

“The right to have social rights”
Hannah Arendt and the lost treasure of corporative constitutionalism
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Edouard Delruelle
University of Liege, Belgium
Materiality of Politics/Department of Philosophy

The title of this article is a paradoxical reference to Hannah Arendt's famous phrase “the right to have rights” (Arendt, 1971, p.296). Paradoxical, since social rights, as we understand them today, are foreign to Arendt's thinking, and the “social question” in general is the object of a violent foreclosure in her work, as famous as the formula “the right to have rights”. However, I would like to show that the expression “the right to have *social* rights” is not as far to Arendt's thought as one might expect, and that it perhaps gives the true meaning of any “right to have rights”.

Arendt's reflections on the “perplexities of the Rights of Man” (Arendt, 1971, p.290) were provoked, as we know, by the situation of stateless people and refugees during the interwar period. This situation (to which the current situation of migrants can be compared without being confused (Lacroix, 2015, p.79) leads to a tragic paradox. In principle, writes Arendt, “*if a human being loses his political status, he should, according to the implication of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided*”. But “actually,” she continues, *the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for the other people to treat him as a fellow-man*” (p.300)ⁱ. Historical experience shows that the loss of national rights leads *de facto* to the loss of human rights.

It's a gross misunderstanding to attribute a “nationalist” thesis to Arendt, as if she wanted to mock the naive universalism of Human Rights and elevate the Nation-State as the exclusive guardian of the rights of individuals. The point, of course, is quite different. Arendt criticizes the way in which the Declaration of 1789 subsumes human rights under national sovereignty. The core of the problem is that “*the same essential rights were at once claimed as the inalienable heritage of all human beings and the specific heritage of specific nations*”, in other words that “*the same nation was at once declared to be subject (...) to rights of Man and sovereign (...) acknowledging nothing superior to itself*” (Arendt, 1951, p.230). This inextricable and contradictory nexus between human rights and national belonging meant that « “human rights were protected and enforced only as

national rights» (Arendt, 1971, p.230), thus relegating stateless people and refugees into the “lawlessness”.

Arendt derives from this the consequence that the first right that should be recognized for human beings, the one that conditions all others, is precisely the “right to have rights”, the right « *to live in a framework where one is judged by one’s actions and opinions*”, “*a right to belong to some kind of organized community*” (Arendt, 1971, p.296-7). For Arendt, citizens’ rights are not contingent rights subordinated to “natural and imprescriptible” human rights; on the contrary, the right to citizenship is the condition for the effectiveness of human rights. Étienne Balibar has named “Arendt’s Theorem” the proposition that results from this primacy of citizenship: “*rights are not properties that individuals possess for their own sake, but qualities that individuals confer on one another, as they institute a common world*” (Balibar, 2012, p.209). The key point of this “theorem” is that there are no human rights without *reciprocity of rights*: the right to belonging to a political community induces the “*fundamental political right to demand or claim one’s rights*”, and vice versa (Balibar, 2012, p.209). The right to have rights is therefore neither a *natural* right deriving from the simple fact of being human, nor a *positive* right conferred by some instituted power, but a right that is both “*absolute and contingent*”, says Balibar; a right which becomes enacted whenever humans *bind themselves* politically to one another, as in the practice of civil disobedience, which is, in Arendt’s own words, “*nothing but the latest form of voluntary association*” (Arendt, 1972, p.96).

Arendt leaves open the question of which civic “framework”, which “category of political community” could honor, better than the nation-state, this right to have rights. Commentators legitimately look for the answer (in Arendt’s later texts, or through their own reflections) on the side of a *cosmopolitics*ⁱⁱ. It is another way of reflection that I would like to explore. I’d like to examine the idea of rights as “*qualities that individuals confer on one another*”. My hypothesis is that this mutuality of rights leads us to think political rights as social rights, and vice versa. I would like to develop this hypothesis in three steps: (1) Arendt’s idea of “*civil body politic*” in *On Revolution* links up with an underground political tradition, which I call “*corporative constitutionalism*”ⁱⁱⁱ, distinct from both *liberal* constitutionalism (Locke) and *republican* constitutionalism (Rousseau). According to this tradition, citizens activate their right to have rights by concluding *social* pacts of solidarity and cooperation, and these pacts aggregate with one another in a *federative* form; (2) Arendt, obsessed by the experience of “councils”, fails to see that, from the 19th century onwards, “intermediary bodies” (unions, associations, cooperatives, etc.) are the true heirs of these ‘civil bodies politic’; (3) despite the anthropological dichotomy she establishes between the social and the political, Arendt’s thought, revisited through the prism of the “right to have social rights”, remains relevant since it invites us to *politicize* social rights (i.e., not to reduce them to social protections conferred “from above” by the State).

On Revolution (Arendt, 1965) is Arendt's closest approach to the right to social rights as I understand it. The hypothesis may seem disconcerting, since the entire work is built around a clear-cut opposition between the French Revolution, which the "social question" was supposed to have driven to "disaster", and the American Revolution, whose "success" (Arendt, 1965, p.56) is said to be due to its authentically political aim: "*liberty*" understood as "*participation in public affairs, or admission to the public realm*" (1965, p.56). Arendt has been the subject of numerous criticisms. But however historiographically relevant they may be (Hobsbawm 1965), they are misleading, since Arendt's aim is not to compare two historical experiences, but to contrast two "ideal-types": on the one hand, a revolution « *determined by the exigencies of liberation not from tyranny but from necessity, and it was actuated by -the limitless immensity of both the people's misery and the pity this misery inspired* », and on the other hand a revolution « *remained committed to the foundation of freedom and the establishment of lasting institutions* » (Arendt 1965 p.92)^{iv}. However, it would be a mistake to cast Arendt as an advocate of American "liberal" values against some sort of "socialist" Leviathan. In her view, the most revolutionary achievement of the American Founding Fathers was not the establishment of a constitutional government limited by civil rights^v, but the creation of genuine areas for citizen participation. Moreover, she criticizes Americans for quickly "forgetting" the "revolutionary *spirit*" of the *res publica* in favor of the private enjoyment of civil liberties and the quest for individual well-being (1965, p.221).

A close reading of Arendt's text reveals a deeper dichotomy beneath the surface ideal-typical opposition between *social* revolution and *political* revolution, this time opposing a *republican* policy^{vi} based on citizen participation to a *liberal* policy of defending individual rights. *On Revolution* proposes a narrative of political modernity that was subsequently developed and completed, from the 1970s onwards, by the "Cambridge School" (Pocock 1975; Skinner 1978; Skinner 1998; Dunn, 2012) and the "neo-republican" current inspired by it (Pettit 1997; Viroli 1999; Spitz 1995). Like Arendt, and probably inspired by her (Siegelberg 2013), John G.A. Pocock and Quentin Skinner (to name but two pioneers of this current) have shown that it is a mistake to equate modern political history with the unilateral rise of liberal discourse, when this history was also traversed by a specific republican discourse. Historically anterior to the first, republicanism never ceased to compete with liberal ideology, before ceding hegemony to it. For both Pocock and Arendt, the American Revolution was the epicenter of this ideological clash (in the sense epitomized by the confrontation between Hamilton and Jefferson). There are thus two distinct forms of modern constitutionalism: on the one hand, *liberal* constitutionalism (of which Locke and Montesquieu are the undisputed champions), which advocates "representative government" and assigns to the State the function of protecting individual rights (in particular, private property) ; on the other hand,

the Machiavellian-inspired *republican* constitutionalism cultivated by Harrington, Rousseau and Paine, among others, which advocates what we might call “civic government” (i.e. the greatest possible direct participation of citizens in public affairs) and assigns to political institutions the function of preserving the common good, above and beyond particular interests^{vii}.

The “social question” has a paradoxical feedback effect on both the liberal and republican paradigms. Republicanism, by asserting the primacy of “virtue” over “commerce” (Pocock 1985), of the common good over individual interests, is reputed to have devised a more “progressive” policy of equal opportunity and social justice than that of the liberals. But we're a long way from the “social question” as Arendt understood it. Republicanism in no way calls into question the very institution of property, nor does it make the social condition of the subaltern classes (working poors, unemployed, servants, etc.) a properly political issue^{viii}. Republicans and liberals (say, Locke and Rousseau) oppose each other on the question of property, but from another angle: for Rousseau, property is the material *condition* that makes healthy participation in civic life possible, whereas Locke makes private property (and the accumulation of wealth) the very *purpose* of political institutions. This inversion is precisely at the root of the “rise of the social” that Arendt deplores in both *On Revolution* and *Human Condition*: the society set up by the liberals, she laments, is “*an organization of property-owners who, instead of claiming access to the public realm because of their wealth, demanded protection from it for the accumulation of more wealth* » (Arendt, 1958, p.68). In other words, the “social question”, as it dominated the French Revolution and the 19th century, was not anticipated by the republican normative frameworks of equality and social justice, but resulted from the “rise of the social”, itself inseparable from the emergence of the market economy advocated by liberals.

But above all, neither liberalism nor republicanism, at least in their “pure” forms (Locke and Rousseau), are able to conceive (social) rights as qualities that individuals spontaneously confer on one another. For both Locke and Rousseau adhere to the idea of *sovereignty* as a expression of the will of a unified political agent. The existence of a sovereign in any case neutralizes any right to have rights, and hence any dynamic of mutualization of rights. Whether the sovereign is, as in Locke, the *representative* instituted by the people, or, as in Rousseau, the *people* themselves, he is necessarily conceived as an ultimate, infallible and, above all, undivided power. It will be objected that this sovereign results from a “social contract” which has all the appearances of an act of mutualization of rights. But this overlooks the fact that, by concluding this original contract, individuals in reality renounce any right to have rights, any power to confer rights on one another that would compete the state's “monopoly of legitimate violence”. To put it another way, the challenge of this necessarily *unique* contract is to prevent the possibility of there being several [1]. Sovereignty, even when transferred from the king to

the people, thus rules out any idea of a “mixed constitution” (in other words, any idea of a plurality of poles of power and sources of normativity within the same political space), just as it precludes any “intermediary bodies” that might arise between the state and individuals.

My hypothesis is that, alongside the two dominant paradigms of *liberal* constitutionalism (which advocates “representative” government) and *republican* constitutionalism (which advocates “civic” government), it is possible to identify a third, minor and underground line of political thought, which I call *corporative* constitutionalism. The normative core of this third paradigm, buried but still active, rests precisely on the plurality of social pacts, the mixed constitution and intermediary bodies; and it leads to a “federative” form of government. This minor line runs from Johannes Althusius (17th century) to Otto von Guericke (19th century) and Hermann Heller (20th century). But it is also an underground line that has never ceased to mingle with the two dominant paradigms, liberalism and republicanism; later, it would inspire, among others, the socialism of P-J. Proudhon in France, or Hermann Heller in Germany. Proudhon in France, or Heller in Germany. It would later inspire, among others, the socialism of P-J. Proudhon in France, or H. Laski and G.D.H Cole in England, or G. Gurvitch's theory of social law. I would like to (1) briefly outline the original normative core of this corporative constitutionalism, before (2) showing that in many respects Arendt's “social” thought is close to it, even if in other respects it diverges from it decisively.

Let's take a brief look at the political thought of Johannes Althusius. Althusius was a Calvinist jurist at the turn of the 16th and 17th centuries, a tireless polemicist on the theological and political fronts, who was also a political player as Syndic of the city of Emden - a German port city bordering the Netherlands (which was then in the midst of a war of independence against Spain), a city whose interests and political autonomy Althusius was charged with protecting against feudal and imperial power. His major work, *Politica* (first published in 1604, second in 1610) (Althusius 1995) has been eclipsed in the history of modern political thought by the two sovereignty “manifestos” of Bodin's *Six Books of the Republic* (1576) (target of Althusius's criticism) and later Hobbes's *Leviathan* (1651).

What are the major theses of this marginalized political thought ? ^{ix}

- 1) Individuals, who Althusius calls “*symbiotes*” to emphasize their ontologically social character, spontaneously bind themselves to one another within “*consociations*” (*consociationes*), which are interest groupings that are either private (families, corporations, associations, etc.) or public (communes, cities, provinces, etc.). Consociations are legal entities. Through them, men confer rights on one another, in the logic of reciprocity inherent in the right to have rights.

- 2) The highest political consociation is the *Republic*, which is not a union of individuals, but of consociations that delegate to it the powers they cannot assume on their own, while retaining those they need for their autonomy (in accordance with the principle of *subsidiarity*). This is why I use the term “corporative constitutionalism”^x: the Republic is a body politic generated by the integration of all the consociations of a territory. These consociations thus act as veritable constituent bodies for the Republic.
- 3) This corporative constitution is a *mixed* one, excluding any centralized sovereign power. There is a “supreme *magistrate*” at the top, but he is elected by a college of *ephors* (councilors, guardians)^{xi}. Their task is to control him and dismiss him if he does not fulfill his mission correctly, especially if he abuses his power. To reiterate, power is not concentrated in a single body, but spread over the entire social body, and exercised at the top in a two-headed system.
- 4) In a single movement, the social body is constituted “from below”, and resistance to oppression is organized on its basis. The reciprocity of the rights that individuals recognize in each other is the very source of the vigilance exercised by each constituent body towards the constituted bodies above. In the case of tyrannical drift of power, Althusius recognizes a passive right of resistance for citizens, and an active right of resistance for magistrates. Here is a political schema that combines the experiment of solidarity with that of emancipation: the oppressed liberate themselves from tyranny in the same way as they bind themselves together through a founding pact. For Calvinists of the time, this liberation schema was highly attractive, as it was based on the biblical model of the “Hebrew Republic”^{xii}. We can understand why, in the context of the confrontation between German and Dutch Protestant cities against Catholic absolutism, Althusius may have been assimilated to the group of “monarchomaques”.

Following Céline Jouin (Jouin, 2024), I believe that Althusius initiated a *minor* “corporative-federative” line of modern political theory, which was rapidly supplanted by the theory of sovereignty (Hobbes) in its liberal (Locke) and republican (Rousseau) variants. But this minor line remained actively underground. It has not ceased to intermingle with liberal and republican constitutionalism. I will mention just two examples of this hybridization.

The first is Spinoza, who claims explicitly to be a Machiavellian republican, but in fact evolves in the same liberal Calvinist environment as Althusius. Spinoza recognizes the natural right of individuals to associate so as to pool their power (and not to surrender it to some sovereign power, as in Hobbes) (Spinoza, II, §13-16). Spinoza is therefore not a social contract theorist, but contrary to A. Negri's assertion (Negri 1994), p.227^{xiii}, he does not reject any idea of legal mediation. Individuals do bind themselves together through a plurality of historically contingent political pacts. Furthermore, Spinoza does not advocate a specific political regime, but rather that power (whether monarchical or

aristocratic) should be subject to the democratic vigilance of the “multitude”, through a “bottom-up” network of assemblies and regulatory organs.

The second example is Montesquieu, who was a liberal theorist of representative government, but for whom “intermediate powers” and “political bodies” play an active role as counter-powers to the monarchical institution, which is inevitable in vast territorial states (Montesquieu, 1995, II, 4). But we should also reconsider, through the prism of corporative constitutionalism, the developments Montesquieu dedicates to “federative republics” and the distribution of powers between the states that compose them (Montesquieu, IX) (Terrel, 2019).

In 1880, the German jurist Otto von Gierke revived Althusius in a work that is also a comprehensive reconstruction of modern political theory. The fundamental concept of Gierke's theory of law is *Genossenschaft* (association, corporation)^{xiv} as opposed to the principle of *Herrschaft* (domination) that drives the Roman-Canonical sovereignty tradition. Against this hegemonic tradition based on the dichotomy between the centralized State and individuals, public and private law, Gierke seeks to demonstrate the primacy of social law as self-engendering of social and political bodies “from below”. This process of mutualization identifies social law with a *corporative* law that is neither a law of *subordination* to the sovereign State nor a law of simple *coordination* between individuals, but, as G. Gurvitch will see very well, a right of *integration* that engenders a political body without transforming it into a “whole” separated from its members (Gurvitch 1932)^{xv}

Although Gierke's writings have aged, and he himself was rather conservative and nationalist, his influence was decisive, as I've already mentioned, on the English *Guid-socialists* (Cole, Laski) and above all on German social- democrat jurists such as Hugo Sinzheimer or Herman Heller (the conceptual of the social state of law - *sozialer Rechtsstaat*) (Llanque 2019; Jouin 2019; Le Bouëdec 2019). These two currents, despite significant differences, both advocated the control of industry by workers' councils (at both company and political levels) and the institutionalization of social conflict through bipartite consultation between unions and employers.

It would be necessary to undertake a meticulous genealogy of this corporative constitutionalism, particularly through the lens of the idea of mixed constitution that is inextricably linked to it (Delruelle 2023; Delruelle 2024), and from the perspective of a transindividual ontology of the political, which overcomes the opposition between holism and individualism^{xvi}. But what really interests us is the relevance of this corporative constitutionalism to Hannah Arendt's thought. This is obvious in her theory of “power”, which is fundamentally a power to make pacts, as in the famous “Mayflower Compact” signed by Calvinist dissenters who landed on the inhospitable shores of Massachusetts

in 1620. Here, according to Arendt, lies the true meaning of the American Revolution: to have “*liberated the power of covenant and constitution-making as it had shown itself in the earliest days of colonization* » (1965, p.168). The genius of these emigrants, she argues, was to have constituted “*civil bodies politic*” based on “*the mutual promise and binding of its constituents* » (1965, p.168). These “civil bodies politic” (1) “*did not imply rule and the division of the people into rulers and ruled* », and (2) each formed “*a political realm that enjoyed power and was entitled to claim rights without possessing or claiming sovereignty* » (1965, p.176/168). Here, then, we find two of Althusius' fundamental ideas: (1) *consociation*, i.e. (to put it in Arendt's terms) the act of conferring rights on one another, of creating “*civil political bodies*”, and (2) the *federative* principle governing a “*country which was articulated from top to bottom – from provinces or states down to cities and districts, townships, villages, and counties - into duly constituted bodies, each a commonwealth of its own, with representatives 'freely chosen by the consent'*» (1965, p.176).

Arendt emphasizes the originality of the corporative pact in opposition to the “classical” social contract theories of Hobbes and Locke. These theories remain captive to the individual-State doublet and the pattern of sovereignty. Whereas the corporative pact is a mutual contract “*is based on reciprocity and presupposes equality*”, Locke's social contract (though the one most familiar with the American experience) is a vertical contract of submission whereby “*he resigns his power*” to the State (1965, p.171). Arendt thus contrasts, on the one hand, a federative logic where “*constituted political bodies can combine and enter into lasting alliances without losing their identity*” and, on the other hand, a sovereigntist logic where “*there must be one representative of the nation as a whole, and where the government is understood to incorporate the will of all nationals* » (p.171).

Arendt's closeness with corporative constitutionalism is therefore obvious when it concerns the first pillar of the “*Constitutio Libertatis*”: the “power” to make pacts. But it is just as clear regarding the second pillar: an “authority” “*to assure perpetuity, that is, to bestow upon the affairs of men that measure of stability without which they would be unable to build a world for their posterity, destined and designed to outlast their own mortal lives* » (p.182). Once again close to Althusius and Gierke, Arendt rejects any authority that might emanate from the transfer of sovereignty from God or king to a mythicized “people”. She places authority in the very act of preserving (and restoring, if necessary) the liberty which men have recognized in one another. It is in this way that Arendt attributes to the US Supreme Court (like the Senate in Rome) the same role of “*continuous constitution-making* » as Althusius' s College of Ephors (p.200).

My thesis that corporative constitutionalism had an underground but decisive influence on the American revolutionary imaginary is exposed to a major objection raised by Arendt:

the fact that the colonists who concluded the “Mayflower Compact” or the “Fundamental Orders of Connecticut” had not been inspired by any “*political or theological theory*” (in other words, they had not read Locke, let alone Althusius); nor were they inspired by distant examples drawn from medieval history^{xvii}. But on the contrary, we know that these Calvinist Puritans were familiar with the struggle of Dutch and German cities for autonomy, and impregnated with the corporative and communalist culture that prevailed there. Arendt herself concedes that “*if there was any theoretical influence that contributed to the compacts and agreements in early American history, it was, of course, the Puritans' reliance on the Old Testament, and especially their rediscovery of the concept of the covenant of Israel*» (p.172). And later on, she adds that the Revolutionaries had at their disposal “*two legends of liberation*”: *Virgil's story of the wanderings of Aeneas after he had escaped burning Troy*” (prelude to the founding of Rome) and ... “*the biblical story of the exodus of Israeli tribes from Egypt*” (p.205). The schema of *emancipatory solidarity* underlying the ‘*Republic of the Hebrews*’ is thus clearly present in Arendt’s text.

And that's not all. We know that Arendt was intellectually very close to Carl J. Friedrich^{xviii}, a German intellectual exiled in the United States like herself, author of a book on totalitarianism five years after her own (Friedrich 1956), but also an eminent expert on Gierke’s theory of law and Althusius's *Politica*, for which Friedrich wrote the ‘Introduction’ to the first English translation of 1932 (Friedrich 1932) (a text of which Arendt was certainly well informed). An even more interesting clue: in a footnote, Arendt, referring to the notion of “legal person” (based on the Roman *persona*), mentions « *the very illuminating discussion by Ernest Barker in his Introduction to the English translation of Otto Gierke's Natural Law and the Theory of Society 1500 to 1800*” ((Arendt, 1965, p.293). This recognition of debt is significant in that it concerns the notion of “the right to have rights”. In Arendt's view, if the right to citizenship conditions human rights, it is because the individual, far from being a “natural” entity, is essentially a *persona* in the Latin sense, a “*person with rights and duties*” and recognized as such by his fellow citizens. This is exactly Gierke's thesis, as “luminously” explained by Baker ...

There can be no doubt, then, that Arendt was familiar with the conceptual sources of corporative constitutionalism, which I believe outlines a line of political thought *distinct* from liberal and republican constitutionalism. But if Arendt is on a par with this minor “corporative-federative” line when it comes to the experiences where revolutions find their *spring*, she moves surprisingly far away from it as soon as it comes to identifying their *legacy* - and therefore their actuality for us. It's as if Arendt had failed (or not wished) to see the revolutionary potential that this corporative thinking deployed from the 19th century onwards. This will be the final stage of my investigation.

In Arendt's eyes, the revolutionary spirit survived in the 19th and 20th centuries through the tradition of councils, like a “lost treasure” buried under the crushing weight of the

Nation-State. From the Paris Commune of 1871 to the Hungarian Revolution of 1956, via the soviets of the Russian revolutions of 1905 and 1917 and the *Arbeiterräte* in Germany in 1919, the council tradition forms a discontinuous chain of spontaneous experiments in “« *direct participation of every citizen in the public affairs of the country*» (Arendt 1965, p.263). According to Arendt, the “council system” concealed a horizontal, federative organizing principle that the centralized nation-state has continually crushed through the “party system”, which in her view is nothing more than an oligarchic by-product of representative government. The entire history of twentieth-century revolutions is thus the history of the conflict between the two systems, that of the “*organs of representation*” represented by the parties, and that of the “*organs of action and participation*” represented by the councils (Arendt 1965, p.275). Or, more precisely, it is the history of the inexorable crushing of councils by parties - the former surviving in our political culture only as “*islands in a sea or as oases in a desert* » (Arendt 1965, p.275).

With such a narrative, Arendt regrettably falls back on the classic dichotomy between *liberal* constitutionalism (which gave rise to the party system) and *republican* constitutionalism (which survived through the council system), while *corporate* constitutionalism here seems to have completely vanished. But if we wonder who the real drivers of the democratization of political institutions in the 19th and 20th centuries were, we would agree that it was neither parties nor councils, but “intermediary bodies”, the undeniable heirs of Althusius's consociations: trade unions, cooperatives, mutual organizations, associations and so on. The emergence of these intermediary bodies as political actors is the major phenomenon of the “post-1848” period. Under their impetus, the subaltern classes will politically invest the intermediate space between the state and individuals (in the form of “organized civil society”), as well as between public and private law (in the form of social law). I argue that if the subaltern classes have been politically capable of struggling for their emancipation, it is principally through these intermediary “civil bodies politic”, and not through the sporadic experiments of councils, which are constitutively incapable of institutionalizing themselves, nor through the action of parties which, despite the extension of the right to suffrage, have not altered the inherently elitist nature of elections (Manin, 1995) (unless they bring “Caesarist” leaders to power^{xix}

If Arendt fails to see the revolutionary role of intermediary bodies, it's due to her anthropology, which distinguishes three distinct forms of *vita activa*: *labor*, *work* and *action*, which respectively respond to the three fundamental human conditions of *life* (the reign of necessity and needs), of *world* (the sphere of culture, of tradition) and of *plurality* (the reign of freedom, through political speech and action) (Arendt, 1958). A strict seal separates the latter two spheres (“culture” and “politics”) from the former (“the social”), relegating labour to a non-political space. Arendt cannot, therefore, turn workers as *workers* into genuine political actors. In her eyes, the “social question” can only appear in the immediate mode of compassion, and necessarily engenders mass violence. The

social cannot therefore produce any “*interest*” in the sense of an “*inter-esse*” (inter-est), something that would be *between* (“*inter*”) men, and through which they could relate to each other through deliberation, action and promise. *Social* rights are excluded from the space instituted by the right to have rights.

Yet the history of intermediary bodies belies this thesis. On the contrary, this history shows the capability of subalterns to create “civil bodies politic” in which the social question is raised to an “inter-est”, an object of action and promise, but also of “negotiation and tedious compromise” (Arendt, 1965, p.24). Arendt is so blind to this reality as to assert that *« the councils have always been primarily political, with social and economic claims playing a very minor role »* (Arendt, 1965, p. 274). Yet it was the labor movement that initiated *all the* council experiments Arendt mentions as examples. And even when the councils involved soldiers, peasants or students, it was social issues that they brought to the public arena. Even her close friend Mary McCarthy protests: “What are we supposed to do on the public stage, in the public space, when we ourselves are not concerned by social issues? What's left...? If all questions of economics, human welfare, racial diversity, if everything that falls within the social sphere is excluded from the political arena, then I'm fooled. All that's left is war and rhetoric. But speeches can't just be speeches. They must have an object” (McCarthy, 1979, p.315)

Intermediary bodies show that the social is political and the political is social. The consequence is that we must reverse Arendt's demonstration and recognize the “superiority” of the French Revolution over the American Revolution. The uniqueness of the French revolutionaries is that they radically challenged the institutions of the “social” as a whole: not only absolutism and privilege, but also inequalities of class, gender, race and so on. As Cl. Lefort writes, the revolution “*inaugurates a history in which men are experiencing a definitive indeterminacy regarding the foundation of power, Law and Knowledge, and the foundation of the relation of one to the other, in all registers of social life*” (Lefort, 1986, p.29). By contrast, the Founding Fathers of the United States never at any time called into question the institution of slavery (which leads Arendt, embarrassed, to grossly contradict herself on this point^{xx}). If the American Revolutionaries denied their slaves the slightest “right to have rights”, it was obviously because they didn't want to raise the question of their *social* rights...

Significantly, when she discusses the French Revolution, Arendt devotes lengthy developments to the conflict between Jacobin centralism and revolutionary sections and other parisian communes, but she says nothing about the “Le Chapelier law” which, by prohibiting all professional groupings, aimed above all to neutralize trade unions and intermediary bodies. Arendt begins the tradition of councils with the Paris Commune of 1871 but pays no attention to the flowering of militant associations that characterized France from 1848 onwards. Yet these associations were not part of either the “party

system” or the “council system”, but rather experiments in concrete solidarity (production or consumer cooperatives, mutual health organizations, associations in defense of workers' or women's rights, etc.), in which people reciprocally conferred on each other the right to social rights. While it is true that the Third French Republic was founded on the bloody repression of the Paris Commune in 1771, it also proceeded to give institutional recognition to these “civil bodies politic”, through the laws of 1881 on freedom of the press, 1884 on trade-unions and 1901 on associations (after the law of 1864 on the right to strike).

In her aversion to the “party system”, Arendt also failed to understand how, in Northern Europe, following the Gotha Congress in 1875, “social democracy” succeeded in establishing a concerted mode of political action in which the “party”, along with the trade unions and the satellite associations, formed a network of intermediary bodies dedicated to the working-class movement^{xxi}. And in the twentieth century, these intermediary bodies were again at the root of the Welfare State, probably the greatest political conquest of European productive classes (Delruelle, 2020).

A completely different post-revolutionary narrative thus emerges, in which the “party system” and the “council system” do not collide, but rather constitute the two poles between which intermediary bodies constantly oscillate: that of the spontaneous council experience, a pure event irruption unable to last (Breugh, 2016) on the one hand, and that of the bureaucratic party organization subject to the “iron law of oligarchy” (Michels, 2001) on the other. Is it not in this unstable, contingent space between state and civil sphere, between public and private law, that social law will emerge? Is it not here that new forms of “civil bodies politic” will be invented, through which men will activate their right to social rights ?

Perhaps the “lost treasure” of revolutions lies not in the discontinuous chain of council experiments, but in the underground effervescence of intermediary bodies irrigating the “mixed constitution of the Moderns”? However, this is not to idealize intermediary bodies, which can be the instruments of heterogeneous interests, sometimes progressive, sometimes conservative. The term refers not only to trade unions, political parties, mutual societies and associations born out of the workers' movement, but also to religious congregations, socio-professional guilds and major state bodies (the army in particular), which in turn nurture the most conservative visions of society. In this way, twentieth-century fascism established the “corporate state”, suppressing the “bottom-up” democratic logic of intermediary bodies and transforming them into servile instruments of state sovereignty (Chatriot, 2013; Gagliardi 2013; Garrido 2015). But isn't this instrumentalization of intermediary bodies the paradoxical expression of the danger they represent for dominant interests?

Thus Arendt, after drawing extensively on corporative-federative constitutionalism to elaborate her own theory of pacts and “civil bodies politic”, was unable or unwilling to see how these same constituent bodies, under the effect of the “social question”, had successfully metamorphosed into intermediary bodies acting at the intersection of state and civil society, and how they became the levers of struggle for the emancipation of the subaltern classes. The dichotomy between the social and the political that drives her political anthropology made it impossible for her to conceive of a right to *social* rights, though this was one of the premises of her thinking.

But there's nothing to stop us from updating this corporative constitutionalism inspired by the emancipatory struggles of the medieval city and seeing Althusius as the man who tried to bring these struggles into modernity. Another genealogy of social rights is thus emerging, based on the dated but still relevant work of Max Weber (Weber, 1958) and Augustin Thierry (Thierry, 2012) (the very man to whom Karl Marx credited the idea of “class struggle”^{xxii}). These works show the significance of the battles waged by medieval communes against seigneurial or royal powers. We can see that “*rural commons and corporative law were not so much destroyed as refounded, on the basis of individual right*”, and that Arendt was wrong to deny any link between councils and medieval communes (Arendt, 1965, p.261)^{xxiii}. On the contrary, we can hypothesize that “*the medieval town represents the beginning of a process that could very well culminate in our social law*” (Jouin, 2024, p.77). The “right to have social rights” then refers to the original experience of recognizing each other's rights, which is both the experience of effective solidarity within multiple consociations and of an emancipatory struggle against all forms of oppression and exploitation.

Arendt shows us, in despite of herself, that it is impossible to dissociate the political and the social: there can be no politics without solidarity, protection and status accorded to everyone; and conversely, every “social pact” requires a politics of vindication, mobilization, even disobedience and insurrection. It also reminds us that the social state is of limited value if it is reduced to a set of social protections conferred “from above” by the state. If the social state is not activated by genuine mechanisms for institutionalizing social conflict, and if it is not constantly “repoliticized” by new struggles, it is doomed, as we see today, to deteriorate under the combined effect of budgetary constraints and identity-based exclusions.

ENDNOTES

ⁱ In a caustic formula of which she has the secret, Arendt writes: « *The world found nothing sacred in the abstract nakedness of being human* » (Arendt, 1971, p.299).

ⁱⁱ Among the vast literature on the subject, let's mention the following: Lang A.F. & Williams J, 2005; Axtmann R. 2006; Hayden P., 2009; Fine R., 2007, p.96-132; Owens P., 2007; Lacroix J. 2015.

ⁱⁱⁱ I use the expression “*corporative constitutionalism*” (“*constitutionnalisme corporatif*” in French) to avoid confusion with the term “corporate constitutionalism”, which in English concerns corporate law and focuses essentially on the social responsibility of private companies (cf. Stephen Bottomley, 2007; Corbett A. & Spender P, 2009. The issue I'd like to raise is both different and broader, since it concerns the role of “intermediary bodies” (“*corps intermédiaires*” in French) played in the political arena by organizations, whether public or private, such as trade unions, militant associations, cooperatives, municipalities, etc. In this article, as we will see later, *corporative* constitutionalism refers even more specifically to what Hannah Arendt calls “civil bodies politic”.

^{iv} It has been argued, and rightly so, that Arendt constructed the ideal type of “social” revolution on the model of the Bolshevik Revolution, which is the prism through which she reads the French Revolution (Ducange, 2014, p. 189).

^v « *The notion of constitutional government is of course by no means revolutionary in content or origin*” (Arendt, 1965, p.143).

^{vi} Of course, I use the term “republican” in the “classical” sense it has always had from Aristotle to Arendt, and not in the sense it has taken on today, in the American and French political fields, where it designates conservative parties imbued with a nationalist and identitarian ideology that is the antithesis of original republicanism. Much could be said about this semantic shift.

^{vii} This neo-republican “grand narrative”, whether it takes the “neo-Aristotelian” form of Pocock or the “neo-Roman” form of Skinner, is open to numerous objections from the historian of philosophy. The essentially Anglo-Saxon prism of Pocock and Co. makes the English and American revolutions the central axis of development of neo-republicanism, which leads them, among other things, to completely sidestep two authors who are nonetheless fundamental to this republican movement: Spinoza and Rousseau.

^{viii} That's why I think it's anachronistic to make a “revolutionary” reading of Machiavelli's eulogy of the “tumults of the plebs”, as Antonio Negri does in *Insurgencies* (1999)

^{ix} In addition to the excellent “Introductions” to both English and French translations, read Glenn A. Moots' useful synthesis of Althusius' thought, which opportunely highlights its topicality (Moots G.A, 2020). Cf. also Alvaro R., 2018; Duso G., 2005; Belin-Capon M-H, 2015 ; Demelemestre G. 2024.

^x In her “Introduction”, French translator Gaëlle Demelemestre speaks of “*corporative democracy*” (p.26).

^{xi} In Sparta, the “ephors” were a board of magistrates responsible for “supervising” the royal dyarchy. The term had been exhumed by the German Protestant churches to designate seminary directors. It must therefore have been familiar to Althusius. The ephorate is an institution analogous to the plebeian tribunes of the Roman Republic.

^{xii} Eric Nelson has shown the importance, among 17th-century Calvinist thinkers and political actors, of the “Hebrew Republic” as a model for a triple political claim: (1) only a republican (not a monarchical) constitution is legitimate; (2) the State must guarantee an egalitarian distribution of wealth (dedicated among the Hebrews by the Jubilee which, every 50 years, is a year of land redistribution and debt remission); (3) a pious republic tolerates religious diversity. Nelson E, 2011.

^{xiii} “*The rejection of the concept of mediation is at the very heart of Spinoza's thought*” (Negri A., 1994)

^{xiv} Gierke's masterwork is *Das deutsche Genossenschaftsrecht*, in 5 volumes published between 1868 and 1913

^{xv} Georges Gurvitch, 1972, p.15. As Céline Jouin writes, “*the rejection of ‘intermediate bodies’ from Hobbes and Rousseau to Kant seems to Gierke to be entirely indicative of the modern state's tendency to absorb all community life, a tendency which ultimately leaves associations, suspected of being ‘factions’, no more than the narrow space of private law*” (Jouin C., 2024, p.13)

^{xvi} Balibar, E., 2018. This idea of “transindividuality” was anticipated by G. Gurvitch through the concept of “transpersonality” (Gurvitch, 1971, p.9). As corporative constitutionalism is based on

the image of the body and the corporation, another avenue of reflection opens up, based on the political theory of Cl. Lefort. Lefort defines democracy as a process of "disincorporation/disembodiment" of power, constantly threatened by a totalitarian phantasm of "reincorporation/re-embodiment". But shouldn't democracy be understood, as C. Jouin suggests, in terms of the "pluralization of incorporation" ? (Jouin, 2024, p.3).

^{xvii} For example, "The Alliance of the Waldstätten", supposed to have given rise to the Swiss Confederation in the 13th century (Arendt, 1965, p.173).

^{xviii} Her article "What is Authority?", one of the best-known in *Between Past and Future*, originally appeared in a collective work edited by Carl Friedrich, *Authority*, Harvard University Press, 1959.

^{xix} In both the United States and France, Andrew Jackson and Louis-Napoléon Bonaparte, both of whom can be described as "Caesarist" or, if you prefer, "populist", won the first presidential elections by universal suffrage.

^{xx} On the one hand, Arendt insists that the institution of slavery, however deplorable, does not invalidate the success of the American Revolution, which is to have created spaces for citizen participation. But on the other hand, when she seeks to prove by the absurd that a revolution was unthinkable in Antiquity, she writes that we could have spoken of a "revolution" in Rome or Athens if "the slaves and resident aliens, who formed the majority of the population without ever belonging to the people, had risen and demanded an equality of rights. This, as we know, never happened" (Arendt, 1965, p.40). But in my opinion, this statement effectively denies any revolutionary character to the so-called "American Revolution".

^{xxi} Arendt's narrative of a deadly struggle between the council system and the party system, and her rejection of any political value for intermediary bodies, was undoubtedly influenced by the way in which the German Social Democratic Party, to win its place within the institutional system of the Weimar Republic in 1919-1920, actively participated in the crushing of the Spartakist council movement. This culminated in the assassination of Rosa Luxemburg, whom the Arendt family had greatly admired.

^{xxii} As far as I'm concerned, I'm not the one who discovered the existence of classes in modern society, nor the struggle between them. Bourgeois historians had set out the historical development of this class struggle long before me, and bourgeois economists had described its economic anatomy" (Marx K, 1972)

^{xxiii} In a footnote, Arendt concedes that the Paris Commune of 1871 may have been inspired by the struggles of the medieval city.

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