

DEMOCRACY AS PROCEDURE AND DEMOCRACY AS REGIME*

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The very subject of our discussion is a translation and expression of the crisis the democratic movement is currently undergoing. And our choice of this subject is indeed conditioned by the appearance of a conception of “democracy” that, breaking with all previous political thought, makes of democracy a mere set of “procedures.” Political thought saw in democracy a *regime* that was indissociable from a substantive conception of the ends of the political institution and from a view, and from an aim, of the type of human being that corresponds to it. It is easy to see that, whatever the philosophical window dressing, a purely procedural conception of “democracy” itself originates in the crisis of the imaginary significations that concern the ultimate goals [*finalités*] of collective life and aims at covering over this crisis by dissociating all discussion relative to these goals from the political “form of the regime,” and, ultimately, even by eliminating the very idea of such goals. The deep-seated connection between this conception and what is rather ridiculously called contemporary “individualism” is quite manifest and I shall return to it. But we must begin at the beginning.

I

To discuss democracy is to discuss politics. Now, *politics – la politique* – does not exist everywhere and always; true politics is the result of a rare and fragile social-historical creation. What does necessarily exist in every society is *the political sphere in a general or neutral sense*, “*the political*” – *le politique* – the explicit, implicit, sometimes almost ungraspable dimension that deals with power, namely the instituted instance (or instances) that is (or are) capable of issuing sanction-bearing injunctions and that must always, and explicitly, include at least what we call a judicial power and a governmental power.¹ There can be, there has been, and we hope there again will be societies without a State, namely, without a hierarchically organized bureaucratic apparatus separate from society and dominating it. The State is a historical creation that can be dated and localized: Mesopotamia, East and Southeast Asia, pre-Columbian Meso-America. A society without such a State is possible, conceivable, and desirable. But a society without explicit institutions is an absurdity into which both Marx and anarchism lapsed.

There is no such thing as an extrasocial human being, nor is there, either as reality or as coherent fiction, any human “individual” as an a-, -extra-, or presocial

“substance.” We cannot conceive of an individual that does not have language, for example, and there is language only as creation and social institution. Unless one wants to look ridiculous, one cannot see this creation and this institution as resulting from some deliberate cooperation between “individuals” – or from an addition of “intersubjective” networks: for there to be intersubjectivity, there must be human subjects as well as the possibility for these subjects to communicate – in other words, there must be already socialized human beings and a language that they could not produce by themselves qua individuals (one or many “intersubjective networks”) since they must receive language through their socialization. The same considerations hold for a thousand other facets of what we call the individual. Contemporary “political philosophy” – as well as the basics of what passes for economic science – is founded upon this incoherent fiction of an individual-substance, which is supposedly well defined in its essential determinations outside or prior to society, and it is upon this absurdity that both the idea of democracy as mere “procedure” and contemporary pseudo-individualism are necessarily based. Outside society, however, the human being is neither beast nor God (as Aristotle said) but quite simply *is not* and cannot exist either physically or, what is more, psychically. Radically unfit for life, the “hopeful and dreadful monster” that is the newborn human baby must be humanized; and this process of humanization is its socialization, the labor of society mediated and instrumented by the *infans*’s immediate entourage. The being-society of society is the institutions and the social imaginary significations that these institutions embody and make exist in effective social actuality [*effectivité sociale*]. These are the significations that give a meaning – imaginary meaning, in the profound sense of the term, that is, spontaneous and unmotivated creation of humanity – to life, to activity, to choices, to the death of humans as well as to the world that they create and in which humans must live and die. The polarity is not that between individual and society, since the individual *is* society, a fragment at the same time as a miniature – or, better, a sort of hologram – of the social world. Rather, it is that between psyche and society. The psyche must somehow or other be tamed; it must accept a “reality” that is to begin with, and, in a sense, till the very end radically heterogeneous and alien to it. This “reality” and its acceptance are the work of the institution. The Greeks knew it; the moderns, in large part because of Christianity, have occulted this fact.

The institution – and the imaginary significations it bears and conveys – can exist only if it preserves itself, that is, only if it is fit enough to survive. The Darwinian tautology finds here another fertile ground of application. The institution preserves itself also by means of power – and this power exists, first of all, as a radical, always implicit, “infrapower.” You were born in Italy in 1954, in France in 1930, in the United States in 1945, in Greece in 1922. You did not decide that, but this pure fact will decide the main part of your existence: your native tongue, your religion, 99% of your thought (in the best of cases), your reasons for living and for accepting (or not accepting) to die. This is much more,

and indeed something quite other, than a mere “being-in-the-world” that has not been chosen (Heidegger’s *Geworfenheit*). That world is not one or *the* world; it is a social-historical world, fashioned by its institution and containing, in an indescribable fashion, innumerable transformed legacies [*transformés*] of previous history.

From birth, the human subject is caught in a social-historical field, is placed under the simultaneous grip of the collective instituting imaginary, instituted society, and history, whose provisional culmination is this institution itself. In the first place, society can do nothing other than produce the social individuals that conform to it and that in turn produce it. Even if one is born into a society riven by internal conflict, the terrain of such conflict, the stakes involved, and the options available are pre-given; even if one were to become a philosopher, it is *this* history of *this here* philosophy that will be the point of departure for one’s reflection, and not another. Here one is very much on the far side, or the near side, of all intention, will, maneuver, conspiracy, or predisposition of any assignable institution, law, group, or class.

Alongside—or “above”—this implicit infrapower, there always has been and there always will be an explicit power, instituted as such, with its particular arrangements, its definite functioning, the legitimate sanctions it can put into application.² The necessary existence of this power is the result of at least four key factors:

- the “presocial” world, as such, always threatens the meaning already instaurated by society;
- the psyche of each singular human being is not and can never be *completely* socialized and rendered exhaustively conformal to what institutions demand of it;
- other societies exist, and they pose a danger to the meaning already instaurated by the society in question;
- in its institutions and its imaginary significations, society always contains a push [*poussée*] toward the future, and the future excludes a prior and exhaustive codification (or a mechanization) of the decisions that are to be made.

For these reasons, there is a need for explicitly instituted instances or agencies that can make sanction-bearing decisions about what is to be done and not to be done, that can legislate, “execute” decisions, settle points of litigation, and govern. The first two functions can be (and, in most archaic societies, have been) buried beneath customary regulations, but the last two cannot. Finally, and above all, this explicit power is itself the instituted guarantee for the monopoly over legitimate significations in the society under consideration.

The political (le politique) may be defined as everything that concerns this explicit power. This includes the modes of access to explicit power, the appropriate ways of managing it, and so on.

This type of institution of society covers almost all of human history. Here we are talking about heteronomous societies, which certainly create their own institutions and significations, but they also occult this self-creation by imputing it to an extrasocial source – in any case, one that is external to the effective activity of the effectively existing collectivity: the ancestors, the heroes, the gods, God, the laws of history or those of the market. In these heteronomous societies, the institution of society takes place within a closure of meaning. All questions the society under consideration is capable of formulating can find a response within its imaginary significations, and those that cannot be formulated are not so much forbidden as mentally and psychically impossible for the members of that society.

This situation, as we know, has been shattered but twice in history – in ancient Greece and in Western Europe – and we are the inheritors of this break. It is what allows us to speak as we are now speaking. The rupture that has occurred expresses itself through the creation of *politics* and philosophy (or reflection). Politics puts into question the established institutions. Philosophy puts into question what Bacon called the *idola tribus*, the collectively accepted representations.

In these societies, the closure of meaning is broken or at least tends to be broken. This rupture – and the incessant activity of questioning that goes along with it – implies the rejection of any source of meaning other than the living activity of human beings. It therefore implies the rejection of all “authority” that would fail to render an account and provide reasons, that would not offer *de jure* justifications for the validity of its pronouncements. It follows from this, almost immediately, that there is:

- an obligation on the part of all to give an account of and reasons for their deeds and their words (this is what the Greeks called *logon didonai*);
- a rejection of preestablished “differences” or “alterities” (hierarchies) in individuals’ respective positions, therefore a questioning of all power flowing therefrom;
- an opening up of the question of what are the good (or best) institutions, insofar as these institutions depend on the conscious and explicit activity of the collectivity – therefore also an opening up of the question of justice.

It is easy to see that these consequences lead one to consider politics as a labor that concerns all members of the collectivity under consideration. This presupposes the equality of all and it aims at making such equality effectively actual. Therefore, it is also a labor aimed at transforming institutions in a democratic direction. We thus can define politics as explicit and lucid activity that concerns the instauration of desirable institutions and democracy as the regime of explicit and lucid self-institution, as far as is possible, of the social institutions that depend on explicit collective activity.

It is hardly necessary to add that this self-institution is a movement that does not stop, that it does not aim at a “perfect society” (a perfectly meaningless

expression) but, rather, at a society that is as free and as just as possible. It is this movement that I call the project of an autonomous society and that, if it is to succeed, has to establish a democratic society.

A prior question arises, one that actually has been posed in history: Why do we want, why ought we to want, a democratic regime? I shall not discuss this question but shall limit myself, instead, merely to observing that the raising of this question itself already implies that we have to (or ought to) be living in a regime in which all questions can be raised – and this is exactly what a democratic regime is.

But it is also immediately obvious that such an institution – one in which any question can be raised and in which no position, no status, is given or guaranteed in advance – defines democracy as a regime. I shall return to this point.

II

It has been objected that this view entails a substantive conception of citizens' happiness – and that, consequently, it inevitably leads to totalitarianism. This position is stated explicitly by Isaiah Berlin and implicitly by Rawls and Habermas in their arguments.³

But nothing in what we have just said makes any allusion to citizens' "happiness." The historical motivations behind these objections – from Saint-Just's famous "Happiness is a new idea in Europe" to the monstrous farce of Stalinist regimes which claimed that they were working for, and achieving, people's happiness ("Life has become better, Comrades. Life has become merrier," Stalin declared at the height of misery and terror in Russia) – are understandable. Nonetheless, these motivations do not of themselves justify adoption of the theoretical position; the latter appears as an almost epidermal reaction to a historical situation of colossal dimensions – the emergence of totalitarianism – which would require a much deeper analysis of the political question. The objective of politics is not happiness but freedom. Effective freedom (I am not discussing here "philosophical" freedom) is what I call *autonomy*. The autonomy of the collectivity, which can be achieved only through explicit self-institution and self-governance, is inconceivable without the effective autonomy of the individuals who make it up. Concrete society, the living and functioning one, is nothing other than the concrete, effective, "real" individuals of that society.

The inverse, however, is equally true: The autonomy of individuals is inconceivable and impossible without the autonomy of the collectivity. For, what does the autonomy of individuals signify, how is it possible, and what does it presuppose? How can one be free if one is placed of necessity under the law of society? Here is a first condition: One must have the effective possibility to participate in the formation of the law (of the institution). I can be free under the law only if I can say that this law is mine, only if I had the effective possibility to participate in its formation and its positing (even if my preferences did not prevail). The law

being necessarily universal in its content and, in a democracy, collective in its source (this is, in theory, not contested by the proceduralists), the result is that, in a democracy, the autonomy (the effective freedom) of all is and has to be a fundamental concern of each. (The tendency to “forget” this self-evident fact is one of the innumerable ways in which contemporary “individualism” tries to stack the deck.) For, the quality of the collectivity that decides on our fate is of vital import to us – otherwise, our own freedom becomes politically irrelevant, Stoic, or ascetic. I have a basic positive (and even egotistical) interest to live in a society that is closer to that of the *Symposium* than to that of *The Godfather* or of *Dallas*. In its effective realization, my own freedom is a function of the effective freedom of others – though this idea is certainly incomprehensible to a Cartesian or a Kantian.

No doubt, the deployment and realization of this kind of freedom presupposes certain specific institutional arrangements – including, certainly, some “formal” and “procedural” ones: individual rights (a “bill of rights”), legal guarantees (“due process,” *nullum crimen nulla poena sine lege*), the separation of powers, etc. But the liberties that result therefrom are strictly defensive in character. All these arrangements presuppose – and this is the near-general tacit postulate in what passes for modern political philosophy – that there is, facing the collectivity, an alien power that is unmovable, impenetrable, and, in its very essence, hostile and dangerous, whose potential must, to the extent that is possible, have limits set on it. This is but the tacit philosophy the English House of Commons maintained vis-à-vis the King, and it is the position explicitly articulated in the founding texts of the American Constitution. That, a few centuries later, the “political thinkers” of modernity still act psychically and intellectually as “your Excellency’s Most obedient Servant” (*Eu. Excellenz untertänig gehorsamster Diener*)⁴ will surprise only those who have never reflected on the strange relationship that exists between most intellectuals and the established powers.⁵

Freedom under law – autonomy – signifies participation in the positing of the law. It is tautologous to state that such participation achieves freedom only if it is equally possible for all, not in the letter of the law but in effective social actuality. The absurdity of opposing equality and liberty, the supposed opposition some people have been trying to drub into our ears for decades now, follows immediately from this tautology. Unless their meanings are taken in a totally specious way, the two notions imply each other.⁶ The equal effective possibility of participation requires that everyone has effectively been granted all the conditions for such participation. Clearly, the implications of this requirement are immense; they embrace a considerable portion of the overall institution of society, but the Archimedean point here is obviously *paideia*, in the deepest and most permanent sense of the term, to which I shall return.

It is therefore not possible to achieve even a “procedural democracy” that is not a fraud unless one intervenes deeply in the substantive organization of social life.

III

The ancient Greek tongue and the political practice of the Athenians offer us a precious – and, in my opinion, universally valid – distinction among three spheres of human activities that the overall institution of society must both separate and articulate: the *oikos*, the *agora*, and the *ekklēsia*. A free translation would be: the private sphere, the private/public sphere, and the (formally and in the strong sense) public sphere, identical to what I above called explicit power. I note in passing that this fundamental distinction is there on a factual level and in language but was not rendered explicit as such during the classical era, not even, except in part, by the classical thinker of democracy, Aristotle.

These spheres are clearly distinguished (and properly articulated) only under a democratic regime. Under a totalitarian regime, for example, the public sphere in principle absorbs everything. At the same time, this public sphere is in reality not at all public, for it has become the property of the totalitarian Apparatus that holds and exercises power. In principle, traditional absolute monarchies respected the independence of the private sphere – the *oikos* – and intervened only moderately in the private/public sphere – the *agora*. Paradoxically, today's pseudodemocracies in the West have in fact rendered the public sphere in large part private: the decisions that really count are those made in secret or behind the scenes (of the Government, the parliamentary system, and the party Apparatuses). A definition of democracy as good as any other is: It is the regime in which the public sphere becomes truly and effectively public – belongs to everyone, is effectively open to the participation of all.

The *oikos* – the family household, the private sphere – is the domain in which, formally and in principle, the political power neither can nor should intervene. As with all subjects in this domain, even this cannot and should not be taken absolutely: penal law prohibits assaults on the life or bodily integrity of the members of one's family; even under the most conservative governments, the education of children is made mandatory; and so on.

The *agora* – the marketplace and meeting point – is the domain in which individuals come together freely, discuss matters, contract with one another, publish and buy books, and so on. Here again, formally and in principle, the political power neither can nor should intervene – and here again, as in all cases, this cannot be taken as absolute. The law prescribes respect for private contracts, prohibits child labor, and so on. In fact, one could never stop enumerating the points on which and the arrangements by which the political power, even in the most "liberal" States (in the sense of "free-market" or "laissez-faire" "liberal capitalism"), intervenes in this domain (for example, the formulation of governmental budgets, which will be mentioned again below).

The *ekklēsia*, a term I use here metaphorically,⁷ is the site of the political power, the public/public domain. The political power includes powers, and these powers must be both separate and articulated. I have explained my position on this else-

where⁸ and I shall limit myself here to a few points that are of importance for the present discussion.

When the activity of the different branches of power are considered in the concrete, one can clearly see that in no domain can decisions be conceived and adopted without taking into account considerations of a substantial character. This holds both for legislation and for government, for the “execution” of decisions as well as for the judiciary.

Indeed, it is impossible to imagine a law – except, precisely, a procedural one, and even then ... – that does not touch on substantive questions. Even the prohibition of murder does not go without saying – as is shown by the many restrictions, exceptions, and qualifications that everywhere and always surround it. The same goes for that which relates to the “application” of the laws, whether it is a matter of the judiciary or of the “executive.”⁹ The judge cannot (and, in any case, should not) ever be a *Paragraphenautomat*, not only because there are always “holes in the law” (*Rechtslücken*) but especially because there is always a question of interpretation of the law and, at a deeper level, a question of equity.¹⁰ Interpretation, like equity, is inconceivable without recourse to and invocation of the “mind of legislator,” or his “intentions”¹¹ and the substantive values at which these intentions are supposed to aim. It is the same for administration, to the extent that the latter cannot simply “apply” laws and decrees without interpreting them. And it is, *par excellence*, the same for the Government. The governmental function is “arbitrary.” It takes place within the framework of the law and it is bound by the law (obviously, I am speaking here of what is *supposed* to be the case in Western “democratic” regimes), but in general it neither applies nor executes laws. The law (in general, a country’s Constitution) says that the Government must submit a budget proposal to the parliamentary branch every year and that the latter (which, in this case, shares a governmental and not a “legislative” function) must vote on it, as is or with amendments; but the law does not say, and could never say, what should be in this budget. Quite obviously, it is impossible to imagine a budget that would not be totally drenched, as much on the revenue side as on the expenditure side, in substantive decisions, that would not be inspired by objectives and “values” that it aims at achieving. More generally, we can say that all nontrivial governmental decisions concern and commit the future, in a sort of radical, and radically inevitable, obscurity. To the extent that society depends on them, these decisions tend to orient a society’s evolution in one direction in preference to another. How could they be made without having recourse, if only tacitly, to substantive options?

It might be objected: But all these explicit decisions (and notably legislative and governmental ones) could very well merely aim at preserving the present state of things – or at preserving society’s (non-“political”) freedom to give rise to and deploy whatever “substantive lifestyles” it might wish to adopt. However, this argument itself contains, be it only implicitly, a positive evaluation of the already existing forms and contents of social life – be they the legacy of times

immemorial or the product of society's present activity. To take the example most familiar to the present-day reader, extreme "liberalism" (in the Continental sense of a conservative "free-market" or "laissez-faire" ideology) boils down to a substantive affirmation that whatever the "mechanisms of the market," "free individual initiative," and so on produce is "good" or "the least bad thing possible," or else to the affirmation that no value judgment can be made on this matter. (The two affirmations, which are obviously contradictory, are simultaneously or successively maintained by such people as Friedrich von Hayek.) To say that no value judgment can be made about what society "spontaneously" produces leads to total historical nihilism and boils down, for example, to affirming that any regime (Stalinist, Nazi, or other) is as worthwhile as any other. Saying that what tradition or (this boils down to the same thing) society produces "spontaneously" is good or the least bad thing possible obviously obliges one to show, each time and with each specific example, in what respect and why this is so and therefore obliges one to enter into a substantive discussion.

As no one in his right mind would challenge these assertions, the duplicity of the procedural position becomes quite clear: it is not a matter of denying that decisions affecting questions of substance must in any case be made, whatever the type of regime under consideration, but of affirming that, in a "democratic" regime, the "form" or the "procedure" according to which these decisions are made alone really matters – or else that this "form" or "procedure" by itself identifies a regime as "democratic."

Let us grant that it is so. Still, every "procedure" must be applied – by human beings. And these humans have to be such that they could, should, and as a strict rule would apply this procedure according to its "spirit." What are these beings, and where do they come from? Only a metaphysical illusion – that of an individual-substance, preformed in its essential determinations, whose belonging to any definite social-historical environment would be as accidental as the color of its eyes – would enable one to duck this question. We are in the realm of effective politics, not in Habermasian "counterfactual" fictions, therefore one must postulate the effective existence of human atoms – ones already endowed not only with "rights," and so on, but with a perfect knowledge of legal arrangements (barring that, we would have to legitimate a division of labor, established once and for all, between "mere citizens" and judges, administrators, legislators, etc.) – that would tend on their own, ineluctably, and independently of all education or training, their singular histories, and so forth, to behave as juridico-political atoms. This fiction of *homo juridicus* is as ridiculous and inconsistent as that of *homo oeconomicus*, and the anthropological metaphysics presupposed by both is the same.

For the "procedural" view, humans (or a sufficient proportion of them) would each have to be a pure legal Understanding. Effective individuals, however, are something else entirely. And one is indeed obliged to take them as they are, always already fashioned by society, with their histories, their passions, their particular allegiances, commitments, and memberships of all sorts, such as the

social-historical process and the given institution of society have already fabricated them. In order for these effective individuals to be other than they are now, it would be necessary for this institution, too, to be other in substantial and substantive respects. Let us even suppose that a democracy, as complete, perfect, etc. as one might wish, might fall upon us from the heavens: this sort of democracy will not be able to endure for more than a few years if it does not engender individuals that correspond to it, ones that, first and foremost, are capable of making it function and reproducing it. There can be no democratic society without democratic *paideia*.

The procedural conception of democracy is, short of lapsing into incoherency, obliged to introduce surreptitiously – or culminate in – at least two *de facto* and simultaneous judgments of substance:

- that the effectively actual, given institutions of society are, such as they are, compatible with the functioning of “truly” democratic procedures;
- that the individuals in this society, such as they are fabricated by this society, can make the established procedures function in accordance with the “spirit” of those procedures and can defend them.

These judgements include multiple presuppositions and entail numerous consequences. I shall mention but two.

The first is that here again one encounters the fundamental question of equity, not in the substantive sense but, first of all, in its strictly logical sense, as already laid down by Plato and Aristotle.¹² There is always an inadequacy between the matter to be judged and the very form of the law – the former being necessarily concrete and singular, the latter abstract and universal. This inadequacy can be overcome only by the creative work of the judge who “puts herself in the place of the legislator” – which implies that she has recourse to considerations of a substantive nature. This necessarily goes beyond all proceduralism.

The second is that, for individuals to be capable of making democratic procedures function in accordance with their “spirit,” a large part of the labor of society and of its institutions must be directed toward engendering individuals that correspond to this definition – that is, women and men who are democratic even in the strictly procedural sense of the term. But then one has to face up to a dilemma: Either this education of individuals is dogmatic, authoritarian, heteronomous – and the alleged democracy then becomes the political equivalent of a religious ritual – or the individuals who are to “apply the procedures” (e.g. voting, legislating, execution of laws, governance) have been educated in a critical manner. In the latter case, the institution of society must endow critical thinking as such with positive value – and then the Pandora’s box of putting existing institutions into question is opened up and democracy again becomes society’s movement of self-institution – that is to say, a new type of regime in the full sense of the term.

The journalists, as well as some political philosophers who seem completely unaware of the long disputes over the “philosophy of right” during the last two centuries, constantly talk to us about the “State of right.” If, however, the “State of right” (*Rechtsstaat*) is something other than a “State of law” (*Gesetzstaat*),¹³ it is so only insofar as the former goes beyond mere conformity with “procedures” – that is, only insofar as the question of justice is posed and affects even the legal rules that have already been laid down. But the question of justice becomes the question of politics as soon as the institution of society has ceased to be sacred or based on tradition. Appeals to the “rule of law” thenceforth can serve only to dodge the questions: Which law? Why this law and not another? Even the “formally democratic” response – the law is law because it is the decision of the greatest number (I leave aside here the question of whether it is really so) – cannot close the question: And why, then, does it have to be so? If the justification for the rule of the majority is strictly procedural in character – for example, the fact that all discussions must at some point come to an end – then any old rule would enjoy the same amount of justification: we could decide by lot, for example. Majority rule can be justified only if one grants equal value, in the domain of the contingent and the probable, to the *doxai* of free individuals.¹⁴ But if this equality of value among opinions is not to remain a “counterfactual principle,” some sort of pseudotranscendental gadget, then the permanent labor of the institution of society must be to render individuals such that one might reasonably postulate that their opinions all have the same weight in the political domain. Once again, the question of *paideia* proves ineliminable.

The idea that one might separate “positive right” and its procedures from substantive values is but a mirage. The idea that a democratic regime could receive history “ready made” from democratic individuals who would make it function is just as much so. Such individuals can be formed only in and through a democratic *paideia*, which does not grow up like a plant but instead has to be one of the main objects of a society’s political concerns.

Democratic procedures comprise one – certainly important, but only one – part of a democratic regime. And these procedures must be truly democratic in their spirit. In the first regime that, despite everything, might be called democratic – that is, the Athenian regime – these procedures were instituted not as a mere “means” but as a moment in the embodiment and facilitation of the processes that brought that regime into being. Rotation in office, sortition, decision-making after deliberation by the entire body politic, elections, and popular courts did not rest solely on a postulate that everyone has an equal capacity to assume public responsibilities: these procedures were themselves pieces of a political educational process, of an active *paideia*, which aimed at exercising – and, therefore, at developing in all – the corresponding abilities and, thereby, at rendering the postulate of political equality as close to the effective reality of that society as possible.

IV

The roots of these confusions certainly are not solely “ideal” in origin – in the sense that they would be sought essentially or exclusively in “false ideas” – any more than they are merely “material” – in the sense that they would express interests, drives, social positions, and so on, whether conscious or not. Their roots plunge deep into the social-historical imaginary of the modern “political” period, already into its prehistory but especially into its basically antinomical character. It is not possible to undertake here an elucidation of these roots. I shall limit myself to picking out a few salient points among the constellation of ideas in and through which this imaginary has expressed itself in the political sphere.

I shall begin *in media res*. Marxism (and this goes back, whatever one might say, to Marx himself) judged “bourgeois” rights and liberties in light of the following standard of criticism: that they were merely “formal” and were established more or less in the interest of capitalism. This critical standard was faulty in multiple ways.

First of all, these rights and liberties did not arise with capitalism, nor were they granted by the latter. Demanded at the outset by the protobourgeoisie of what became the free towns, they began to be wrested, conquered, imposed as early as the tenth century through people’s centuries-old struggles (in which an important role was played not only by underprivileged strata but also very often by the petit bourgeoisie). Where they were merely imported, for example, they have almost always been lackluster as well as fragile (as in the countries of Latin America or Japan). Next, it is not these rights and liberties that correspond to the “spirit” of capitalism: the latter demands, rather, the Taylorist “one best way” or the “iron cage” of Max Weber. The idea that they might be the political counterpart of and presupposition for competition in the economic market is equally false; the latter is only one moment, neither spontaneous (see Polanyi) nor permanent, of capitalism. When we consider the inner tendency of capitalism, we see that capitalism culminates in monopoly, oligopoly, or alliances among capitalists. Nor are they a presupposition for capitalism’s development (see again Japan or the Asian “dragons”).

Finally, and above all, they are in no way “formal” in character: they correspond to vitally necessary traits of every democratic regime. But they are *partial* and, as indicated at the beginning of this text, essentially defensive in character. Even Isaiah Berlin’s qualification that they are “negative” is inadequate. The right to assemble, to seek redress or grievances, to publish a newspaper or a book is not “negative”: the exercise of such rights comprises one component of social and political life and can have, and even necessarily does have, important effects on the latter. It is something else if their exercise might be hindered by effectively actual conditions or, as today in the rich countries, rendered more or less futile by the general process of political desertification. As a matter of fact, a major part of the struggle for democracy is aimed at instaurating real conditions that would

permit everyone effectively to exercise these rights. Reciprocally, this fallacious Marxist denunciation of the so-called formal character of “bourgeois” rights and liberties has had catastrophic effects, serving as a springboard for the instauration of Leninist totalitarianism and as a cover for its continuation under Stalinism.

These liberties and these rights are therefore not “formal” in character: they are partial and, in effective social reality, essentially defensive. For the same reason, they are not “negative.” Isaiah Berlin’s expression belongs within the context and social-historical legacy to which I alluded at the outset. It corresponds to the underlying, near-permanent attitude toward power of European (and American) societies and populations (and certainly not only them, but these are the ones we are talking about here). When the millennial imaginary of kingship by divine right was finally, at least partially, shattered (this imaginary was ratified and reinforced by Christianity, with Paul’s “There is no power but of God”), the representation of power as something other than society, opposite it and opposed to it, nevertheless continued. Power is “them” (“us-and-them,” as the English continue to say); it is in principle hostile; and it is a matter of keeping it within strict limits and of defending oneself against it. It was only during revolutionary periods, in the former Thirteen Colonies or in France, that phrases such as “We the people” or the term *Nation* acquired some political meaning, that sovereignty was declared to belong to the nation – in a phrase that was, moreover, rapidly emptied of its content by means of “representation.” In this context, it is understandable that rights and liberties have come to be considered as a means of defense against an all-powerful and essentially alien State.

Isaiah Berlin contrasted these “negative” liberties, the sole ones acceptable to him, with an idea of “positive” liberty that is closely related to the ancient (Greek) democratic conception that all citizens are to participate in power. According to him, the latter kind of liberty is potentially totalitarian, since it would presuppose the imposition of a positive and collectively (politically) determined conception of the common good, or of what it is to live well. The fault lines in this argument are multiple. The effective (rather than “positive”) liberty of all via everyone’s participation in power implies no more of a conception of the common good than any legislative, governmental, or even judicial decision made by “representatives,” cabinet ministers, or professional judges. As was stated earlier, there can never be a system of right, for example, that would be completely (or even essentially) *Wertfrei*, neutral as to its values. The recognition of a free sphere of “private activity” – whatever its boundaries might be – itself proceeds from the affirmation of a substantive value claiming universal validity: It is good for everyone that individuals move freely within spheres of private activity that are recognized and guaranteed by law. The delimitation of these spheres and the content of eventual sanctions against others who would transgress them must necessarily have recourse to something other than a formal conception of law, as could easily be shown with any system of positive right. To take only one example, it is impossible to define a yardstick of seriousness for misdemeanors and criminal penalties

without making “comparisons” among the values of life, liberty (prison), money, etc.

Implicit in Berlin’s argument is another confusion: that between the common good and happiness. The end of politics is not happiness, which can only be a private matter;¹⁵ it is freedom, or individual and collective autonomy. Nevertheless, it cannot *solely* be autonomy, for then one would lapse into Kantian formalism and be open to all the justified criticisms levelled against Kantian formalism since it was first formulated. As I have already written elsewhere,¹⁶ we want freedom both for itself and in order to do something with it, in order to be able to do things. Now, as for a vast portion of these things, either we cannot do them all alone or they depend to a high degree on the overall institution of society – and, generally, both simultaneously. This necessarily implies a conception – be it only minimal – of the common good.

Certainly, as I recalled at the outset, Berlin did not create this confusion himself; he simply shared it. It comes from the distant past, and it is thus all the more necessary to dissipate it. The distinction to be reestablished is ancient in vintage (and for this reason it is all the more inexcusable that modern theorists have forgotten it). This is the distinction between happiness, a strictly private affair, and the common good (or the good life), which is unthinkable without recourse to the public domain and even the public/public domain (power). It is, in different terms – ones which, however, will enrich the discussion – that between *eudaimonia*, felicity, which is not *eph’hēmin*, not dependent on us, and *eu zēin*, living well, which in great part depends on us, individually and collectively (for, it depends both on our acts and on that which and those who surround us – and, at a more abstract and more profound level, on the institutions of society). The two distinctions can be contracted into one by stating that the realization of the common good is the condition for living well.

And yet, who determines or defines what it is to live well? Perhaps one of the principal reasons for the confusion surrounding this question is that philosophy has claimed it can provide this determination or definition. It has done so because the position of thinkers of politics has most often been held by philosophers, and they, by profession, would like to determine once and for all both “happiness” and a “common good,” and also, if possible, to make them coincide. Within the framework of inherited thought, this determination could not help but, in effect, be universal, valid for everyone in all times and places, and, in the same stroke, established somehow or other *a priori*. This is the root of the “error” committed by most philosophers who have written on politics and of the symmetrical error committed by others who, in order to avoid the absurd consequences of this solution (as when Plato, for example, legislates which musical modes are permissible or prohibited for every “good” society) have come to reject the question itself, abandoning it to the free will of each.

No philosophy can define for everyone what happiness is and, above all, try to impose it through political decisions. Happiness belongs to the private sphere and

to the private/public sphere. It does not belong to the public/public sphere as such. Democracy, as regime of freedom, certainly excludes any sort of “happiness” that could be rendered, in itself or in its “means,” politically obligatory. Yet, even more than this can be said: No philosophy can define at any moment a substantive “common good” – and no politics can wait for philosophy to define such a common good before acting.¹⁷

Nonetheless, the questions confronting the public/public sphere (confronting legislation and government) cannot even be discussed without a view about the common good. The common good both is a condition for individual happiness and, beyond that, pertains to the works [*les œuvres*] and the enterprises that society wants to see achieved, happiness aside.

This does not concern the democratic regime alone. Ontological analysis shows that no society can exist without a more or less certain definition of shared substantive values, common social goods (the “public goods” of economists constitute only a portion thereof). These values make up an essential part of the social imaginary significations as they are each time instituted. They define the push of each society; they provide norms and criteria that are not formally instituted (for example, the Greeks distinguished in this way between *dikaion* and *kalon*); finally, they underlie the explicit institutional labor of a society. A political regime cannot be totally agnostic when it comes to values (or morals, or ethics). For example, law cannot help but express a common (or dominant and, somehow or other, socially accepted) conception about the “moral minimum” implied by life in society.

But these values and this morality are a collective-anonymous and “spontaneous” creation. They can be modified under the influence of reflective and deliberate action – but the latter must reach other strata of social-historical being than those concerned with explicit political action. In any event, the question of the common good belongs to the domain of social-historical making/doing [*faire*], not to theory. The substantial conception of the common good is created, each time, social-historically – and it is this conception, obviously, that stands behind all law and all procedure. This does not lead us into mere “relativism” if we live in a democratic regime, where questioning effectively remains open on a permanent basis – which presupposes the social creation of individuals who are effectively capable of questioning themselves. We rediscover here at least one component of the democratic common good, which is both substantive and nonrelative: The city must do everything possible to aid citizens in becoming effectively autonomous. This is, first of all, a condition for its existence qua democratic city: a city is made up of citizens, and a citizen is someone who is “capable of governing and being governed,” as Aristotle said. But this is also, as has already been said, a positive condition for each person to live well, this living well depending on the “quality” of the others. And the achievement of this objective – aiding individuals to become autonomous, or *paideia* in the strongest and most profound meaning of the term – is impossible without substantive political

decisions (which, moreover, must be made in every type of regime and in any event).

Democracy as a regime is therefore the regime that tries to achieve, as far as it possibly can, both individual and collective autonomy and the common good such as it is conceived by the collectivity concerned in each particular case.

V

The singular human being as absorbed in “its” collectivity – where, obviously, it finds itself only by chance (the chance of its birth in such and such a place at such and such a time) – and this same being as detached from every collectivity, contemplating society at a distance and trying in an illusory way to deal with society both as an artifact and as a necessary evil: these are but two outcomes of the same process of misrecognition, which occurs on two levels. It takes place:

- as misrecognition of what both the singular human being and society are. This is what is shown by an analysis of the human being’s humanization qua its socialization and of the “embodiment”-materialization of the social in the individual;
- as misrecognition of what politics is qua ontological creation in general – the creation of a type of being that, be it only in part, explicitly gives itself the laws of its own existence – and, at the same time, qua project of individual and collective autonomy.

Democratic politics is, on the factual level, the kind of activity that endeavors to reduce, as much as it possibly can, the contingent character of our social-historical existence as far as its substantive determinations are concerned. Obviously, neither democratic politics on the factual level nor philosophy on the ideal level can eliminate what, from the standpoint of the singular human being, and even of humanity in general, appears as the radical accident (this is what Heidegger was aiming at in part, though he bizarrely confined it to the singular human being, with the term *Geworfenheit*, dereliction or thrownness) that makes there be being, that makes this being manifest itself as a world, that makes there be life in this world, a human species in this life, such and such a social-historical formation in this species, and that within this formation, at such and such a moment and at such and such a place, emerging from one womb among millions of others, makes this tiny bit of screaming flesh, and not another one, appear. But both of these, democratic politics as well as philosophy, praxis as well as thought can aid us in limiting – or, better, in transforming – through free action the enormous portion of contingency that determines our life. It would be illusory to say that they aid us in “freely assuming” circumstances that we never have, and never could have, chosen. The very fact that a philosopher might think and write that freedom is the consciousness of necessity (independent of all substantive considerations as to the

meaning of this statement) is conditioned by innumerable myriads of other contingent facts. The mere consciousness of the infinite mixture of contingency and necessity – of necessary contingency and of ultimately contingent necessity – that conditions what we are, what we do, and what we think is far from being what freedom truly is. But it is a condition for this freedom, a requisite condition for lucidly undertaking actions that are capable of leading us to effective autonomy on the individual as well as on the collective level.

– Translated from the French by David Ames Curtis

NOTES

*“La Démocratie comme procédure et comme régime” was originally presented as a lecture in Rome on February 3, 1994, and then at Columbia University on April 25, 1995. The written version of the French text appeared in my new book, *La Montée de l’insignifiance: Les Carrefours du labyrinthe IV* (Paris: Seuil, 1996). Other texts from this book will soon appear in *World in Fragments* (Stanford), *The Castoriadis Reader* (Blackwell), and *Drunken Boat 3* (1997).

1. See my text, “Power, Politics, Autonomy” (1988), first published in *Zwischenbetrachtungen Im Prozess der Aufklärung: Jürgen Habermas zum 60 Geburtstag* (Frankfurt: Suhrkamp, 1989) and reprinted in my *Philosophy, Politics, Autonomy*, ed. David Ames Curtis (New York: Oxford University Press, 1991).

2. Legitimate sanctions in relation to positive right, not in the absolute.

3. For Habermas, see his recent “Three Normative Models of Democracy,” *Constellations*, 1:1 (April 1994): 1–10.

4. This appears as the closing of Kant’s Dedication to his *Critique of Pure Reason*, dated at Königsberg March 29, 1781, and addressed to the Royal Minister of the State of Prussia, Freiherr (Baron) Von Zedlitz.

5. See my text, “Intellectuals and History” (1987), now in *Philosophy, Politics, Autonomy*, 3–12.

6. See my text, “The Nature and Value of Equality” (1981), *ibid.*, 124–42.

7. I use this term symbolically (and not as an abuse of language). The Athenian Assembly did not exercise judicial power and only supervised the “executive” (in the sense I give here to this term, i.e., administration).

8. See my text, “Done and to Be Done” (1989), forthcoming in *The Castoriadis Reader*.

9. What is named the “executive” in modern philosophical and constitutional language is in fact divided in two: governmental power (or *function*) and administrative power (or *function*). The “Government,” *qua* government, does not “execute” laws; in the main, it *acts* (governs) *within the framework* of the laws. To the extent that it cannot fully be “mechanized,” administration, too, cannot escape questions of interpretation, such as those mentioned later in the text.

10. See my analysis of Aristotle’s ideas on this subject in “Value, Equality, Justice, Politics: From Marx to Aristotle and from Aristotle to Us” (1975), now in *Crossroads in the Labyrinth*, trans. Martin H. Ryle and Kate Soper (Brighton, England: Harvester; and Cambridge, Massachusetts: MIT Press, 1984), esp. 285–320.

11. It is obviously not a matter of “historically documented” intentions but of the necessary – and problematic – insertion of every particular clause into the overall legal system, which in principle is evolving continually.

12. See my “Value, Equality, Justice, Politics.”

13. For many long centuries before the French Revolution, the monarchy, whether absolute or “enlightened,” had achieved a “State of law” in most countries of Western Europe. “There are judges in Potsdam,” replied the Prussian miller to Frederick the Great.

14. This is pretty much how Aristotle justified it in *The Constitution of the Athenians* 41.

15. See the section entitled “Subjective Roots of the Revolutionary Project” in the first part

(1964–65) of my book *The Imaginary Institution of Society* (1975), trans. Kathleen Blamey (Oxford, England: Polity Press; and Cambridge, Massachusetts: MIT Press, 1987), esp. 91–92. [Translator’s Note: This and some other sections from *The Imaginary Institution of Society* will be reprinted in the forthcoming *Castoriadis Reader*. *The Imaginary Institution of Society* will soon be issued in paperback.]

16. See my text, “The Greek *Polis* and the Creation of Democracy” (1983), in *Philosophy, Politics, Autonomy*, in particular pp. 106–14. [Translator’s Note: This text will appear in abridged form in the forthcoming *Castoriadis Reader*.]

17. It would be difficult, certainly, for a philosopher to maintain that a society in which philosophy would be impossible is, in his view, worth as much as another one in which it is practiced. But, barring an additional (and long) elucidation of the content of the term *philosophy*, this does not define for us a class of societies. There was (at least a certain kind of) philosophy in India and in China – not to mention Islamic countries and medieval Europe. It does not follow from this that a caste society or one ruled by mandarins is as politically valid as a democratic society.