

The ideology of Human Rights: on the semiotics of having rights and the politics of being human

A ideologia dos Direitos Humanos: sobre a semiótica de ter direitos e a política em ser humano

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1. Introduction

In *Seeing* [*Ensaio Sobre a Lucidez*], José Saramago continues the story of the nameless city struck by the “white blindness” of his previous book *Blindness* [*Ensaio Sobre a Cegueira*]. In the rainy day in which the local elections took place, the number of absentees is oddly high, making the government call for new elections. In the second attempt, for the authorities’ despair, the abstention is even higher, entailing supplies cut, persecution against “subversive agents”, and other exceptional measures from the State. The book as a whole is a brilliant and satirical account of the limits of modern democracies, but one of its dialogues stands out for its pertinence. At some point, during a ministerial meeting to discuss government actions in virtue of the dramatic circumstances, the minister of defense compares the citizens’ abstention with a siege against the State, what unfolds a discussion on the meaning of rights in general:

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May I remind our dear colleague and the council as a whole, said the minister of justice, that, when they decided to cast their blank votes, the citizens were only doing what the law explicitly allows them to do, therefore, to speak of rebellion in such a case is, as well as being, I imagine, a grave semantic error, and you will forgive me, I hope, for venturing into an area of which I have no authority, is also, from the legal point of view, a complete nonsense, Rights are not abstractions, retorted the minister of defense, people either deserve rights or they don't, and these people certainly don't, anything else is just so much empty talk, You're quite right, said the minister of culture, rights aren't abstractions, they continue to exist even when they're not respected, Now you're getting philosophical.¹

This short dialogue articulates an interesting problem of legal theory. On the one hand, there is the standpoint of the law, personified by the minister of justice, according to which the citizens had the abstract right to be absent in the elections, no matter at what cost. On the other, we have the standpoint of order, personified in the minister of defense, according to which rights can be "abused", and, therefore, materially lost in some circumstances. The possibility of having rights and not being able to enact them, suggested by the minister of culture, is dismissed as "philosophical".

In the present paper I want to elaborate precisely on this indeed philosophical question: what does it *mean* to have rights? I believe the problem is twofold, and its two sides are already present in the first juridical documents of so-called modernity: the American Declaration of Independence, from 1776, and the French Declaration of the Rights of Man and Citizen, from 1789. In both documents – and in all the others following their spirit – rights are declared to be universal and not linked to social status. They are taken to be a "self-evident" truth, not an aspiration or a political aim, and everyone is already born with them, regardless of State recognition. However, the aftermath of the liberal revolutions and the history of the following centuries did not cease to contest this claim.

Lynn Hunt notices the paradox implied in the "self-evidence" of human rights: if they are "so self-evident, then why did this assertion have to be made and why was it only made in specific times and places? How

1 SARAMAGO, 2007, translation amended.

can human rights be universal if they are not universally recognized?”² No wonder they have been dismissed – by critical and conservative theorists alike – as “nonsense upon stilts”, to quote the famous formulation of Jeremy Bentham.³ Taken to be either a mystification, a logical impossibility, or simply a blatant lie, the idea of human rights has been constantly put into question. Nevertheless, despite the attacks, they remain the main ideological field, of political discussion and action, within and without the West.

In the present paper, my aim is not to present a defense of or an attack on human rights, but rather to understand how this paradox is possible. In order to do this, however, I believe we should inquire what does “having rights” *mean*, that is, investigate the semiotics involved in rights discourse. For this reason, I will avoid engaging in the discussions that attempt to find the content or the “foundation” of human rights (be it morality, capability, or an institutional understanding of politics),⁴ and focus instead in the semiotics mobilized by the idea of having rights, a topic completely ignored by the specialized literature. My first hypothesis is that we can apply the Greimasian semiotic rectangle to the system of signification resulting from the meaning of “having rights”. Later, I hope I can derive the consequences of this application and present the “ideological” role human rights play in the relationship between law and politics.

The “semiotic rectangle” is a graphic representation of the oppositional structure of a system of signification. It enables to visually present the relationship between contrary and contradictory terms, and, in doing so, to reveal hidden signifiers implied in the system. As Fredric Jameson summarizes, the rectangle is “designed to diagram the way in which, from any given starting point S, a whole complex of meaning possibilities, indeed a complete meaning system, may be derived”.⁵ Jameson is responsible for expanding the uses of the semiotic rectangle from linguistics to literary criticism and cultural studies, but the implications of the diagram are not limited by these uses, as I will attempt to demonstrate.

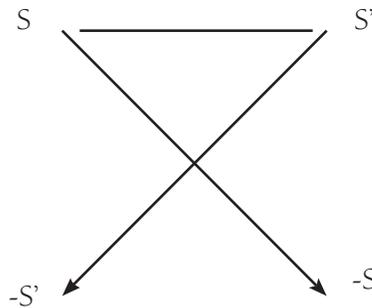
2 HUNT, 2007, pp. 19-20.

3 For the presentation of three classic criticisms of human rights (Bentham’s, Marx’s, and Burke’s.), see WALDRON, 1987.

4 See, respectively, GRIFFIN, 2008; TASIOULAS, 2012; NUSSBAUM, 1997; SEN, 2005; RAWLS, 1999; and RAZ, 2010.

5 JAMESON, 1972, pp. 162–163; see also GREIMAS & RASTIER, 1968, and CORSO, 2014.

The diagram's structure is the following: starting from a signifier S it is possible to derive, first, the simple contradictory term $-S$ (not- S), and to oppose S to a second term S' , of which it is also possible to derive a contradictory term $-S'$ (not- S'), the hidden contrary of the contradiction already implicit in the first sign S (see Fig. 1).⁶ Thus, the merit of the mechanism, as Jameson puts it, is to “enjoin upon us the obligation to articulate any apparently static free-standing concept or term into that binary opposition which it structurally presupposes and which forms the very basis for its intelligibility”.⁷



(Fig. 1)

My hypothesis is that we can articulate the meaning of “having rights” with the help of this semiotic diagram, thus enabling us to articulate the network of meaning presupposed in it. In the final section, I will discuss the implications of Fredric Jameson’s interpretation of the system regarding what he calls its “ideological closure”. In the end, I hope I can provide a new perspective on the relationship between law, politics, and human rights.

2. Squaring Rights

Asking the truly hard – and constantly avoided – question of what a right is, Joel Feinberg resorts to a thought experiment. He proposes we consider Nowheresville, an ideal place different from our societies only in the fact that there are no rights in it. His conclusion is that

6 It must be noted that for GREIMAS & RASTIER, the relationship between S and $-S'$ and of S' and $-S$ is one of implication, or simple presupposition, and that it is the lower term that implies the upper term, and not otherwise. This will be relevant for my further argument.

7 JAMESON, 1972, p. 91, pp. 164.

the most conspicuous difference, I think, between the Nowheresvillians and ourselves has something to do with the activity of *claiming*. Nowheresvillians, even when they are discriminated against invidiously, or left without the things they need, or otherwise badly treated, do not think to leap to their feet and make righteous demands against one another, though they may not hesitate to resort to force and trickery to get what they want. They have no notion of rights, so they do not have a notion of what is their due; hence they do not claim before they take.⁸

A right, therefore, is “a kind of claim”, and a claim is “an assertion of right”. Every attempt to formally define any of the two terms will fall back in this tautology. Instead of pursuing this dead end, Feinberg propose to “use the idea of claim in informal elucidation of the idea of right”. This is possible because claims always presuppose an *action*: “a claim is that which is claimed, the object of the act of claiming. There is, after all, a verb “to claim” but no verb “to right”. By focusing on the observable activity of claiming, states Feinberg, “we may learn more about the generic nature of rights than we could ever hope to learn from a formal definition”.⁹

Exploring the ambiguity of the English word, Feinberg distinguishes between 1) *making* a claim to something; 2) claiming *that* something is; and 3) *having* a claim. It is here, however, that the internal tension of his thesis comes to the fore. Analyzing the first possibility, Feinberg makes a strict connection between making a claim and having a right: “only the person who has a title or who has qualified for it, or someone speaking in his name, can make claim to something as a matter of right. [Rights] can be claimed only by those who have them”. However, anyone can potentially make a claim in the second sense, which not always would be backed by a right. As he exemplifies, anyone can claim “*that* this umbrella is yours, but only you or your representative can actually claim the umbrella”. Thus, the difference between making a legal claim *to* and claiming *that* is that “the former is a legal performance with direct legal consequences whereas the latter is often a mere piece of descriptive commentary with no legal force”.¹⁰

8 FEINBERG, 1970, p. 249.

9 FEINBERG, 1970, p. 250.

10 FEINBERG, 1970, p. 251.

Feinberg then introduces the third sense, distinguishing between the English verb “to claim” (the first sense) and the substantive “a claim”. His take is that “having a claim consists in being in a position to claim, that is, to *make claim to* or *claim that*”. This means that having a claim does not depend in actually making the claim, but in the mere possibility of doing so. As he puts it, “one might have a claim without ever claiming that to which one is entitled, or without even knowing that one has the claim”.¹¹ In truth, it is this third sense that enables someone to have a right without having to claim it, otherwise only claims would exist and rights would always be defined by the activity of claiming.

What seems to haunt Feinberg’s discussion is that claiming proves its importance precisely in the moments in which the existence of the right is unclear. But, at the same time, he does not want to open the possibility of a claim to be valid without implying a right. The problem is exemplified when, for instance, two different subjects claim the same object. In this case, both would be claiming something, but only one would have the actual claim in the dispute. However, depending on the case, possibly both of them would have a reasonable claim, being in the position to start a litigation to decide who actually has the right and who does not. This is the very reason why a system of justice exists (without which a system of rights is unthinkable). If the relationship between rights and claims were direct, if there were no disputes, the idea of claiming would be completely irrelevant to the idea of rights. Rights would be obvious, incontestable, and perhaps their very existence would be meaningless (erasing the difference Feinberg is calling attention to when describing Nowheresville).

Feinberg himself realizes this when he puts the problem of the “validity” of claims. At first, he defines a right as a “valid claim”, and defines validity as “justification within a system of rules”. Someone has a legal right “when the official recognition of his claim (as valid) is called for by governing rules”. However, he says, “if having a valid claim is not redundant, [...] there must be such a thing as having a claim that is not valid”.¹² Here, Feinberg seems to presuppose the existence of a right to make claims (or a right to have rights, to use the famous Arendtian idea), enabling someone

11 FEINBERG, 1970, p. 253.

12 FEINBERG, 1970, pp. 253–255.

to “accumulate just enough evidence to argue with relevance and cogency that one has a right (or ought to be granted a right), although one’s case might not be overwhelmingly conclusive”.¹³

But with this solution to the “problem” of valid claiming, Feinberg opens an even more radical possibility. If a meta-right of making claims is presupposed, the problem folds onto itself when this very right is object of dispute, that is, when the object of claiming is the very possibility of claiming. What seems an abstract question is actually the way human rights work in practice. It is this very process of demanding rights that are not yet valid within a legal system, but grounded in a universal declaration, that characterizes human rights claims.

This process is exemplified by what Lynn Hunt described as the cascading effect of rights in the aftermath of the 18th century revolutions, when every time that a group had their rights granted based on universalist claims, other excluded groups also demanded their rights to be recognized.¹⁴ It is thus because rights and claims are interdependent but not identical that it is possible to claim “new” rights, or rights that are not yet recognized by the existing system of rules. Far from a solution, what Feinberg’s solution actually unfolds is the *gap* between having and claiming rights that is the inevitable result of the declarations’ universalism.

However, the contradiction between having and claiming rights is not the only one present in the declarations. Another one lies in the very name of the French document, that is, the one between being citizen and being human. It was Hannah Arendt who best articulated the problem, which became unavoidable once rightlessness opened the way for the crimes against humanity that marked the 20th century. Beyond establishing that from then on humankind would be the only source of Law, Arendt argues, these documents also had “another implication of which the framers of the declaration were only half aware”:

Since the Rights of Man were proclaimed to be “inalienable”, irreducible to and undeducible from other rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal. No special law, moreover, was deemed necessary to protect them be-

13 FEINBERG, 1970, p. 253.

14 HUNT, 2007, pp. 147–151.

cause all laws were supposed to rest upon them. Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people's sovereignty (different from that of the prince) was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the "inalienable" rights of man would find their guarantee and become an inalienable part of the right of the people to sovereign self-government.¹⁵

The entanglement between human rights and popular sovereignty thus produced a perverse count-effect. What Arendt calls "civil rights" – the "varying rights of citizens in different countries" – were supposed to guarantee in the form of laws the Rights of Man, which should be themselves independent of citizenship and nationality. If the laws of a country violated such rights, their citizens were expected to change them, either by vote or revolutionary action.¹⁶ However, the problem of this full implication between human rights and popular sovereignty came to light "only when a growing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa".¹⁷

Human rights were supposed to be independent from governments, but as soon as "human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them".¹⁸ The very virtue of human rights – i.e. being independent of the established powers – is what enabled their violation: "once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth". Together with citizenship rights, they lost "those rights which had been thought of and even defined as inalienable, namely the Rights of Man".¹⁹ The loss of citizenship turned into a loss of humanity.²⁰

15 ARENDT, 1973, p. 291.

16 ARENDT, 1973, p. 293.

17 ARENDT, 1973, p. 291.

18 ARENDT, 1973, p. 292.

19 ARENDT, 1973, pp. 267–268.

20 This is what I interpret as the major claim concerning Giorgio Agamben's "bare life". Once the legal person was identified with the human being, the loss of legal subjectivity resulted in a loss of humanity itself. As he puts it, "in the 'politicization' of bare life [...] the humanity of living man is decided" (AGAMBEN, 1998, p. 8).

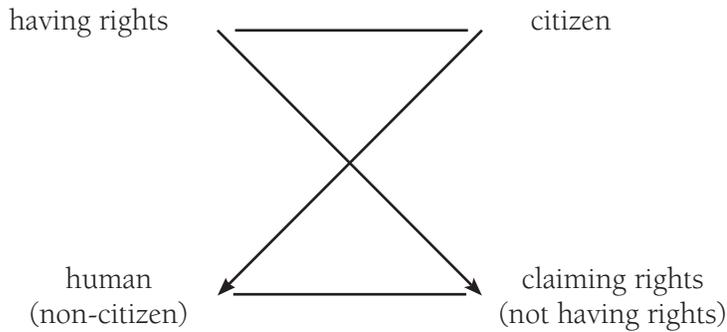
That this is the case for Arendt can be seen in the way she puts rightlessness as a necessary condition for the “totalitarian” measures that followed. As she argues, “the first essential step on the road to total domination is to kill the juridical person in man”.²¹ This is what she means by saying that “the insane mass manufacture of corpses is preceded by the historically and politically intelligible preparation of living corpses”.²² The paradox presented by her is that the moment when human rights were needed the most, when human beings became rightless, when they were reduced to “a human being in general” without further qualifications, their “unique individuality [...] loses all significance”.²³ Arendt’s discussion of statelessness and loss of citizenship thus reveals the intrinsic contradiction between “Man and Citizen”: either a person is a citizen (and, therefore, is granted all the rights adequate to their humanity) or the person is a mere human being, a non-citizen, not having any rights in practice. Instead of *having* rights only in virtue of being human, what *being* human means in the concrete situation is precisely *not being* a citizen – and, therefore, not having any rights.

In both Feinberg’s and Arendt’s case we can see the articulation of a similar problem spurring from the universal declarations. Both (willingly or not) reveal how an identity is, in fact, concealing a deep contradiction resulting from the very separation of the terms they articulate (rights and claims, in the first case; citizen and human, in the second). This brings us back to the semiotic rectangle previously discussed. My hypothesis is that these two contradictions can be disposed in the semiotic system in the two contradictory axes (see Fig. 2). What is implied in the idea of having rights is the possibility of not having them (and, therefore, being able to claim them in virtue of the universalism of rights); what is implied in the idea of citizenship is the possibility of not being a citizen (and, therefore, being reduced to bare humanity).

21 ARENDT, 1978, p. 447.

22 ARENDT, 1978, p. 447.

23 ARENDT, 1973, p. 302. It is interesting to note that Feinberg also makes the connection of *having* rights and *being* human: “this feature of rights is connected in a way with the customary rhetoric about what it is to be a human being. Having rights enables us to “stand up like men”, to look in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons (this is an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other” (FEINBERG, 1970, p. 252).



(Fig. 2)

However, this is not the full articulation of the system. Greimas and Rastier propose that in every relation between terms in the system there is an element that signifies the relationship itself. They propose there is a *complex term* articulating the axis of contraries on the upper half of the diagram, two *deixes* articulating the relationship between the terms and the contraries of their oppositions, and a *neutral term* articulating the two sub-contraries in the lower half. It must be noted that, for them, the complex term and the neutral term have a “hierarchical” relation to S/S' and $-S/-S'$ respectively, and have a contradictory relationship between themselves. They are their hypernyms, including in their meaning the two “contrary” terms. In fact, as they clarify, this relationship of contraries is not exactly one of simple negation, but also of “solidarity, or double presupposition”. they also call attention to the fact that the “neutral” term is named this way because it can neither be defined by S nor S' , demanding the articulation of both of their contradictory terms to reveal itself.²⁴ Thus, in order to articulate the full semiotic system of rights, we must have a proper understanding of their dynamics. In the next session, I will introduce Jacques Rancière’s recent intervention in the debate of human rights in an attempt to bridge the gaps between the two axes that I proposed.

24 GREIMAS & RASTIER, 1968, pp. 89–91. The two deixes signify the relationship of implication between $-S/S$ and $-S/S'$.

3. Bridging the Gaps

In a paper called “Who is the Subject of the Rights of Man”, Jacques Rancière proposes an alternative to what he calls the “ontological trap” of human rights. His description of the problem is the following:

[F]irst, the rights of the citizen are the rights of man, but the rights of man are the rights of the nonpoliticized person, or the rights of those who have no rights – which means they amount to nothing; second, the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen of such or such a constitutional state – which means that they are the rights of those who have rights and we end up in a tautology. So, either the Rights of Man are the rights of those who have no rights or they are the rights of those who have rights. Either a void or a tautology, and, in either case, a deceptive trick.²⁵

Rancière’s argument is that we can only escape this quandary if instead of condemning human rights for their paradox we recognize this very paradox as their true definition: “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”.²⁶ Human rights, for him, are not “the rights of a single subject that would at once be the source and the bearer of the rights and would only use the rights actually possessed”. Indeed, this subject, as Arendt’s critique demonstrates, does not exist. But for Rancière, this is not the true relationship between being a subject and having rights.²⁷

Subjectivity in this case must be grasped as a process that is enacted in a twofold way. First, human rights are “inscriptions, a writing of the community as free and equal, and as such are not merely the predicates of a non-existing being”, something that does not disappear when they are denied – on the opposite, they enable us to perceive them as “denied” precisely because we have already recognized their existence. Second, human rights are “the rights of those who make something of that inscription, deciding not only to ‘use’ their rights but also to build cases to verify the power of the inscription” – that is, not simply to state that they were

25 RANCIÈRE, 2010, p. 67.

26 RANCIÈRE, 2010, p. 67.

27 RANCIÈRE, 2010, p. 67.

violated but draw the consequences of this violation.²⁸ Thus, Rancière's enigmatic phrasing attempts to accurately grasp the process in its double aspect: first, the perception that one indeed *has* rights and that they are being denied ("those who have not the rights that they have"); second, that it is in the act of *claiming* that rights are truly actualized ("they have the rights that they have not").

Rancière's argument subverts the contradiction between having and claim by exploring the power that lies in the gap between them. The vicious cycle between the two terms (as presented in Feinberg's analysis) becomes an explanation of the political logic that enables the contradictory relationship between having and claiming. In this same way, the Arendtian problem that people can be stripped from their rights –justifying the need for a "right to have rights" – ends up reducing their condition and ignoring the always existing possibility of politically demanding the rights they were denied. As he puts it, "the strength of those rights lies in the back-and-forth movement between the initial inscription of the right and the dissensual stage on which it is put to the test".²⁹ If we ignore this strictly political dimension of human rights they become what Rancière calls "humanitarian rights", the "rights of those who cannot enact them, of victims whose rights are totally denied".³⁰

What is interesting in Rancière's case is that he is able to put the problem in these terms because he frames it from *outside* the question of having or not having rights, locating the issue in the *political* action involved in having and claiming. Rancière has a very proper understanding of politics. For him, politics is always a process, never a "sphere" of human interaction.³¹ As proposed in his *Disagreement [La Mésentente]*, politics is generally taken to be "the set of procedures whereby the aggregation and consent of collectivities is achieved, the organization of powers, the distribution of places and roles, and the systems for legitimizing this distribution". However, this distributive and recognizing function is what he calls *police*,³² an

28 RANCIÈRE, 2010, pp. 67–68.

29 RANCIÈRE, 2010, p. 71.

30 RANCIÈRE, 2010, p. 72.

31 RANCIÈRE, 2010, p. 70; 1999, p. 29.

32 Rancière's use of the word does not mean a purely "negative" understanding of it. As he puts it, "there is a worse and a better police [...]. Whether the police is sweet and kind does not make it any less the opposite of politics" (RANCIÈRE, 1999, pp. 30–31). Although Rancière does not mention, "police" and "polis" seem very similar.

“order of bodies that defines the allocation of ways of doing, ways of being, and ways of saying, and sees that those bodies are assigned by name to a particular place and task”. Rancière reserves the name of *politics* for whatever activity that “shifts a body from the place assigned to it or changes a place’s destination. It makes visible what had no business being seen, and makes heard a discourse where once there was only place for noise”.³³

Politics, for Rancière, is the result of a fact: “the equality of any speaking being with any other speaking being”.³⁴ Every ordering, every “distribution” of parts and places, is a contingent and artificial division that inevitably undermines this equality. Thus, equality, for him, is never established by the police order. On the contrary, it is the reason why this order can be questioned in the first place, what reveals its “sheer contingency”. In fact, as he says, “equality turns into the opposite the moment it aspires to a place in the social or state organization”.³⁵ Politics is then his name for the process of questioning, of redistribution, of suspension of the established order, which always remains a possibility due to the *fact* of equality. It is “the open set of practices driven by the assumption of equality between any and every speaking being and by the concern to test this equality”.³⁶

Politics for Rancière thus has no specific objects or issues of its own, its object must always be the existing order. “What makes an action political”, he claims, “is not its object or the place where it is carried out, but solely its form, the form in which confirmation of equality is inscribed in the setting up of a dispute”.³⁷ This form assumed by politics in the moment of questioning the distribution (instead of questioning the proportion of the terms distributed) is what Rancière calls *litigation*. Rancière’s litigation is not a dispute over the inadequate distribution, but of the distribution itself, of what is presupposed in the possibility of “distributing” in the first place: “before the gauging of interests and entitlements to this or that share, the dispute concerns the existence of parties as parties and the existence of a relationship that constitutes them as such”.³⁸

33 RANCIÈRE, 1999, pp. 29–30.

34 RANCIÈRE, 1999, p. 30.

35 RANCIÈRE, 1999, p. 34.

36 RANCIÈRE, 1999, p. 30.

37 RANCIÈRE, 1999, p. 32.

38 RANCIÈRE, 1999, p. 26.

This is the reason why Rancière avoids using the language of recognition. His problem with the term is that it always presupposes an identity that is being “misrecognized” and that demands a proper recognition.³⁹ What Rancière is calling attention to is that this “misrecognition” is always a form of actual recognition that is being questioned— and that it is this “bad” recognition that is being disputed. As he puts it, “individuals and groups are always, in some way, recognized with a place and a competence so that the struggle is not ‘for recognition’, but for *another form* of recognition: a redistribution of the places, the identities, and the parts”.⁴⁰ What usually are called “struggles for recognition” are, in fact, struggles for *not* being recognized in a certain way. The “object” of these struggles, what they demand, is never a pre-existing identity that should be recognized by the existing order. The “identity” (the political subject) arises in the very process of struggling, not before it.

Nevertheless, this raises a problem when we return to the discussion of human rights. For Rancière, having or not having rights would not be a question of recognition by the police order, but a political question of subverting this order. There is a distinction in Rancière’s argument between asking for the recognition of the “part” that you have and becoming the “part of no part” that politically suspends the order. However, in Rancière’s discussion of human rights, the distinction between the two becomes problematic, since the situation could be interpreted simply as a case of misrecognition, a demand of bridging the gap between “man” and “citizen”, of claiming the “part” one already has, given that the people who had their rights violated are indeed “part” of humanity. The problem seems to already be present in Rancière’s paradoxical definition of human rights as “the rights of those who have not the rights that they have and have the rights that they have not”. The denial of rights is counterposed by the affirmation of their existence (what could be read as a demand for recognition) while the exercise of the rights in practice deauthorize their negation (what could be read as the “proof” of the identity asking for recognition).

Rancière seems to be aware of the issue, and it is not by chance that when discussing the “reign of a humanity equal to itself”, he frames the discussion with the idea of human rights:

39 RANCIÈRE, 2016, p. 84.

40 RANCIÈRE, 2016, p. 90.

The militant democracy of old went through a whole series of polemical forms of “men born free and equal in law”. The various forms of “us” have taken on different subject names to try the litigious power of “human rights”, to put the inscription of equality to the test, to ask if human rights, the rights of man, were more or less than the rights of the citizen, if they were those of woman, of the proletarian, of the black man and the black woman, and so on. And so “we” have given human rights all the power they could possibly have: the power of the inscription of equality amplified by the power of its rationale and its expression in the construction of litigious cases, in the linking of a world where the inscription of equality is valid and the world where it is not valid. The reign of the “humanitarian” begins, on the other hand, wherever human rights are cut off from any capacity for polemical particularization of their universality, where the egalitarian phrase ceases to be phrased, interpreted in the arguing of a wrong that manifests its litigious effectiveness.⁴¹

At this point, Rancière’s only solution seems to separate an “active” version of human rights claiming from a “passive” one (the reign of “humanitarian”), but there is another possibility. If politics exists in the moment of questioning the distribution (revealing its contingency regarding the fact of equality) and if the modern version of the police universalizes equality among human beings, then the politics of the age of human rights is not simply one that asks political recognition for an already existing human, but a politics over *humanity* itself.

For Rancière, not only the “citizen” is a political subject, but “man”, the human, also is: “man and citizen are political subjects and as such as are not definite collectivities, but surplus names that set out a question or a [litigation] about who is included in their count”.⁴² The litigation involved in claiming/having rights can only involve a political “redistribution” of parts if it becomes a discussion of what it means to be a human being. When humanity is “no longer polemically attributed to women or to proles, to blacks or to the damned of the earth”, he claims, “human rights are no longer experienced as political capacities. The predicate ‘human’ and ‘human rights’ are simply attributed, without any phrasing, without any mediation, to their eligible party, the subject ‘man’”.⁴³

41 RANCIÈRE, 1999, pp. 125–126.

42 RANCIÈRE, 2010, p. 68.

43 RANCIÈRE, 1999, p. 126.

Politics in this case becomes the activity of humans as humans, the confirmation of their humanity, the cause (and not the consequence) of being human.⁴⁴ In the gap between having and claiming rights lies not the simple recognition of an already constituted part (the “rights of the Man” becoming “rights of the citizen”), but the never-ending struggle of affirming oneself as human. As Costas Douzinas proposes, human rights are not grounded in “human nature”, it is the other way round:

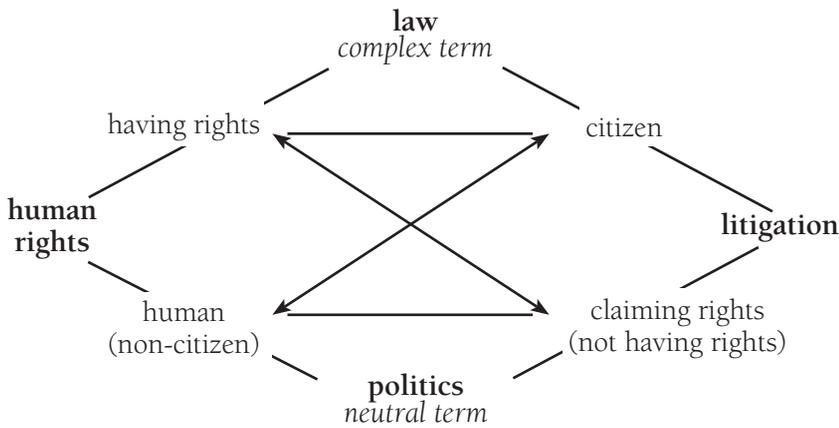
[H]uman rights construct humans. I am human because the other recognizes me as human which, in institutional terms, means as a bearer of human rights. Slaves or animals are not humans because they have no human rights. Nothing in their essence either stops them from having rights or guarantees them. [...] Becoming more or less human through the policed distribution of rights is the modern way of creating the subject as social animal.⁴⁵

After this long detour, I believe we finally have the elements needed for the full articulation of the semiotic system of rights (Fig. 3). First, the left deixis (articulating having rights + being human) is the universal attribution of *human rights*. The right deixis (articulating being citizen + claiming rights) is the process of *litigation*, the object of which is the inscription in the legal order. This case encompasses, at first, just the simple legal demand for recognition of a citizen’s rights. The complex term (articulating the opposition between having rights + being citizen) is the *law* – what Rancière calls “police”⁴⁶ – which at the same time attributes the legal situation of the subject and the rights to which he is entitled. Until now, these three terms seem to be the ground of contemporary human rights discussions, always orbiting between the universalism of human rights, the concrete violations of human rights that give rise to litigating processes, and the legal structure granting rights and defining citizenship.

44 This politicization of humanity can have bleak consequences, as it indeed had historically. However, the tragedy of the fact does not make it less true. The only criterion possible for ‘being human’ is the capacity of claiming to be so. If this is the case, then Rancière’s critique of Arendt and Agamben in the aforementioned text on human rights, loses significance: instead of two different perspectives on politics and rights, they are in fact just focusing in two sides of the same politicization of humanity.

45 DOUZINAS, 2000, pp. 371–372.

46 Rancière himself identifies the police with the law (RANCIÈRE, 1999, p. 29).



(Fig. 3)

The advantage of applying the Greimasian semiotic rectangle, however, is that we can reveal a fourth element that not only lies behind this dynamic but, most importantly, *subverts* the articulation of the three terms. I will follow Rancière in calling this politics, the neutral term that cannot be derived directly from any of the other three, only from their interconnection. In this case, politics is the result of claiming (not having rights) and being human (not being a citizen), which simultaneously gives meaning to both: being human as result of the activity of claiming; claiming as the inevitable consequence of being human. The neutral term also rearticulates the meaning of the two deixes: human rights become the *content* and litigation becomes the *form* of political articulation. Finally, law, the complex term – that not by chance is defined by Greimas and Resnais as in a relationship of contradiction with the neutral term – becomes the very *object* (ground and aim) of political activity.

The result of the semiotic system is to unveil the fact that within the meaning of “having rights” what already is implied is the political action of human beings. This is not simply the result of a “realist” analysis of the dynamic involved in having rights, but the semantic network that it necessarily articulates. However, if the rectangle enables us to see how the system operates, and how law, politics, and human rights are intrinsically connected in the language of rights, one could ask what this means for its “reality”. To answer this question, one could say that we must leave the

noisy sphere of discourse and enter into the hidden abode of social practice, but there are more things between heaven and earth than are dreamt by this “philosophy”.

4. From the Logical to the Ideological

I already discussed how, in his earlier works, Fredric Jameson was interested in deriving the full semiotic system (especially the hidden -S', the contradiction of the opposition) from a single starting point, enabling to reveal hidden meanings in the semiotic network implied by the original term. In his *Political Unconscious*, Jameson furthers the argument and explores the implications of the complex version of the system. His interpretation is that this “apparently static analytical scheme, organized around binary oppositions” could be reappropriated in order to reveal that the terms signifying the relationships are, in fact, ideal syntheses or dialectical mediations. Jameson’s claim is that these combinations embody real social contradictions and that, because of their mediating role, they establish the terms in which these contradictions can be perceived and mobilized by individuals. It is for this reason that he designates the semiotic rectangle as “the very locus and model of ideological closure”, or as a “symptomatic projection” that could be decomposed by dialectical criticism.⁴⁷

It must be noted that ideology, for Jameson, is not a form of “false consciousness”, but a dimension of reality itself which “secretes it as a necessary feature of its own structure”.⁴⁸ Rather than a veil occulting reality, ideology is a necessary part of our relationship to what is perceived as “reality”. As Slavoj Žižek puts it, “ideology is not simply a ‘false consciousness’, an illusory representation of reality, it is rather this reality itself which is already to be conceived as ‘ideological’”. Social reality is “ideological” because it demands a degree of “non-knowledge” in order to operate, to be effective, but everyone acting according to it is operating within this “ideology”. This is why ideology “is not the false consciousness of a (social) being but this being itself in so far as it is supported by ‘false consciousness’”.⁴⁹

47 JAMESON, 2005, pp. 33, 71.

48 JAMESON, 1994, p. 280.

49 ŽIŽEK, 1989, p. 15–16.

Thus, to state that the semiotic rectangle is the model of “ideological closure” is not to point out its “falseness”, but the falseness of its *closure* and stability. Ideology is precisely the “effort to build up a ‘façade’ of coherence”⁵⁰ that sustains the logical closure of the semiotic system. Jameson’s move is to demonstrate how the mediating elements of the structure enable us to map “the inner limits of a given ideological formation” and to establish “the conceptual points beyond which that consciousness cannot go, and between which it is condemned to oscillate”.⁵¹ In doing so, he is able to show how the structure, “far from being completely realized on any one of its levels, tilts powerfully into the underside or *impensé* or *nondit*”, what he calls the “political unconscious” of the system.⁵² If this were not the case, the system itself would be unthinkable. Taking the system of rights as an example, the dynamic between the terms only works because of their relations of contradiction and opposition, not despite them. At the same time, it only works because it is sustained by discursive and non-discursive practices that operate within the established limits. For instance, in a different historical context, with different beliefs, experiences and conceptions (say Nowheresville), the system would lose all its significance.

To say that human rights are “ideological”, therefore, is not to claim their abandonment for some “true” political demand, but to perceive how deeply they frame our understanding of ourselves, especially of what we understand as political demands. The “ideological illusion”, as Žižek puts it, is not on the side of knowledge, but on the side of “real” social practice, which is guided by this “illusion”. What is “misperceived”, he says, “is not the reality but the illusion which is structuring their reality, their real social activity. [...] The illusion is therefore double: it consists in overlooking the illusion which is structuring our real, effective relationship to reality”.⁵³ Ideology is thus not simply a *mirage*, constructed to disguise reality; on the contrary, it structures reality as a gapless whole to avoid the “traumatic” fact of its contingency, a whole whose gaplessness is itself illusory, “ideological”.⁵⁴

50 MOČNIK, 1993, p. 151.

51 JAMESON, 2005, pp. 33–34.

52 JAMESON, 2005, p. 35.

53 ŽIŽEK, 1989, pp. 29–30.

54 ŽIŽEK, 1989, p. 45.

In the case of the ideology of human rights, this “traumatic” fact is the fact of politics, that which can never be fully included in the system but, at the same time, is its motor function. Jacques Rancière, besides his harsh criticism of “ideology”,⁵⁵ seems to articulate the issue in very similar terms. “From the political point of view”, he says,

the inscriptions of equality that figure in the Declaration of the Rights of Man or the preambles to the Codes and Constitutions, those that symbolize such and such an institution or are engraved on the pediments of their edifices, are not “forms” belied by their contents or “appearances” made to conceal reality. They are an effective mode of appearance of the people, the minimum of equality that is inscribed in the field of common experience. The problem is not to accentuate the difference between this existing equality and all that belies it. It is not to contradict appearances but, on the contrary, to confirm them.⁵⁶

Every demand of human rights starts “with the gap between the egalitarian inscription of the law and the spaces where inequality rules”, but the conclusion to be taken from this is not to dismiss the egalitarian prescription. What happens is the opposite, equality is forced upon reality, inventing “a new place for it: the polemical space of a demonstration that holds equality and its absence together”.⁵⁷ Human rights are ideological because they frame, in practice and conception, political action, which can only appear because of this framing. And in doing so, even for a brief moment, it reveals the “self-evident” truth of human rights: “all human beings are born free and equal in dignity and rights”.

55 Rancière’s criticizes ideology as a “metapolitical concept” that attempts to unveil the “truth of the lie” of politics. He focuses on a conception of ideology that attempts to sustain this division between true “reality” and false “consciousness”, reducing the political moment to a disguise of the “real” social issues (RANCIÈRE, 1999, pp. 82–86). This conception seems to be the one used by Althusser, the major object of Rancière’s criticism on the issue since the early seventies (see, for instance, RANCIÈRE, 1974). It is not my aim to defend Althusser from Rancière’s attacks, but simply to use the concept in a completely different way, understanding ideology as the attempt of rationalization and closure of the very political subversion of the order provided by Rancière’s theory.

56 RANCIÈRE, 1999, pp. 87–88.

57 RANCIÈRE, 1999, p. 88.

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