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RANCIÈRE, HUMAN RIGHTS AND THE LIMITS OF A POLITICS OF PROCESS*

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I. INTRODUCTION

In thinking about *Rancière and Law*, as this collection exhorts us to do, I have turned my attention to one of the most well-known areas of Rancière's writings, the Rights of Man. In "Who is the Subject of the Rights of Man?" (Rancière 2004b), Rancière aimed a broadside at the rights-scepticism which can be traced in much of critical theory to the writings of Hannah Arendt (on the left), and an older tradition on the right exemplified by Edmund Burke and Jeremy Bentham. Rancière's writings and thought cover a wide range of areas, but it is the famous focus on rights which interests me here, as it brings to bear the problematisation of the 'subject' which Rancière develops in his writings.

Rancière does not take an ontological view of the subject. Rancière's writings on human rights attempt to get out of an ontological trap he sees being promulgated in relation to them (Rancière 2004b, p.302). These writings on rights and the subject illustrate Rancière's conception of politics as a *process*, which emphasises a dynamic staging of conflicts and the impossibility of stepping outside that discussion and conflict.

My starting point is Daniel Defoe's *Robinson Crusoe*. This eighteenth century piece of literature is key for the discussion about the subject of human rights, and the paradoxes which those rights contain. This novel was used in United Nations debates to justify parts of the drafting of the Universal Declaration of Human Rights (UDHR). In basing the subject of human rights in part on the eponymous hero of the same novel, the drafting committee (advertently or inadvertently) constructed a vision of the human subject which conflated the figures of man and citizen. The subject of human rights was not a natural man, but intimately connected and indivisible from the society in which he was living.

I connect Arendt's critique of the right to have rights to these debates at the United Nations, illustrating how they lend support to Arendt's criticisms of human rights. I then outline Rancière's counter-critique of Arendt, and his defence of politics and rights. I show how Rancière's distinction between politics and the police envisions a subject which is created through 'dissensual' acts. These acts of 'dissensus' are the very divisions, the strife or the conflict which constitutes the stage on which politics occurs (Rancière 2009, pp.114-115, 122).

Rancière's subject does not need to act politically in an existing public sphere where individuals recognise each other as equal and distinct. Rather, the acts they commit help contest the very meaning of rights and politics; a politics which always entails the verification of equality as such.

* I am extremely grateful and indebted to the incredibly detailed and thoughtful comments I received from Jo Bridgeman, Julen Extabe, Tarik Kochi, Monica Lopez, Kenny Veitch and the anonymous reviewer on earlier drafts of this paper. Any errors remain my own.

I want to turn to the consequences of this processual politics. I use Rancière's writings on politics and his defence of rights to illustrate how, in his schema, political subjects can be formed and new subjects hitherto unrecognised can be created through dissensual acts. I argue that in Rancière, any judgment on the quality of a political act, and the subject it can create, is necessarily made *ex post facto*. Rancière's separation of politics from ethics forces us to avoid pre-judgments of the political nature of acts. This carries the risk that the reader of Rancière will interpret only the acts they are already sympathetic towards as 'political' and dissensual. The political remains in the eye of the beholder.

As a result, this processual politics must be supplemented with a later judgment to be able to differentiate *between* potential political acts. In treating Rancière as a serious thinker of modernity and of rights, we need a way to distinguish between an act which is, for example, carried out by racists or those who oppress rights, and an act carried out by a demonstrator or as an act of resistance against hegemony. I argue that it is possible, following Rancière, to conceive of both as acts of dissensual politics potentially giving rise to political subjects.

This in turn highlights the key issue for me in relation to Rancière's thought. How can we distinguish between the quality of actors who act politically, without falling back on a presumed political sphere (as in Arendt) or modern liberal political philosophy? I conclude that a stronger questioning of the types of judgment needed to differentiate between political acts is required to avoid Rancière's thought being used to justify forms of action the reader finds sympathetic.

II. HUMAN RIGHTS, *ROBINSON CRUSOE* AND TODAY'S MAN FRIDAYS

My starting point may appear to be an odd one. Yet Defoe's *Robinson Crusoe* has come to shape modern debates, and the modern law, of human rights (Defoe 1719/2003). It was used to justify the wording of Article 29 of the UDHR. The rationale for human rights, which also serves as the basis for Arendt's critique in *The Origins of Totalitarianism*, can be seen in Jacques Maritain's refrain that human rights are inherent and inalienable "from the very fact that man is man" (Maritain 1986, p.63). Human rights are seen as necessitating the free and full development of the human personality (Slaughter 2007, p.4). However, even defenders of human rights note that international human rights is a notoriously feeble legal regime, only existing through formal arrangements between sovereign states or as a consequence of state practice (Slaughter 2007, p.24). Perhaps the nature of this feebleness can be illustrated by the fact that the UDHR itself is just that, a Declaration, and not a Treaty.

Adopted in December 1948, the UDHR itself was born out of great debates held by the Third Committee of the United Nations (United Nations 1948). Fifty-eight nations were represented at the United Nations at the time, and the Committee discussed at length the draft declaration proposed by the Commission on Human Rights (Morsink 1984, p.310). These debates shed light on the underlying philosophical basis of the 'Rights of Man'.

The UDHR has been invoked as a standard by which to judge competing philosophical theories about human rights. The Committee's debates centred on whether the rights to be promulgated were to be conceived of as 'natural rights', separate from and unconnected to the State or Government, or granted because the individual had a relationship with their nation state. The UDHR itself carries a strong individualistic focus, which emanates from eighteenth century ideals of 'natural rights' (Morsink 1984, pp.310-311). However, Article 29 was seen as an 'escape clause', admitting that rights are balanced by and correlative to duties (Morsink 1984, p.317; Morsink 1989, p.22). The text of paragraph one of Article 29 originally stated that "everyone has duties to the community which enables him freely to develop his personality". Alan Watt, the Australian delegate to the Third Social and Humanitarian Committee of the United Nations, proposed an amendment to Article 29:

Everyone has duties to the community *in which alone* the free and full development of his personality is possible (United Nations 1948, p.658).¹

The key word here, as Joseph Slaughter has identified, is 'alone'. This rejects individualism and asserts a clear connection between the individual and the state or society. Watt's proposal aimed to moderate the individualistic excesses of the Declaration (Slaughter 2006, p.1406). Watt's amendment was opposed by the Belgian delegate, Fernand Delhousse, who was concerned that it endorsed a kind of social determinism:

It might ... be asserted that the individual could only develop his personality within the framework of society; it was, however, only necessary to recall the famous book by Daniel Defoe, *Robinson Crusoe*, to find proof of the contrary (United Nations 1948, p.659).

Dehousse complained that Watt's amendment implied that it was the duty of society to develop the individual's personality. Despite Australia withdrawing the amendment at this objection, the Soviet Union subsequently reintroduced it. The Soviet delegate, Alexei Pavlov, challenged the Belgian reading of *Robinson Crusoe*, claiming that the protagonist was not a natural man as Dehousse had claimed:

[The amendment was] important in that it stressed the harmonious relations which should exist between the individual and the society in which he lived. The word 'alone' ... seemed to him excellent. It rightly stressed the fact that the individual could not fully develop his personality outside society. The example of *Robinson Crusoe* [had] shown that man could not live and develop his personality without the aid of society. Robinson had ... at his disposal the products of human industry and culture, namely, the tools and books he had found on the wreck of his ship (United Nations 1948, pp.659-660).

Whereas Dehousse read Defoe as defending an idea of personality which developed *separately* from society, and required protecting from that society, Pavlov's reading

¹ Emphasis mine.

of Defoe saw personality developing from a dialectical interaction *between* the individual and society (Slaughter 2006, p.1407).

Robinson Crusoe's influence was not just restricted to the debates surrounding human rights. Jessica Whyte has written about Marx's identifying political economists' fondness for Defoe (Whyte 2014, p.307; Marx 1990, p.169). For Marx, all production was socially determinate production – the producing individual is always dependent on a greater social whole (Marx 1993, p.84). Rather than representing a natural man outside of society, Crusoe is emblematic of the new atomised individual whose social bond is organised through the market. The newly freed individuals emerge only after they are robbed of their own means of production and of the guarantees of existence provided by the old feudal communities (Whyte 2014, p.308). However, Crusoe stood as a useful device for this shift, as through his example a historically specific set of economic and social relations were naturalised and treated as the expression of the very humanity of man (Whyte 2014, p.310). In Whyte's reading of Marx, the political economists' use of Crusoe is bound up with a teleological conception of history as a progressive trajectory culminating in a world of capitalism and human rights (Whyte 2014, p.304).

Yet as Whyte identifies, what is missing from this UN debate surrounding Robinson Crusoe is the role, and position, of Friday. In the novel, Friday is rescued from a rival tribe and transformed into a "faithful, loving, sincere servant" (Defoe 1719/2003, p.165). In ignoring Friday the delegates rearticulated Defoe's colonial characterisation of the social relations on the island. There was no room for Friday to become a protagonist or legal person (Whyte 2014, p.302; Slaughter 2007, p.53). From the very beginning, international human rights law can be read as excluding certain peoples. Slaughter illustrates how *Robinson Crusoe* served Article 29 as an 'enabling fiction', where human personality entered international law as the product of and medium of social relations, but specifically Western, and colonial, social relations (Slaughter 2006, p.1406). Whilst Article 2 UDHR asserted the human rights of persons in "nonself-governing" territories, as Whyte argues, those persons had as little ability to participate in debating and shaping the terms of human personality as Friday did on Crusoe's island (Whyte 2014, p.302).

III. RANCIÈRE AGAINST THE ARENDTIAN CRITIQUE OF RIGHTS

It is at this point that Hannah Arendt enters my argument. Her critique of rights allows Rancière's defence of rights and his processual politics to be fully understood. The rights of man arose from the same conditions for Arendt as those which Marx attributed to the Crusoe myth, namely a "new era in which individuals were no longer secure in the estates to which they were born or sure of their equality before God as Christians" (Arendt 1960, p.291). The new rights protected atomised figures of civil society. The idea of a rights-bearing natural man rely on no prior approval:

[T]hese rights and the human dignity they bestow should remain valid and real even if only a single human being existed on earth; they are independent

of human plurality and should remain valid even if a human being is expelled from the human community (Arendt 1960, p.291).

However, Arendt makes the point, like Marx, that man cannot be understood as an atomised unit, detached from the pre-existing world. The natural man of the human rights declarations did not exist:

[M]an had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people. From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an ‘abstract’ human being who seemed to exist nowhere (Arendt 1960, p.291).

The fiction of a natural man was laid bare when the inalienability of the grand rights declarations were faced with the spectre of the abandoned, the refugee (Arendt 1960, pp.291-292). For Arendt, the idea of human rights came apart when the world was confronted by “people who had lost all other qualities and specific relationships except that they were still human” (Arendt 1960, p.299). If human rights cannot include the Fridays of the world, then they are not ‘human’ rights at all.

Contrary to the declarations of rights, taking an ethical view, Arendt sees that “a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man” (Arendt 1960, p.300). In this exceptional situation in which stateless people had nothing left to appeal to but their rights as human beings, they were barely recognisable as human (Schaap 2011, p.23). There is on this reading an inherent tension between the ideas of ‘man’ and ‘citizen’. In a corollary manner to *Crusoe*, the reality is that it is the rights of the citizen which are based in reality, not the rights of man (Arendt 1946, p.139). If human rights are reducible to the rights of citizenship, they are redundant, they are the rights of those that already have rights. If they attach to the human as such, they amount to nothing.

On the face of it, the UDHR debates, and the use of *Robinson Crusoe* to describe natural man, bolsters Arendt’s position. An individual can only develop their personality from within a society, as a citizen. More than this, a foundational document of human rights bases its definition of man on a book which places animals above those humans without legal personality (Defoe 1719/2003, p.118). The push-back against the teleological conception of history is evident in Arendt’s work – the very nature of rights, and the paradox contained within them, means that they will never end up satisfying their aims and goals. There will always be a problematic remainder, the Man Friday reminding today’s *Crusoes* that the basis of their rights is not universal, no matter how much they may protest otherwise. The paradoxes within rights that Arendt contends shows their inefficacy, but this is not a hopeless position. For Arendt, this underscores that:

[O]nly within the framework of a people can a man live as a man among men, without exhausting himself. And only when a people lives and functions in consort with other peoples can it contribute to the establishment upon earth

of a commonly conditioned and commonly controlled humanity (Arendt 1944, p.122).

For Arendt, it is as a consequence of seeing the limitations of natural rights that we become aware of the right to politics itself. Arendt's politics is a specific way of life; politics is possible only within a public sphere in which individuals already recognise each other as equal and distinct – the very thing that stateless people are deprived of (Schaap 2011, p.34). This public realm is common to all, where identities and selves are revealed (Arendt 1954, p.52). Only here can plurality and freedom be experienced. Politics occurs between individuals and is established as relationships which can only occur in the public sphere, not the private realm of the household (Arendt 2005, p.108).

Perhaps the UDHR debates are closer to Arendt than they at first appear. By stating that personality can only be developed from within a community, the UDHR also presupposes a form of public sphere within which these political rights can be realised. In this manner, Arendt's critique can be read as one of form rather than substance; a disagreement over the manner of the public sphere, rather than the necessity of its presupposition.

For Arendt, where conditions of inequality prevail there can only be struggle for liberation (where action is subordinated to freeing oneself from domination) rather than an authentic politics (where action is an end in itself) (Arendt 1990, p.29). There must be an equal sphere actually in existence in order for politics to occur. This is Rancière's point of contention with Arendt.

As Schaap has eloquently and persuasively contended, both Rancière and Arendt are praxis theorists who want to escape political philosophy's reduction of political issues to questions of government (Schaap 2012, p.146). However, Arendt believed that traditional philosophy failed to appreciate action as the proper object of political philosophy as it treats politics as a matter of ruling (Schaap 2012, p.147). She followed a reading of Aristotle in understanding politics in terms of its specificity as a way of life (*bios politicos*), claiming that Aristotle saw man as a living animal with the additional capacity for politics (Arendt 1954, p.27). In Schaap's words, Arendt understands ordinary rights as a precondition for politics since they institutionalise an artificial equality that is constitutive of the public sphere. This is why the right to have rights amounts to the right to politics (Schaap 2011, p.23).

Arendt's thesis is that the economic, biological and instinctual bases of human association are opposed to and excluded from political life. Arendt wishes to preserve the political from contamination by the private (Schaap 2012, p.156). In support of this view, Arendt refers back to Aristotle's opposition of political organisation that of the home (Arendt 1954, pp.24, 27). Later in *The Human Condition* Arendt asserts that for the Greeks "everything merely necessary or useful is strictly excluded" from "the realm of human affairs", namely the political realm (Arendt 1954, p.25). A hierarchy thus arises, placing the public realm of politics above the private realm of the home. The equality Arendt seeks to bring about *must* occur in the public realm.

It is this which leads Rancière to claim that Arendt adopts an *archipolitical* position, which represses politics, rather than defending and encouraging it (Schaap 2012, p.151). Rancière's complaint about Arendt is that in differentiating clearly the sphere of political life from the sphere of private life, Arendt (like the drafters of the UDHR), draws the borders around these political predicates *in advance* (Rancière 2004b, p.303). This has negative consequences for how rights are conceived, and Arendt's position is explicitly rejected by Rancière as an ethical, not a political position.

This rejection needs to be connected to Rancière's separation of politics and ethics. For Rancière, 'ethics' are not synonymous with 'morals' (Rancière 2009, p.109). In *Dissensus*, he speaks about morality implying the separation of law and fact, and the division of different forms of morality and of rights (Rancière 2010, p.188). In contrast, Rancière can be read as taking issue with the conceptualisation of an ethical life which dissolves all distinctions necessary for judgment. The strength of Rancière's thought is his emphasis on the manner in which ethics can preclude or limit politics, by acting as a force which bounds or defines politics *in advance*. This ethical turn has two main facets.

Ethics can firstly refer to both the dwelling and way of being that corresponds to that dwelling. Ethics dissolves norm into fact and subsumes all forms of discourse and practice beneath the same point of view, or consensus (Rancière 2009, p.109). This form of 'consensus' reduces the aggregate of individuals within the social body into a single people identical with the count of the population and its parts. Consensus transforms political community into an ethical community, into a community that gathers together a single people in which everyone is supposed to be counted. This comes up against a problematic remainder, the excluded, the part which has no part, the Friday to every Crusoe (Rancière 2009, p.115-116). Consensus means the attempt to get rid of politics itself by ousting these surplus subjects and replacing them with 'real people' and identity groups (Rancière 2004a, p.306).

The second form of ethics Rancière speaks of is the ethics of the absolute Other, and related ideas of infinite justice. This ethical life sees absolute evil as resulting from a betrayal of Otherness, the part of us we do not control (Rancière 2004b, pp.307-308). This form of ethics thus seeks obedience to the rights of the Other, which sweeps aside dissensus and substitutes an ontological destiny for political action (Rancière 2004b, p.309). This ethical life, a constant battle between Good and Evil, erases politics.

Rancière alleges that if the gap between the abstract literalness of rights and their verification is diminished (which is what Arendt contends), then rights will appear vacuous and of no use, and the Rights of Man appear to become the rights of those who have no rights (Rancière 2004b, p.307). These individuals cannot exercise the rights themselves, so others must intervene (hence the spectre of humanitarian intervention) and grant them their rights.

Rancière sharply critiques these two approaches. Neither is appropriate for understanding rights. Rights are not simply a justification for humanitarian intervention. Instead, they allow those who are excluded to litigate for their inclusion as equals. In this political community, the excluded is a conflictual actor,

an actor who includes himself as a supplementary political subject, carrying a right not yet recognised or witnessing an injustice in the existing state of right. The figure of Friday, rather than Crusoe, is therefore central to Rancière's understanding of rights.

Politics is exceptional – a deviation from the normal order of things. Rights do not belong to definite subjects. Rather, politics, and democracy, is precisely about where to draw those borders, how they are constructed, and how they can be modified, helping us interrogate what we are able to think and to do (Rancière 2010, p.218). Rancière does not subscribe or come back to old moral ideas, but in the current ethical turn, exemplified by Arendt's thought, he sees a movement going on which *prevents* judgments being made. I agree with Rancière that judgments need to be made. However, as I argue here, it is an ambiguity about the nature and role of judgment in Rancière's politics which needs academic focus and explication.

IV. RANCIÈRE'S DEFENCE OF POLITICAL SUBJECTIVISATION

Rancière's defence of rights, and construction of political subjectivisation, is central to my argument that his politics is not able to distinguish between the quality of political acts. Rancière's politics focuses on the excluded, the problematic remainder which Arendt saw as undermining human rights. This focus on the excluded is why I wish to trace Rancière's defence of rights to a 1977 interview he conducted with Michael Foucault. In this interview, Foucault spoke of the 'pleb', an excluded figure to be sure. Foucault argued that the figure was irreducible to, and marked the limit of, power relations:

The pleb does not exist in all probability, but there is something of the pleb ... in bodies, in spirits, in individuals, in the proletariat, but, with each dimension, form, energy, and irreducibility, differs in each and every instance. This part of pleb does not represent some exteriority with regard to power relationships as much as it represents their limit, their ruin, their consequence (Foucault 1980, pp.134-135).

Giorgio Agamben sees Rancière returning to this Foucauldian concept of the pleb in his work, developing it into the concept of a people, 'the part of those who have no part', the bearer of a wrong that establishes democracy as a 'community of dispute' (Agamben 2005, pp.57-58). Rancière has admitted his Foucauldian influence in his writings, but where Rancière differs from Foucault is that he is a defender of radical equality (Rancière 2004a, p.50). There is no proper foundation for any political community, except an anarchical presupposition of equality.

Agamben is referring to *Dis-agreement*, where Rancière discusses the plebs of the Aventine Hill in Rome, who appear to be in a similar position to the natives on Crusoe's island. Like Arendt, Rancière focuses on these marginalised figures, but draws very different conclusions from considering them. The plebs are cast out from Roman society; "there is no place for discussion with the plebs for the simple reason that plebs do not speak" (Rancière 1999, p.23). The plebs were not part of a political stage because they were not recognised as equal political subjects

(Rancière 1999, p.26). What the plebs did, and what interests Rancière about them, was that they acted *as though they were equal political subjects*, and therefore created a conflict and a dispute over the meaning and scope of Roman citizenship and participation in civil society. This conflict over the existence of a common stage and the status of those present on it is ‘politics’ (Rancière 1999, pp.26-27).

Where Rancière departs from Arendt is in the consequences of following Aristotle’s definition of man as a speaking animal. As Maurizio Lazzarato has explained, for Rancière Greek democracy demonstrated that the unique principle of politics is equality. In language, we find the minimum of equality necessary for a comprehension of living beings, permitting us to verify the principle of political equality (Lazzarato 2013, p.155). For Rancière, what it means to be a speaking animal is a contestable issue (Schaap 2011, p.29). The Aristotelian definition of man as a political animal defined politics on the essence of a mode of life (Rancière 2010, p.92). This appears to create a ‘test of humanity’. Political exclusion entails non-recognition of particular categories of people as subjects qualified to speak, like the pleb, or the indigenous peoples on Crusoe’s island (Rancière 1999, p.23).

Politics is not enacted through a presupposed stage, public sphere or society. The very existence of a stage for politics must first be established through a dispute, or *litige*, wrong (Rancière 2010 p.91). Subjects do not exist before any wrong which provides that stage for political action (Rancière 1999, pp.26-27). In *Dis-agreement* he explains:

Wrong is simply the mode of subjectification in which the assertion of equality takes its political shape ... Wrong institutes a singular universal, a polemical universal, by tying the presentation of equality, as the part of those who have no part, to the conflict between parts of society (Rancière 1999, p.39).

The wrong here involves a practice by individuals who are not recognised as speaking subjects within a social order that denies they are qualified to engage in politics (Schaap 2011, p.34). This means that political subjects are in no way predetermined, but actually are “always defined by an interval between identities, whether these identities are determined by social relations or juridical categories” (Rancière 2014, p.59). Subjectivisation is therefore the process of becoming a collective subject, emerging through the dissensual acting out of the presupposition of equality.

Unlike archipolitical thinkers like Arendt, Rancière reads equality as something created by people and brought into focus through disputes or actions – “a mere assumption that needs to be discerned within the practices implementing it” (Rancière 1999, p.33). These practices demand equality as individuals, like the plebs, act as though they are equal. This demonstrates the essence of equality, which has no particular character, but instead it undoes the naturalness of given orders and undercuts hierarchies and replaces them with divisions (Rancière 2007a, pp.32-33). Political subjects are open predicates, who emerge through disputes that end up defining the political sphere (Schaap 2011, p.34; Rancière 2004b, p.303).

It is here that I introduce Rancière’s division between ‘politics’ and the ‘police’, two logics of human being-together (Rancière 1999, p.28). The political is

“the field for the encounter between [politics] and [police] in the handling of a wrong” (Rancière 1992, p.59). In order to think this encounter one has to abandon certain concepts, the first of which is the Foucauldian idea of power. Rancière writes:

[I]t is equally important to affirm that no thing is in itself political by the mere fact that power relations are exercised (Rancière 2004a, pp.55-56).

The police is a hierarchical form of politics, rather than an institution of power. It is a ‘distribution of the sensible’ within which it becomes possible to define strategies and techniques of power (Rancière 2010, p.95). It is a hierarchy based on the presupposition that some are fit to govern and some are not. This distribution of the sensible is:

[T]he system of self-evident facts of sense perception that simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it (Rancière 2004a, p.13).

The police disciplines conflict and disputes, subordinating agents to their place within a social order, defining the terms by which one can participate in public discourse, like the debates around *Robinson Crusoe* and the UDHR. Surplus subjects are removed by the police. The equality which exists in a police order is one granted by those who govern. In contrast, politics reconfigures the distribution of the sensible, in order:

[T]o introduce into it new subjects and objects, to render visible what had not been, and to make heard as speakers those who had been perceived as mere noisy animals (Rancière 2009, p.25).

Those who are excluded, the Fridays, can speak. What this means is that when Rancière refers to politics, he intends that:

“Politics” should be used exclusively to characterise a clear-defined activity, which is also antagonistic to the former – the police. This activity, one that disrupts sensible configurations in which shares, parts or their absence are defined in regards to the presupposition that there is, by definition, no share: the share of the share-less ones (Rancière 2009, pp.52-53).

Yet this does not mean that the police is always oppressive. Rancière makes the point that there is “a better and a worse police” (Rancière 1999, pp.30-31). The police order can procure all sorts of good, and one kind of police may be infinitely preferable to another – but Rancière makes clear that this does not make the police any less the opposite of politics (Rancière 1999, p.31). The police cannot be escaped from, or overturned in a revolutionary action; *some* police order is always inevitable (Rancière 1999, p.29). Politics is a heterogeneous logic to the police, but is bound up in relation to the police order; this is because it has no objects or issues of its own. Politics runs up against the police everywhere, acting on common places and determining state institutions and their configuration (Rancière 1999, p.33).

So it is clear that Rancière’s politics is different from forms of politics as commonly understood (such as progressive egalitarian movements, which many

readers may have sympathy for), which in his schema actually make up part of the police order. The essence of this politics is dissensus, and happens by means of the assumption of equality (Rancière 2010, p.38). What determines whether an act is dissensual and political is not its outcome, but its form. A political act is one which brings the police order into conflict with the presupposition of equality (Rancière 1999, pp.31-32). Whilst nothing is political in itself, anything may become political if it gives rise to a meeting of these logics; the presumption of equality contradicts the police distribution of bodies in the form of a wrong (Rancière 1999, p.35).

Therefore, dissensual acts are inseparably and *radically* egalitarian, engaging in a critique of the instituted divisions of the police order, and paving the way for renewing our interrogations into what we are able to think and to do (Rancière 2010, p.218). Such acts reflect the capacity of the subject to work on the intervals between identities, and reconfigure the distribution of private and public, universal and particular (Rancière 2006, p.302). Dissensual acts can give rise to new identities which in turn end up being recognised by the police order, changing the distribution of the sensible. Going further, democracy entails that there is never just *one* subject, since political subjects exist in the interval *between* identities, and are defined through the distribution and re-distribution of forms of subjectivisation (Rancière 2010, p.207). Politics brings attention to contradictory subjects which were not recognised in the police order; it is not a creation of subjects *ex nihilo*, but politics transforms identities into instances of an experienced dispute or dissensual act (Rancière 1999, p.36).

Subjectivity is therefore intertwined with dissensus; acts render visible what was once not recognised, and lead to new subjects and new rights being responded to by the police order. The police order is a responsive order. Disputes create further divisions amongst received categories and distributions; the police will have to respond to these divisive acts. Politics does not focus on results. Rather, the fact that the police order would respond to political, dissensual acts immediately redistributes the sensible. Those individuals who were treated as the plebs, or Crusoe's natives, are now not so treated because of that very response. Previously, they would have simply been ignored.

V. THE LACK OF POLITICAL JUDGMENTS IN RANCIÈRE

Crucial to all of this is the distinct lack of pre-judgment as to the worth of the political acts that Rancière describes. Not every act is a political act. A political act is one which disrupts the police and gives voice to new subjects, to be true, but this says nothing about the nature or desirability of those new subjects, or indeed the desirability of the response of the police. We know that any presupposition of a way of life cannot be political, as politics is not a mode of being – there is no pure *bios politicos* (Rancière 2010, p.42).

The lack of any presupposition, other than that of equality, must mean that it cannot be considered political to define in advance a form of life suitable for the political sphere. This is the case even with a form of life premised on principles of, say, anti-racism, non-discrimination and gender equality. By defining a political sphere in advance with such predicates, we are creating, no matter how well-

intentioned, a police order and an essential way of life. This is consensus, which annuls dissensus as it nullifies surplus subjects by positing an ‘end of politics’ – a return to the normal state of things, through distinguishing in advance what counts as properly political action (Rancière 2010, pp.42-43; Schaap 2012, p.158). This would include an Arendtian public sphere; Rancière views this as again distinguishing in advance what counts as political. Consensus will always exclude ‘Fridays’, even if those who are excluded are viewed by the vast majority of people as being correctly excluded. Consensus therefore assumes that we are not all equal, which is the only presupposition for Rancière that politics can emerge from (Mey 2013, p.177). This is why Rancière argues that:

[R]eturning the inventions of politics and art to their difference, entails rejecting the fantasy of their purity, giving back to these inventions their status as cuts that are always ambiguous, precarious, litigious (Rancière 2009, p.132).

Nor can this presupposition of equality also include the presupposition of ideas of social justice, progressive politics and egalitarianism. Rancière is clear to state that “equality turns into the opposite the moment it aspires to a place in the social or state organisation” (Rancière 1999, p.34). As soon as equality aspires to such a place, it is consensus, even if it is a progressive politics or aims for socially desirable goals such as affirmative action. Such an instrumental form of a presupposition would always presuppose a police order.

It is clear that Rancière sees politics as an active process which an individual needs to undertake, in order to act out the presumption of equality, and avoid being classified in the police order, or worse, not recognised by such an order. Passivity and spectatorship connote an individual looking at a spectacle (Rancière 2007b, pp.271-272), conflicting with the *practical* issues of political action and democracy (Rancière 2010, p.59).

The key point for my argument is when Rancière discusses who exactly comprises the ‘part of those who have no part’. For him, this is not just the ‘excluded’, those who are cast out by a given hegemony. Instead, it is “anybody whoever”, newcomers who are heard and allow new objects to appear as common concerns (Rancière 2010, p.60). Surplus subjects here must be read as *any* subject which does not fit into the political way of life posited by consensus.

Rancière’s emphasis on *common* concerns here is curious, because it appears not to fit easily with his criticism of ethics as pre-judging a way of life of the community. If acts are deemed political because they appear to fit within concerns ‘common’ to society, then we must ask what this common is. If it is a being-in-common, the simple dwelling together in the world that Jean-Luc Nancy speaks of (Nancy 1991, pp.xxxvii, xl), then we again face a question of how to distinguish between political acts. If this radical equality has no world of its own, and is only traced by acts of verification (Rancière 2010, p.213), then this model for revolutionary action is based on demonstration, argumentation and interlocution (Lazzarato 2013, p.164). However, following Lazzarato, if everyone is equal and can have their say, there will be as many governments as there are individuals (Lazzarato 2013, p.162). Contrarily, if the ‘common’ Rancière refers to is a ‘being-

common' (Nancy 1991, p.xxxix), then he does nothing other than repeat the ethical pre-judgment about a way of life he so vehemently criticises in his thought. If this is the case, then Rancière does nothing more than repeat what he criticises in Arendt, and would lend credence to her own critique of rights Rancière opposes.

To avoid Rancière's thought being internally inconsistent, and also avoiding invoking a messianism and recasting emancipation as a multiplicity of forms of dissensus occurring in the broken time of now, we must conclude the former view (Rancière 2010, pp.60-61). For Rancière, the community exists through the setting up of divisions and disputes, and is constructed through the heterogeneous meeting of political acts and police hierarchies.

Because this presupposition of equality has no particular character, but undoes police orders and replaces them with divisions, it stands that Rancière cannot explain *how* we are to distinguish between that very multiplicities of political acts. No conclusion can be drawn in advance as to the worth of the dissensual activities which such subjects perform – only that the litigious actions undertaken disrupt the distribution of the given. The given could even be a 'better police order', such as a liberal democracy, or even a leftist democracy. All we know about political actions is that they institute a "polemical universal" by tying the presentation of equality to the conflict between parts of society (Rancière 1999, p.39). In short, individuals who are not recognised by police orders create a division on the basis that they presume themselves to be equal to others.

On this basis, it is possible for an individual to act out dissensual politics through activities which many would view as objectionable and distasteful, immoral, unethical or utterly horrific. This is the case as equality is an empty predicate, and is not related to egalitarianism or forms of political belief (like socialism) that are part of the police order. The disagreement of a wrong is not connected to morality or ethics, but rather to the fact that individuals are not recognised as equals by the police order. The noises uttered by the part which has no part are recognised as sounds which could be words, but are not understood as such because of who is uttering them (Rancière 1999, p.xii).

This is connected to Rancière's point that some police orders may actually be preferable to others and acceptable to us – the individual espousing views and identities not accepted by the police order may act out an equality that the reader of this chapter may not want to grant them and their words. Rancière's politics is attractive as a method for opening up the social order to new forms of subjectivisation, but he does not provide a schema to distinguish between the merits of those subjects.

To put it crudely, how can we tell the difference between the claims of Daesh and Occupy?

VI. THE RIGHT TO HAVE RIGHTS

This processual, litigious account of politics provides the basis for Rancière's rethinking of human rights. Rancière reframes the subjects of the Rights of Man as supplementary subjects. The Rights of Man are "the rights of those who have not the rights that they have and have the rights that they have not" (Rancière 2004b,

p.302). The subject of rights is the process of subjectivisation that bridges the interval between two forms of existence of human rights. Human rights are written rights, inscriptions of equality, which are not just an abstract ideal but part of the configuration of the given. They form part of the hierarchical police order, alongside the courts and laws which sustain and uphold them. Yet the Rights of Man are also rights awarded to those who “make something of that inscription”, individuals who build a case explaining why they should be included within the inscription of the right (Rancière 2004b, p.303).

In this Rancière comes closer to liberal views of human rights than he does radical politics. In his pronouncements regarding the litigation over the meaning of political predicates Rancière brings to mind the idea of the ‘living tree’ approach to human rights which characterises many progressive defences of rights.² However Rancière clearly does go further than the status quo, as current human rights laws appear to pre-judge a certain *ethos* with respect to rights claims. This is the case as human rights are based around legal instruments. New rights, or extensions of existing rights, require legal recognition from the police order.

The major global human rights instruments include provisions, much like the UDHR, which limit the application of rights. In fact, many such treaties, knowingly or not, invoke the spirit of Article 29 and the assumption that personality can only be fulfilled from within an existing community (which excludes figures like Friday who do not form ‘part’ of that community). The International Covenant for Civil and Political Rights (ICCPR), for instance, makes the point in Article 19(2) that freedom of speech can be limited for the protection of the rights of others, or to protect “public order”. Article 17 of the European Convention of Human Rights (ECHR) guards against the use of rights in a way which would abolish or limits other rights guaranteed in the Convention. These are part of the police hierarchy, which order claims and individuals. In addition, there is an underlying assumption that the rights protected are part of an existing order, which reflects an already existing community which has its own standards and morals. Such instruments preclude the rights claims of those persons who would destroy the rights of others through their actions. Some case examples can help illustrate my point.

In *Norwood* an individual was prosecuted for inciting racial hatred when he placed a poster a window in his home blaming Islam for the September 11 attacks, and advocating the removal of all Muslims from the United Kingdom.³ Norwood’s claim that his conviction had breached his right to free expression was dismissed by the European Court of Human Rights on the grounds that he was setting out to destroy the rights of others through his actions. Likewise, in *Faurisson*, a scholar whose work questioned the existence of gas chambers in World War Two lost his claim in challenging his conviction for such speech, on the grounds that under Article 19 ICCPR, such a restriction was permissible and necessary to serve society’s struggle against racism.⁴

² *Edwards v Attorney-General for Canada* [1930] AC 124 (PC).

³ *Norwood v UK* (2004) (Application No. 23131/03) (ECtHR).

⁴ *Faurisson v France*, Communication No 550/1993, UN Doc CCPR/C/58/D/550/1993 (1996) (ICJ).

My point is not to question these decisions. Rather, they illustrate a police order (a better one than many which exist, no doubt) which has formed a distribution of the sensible that has recognised some voices and not others. Such an order recognises some rights claims, and some political subjects, and assumes the voicelessness of others. Could Faurisson and Norwood be dissensual political actors, and be recognised as subjects? Could they have acted from the presupposition of equality? If my argument holds, and the presupposition of equality is an empty signifier, then I think that they could. Their actions claimed that they should be included within the inscription of the abstract right of freedom of expression, as they acted *as though they were* equal to others.

Now, it may very well be objected that this was precisely what they were *not* doing, as through their actions they wanted to treat others in a discriminatory manner, and therefore they did not support equality. I think this is too easy a response. If equality is a mere assumption, and is presumed by the actor themselves in order to fracture the police order, then it cannot immediately follow that we can interpret ‘equality’ as a ‘thick’ political concept which can help us distinguish between rights claims and determine in advance which ones are political or not. By this I mean that the actor acts as though they are equal, so they must be acting from their own presupposition that they are equal to others – this says nothing about the quality or nature of their act. By a thick concept, I mean a version of equality akin to substantive forms, which already presuppose certain characteristics that equality must have.

These cases also illustrate how human rights claims are therefore inherently antagonistic. When individuals claim protection under human rights laws, they are claiming that the laws should be extended to cover their situations. In effect, they are challenging the distribution of the sensible, and asking for the given order to be redistributed in their favour. They are a part which has no part that is demanding to be counted. Such claims must be seen as political, in the Rancièrian sense.

A Rancièrian political act (such as the claims of Norwood and Faurisson) is antagonistic and involves a confrontation of a disagreement, a circumstance whereby people are treated as less than equal. Whilst it is possible to make such a judgment after the act has occurred, and it is necessary to do so, this would not detract from its political nature. The act itself would be political, as it would be interjecting itself into an order that attempted to distribute all subjects and bodies; the police order would then respond to that claim made by the new subject. This response could either reject the claim or accept it.

None of this defeats Rancière’s argument and points he makes. What it does do is focus attention upon the police orders which ultimately are the responsive element to political acts. ‘Better’ police orders may make the judgment that the acts of Occupy need responding to, and the distribution of the sensible needs redistributing. Likewise, the acts of Daesh have been responded to differently, and are treated as though these are not, and can never be political claims. My point is that a contrary view would be just as possible under Rancière’s sketch of the police and politics. We should not read him as setting out a schematic for how broadly radical, leftist actions can help shape the world and change existing police orders. In many ways, what he does is much more important – he places the emphasis on

the *response* to political acts. The police response to a dissensual act shows how an order deals with an ‘outsider’, a Friday. It can show us which police orders are better or worse.

VII. CONCLUDING REMARKS

Rancière, in his separating of ethics from politics, draws attention to the difficulty of such a separation when making judgments. Whatever our own political beliefs, deciding upon whether a political claim relates to a common concern must involve a judgment. Whilst he critiqued Arendt for an archpolitical position which does not make such a separation, I argue that it is not as easy to separate ethics and politics as Rancière suggests.

Lazzarato has critiqued Rancière on precisely this separation, arguing that if we isolate the political act, we are prone to miss the way in which the police mobilises *both* potential political acts *and* ethics (Lazzarato 2013, p.157). Lazzarato here identifies a key criticism Rancière advances against Arendt’s archpolitical position. Arendt’s public sphere, the *bios politicos*, delineates the borders of equality in advance. If Arendt’s public sphere is a police order, then it is correct to surmise that such a police order is based on an ethical judgment. That is to say, the police order’s response to antagonistic acts is precisely *not* to treat them as separate from ethics. We ultimately see as political those actions which accord with our pre-conceived world views and ideas of which rights claims should be recognised, and which persons should be recognised as political subjects. Arendt’s writings on refugees and their status under human rights laws is a vivid example of this.

Lazzarato’s point is that whereas Rancière’s political subject appears to be formed in an act of instantaneous politics, the constitution of a subject is an ethical act in and of itself, and cannot be separated from a specific activity called ‘politics’ (Lazzarato 2013, pp.168-172). The cases of *Faurisson* and *Norwood* illustrate this. An underlying *ethos* influenced the legal decisions which ruled that Faurisson and Norwood were not actors whose voice should be heard. They did not fit in the police order. Just as easily, a society could form a view that actors we may see as sympathetic should not be recognised as speaking subjects, and that their political acts should give rise to new forms of subjectivity.

In my view, Rancière’s critique of Arendt and her views of rights have force. Rancière illustrates the dangers in drawing the bounds of politics in advance, and how this can exclude individuals as political actors. This leads human rights to become either worthless, or to justify humanitarian intervention. Rancière shows how human rights can be reclaimed into an antagonistic political process. Surplus subjects, the Fridays abandoned by human rights declarations, stand not as examples of the failures of rights, as Arendt would have it, but as litigants who challenge the existing police order.

This brings us back to the plebs on the Aventine Hill and Crusoe’s Friday. Such figures immediately appeal as those surplus subjects not recognised by existing orders. For Rancière, *contra* Arendt, the plebs and Friday seek to make something of their right to have rights, rather than always already being excluded from their inscription from the very beginning. Yet these sympathetic figures could

as easily be Faurisson and Norwood, other surplus subjects not recognised as equals by the police. As Rancière states:

By subjectification I mean the production through a series of actions a body and a capacity for enunciation not previously identifiable within a given field of experience, whose identification is thus part of the reconfiguration of the field of experience (Rancière 1999, p.35).

Where Rancière criticises Arendt for delineating the field of politics in advance, Rancière does not explain how the field of politics can, or will be, delineated after the act of dissensus to ensure that Friday is recognised yet Faurisson is not. How can we reconfigure the field of experience in such a way so that the actions of Occupy take precedence over Daesh? I agree with Lazzarato that the recognition of a political subject is an ethical act. It is a serious matter for scholarship to consider how Rancière's schema can be interpreted, if at all, to consider the relationship between dissensual politics and ethics. Rancière does not provide us with an easy answer. I do not think that there is an easy answer. Perhaps that is his point, and the greatest lesson we can learn from his work.

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