *and* equal. The “naturalness” of equality holds good also after one’s mere arrival in the world, i.e. there is something more to equality than the bare fact of the capacity to be born (*zoe* and *bios* stand in parallel). Naturalness remains in force beyond and almost in spite of the social/political character of the community in which man is born and lives on the basis of established rules and norms which characterize the complex institution of citizenship. Precisely because the citizen remains a man at all times, his original freedom is not ceded to the society. Likewise, the original equality does not recede despite possible social differences. It seems, moreover, that both freedom and equality originate from nature, from mere humanness, and not from what is provided by this or that political community or divine providence.

With this revolutionary gesture, the French declaration made the deepest turnover in the thinking on political subjectivity. The notion of man was the foundation stone for a new definition of equality: without man, modern equality – which redefines the meaning of citizenship – would be unthinkable. However, the Declaration of the Rights of Man and of the Citizen is in a fundamental way an ambiguous text, because, besides man, it postulates yet another equally revolutionary (or counter-revolutionary) notion: a notion which limits universal equality and effectively stands in its way.

Namely, although the aim of every act of political association (the gathering of natural men in an unnatural community) is the preservation of the natural and imprescriptible rights of man (art. 2), the principle of any sovereignty resides essentially in the nation (art. 3). No body, no individual can exert authority which does not emanate expressly from the nation, states the Declaration of the Rights of *Man and of the Citizen*. In this text, the nation appears in an unusual way, suddenly, as a kind of new form of a “natural” political community based on *common birth*. It is as if the authority which emanates from it unites within itself the naturalness of humanity and the civic character of the formal rules which maintain the community. The nation appears as a special kind of symbolic glue, like that which aspires to annul the difference between man *and* citizen, that which removes the naturalness of humanity and attaches it to the artificial mould of a social structure. The authority of the nation functions as a prerogative, an authorization for a political community to be thought as natural, because it is composed of men who belong to the same family: a family which is not the human-kind but a nation (Latin *natio*, that which is born, *nasci*, linked according to familial ties and birth). Leviathan, the Hobbesian metaphor for the state, which arises through this agreement, ceases to be an artificial god and becomes a strange state-god of natural men whose rights are sacred.

The act of proclaiming the rights of man as imprescriptible and inalienable is basically performative. Something that up to yesterday was alienable, which on the basis of the social regula could be taken away, not recognized or refused – for example,

property or the resistance to oppression, two of the four great rights of man – from today on is proclaimed an untouchable right, in the sense of possibility or privilege. Something that, up to yesterday, could be alienated both as a possibility (say, in the case of a slave) and a privilege (for example, in the case of a debtor), now declaratively becomes inalienable in an imprescriptible way. However, whence comes the authorization for such a performative declaration, and particularly, whence comes the authorization for a statement of sacredness? Man alone is not the author of his natural rights, nor is he their own creator, but is only their holder, owner, possessor. The source of that estate, that property, is either nature or God.<sup>5</sup> In the French version which invokes God as a witness and protector, though not as the sole creator of sacredness and imprescriptibility, that authorship belongs to nature. But the supreme authority, that which guarantees the survival of natural rights in a community which, in principle, could abolish, deny, vulgarize them, is the specific “natural community” which in effect reaffirms them, transforming naturalness into sacredness. Paradoxically, after the imprescriptible rights of man have been established – derived from the mere fact of one’s birth in the body of man – it is as if in themselves they are not sufficient, or sufficiently natural. So they are thus linked by an unbreakable bond with a community of men defined not by political association, but by common birth. That community is not the *humankind*, mankind, but the nation.

Therefore, the text in which man is postulated as the subject of universal equality is the same text which postulates the nation, a community which limits that equality from inside. It is important to understand the way in which equality is limited, in which it is at the same time particularized and announced as general, in order to realize why the rights of man are not the same as human rights. For this purpose, the key word is brotherhood, the only word from the famous trio which does *not* appear in the Declaration of the Rights of Man and of the Citizen. “*Fraternité*, the third concept in the new civic community, is no longer valid as the fulfilment of the divine commandment of love, but ... as the realization of the political freedom of all citizens. The objective purpose of the civic use of freedom no longer consists in establishing one fraternal community, but brotherhood is the means for producing equal political freedom”, says Hauke Brunkhorst.<sup>6</sup> I want to claim that by the introduction of the nation, a civic community is established as a specific “fraternal community”: from now on, they are one. The nation guarantees that all citizens are brothers, which changes the old Judaeo-Christian idea of brotherhood in which the slave, the poor man and the foreigner also have a place. These new brothers do not originate from sameness before God and closeness in faith, but from equality, by abolishing the hierarchical relations headed by the *pater familias*, whether he be father, priest or king. Men are born free and equal, and therefore cannot be born as sons (of a father, even less of a mother); however, their equality, which they confirm as citizens – *remaining* free and equal – continues to be related, but another type of family gathers them together. That is the fraternal family: one that permits slaves, includes beggars, excludes foreigners and does not recognize sisters.<sup>7</sup> However, every Frenchman in it is brother to every other Frenchman.

The political appearance of man at the end of the 18<sup>th</sup> century, despite its entanglement in the nation, had for us today unreasonably strong echoes. The abstract nature of the rights of man brought into question the existing orders, tradition, customs and habits, established rights and privileges, which were written about in various ways by Edmund Burke, Tom Paine and Mary Wollstonecraft. No wonder then that in the very age of revolutions the ousting of current orders and the setting up of unthinkable new ones was spoken about with enthusiasm or with fear: the political appearance of man in parallel and at the same time as the citizen implied unheard-of possibilities for equality. The abolition of hierarchies which had formed the *ancien régime* had been drawn from the idea of man: on the basis of the fact that men are born and remain free and equal, it was established that “social distinctions can be founded only on the common good” (*Déclaration*, art. 1). The generality of the rights of man provided the ground for the sovereignty of every individual citizen, the ideal revolutionary output of which would be the absolute equality of sovereign individuals.

Today we know that the French Revolution produced only distant echoes of this idea. The appearance of man, along with the citizen, enabled the up-to-then unthinkable proclamation of the equality of each individual who appears in the guise of a citizen, although that led neither to real equality of men as citizens nor to real equality of men as men. However, postulating the rights of man could, in perspective, have nurtured more than symbolic equality. Within the nation, equality is realized only symbolically – the French beggar and the French banker not only have equal sacred rights but are also brothers. Social inequality indeed only confirmed even more strongly the merely symbolic, ideal and unconditionally valid character of this fraternal tie.

Postulating the rights of man could also lead to the real equality which would be demanded by the classless society,<sup>8</sup> a society in which the common good demands that there are *no* social differences. Marx talked about the fundamental differences between the *citoyen* and the *bourgeois*, identifying the latter with the man generated by the rights of man. The revolutionary rights of man postulate the bourgeois, an egoistic monad, an individual who is isolated from the community, withdrawn into himself and his private interests, a man to whom society is not his birthplace, but something external and limiting. And although feudal hierarchical relations are torn apart with the emancipating of man, that emancipation is only partial, even though it is presented as universal. This partial man who presents himself as a man as such, is a product of a partial revolution in which one class undertakes the general emancipation of society from its own special position at the moment of *fraternization* and assimilation with society in general.<sup>9</sup> Marx’s solution is well-known. Speaking about German emancipation – an emancipation which trots slowly behind the French one, but just because of that does not have to repeat the latter’s error of separating man and citizen – he invokes the total collapse of the existing world order, that is the complete loss of man for the purpose of completely obtaining man anew, and the subject of that revolution can only be the proletariat – the class which is the breakdown of all classes, which does not seek special rights because no special injustice whatsoever has been done to it, which cannot call upon any kind of historical rights but exclusively upon

human rights. The product of this radical revolution cannot be political or German or national emancipation but solely the emancipation of mankind in general. It is known that the attempt at such emancipation remained preserved in another revolution the basic task of which was “to abolish all exploitation of man by man, to completely eliminate the division of society into classes, to mercilessly crush the resistance of the exploiters, to establish a socialist organization of society and to achieve the victory of socialism in all countries”.<sup>10</sup>

Of course, it can be immediately said that real equality requires the absence of numerous other differences, of which the first is that the term “man who has imprescriptible rights” means also “woman”. In 1791 Olympe de Gouges wrote the *Declaration of the Rights of Woman and the Female Citizen*, a palimpsest of the *Declaration of the Rights of Man and of the Citizen*, precisely because woman was not included in the notion of man. Likewise, the notion *citoyen* could not be automatically broadened to include *citoyenne*. In revolutionary spirit, de Gouges adds mothers, daughters, *sisters* to the French nation. In 1791, just two years later, women are no longer a mere part of the French people, but much more than that, representatives of the nation – despite the fact that they are not citizens. (In his sardonic interpretation of the many mistakes of the French declaration, its contemporary Jeremy Bentham makes this comment on the link between woman and nation: ... “[they] issue from *the* nation: that is, from the *whole* nation, for no part of it is excluded. Women consequently included, and children—children of every age. For if women and children are not part of the nation, what are they? Cattle?”)<sup>11</sup>

Repeating in the first three articles the word “woman” everywhere where it was surmised under the superior idea “man”, de Gouges insists on an invisible blank, on an empty place of sex as a politically operable distinction which stands in the way of full or real equality: “woman is born free and remains the equal of man in rights” (art. 1), “the purpose of all political organizations must be the protection of the natural and imprescriptible rights of Woman and Man” (art. 2) and, perhaps the most important, “the principle of sovereignty is vested primarily in the Nation, which is nothing else but the union of Woman and Man” (art. 3). Olympe de Gouges was soon to be executed, in 1792, with the explanation that she had “forgotten the virtues appropriate to her sex”,<sup>12</sup> and the women of France, like women in other parts of the world, were denied political emancipation for at least another full century after that, leaving those “representatives of the nation” deprived of citizenship. No wonder then that Simone de Beauvoir would present her great campaign for the emancipation of the “second sex” in 1949 as the final attempt to answer the question “what is woman?”, in order to understand “how in female conditions one can become a human being”.<sup>13</sup>

At last, in the 18<sup>th</sup> century, the barbarians of earlier times gain a new, scientific name. In order for “race” to begin to mean something, the world had to be discovered, conquered and colonized, which also meant the abduction of humans who in other places served as slave labour. Such a barbaric act against “barbarians” needed justification which was based on the gradation of humanity. As in earlier times, this was defined as civility, or rather perhaps as civilizedness, which, increasingly frequently, and paradoxically, emerged from *natural differences*. Although people are born free and equal, the differences between races, that new scientific label for grading human-

ness, introduced a difference into the idea of man itself. Voltaire, for example, has this to say about it: "I'm convinced that with people it's the same as with trees; as pear-trees, pines, oaks, apricots don't come from the same tree, so bearded white men, blacks with woolly hair, yellow men with hair like manes and people without beards do not come from the same man".<sup>14</sup> In order for this differential concept to have developed and become the dominant weapon in justifying the social institutions which effectively destroyed the freedom and equality of all human beings, it was essential to justify the impossibility of brotherhood with non-white or "differently white" people (examples of those are Jews, Irish and Slavs). That justification was derived from an invisible biological difference, from blood, a new way of calculating kinship between men, and from the need for new communities to set boundaries from within and for enforced contacts to be kept on the level of alienage, foreignness. To the abolitionist question of Josiah Wedgewood's famous medallion: "Am I not a man and a brother?", which is asked by a black man in chains – the correct racial reply must be negative: not only as a slave but as a black man, this "man" does not belong to the fraternal family. Historically considered, this is backed up by the reaction of the French brotherhood to Haitian slaves, "black Jacobins", who had dared to wish for the same principles which the brotherhood applied to man and citizen. In 1952 Frantz Fanon began his famous book *Black Skin, White Masks*, a text on the epidermalization of inferiority, with the thesis that "the negro is not a man ...., the negro is a black man",<sup>15</sup> which leads one both to think anew of the colour of skin and to re-examine the humanity of man.

At the moment when man is postulated as a political subject, the fundamental definition of equality – that which more than freedom defines the humanity of man – is something which, paradoxically, limits that humanity from within. That man is no longer a son – the rights of man abolish the existing political hierarchy and in that way change the nature of the political. However, by this, man does not become simply a man but, in the framework which confirms his humanity, in the framework of the nation, he becomes a brother. That political kinship does not touch upon social inequality – the poor Frenchman and the rich Frenchman are ever more symbolically brothers, although they will never sit down at the same table. Likewise, brothers cannot be universalized so as to include sisters, and nor can sisters, even though they give birth to men, be men themselves. From then on there originates the manner of "adding up" women, in a way similar to that in which Olympe de Gouges attaches a *une femme* to *un homme*, to show that a woman is in fact not a man and a sister is not a brother. Contrary to the social inequality among the Frenchmen, this is about the "natural inequality" of Frenchman and "Frenchwoman" (clearly, the question remains of how in any way, if not politically, woman became a representative of the nation). That retained naturalness which did not acquire a political form (man *and* citizen), halts woman in the position of neither man nor citizen which, as an impossible brother, she shares with the black man. His blackness represents a natural deficiency, and an epidermal lack of humanity which can only ever approximate, in Fanon's words, to the honorary citizenship of the white man.

The real, and not the symbolic equality of man and man would demand a far more revolutionary world: a world in which the black man does *not elevate* himself to the

white man; a world in which private property is not a measure of humanity; a world in which the nation is a *réunion*, a repeated, always new and different union of woman and man, the purpose of which is not natural reproduction but the political production of freedom and equality. In the words of the seemingly isolated Condorcet, "Either no individual of the human species has genuine rights, or all have the same rights; and he who votes against the rights of another, whatever the person's religion, color, or sex, thereby foregoes his own rights".<sup>16</sup>

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At the time of postulating man as a political subject, equality pretended in a strange way to universality and particularity, which was derived from differently presupposed exclusions. The fact is that the 19<sup>th</sup> century cannot boast great declarations like those from the 18<sup>th</sup>, but it was precisely then that social movements were formed aiming to broaden the idea of man in order for it to include those who had remained invisible, unrecognized, forgotten – really unfree and unequal in spite of being people. These movements were founded on presumptions of internationality even when they were only attempting to change the national rules of the recognition of humanity. Neither one nor the other can surprise us. Man was born as a citizen or together with one: the aim of his birth was, so to say, the birth of a citizen. The gaining or broadening of civic rights must so much the more, at least in some of its phases and forms, be deemed identical with the gaining and broadening of the rights of man. However, all these attempts also necessarily led to the transgressing of national borders, because the birth of man is inherently more than the birth of a citizen. This fundamental contradiction of requirements that the man be untied from the citizen, that he should not be a brother, remained preserved in various attempts to realize the general emancipation of mankind.

The nation showed itself to be an impossible framework for *human* rights at the moment when there had to be brought into question either the nation itself as a framework which made them possible, or the meaning of rights as the rights of man. Postulating the nation in the revolutionary text of 1789 was to an equal measure as radical a gesture as the politicization of the rights of man, simply because at that time it was by no means understood that the state had to be organized as a nation-state.<sup>17</sup> When the world in the 20<sup>th</sup> century becomes a family of nation-states, and especially when it becomes a family in a war which produces not only countless deaths but also countless representatives of nations who, leaving their nation-states, are no longer citizens of anywhere – it becomes clear that the rights of man truly remained submerged in the rights of citizens, rights which were formed and guaranteed by the nation-state. Outside the nation-state, man was no longer a brother, nor was he a citizen of the world except in a very figurative sense which had not moved further from stoic cosmopolitanism, and the very title of man became questionable and potentially emptied of all meaning. The unusual – and, again, French – word *sans-papiers* (*without papers*) – does not just remind us of the deeply bureaucratic aspect of citizenship – on the contrary, questions of birth, place, country of birth and the blood which runs in the veins of the newly-born (*ius soli* and *ius sanguinis*), remain stored in the birth certificate, a paper which confirms that we have somewhere been really born as men, that we have

been nurtured by a certain nation, that we have at last at birth somewhere gained official confirmation of our status of *natus*.

Thus, only with the appearance of men *and* citizens who are “stateless”, even though the fact of being born in a certain place can never make them “nation-less”, there is revealed the existence of deep internal tensions between the political community which accords the position of citizen and the nation which nominates brothers. Even more so, by this is shown a certain redundancy of man in establishment of *citizens as brothers*. As “the same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations..., the practical outcome of this contradiction was that from then on human rights were *protected and enforced* only as national rights ...”.<sup>18</sup> *Sans-papiers* and the *stateless* become those unbelievable figures who have inalienable, imprescriptible and sacred rights, but do not have the framework in which they can recognize this or that right. Hence these people, according to Hannah Arendt, become, with the loss of statehood in the ordered world of the nation-states, expelled from mankind, deprived of all qualities and special relations and reduced to the mere bareness of a human being (*zoe*). In view of the framework which gives rights their content, which gives them meaning and significance, these people are thereby denied the right to rights, the right to belong to mankind. Arendt rightly remains suspicious as to whether the basis of all rights can be guaranteed by that single thing which can safeguard the right to rights – mankind itself.<sup>19</sup> As they arose together with the nation and in brotherhood, the rights of man also disintegrate in the consolidating of a world in which there is no place for men who (at least temporarily) are no longer anyone’s brothers.

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*The description of the persons, of whose rights it is to contain the declaration, is remarkable. Who are they? The French nation? No; not they only, but all citizens, and all men. By citizens, it seems we are to understand men engaged in political society: by men, persons not yet engaged in political society—persons as yet in a state of nature.*

*The word men, as opposed to citizens, I had rather not have seen. In this sense, a declaration of the rights of men is a declaration of the rights which human creatures, it is supposed, would possess, were they in a state in which the French nation certainly is not, nor perhaps any other; ...*

*This instrument is the more worthy of attention, especially of the attention of a foreigner, inasmuch as the rights which it is to declare are the rights which it is supposed belong to the members of every nation in the globe. As a member of a nation which with relation to the French comes under the name of a foreign one, I feel the stronger call to examine this declaration, inasmuch as in this instrument I am invited to read a list of rights which belong as much to me as to the people for whose more particular use it has been framed.<sup>20</sup>*

Thus wrote Jeremy Bentham in 1796 – an Englishman, a foreigner to the French brotherhood – about the “logical mistakes” in the Declaration on the Rights of Man and of the Citizen. However, for Bentham, the most dangerous characteristic of this text

was its anarchic revolutionariness, and not its inaccuracy, figurativeness and ornamentality – for which he equally condemns it. In contrast to this, the Universal Declaration of Human Rights is not revolutionary, nor is it even exaggeratedly figurative, but it is the first text in which Bentham’s words, regardless of his suspicion and resistance towards fictions such as “man”, do not sound hollow. The Universal Declaration is an eclectic inventory of rights which have to be respected outside the nations and states whose mandate is to confirm or deny them: everyone has a right to them regardless of which state issues his or her birth certificate. In other words, someone in principle has a right to them even before his or hers birth certificate is issued. This principle is key, although in practice it is not active – but only by taking it into consideration can we say that someone is born and remains equal in human rights.

That list of rights does in fact mean that the state has a mandate, not only because the Universal Declaration in itself inherits a history of doubling man and citizen, but also because it addresses states and asks them to, so to say, doubly affirm the primary humanity (*humanitas*) of citizens, humanity which is valid on the horizon of mankind (*humanitas*), and not of the state/nation. For this, from the historical point of view, it was essential that the world (or rather the European continent) should organize itself into a constellation of nation-states, multiplying miniature brotherhoods beyond and separate from common humanity (but also from oppression on the basis of class membership), for which the principle of nationality becomes dominant in political association. Only on the reverse side of the triumph of the nations, with the total war which ended in 1945, was it possible to revise the meaning of the universal and the basic, that is, to try to answer the question of what, on the basis of such circumstances, does it mean that certain fundamental rights belong to all.

Without doubt and as a direct and indelible effect of the Second World War, two figures particularly stand out as bare humanity, living creatures without a political existence. These figures are neither barbarians nor wolves. On the contrary, these are human beings which are politically produced in unlivable lives. The first is the radical figure of the concentration camp victim, a figure of total helplessness, a living corpse wounded to such an extent that it has lost its sense of vulnerability.<sup>21</sup> Apart from anything else, this figure showed that in the state/nation there could be man whose rights are perhaps natural but, in the absolute sense, are alienable and non-sacred. The second figure, a person without papers, a person whose movement can become illegal, showed that in a world which recognizes only people who are citizens (whose humanity is, in other words, legal), there is a certain surplus which is above both man and citizen.<sup>22</sup> Both instances showed that for life – being born and *remaining* equal and free – it is essential to respect that, after being born, one also has the right to live.

It is precisely in these circumstances that the Universal Declaration introduces an important shift in political subjectivity. Instead of man, citizen or brother – concepts which have outworn themselves and demonstrated their deficiency – it speaks of *everyone*. Although everyone who is hidden behind this emptiest, most general and most unlimited designation is a man and/or citizen, and sometimes also perhaps brother, the horizon in relation to which this designation is positioned is mankind and not the nation. No less important is the fact that behind this “everyone” no male, or a white

male, or a *bourgeois*, or a Frenchman (or European, dweller in a metropolis, a Christian) is hidden.<sup>23</sup> “Everyone” is a *political* subject, because the *right to life* is a political right, regardless of whether it is natural or not; while the *right to a good life*, which in a certain sense assumes a list of possibilities and privileges which are named and recognized in the Universal Declaration, is more so still.

The arrival of the democracy to come is inscribed as a promise in the Universal Declaration of Human Rights, in that expression which refers to all and includes everyone, without limits – everyone who is not the same and not kin but is on the contrary singular in his human form. That is a promise deeply linked to belief in a different social and international order which will make it possible for the world to be, for once, equally developed, for it to be ruled by peace and an absence of want, and for each person in that order to have the right to rights. It is up to us seventy years later to ask ourselves why, today, this promise seems not only unbelievable but almost ironic.

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*Note: Where the author has used sources translated into Serbian, the original or English versions of those works and their appropriate bibliographical details, are given in square brackets.*

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## Endnotes

- <sup>1</sup> Derrida 2003; Derrida 2007.
- <sup>2</sup> In a book which deals with the conception of the "individual", Larry Siedentop points out that this was linked to the classical understanding of freedom, which could not be comprehended other than as the freedom of the *citizen*. "Ancient liberty consisted of having a share in the government of the city, in public power. It consisted of the privilege and duty to attend the assembly, speak in debates, judge the arguments, take sides and vote... Ancient liberty did not tolerate indifference towards the political process. The public thing, *res publica*, was everything." (Siedentop 2015, 28).
- <sup>3</sup> Aristotle 1975, 23-31; Fuko 2006, 160; Agamben 2013.
- <sup>4</sup> All references to the Declarations are taken from Mrđenović 1989, where they appear in their original language and in Serbian, with brief and valuable commentaries.
- <sup>5</sup> According to the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." (cit. Mrđenović 1989, 107).
- <sup>6</sup> Brunkhorst 2004, 79. On the figure of the brother, see particularly Derrida 2001.
- <sup>7</sup> "A woman, let's say, 'if only it were not for her sex ... , is a man' (Rousseau, cit. Coole 1993, 83). In contrast to a brother who is a man regardless of his sex; to a brother who is born as a man regardless of whether someone truly gives birth, reproducing thus not just a tangible corporality, but also the possibility of the survival of the various links on which society rests (which in the symbolic register is considered as the most acceptable and longest-lasting merit of women), a woman with her capability of giving birth becomes marked as an impossible brother. During the original contract - at the hour of *giving birth* - she is mysteriously absent." (Zaharijević 2008, 134).
- <sup>8</sup> Balibar 2007, 31, speaks of the differences between symbolic and real emancipation.
- <sup>9</sup> Marx 1985, 74-81, 102, 103.

- <sup>10</sup> Declaration of the Rights of the Working and Exploited People (1918), art. 2 (cit. Mrđenović 1989, 161).
- <sup>11</sup> Bentham 1796.
- <sup>12</sup> Marks and de Courtivron 1980, 16.
- <sup>13</sup> De Beauvoir 1983, 26.
- <sup>14</sup> Cit. Todorov 1994, 108.
- <sup>15</sup> Fanon 2015, 26; see also C. L. R. James 1989, and Molnar 1997, 162-3.
- <sup>16</sup> Cit. Sledziewski 2000, 41.
- <sup>17</sup> The different historical development of nation-states in the so-called Western world, the East European parts of the world, and then in the 20<sup>th</sup> century all those parts of the world of which the sovereignty originated from the authority of the nation which was not identical to the “nations” which resided in the vast territories of Africa, South America and Asia, supports this view.
- <sup>18</sup> Arendt 1958, 230; italics – A.Z.
- <sup>19</sup> Arendt op. cit., 296-7.
- <sup>20</sup> Bentham 1796.
- <sup>21</sup> Améry 1980; Agamben 2013.
- <sup>22</sup> That surplus in the form of attribute appears in the Universal Declaration as the right to nationality, closely linked to the right to migration. Nationality can clearly be recognized as something which can be had and lost and, perhaps, acquired again (as one can, among other things, lose a paper, a confirmation of some form of belonging, about the fact that we are born in a certain place).
- <sup>23</sup> In the original Article 2 which enumerates the differences between people which ought not to be the basis for discrimination, there is a part which is most often today left out of the Universal Declaration, we assume, because of obsolescence. However, that part is as important as the ban on the misuse of differences, particularly in its historical context: “Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty” (Mrđenović 1989, 188).