A STUDY OF HUMAN RIGHTS WITH REFERENCE TO THE THEORY OF RADICAL DEMOCRACY AND CRITICAL LEGAL STUDIES: THE EXPERIENCE OF THE SUBJECT OF THE HUMAN RIGHTS AND MODERN DEMOCRACY

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
MIDDLE EAST TECHNICAL UNIVERSITY

BY

ELİF HANNAN MUSABAŞOĞLU

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF SCIENCE
IN
THE DEPARTMENT OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

DECEMBER 2022

Approval of the thesis:

A STUDY OF HUMAN RIGHTS WITH REFERENCE TO THE THEORY OF RADICAL DEMOCRACY AND CRITICAL LEGAL STUDIES: THE EXPERIENCE OF THE SUBJECT OF THE HUMAN RIGHTS AND MODERN DEMOCRACY

submitted by **ELİF HANNAN MUSABAŞOĞLU** in partial fulfillment of the requirements for the degree of **Master of Science in Political Science and Public Administration, the Graduate School of Social Sciences of Middle East Technical University** by,

Prof. Dr. Yaşar KONDAKÇI
Dean
Graduate School of Social Sciences _____

Prof. Dr. Tarık ŞENGÜL
Head of Department
Department of Political Science and Public Administration _____

Assoc. Prof. Dr. Cem DEVECİ
Supervisor
Department of Political Science and Public Administration _____

Examining Committee Members:

Assoc. Prof. Dr. Kürşad ERTUĞRUL (Head of the Examining Committee)
Middle East Technical University
Department of Political Science and Public Administration _____

Assoc. Prof. Dr. Cem DEVECİ (Supervisor)
Middle East Technical University
Department of Political Science and Public Administration _____

Assist. Prof. Dr. Kurtuluş CENGİZ
Ankara University
Department of Sociology _____

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Name, Last Name: Elif Hannan MUSABAŞOĞLU

Signature:

ABSTRACT

A STUDY OF HUMAN RIGHTS WITH REFERENCE TO THE THEORY OF RADICAL DEMOCRACY AND CRITICAL LEGAL STUDIES: THE EXPERIENCE OF THE SUBJECT OF THE HUMAN RIGHTS AND MODERN DEMOCRACY

MUSABAŞOĞLU, Elif Hannan
M.S., The Department of Political Science and Public Administration
Supervisor: Assoc. Prof. Dr. Cem DEVECİ

December 2022, 98 pages

The political signification of human rights has always been an ongoing debate for the political theory. It is understandable given human rights's aspiration to include everyone seems like a delusive solution for the fundamental questions of politics, such as recognition and representation, and its antagonistic nature. This thesis explores the potential responses to this conundrum by post-foundational leftist perspectives. My aim is to demonstrate the political value of human rights for left politics. Examining the theory of radical democracy suggested by Laclau and Mouffe, the interpretation of power and democracy by Lefort, and Douzinas's critical legal views on human rights; I conclude that the concept of human rights can be re-formulated as the rights of the other. Therefore, it can sustain the center of the law empty and establish an institutional basis for the unsutured realm of the political and empty space of power suggested by these post-foundational views. By framing the issue of rights in connection with the experience of the subject of democracy and the articulation of political resentments, I try to define the human rights as the possibility of claiming a

place on an institutional ground, when the existing legal system fails to recognize the claimant as a legitimate interlocutor. In this sense, I claim rights reflect the subject's political experience in relation to state authority by priorly defining the frame of action and articulation for her.

Keywords: Costas Douzinas, Claude Lefort, Human Rights, Post-foundationalism, Radical Democracy.

ÖZ

RADİKAL DEMOKRASİ VE ELEŞTİREL HUKUK TEORİSİ AÇISINDAN İNSAN HAKLARININ İNCELENMESİ: iNSAN HAKLARI VE MODERN DEMOKRASİ ÖZNESİNİN DENEYİMİ

MUSABAŞOĞLU, Elif Hannan
Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü
Tez Yöneticisi: Doç. Dr. Cem DEVECİ

Aralık 2022, 98 sayfa

İnsan haklarının siyasi önemi ve manası, siyaset teorisinde süregelen bir tartışmadır. İnsan haklarının kapsayıcı dili siyasetin tanınma ve temsiliyet gibi temel soruları ve uzlaşmaz doğası düşünüldüğünde inandırıcı gelmemektedir. Bu tez, temelcilik-sonrası sol perspektiflerin bu muammaya verebileceği yanıtları araştırmaktadır. Amacım sol siyaset için insan haklarının siyasi değerini ortaya koymaktır. Laclau ve Mouffe tarafından ortaya koyulan radikal demokrasi teorisi, Lefort'un iktidar ve demokrasi okuması ve Douzinas'ın eleştirel hukuk perspektifiyle yürüttüğü insan hakları tartışmasına dayanarak; insan haklarını öteki(nin) hakları olarak tekrar düşünülebileceğini savunuyorum. Böylece, insan hakları hukukun merkezindeki boşluğu koruyabilir ve, bu düşünürler tarafından ortaya konulan, siyasi alanın kapanmayan yapısı ve iktidarın boş koltuğu için kurumsal bir temel oluşturabilir. Haklar sorusunu; demokraside öznenin deneyimi ve siyasi hınçların ifade edilmesi çerçevesinde ele alarak, insan haklarını, varolan yasal düzenin kişiyi meşru bir özne olarak tanımlayamadığı durumlarda, bu kurumsal düzende bir yer talep etmesinin bir sağlayıcısı olarak kurmaya çalıştım. Bu açıdan; haklar, onun için mümkün olan eylem ve

artikülasyon çerçevesini belirleyerek, öznenin devlet otoritesiyle ilişkili siyasi deneyimini yansıtır.

Anahtar Kelimeler: Costas Douzinas, Claude Lefort, İnsan Hakları, Radikal Demokrasi, Temelcilik-sonrası

TABLE OF CONTENTS

APPENDICES

.

CHAPTER 1

INTRODUCTION

This thesis aims to examine the possibility of establishing a ground for justification of human rights within the leftist post-foundational frame of radical democracy and critical legal thought. The basis of law or political power is a deep question with multiple angles and infinite responses. Regardless of this complexity, the response given to this question sets the stage for the justification of democracy and human rights. Thus, I will try to evaluate the arguments for human rights which may be explicitly provided by or could be drawn from the leftist post-foundational theories of politics. For the purpose of clarity and practicality, I will focus on the theory of radical democracy presented by Ernesto Laclau and Chantal Mouffe, theory of power and democracy offered by Claude Lefort, and critical legal understanding of human rights provided by Costas Douzinas.

Being intrigued by the growing indifference to the rule of law and the constitutional principles in the mundane discourse of daily politics and common loss of faith in the fairness of legal judgement, I begin to question our initial motivation of justifying law and order on a defined ground. In other words, by reflecting on the relevance of law to the politics and implication of human rights for the justice, I have turned my gaze upon the supposed plausibility of the grounds of justification of democracy and rights. The optimistic association of this concept with the human rights and democracy sadly seems to have become more and more questionable in light of all the dreadful events of the 20th century. In addition to the global and general image of crookedness and impotence of the legal and democratic institutions and processes, one find a curious absence of even a weak expectation for an institutional solution for their debilitating anxiety about their individual lives in common people. A significant

literature shows that the political discourse limits the autonomy of the law or instrumentalizes the legal power, broadly, on the grounds of the alleged importance of majority opinion in democracy, the requirement of agile governments in the face of fast-paced processes of international relations and the globalization, and the delay in the adaptation of long-established ways of society to cultural and sociological changes -especially imposed by sexual and ethnic minorities-. People's loss of faith in the law, on the other hand, is captured by legal studies and sociology in the context of unequal access to institutions of justice, but somehow omitted in the debates about liberal subject and her relation to state in political science literature.

I will frame my examination of the theories of Mouffe and Laclau, Lefort and Douzinas on human rights and democracy from the perspective of society's peculiar connection with the state authority and its institutions by establishing a perspective based on the understanding people's perception of themselves as acting subjects of human rights. This connection is no doubt political but it also has a psychological aspect; what I am interested in is not merely the status of law in democracy or democratic politics as such, but the experience of the individual with law and democracy beyond a formal description. In other words, the problem of my thesis is the *experience* of the modern political subject with regard to her legal existence and the political authority; it relates to how does the subject perceive herself: Who is she when she participates in the political? Who is she when she takes part in the process of democracy? Who is she when she engages with the institutions of justice?

My employment of the word 'experience 'in my thesis is originally inspired by the manner that Lynn Hunt, the prominent historian who has written extensively on the French Revolution and human rights, uses it:

> The French Revolution, like all revolutions, was first and foremost an experience. I use the word advisedly because the term "experience" is at once amorphous and vexed. I use it, nonetheless, in order to signal that attention must

> be paid to the way in which events were subjectively viewed; these subjective views had everything to do with how events developed. (Hunt, 2003: 3)

If the subjective perceptions of people on events are worth to examine for a historical research; subjective perceptions of people on the institutions of power and justice should be important for a political science research. Hunt claims that the ideas and abstract concepts such as "the social" can be *experienced* and, the historical study of the French Revolution should indeed concern the experience of the new meaning attributed to the social by the discourse of Enlightenment or the new meaning attributed to citizen in the declaration (Hunt, 2003: 2015). The study of experience, in the most fundamental sense, relates to changing meaning of words we use to describe our shared reality and changing conceptualization of ideas and principles that we make sense of this reality. Therefore, this thesis tries to explore the mechanisms of the political that make the emergence of universally accepted truths which were once deemed incomprehensible possible; as in the depiction of equality of men as self-evident in the Declaration of Independence (Hunt, 2007: 15). Hunt claims that "the claim of self-evidence" of human rights and its evident development through very specific historical events constitute a paradox (Hunt, 2007: 19-20).

This paradox reminds me of Agamben's claim regarding the appropriation of childhood experience by language and the modern association of knowledge with experience (Agamben, 1993: 18). This association is also presented as *self-evident*. Agamben argues that our understanding of experience undergoes a historical shift as the subject enters into language by becoming an empirical "I", which is positioned outside of her object of knowledge (Agamben, 1993: 31). Language transforms 'experience' to 'knowledge of the experience as an *I*'. Now, there are two things that the subject responds to: experience and its possibility or knowledge. In other words, the subject of the experience becomes split into two subjects: one is a knowledgeable adventurer without the real experience (Don Quixote) and other one always seems to find himself having an experience without a slightest clue about its meaning (Sancho Panza) (Agamben,

1993: 24). The experience and knowledge lose their separate realms of existence: the experience has an outside; therefore, it is deprived of its completeness:

> The transformation of its subject does not leave traditional experience unchanged. Inasmuch as its goal was to advance the individual towards maturity -that is, an anticipation of death as the idea of an achieved totality of experience- it was something complete in itself, something it was possible to have, not only to undergo. But once experience was referred instead to the subject of science, which cannot reach maturity but can only increase its own knowledge, it becomes something incomplete, an ‘asymptomatic ’concept, as Kant will say, something it is possible only to undergo, never to have: nothing other, therefore, than the infinite process of knowledge. (Agamben, 1992: 23)

My examination of the experience of human rights and democracy is largely influenced by this paradox of split subject and lacking experience. This influence distances my thesis from foundational theories which justify human rights on peculiar ways of experiencing the world and the subject. As a result, the discussion would likely limit itself with an already-existing center for meaning. Instead, I will focus on leftist and post-foundationalist theorists who has a more interpretative approach to politics, society, and law, and tend to be more attentive to the sphere of language as the constitutive realm of subject. In this way, I hope to refrain from reducing the human rights to a politics of demanding rights and recognition and reducing law to a plain regulation of the social.

Post-foundational theories of democracy and human rights are not devoid of challenges either. Thinking with reference to the necessary absence of a center carries the risk of extending the scope of the research to an impractical point. That is why I try to limit my examination of these theories to their interpretation of certain concepts, which I deem important for my question. I will focus on how the concepts of plurality, power, universality, contingency, political will and subject are explicitly or implicitly understood by Laclau and Mouffe, Lefort, and Douzinas. I argue that to the specific construction of some of these concepts in each theorist will potentially enable us to understand the subject of human rights and democracy a bit more or at least, identify the realm of the issue of human rights with respect to the experience of the subject more clearly.

Methodology of this research is interpretative reading of these thinkers. My engagement with the theories of radical democracy and critical legal thought aims to present an explanation of the necessary absence of a ground for human rights. So, I fundamentally seek the post-foundational roots of these theories. My focus on the concepts of plurality, power, universality, contingency, political will and subject is determined by the need to present a general conclusion about post-foundational account of human rights and also, the well-established pertinence of these notions in the discussion of democracy and human rights. All of these theories are indeed elaborated with reference to these concepts; albeit for different purposes. Laclau and Mouffe formulate the political on the grounds of contingency and plurality. Lefort especially focuses on the significance of the relation between power and its alleged universality for democracy. Douzinas understands the human rights politics as the resistance of the subject who acts on her will to claim her uniqueness and also, to be a part of a whole. Thus, all of these leftist theories contribute to the post-foundational construction of the sphere of human rights and its subject in different yet, when closely engaged, very interconnected paths.

The next chapter will focus on the theory of Chantal Mouffe and Ernesto Laclau which discusses the political without a center and constructs the subject of the political in a hegemonic terrain of antagonisms. I will demonstrate that the political experience today is characterized by its openness to newcomers and through the articulating subject; and the notions of empty signifier and symbolic order expose the ruptured relation between the knowledge and experience. In the third chapter, I will examine the theory of democracy with reference to Claude Lefort's interpretation of political power as the gap between the fragmented society and its appearance as a totality; and his conceptualization of democracy and rights as the institutions of this gap. According to him, the human rights are relevant to politics, because, by making the third of the democracy visible and by substantiating the border between the people and the authority, they prevent totalization of the regime. Next chapter will deal with the conceptualization of

human rights as the absent ground of law by Costas Douzinas. The critical legal studies aim to demonstrate the interconnection between the social and law. Douzinas, a professor of law and a former left-wing politician, claims that the human rights law should not be examined without a consideration of its political origin as natural rights and its meaning for our individual attachment to the society. By exposing the distinction between the experience that nurtures the development of rights and formal knowledge which minimizes the revolutionary meaning of human rights, I wish to illuminate the modern legal subject's quest for justice, which is the main problem of my thesis. The object of my research is to unearth a hopefully rich layer of theory beneath our current construction of reality, that no doubt presents a beautiful spectacle of human rights and democracy, but fails to build a legal system that can actually support the people when the neglected faults of politics start to release their energy

CHAPTER 2

THEORY OF RADICAL DEMOCRACY

2.1. Introduction

In this chapter, I will frame the theory of radical democracy by Ernesto Laclau and Chantal Mouffe and I will also start discussing human rights from the leftist perspective. I will first clarify what exactly post-foundationalism refers to. Then, I will frame the distinction between politics and the political in relation to the post-Marxist idea that it is impossible to ground ethical and political existence on any a priori idea of the good. In the third and final section of the chapter, I will demonstrate how the absence of such a ground relates to subjectivity in the radical democracy. I will mainly focus on the theory of hegemony and plurality drawn by Laclau and Mouffe. The brief and sporadic remarks on other thinkers such as Alain Badiou or Hannah Arendt are only included in order to supplement the focus of the chapter through a slightly broader, yet still incomplete portrait of post-foundational politics and the leftist perspective on democracy.

2.2. Post-foundationalism and Leftist Theory

Post-foundationalism broadly refers to the rejection of an authority in an epistemological structure; from the perspective of the political philosophy, it implies a structure based on the necessary absence of a ground. Let me now explain the main post-foundational arguments in the frame of leftist political theory.

2.2.1. The Necessary Absence of Foundations

Political theorists deal with an empirical reality which seems ultimately scattered and complex, even when they limit their research to a specific time, place,

subject or a theory. Unless we see reality as unified as possible, we should seek and make sense of divergences, from an otherwise predictable logic, which give rise to the complexity and scatter. To question the necessity of ground is a way of doing this. However, thinking in terms of movements, complexity, scatter, and unpredictability does not have to 1.) amount to renouncing the burden of providing reason and criterion to assess the hypothesis of the theory and analyze it consistently, 2.) result in indecisiveness regarding the theory and, 3.) should not interrupt further discussion in the field. The ungroundedness, then, should be justified just as any ground -so to speak.

Marchart's distinction between post-foundationalism and anti-foundationalism is meaningful: while anti-foundationalism problematizes the multitude of possible foundations stemming from infinite differences and calls this plurality, post-foundationalists problematize the very existence of the notion of foundation and consider every so-called foundation as an effect of the play of differences (Marchart, 2007: 58). Marchart refers to Derrida who argues that the impossibility of an absolute totalization of the political field cannot be granted to the infinite pluralities but it is resulted from the fact that these pluralities or possibilities are themselves the effect of the play between the differences (Derrida, 1978: 289; cited in Marchart, 2007: 17). There are not infinitely many grounds such that there are infinitely many coexisting politics and ethics, rather any structure of politics already comprises a free movement. Each possible ground already includes a multiplicity; it is already being contested from the inside and is changing through time. So, there are no multiple totalizing grounds, but an impossibility of an ultimate totalization. In other words, it is not the differences, but their constant play that prevents meaning from being fixed around a center. Thus, Derrida concludes, the absent center is already the necessary condition of the play. Marchart asserts that this absence of the center should be considered as "a necessary impossibility" and should be given an ontological priority (Marchart, 2007: 18). In other words, the underlying logic of post-foundationalism is the necessary absence of grounds.

The play of differences and the effect created by this play of differences, as the source of plurality, justify a priori status of groundlessness of the political (Marchart, 2007: 26). Thinking within the framework of the impossibility of a final ground overcomes the limit imposed on the structure by the infinite possibilities of grounds, as in the liberal definition of plurality.

> The nature of the field excludes totalization because the field 'is in effect that of play, say, because instead of being an inexhaustible field, as in the classical hypothesis, instead of being too large, there is something missing from it, a center which arrests and grounds the play of substitutions'. (Derrida, 1978: 289; cited in Marchart, 2007: 17)

This thesis will examine human rights as the missing center of the law based on this framework. Post-foundationalism is also crucial to understand Lefort's theory and his idea of empty space of power in democracy. Now, we will look at how post-foundational left responds to the problem of universalism.

2.2.2. The Link between the Construction of the Universality and Powe

Laclau argues that the social is established and operated through "processes by which the movement of the concrete itself constitutes the abstract […] an 'abstract' which is not a formal dimension preceding or separated from the concrete, but something to which the concrete itself 'tends'" (Laclau, 2000: 191). In other words, the part of the world that a person takes interest cultivates an idea or an image through this person. The abstract, therefore, is dependent upon our social imaginary, but we cannot argue that it is purely ideal, because it is the production or an effect of the concrete. By abstract, Laclau means things that people find universally meaningful, things that they know they can tell people and expect to be understood by them. By concrete, he understands something peculiar; thus not easily transmissible. Concrete abstracts, according to Laclau, generate meaning that shapes our social imaginary and this meaning cannot have a direct counterpart in the world. Politics is to create the social imaginary through concrete abstracts which create an effect of universality.

Universalizing the peculiar sounds like something that could easily turn into a process of totalization. Laclau discusses the question of universality in relation to power and its assumed capacity to objectify the subject (Laclau, 1994: 24). He claims that the idea of absolute power, that the modern political theory aims to destroy, has never been real in the first place. He considers the idea of totality of the subjects and objectiveness of the power as an old illusion. He traces back the origins of this illusion to (misreadings of) Hobbes and suggests that a deeper look at his political theory will actually demonstrate the necessary absence of the ground in power and society. Let me elaborate more on this issue.

He starts by stating that modern political theory commits itself to establishing the legitimacy of power outside of the power itself. According to him, this is a misinterpreted question because it assumes a clear opposition between subjective and objective. By pointing to the interrelatedness between subject and object, he claims that objective is by no means "purely formal" or subjected is not completely "alienated" from objective (Laclau, 1994: 11). In other words, neither the state of nature is completely chaotic, nor Leviathan can inflict power over everyone without any concession. Overlooking this relation, warns Laclau, would lead us into thinking that particular can actually gain an absolute universalism. "An absolute coincidence between the subjective and objective" (Laclau, 1994: 22) means no possibility of reversing any limit that the social imaginary hits, because there is nothing left beyond the power and it naturally encompasses the space of subject. To overcome this logical difficulty, according to Laclau, Hobbes suggests covenants: the Leviathan actually tame the state of nature through law which seems like its total reflection but cannot be because it is necessarily external. There is necessarily an emptiness implied by the covenant. Laclau claims the covenants provide legitimacy by standing between the Leviathan and the society. The idea of legitimacy forces power to compromise or, by simply being in between subject and object, continuously reminds Leviathan that its power depends on the covenant; thus, it is not absolute (Laclau, 1994: 19-21).

The chapter in which Laclau presents the necessary absence -without telling so- in the power of *Leviathan* is titled "*Minding the Gap*" (Laclau, 1994). The gap is between power and society. Laclau claims that if we do not 'mind the gap', we end up believing in pure presence and absolute power. This would bring us to the point we think the law is already concrete and there is no space for new possibilities or plurality: the end of politics and history. The linguistic reversal between abstract and concrete uncovers the gap between the power and its subject; indeed, this gap is the space of the political. Following sections will elaborate more on these connections.

2.2.3. The Issue of Plurality

Laclau deals with the question of universality with respect to the relation between democracy and, again, plurality -as one of the three aspects of radical democracy- (Laclau, 2005: 259-261; cited in Howarth, 2015: 17). According to him, solely focusing on plurality prevents the construction of "a common symbolic order within which [political] claims and grievances could be affirmed" (Laclau, 2005: 261; cited in Howarth, 2015: 17). So, he associates the groundlessness of the political with plurality. Laclau or post-foundationalism in general, according to Marchart, propose deconstructing the idea of ground or foundation in order to ensure the already-existent plurality in the ontic realm (Marchart, 2015: 15).

As I have noted before, post-foundationalism does not refute specific grounds, but it aims for a structure that builds itself upon the non-existence of a ground. Laclau suggests that "the crises of essentialist universalism as a self-asserted ground" has started an inquiry into the "contingent grounds (in the plural) of its emergence and to the complex process of construction" and the idea of constructing meaning without relying on a foundation transforms the question of political theory "from an object to its conditions of possibility" (Laclau, 1994: 2; cited in Marchart, 2007: 15). Therefore, the major task is to deconstruct universality. This view is not shared by every post-foundationalist inquired by

Marchart. Badiou, for example, points to the possibility of the evental origin of the universality which traces the cause of any established order to a historical breaking point wherefrom the truth comes out -as in a revolution-, "co-belonging of the One, of universality and singularity" (Badiou, 2003: 76; cited in Marchart, 2007: 125). In this line of thinking, the political is the emergence of the subject who makes a judgement -disturbing the order- as a response to the situation, causing the event and paying her adherence to the event. Marchart argues this formula is post-foundational because none of these parts -subject, event or decision- precedes one another in the process of making one particularity the universal truth of the political; the truth-event (Marchart, 2007: 124).

While Badiou's post-foundationalism links us to foundational moments of the political -event-, Laclau's theory of radical democracy strongly refrains from this line of thinking; Laclau and Mouffe even suggest that Marxist theory is no different than Jacobin tradition for it presupposes "one foundational moment of rupture" and "a unique space in which the political is constituted" (Laclau and Mouffe, 1985: 152). Badiou assumes a truth and adherence to it as political. The politics relates to truth; it is the order of truth that Badiou actually explains with the principles of set theory. To Laclau, there is no such truth. According to him, as mentioned before, the common symbolic world shared collectively is the beginning -or end- point of the politics. The politics relates to the construction of this shared sphere of meaning; it is the sum of all meaning construction practices and institutions; therefore, it cannot be limited to one foundational moment. In fact, Laclau compares his linguistic approach to political ontology with Badiou's mathematical approach and claims that "the social and political relations (cannot be) represented in terms of the categories which govern set theory" (Howarth, 2015: 259-260).

2.3. Radical Democracy: The Priority of the Political Over Politics

Laclau and Mouffe's interpretation of the autonomy of politics informs their ontology of power. The gap between power and society, I think, can be seen as

the examination of the distinction between the political and politics through the lens of power. In this section, I will examine the more extensive political ontology in the theory of Laclau and Mouffe by focusing on the relation between power and objectivity and the priority of the political over politics. These points would help to clarify the unsutured character of the social and the embedded antagonism in the political.

According to Laclau, we should shift our gaze to the "eminently political character of any social identity" (Marchart, 2007: 134). The implied urgency is a reaction to the 'absorption of the political by the social'" (Laclau, 1990: 160). This stress on the primacy of the political over the social is originated from a notorious critique of liberal democracy: Schmitt remarkably argues that the political has an autonomous field of operation -defined by a clear distinction between friend and enemy (Marchart, 2007: 41). Laclau refers to politics as "the acts of political institutions", whereas considers the political as the "instituting moment of society" (Laclau, 1996: 47, 60). However; it is Mouffe, following Schmitt, who breaks down the distinction between politics and the political as the core of the radical democracy and as her critique of liberal democracies (Mouffe, 1993: 2). Mouffe, evoking Schmitt's idea of antagonism as the primary difference of politics; refers to the political as "the disruptive moment of antagonism", and politics as "the practices and institutions through which a certain order is organized" (Marchart, 2007: 43).

Another prominent figure who establishes her theory on the conception of antagonism and the primacy of the political is Hannah Arendt. Marchart argues that both Schmitt and Arendt assign a priority to collectivity of people but it is established differently for each thinker (Marchart, 2007: 40-41). Arendt thinks that people come together because they are motivated by the idea of common: "[…] the political cannot be grounded in anything outside itself, that is, outside the in-between space of those who assemble in order to act" (Marchart, 2007: 146).

2.3.1. Society as A Closed System of Meanings

According to post-foundationalist view, the absence of the foundation does not mean the dissolution of the function or necessity of the absent ground of the political. Even if the center of the political is absent, the power symbolized by institutions and states is important and real. This power should be examined with regard to the distinction between the political and the politics. Laclau claims that the impossibility of the total convergence of the political and politics is constitutive of social relations:

> The ultimate instance in which all social reality might be political is one that is not only not feasible but also one which, if reached, would blur any distinction between the social and the political. This is because a total political institution of the social can only be the result of an absolute omnipotent will, in which case the contingency of what has been instituted – and hence its political nature – would disappear. The distinction between the social and the political is thus ontologically constitutive of social relations (Laclau, 1990: 35).

The society is the embodiment of sedimented power that is already forgotten through routinization of traditions (Marchart, 2007: 139). This sedimented power and the society refer to the ultimate rigidity and objectivity of the institutional structure and traditions of the politics. As far as Laclau is concerned, society is defined by the absence that resists this rigidity and objectivity. This is the core of democratic indeterminacy. The point is that definition or better put it, full identification is impossible, what Laclau calls "act of identification" involves different mechanisms (Laclau, 1994: 33). These are the logic of suture -naming the subjects outside of itself, not recognizing its place in the system-, the logic of repression -naming subject with another name, recognizing its place in the system while not recognizing its important qualities- and logic of subject. Logic of subject defines a subject which is to represent the whole society by mechanisms that exclude it and counting it as a unity at the same time (Laclau, 1994: 34). The logic of subject, for Laclau, is the ontology of society; it is the movement of being framed by time (Laclau, 1994: 28). The relation between this movement and the political structure depends on the gap between the

constitutive moment of the symbolic -the power- and its domination for a final cause -object (Laclau, 1994: 29). Laclau argues that this gap is the democratic indeterminacy of the political and incompleteness of the social.

> We must, therefore, consider the openness of the social as the constitutive ground or 'negative essence' of the existing, and the diverse 'social orders' as precarious and ultimately failed attempts to domesticate the field of differences. (Laclau and Mouffe, 1985: 95)

2.3.2. The Social that Resists to Meaning

Marchart argues that post-foundationalism tends the gap which was left by the old figures of absolute power; in the sense of acknowledging it and fulfilling its function (Marchart, 2007: 103). We have established that the construction of common symbolic imaginary is succeeded through concrete abstracts. This process relates to power and antagonism. The reversal of the abstract and concrete operates through the unequal power relations: the power decides on the structure of signification (Howarth, 2015: 262). In other words the idea of objectivity is constructed in the realm of the political (Marchart, 2017: 148) and the political is the name of this construction. Since its ground is negatively established, the social resists to any fixation of meaning as objectivity. Laclau and Mouffe present "the openness of the social as the constitutive ground" (Laclau and Mouffe, 1985: 95-96).

This reversal is by no means neutral. The structure of signification aims to establish order and peace in contempt of injustice:

> They are signifiers with no necessary attachment to any precise context, signifiers which simply name the positive reverse of an experience of historical limitation: 'justice', as against a feeling of widespread unfairness; 'order' when people are confronted with generalized social organization; 'solidarity' in a situation in which antisocial self-interest prevails, and so on. (Laclau, 2000: 185)

These meaning-creating operations are called articulation and belong to the hegemonic sphere (Laclau and Mouffe, 1985: 134). Although I will examine the concept of articulation and hegemony in the following section, it is important here to distinguish articulation from communication. Laclau and Mouffe are against the concepts of a democratic public sphere (which is dominated by power relations and yet still enable positive communication among members) as theorized by Habermas (Zerilli, 2004: 108). The order is created around certain subjectivities while excluding other possibilities (Mouffe, 2014: 181) and this creation itself is political; not what happens afterwards. Laclau considers the deliberative democracy as foundationalist because the supposed sphere of communication constitutes "an external tribunal (of undistorted communication) from which to judge and thus to fix the play of politics" (Marchart, 2007: 150-151). In other words, hegemony constructs meaning and order through articulation; not taking over the already-constructed field of politics because the post-foundationalist nature of the political exhibit us from defining any traits regarding the process or subjectivities in the political.

2.3.3. Basis of the Political: Antagonism

Mouffe claims that "when we look at the current state of democratic politics through a Schmittian lens, we realize how much the process of neutralization and depoliticization, already noticed by Schmitt, has progressed" (Mouffe, 1992: 2). Thus, she agrees with Schmitt on the issue of liberal democracy: "every consensus is based on acts of exclusion, it reveals the impossibility of a fully inclusive 'rational' consensus" (Mouffe, 2005: 11). Schmitt negates the antagonism in the sphere of the political, in which friend/enemy distinction is clear and the affairs are organized accordingly, so that it does not turn into real killing (Mouffe, 2005: 11). However, Mouffe thinks that it should not be negated at all but should be framed as agonism in the sphere of the political. It is not factor of unification of the society, it is the core of political conflict and should be sustained as such. Thus, according to Mouffe's theory of radical democracy, agonism in the society keeps it fragmented in a desired way.

Any formulation of the public which aims to imagine a unified ‘inside’ and a hostile ‘outside’ or overlooks the weight of agonism in the construction of political difference leads us to a point of the dissolution of the political. Laclau and Mouffe claim that the distinction between the political and politics drawn by Schmitt is only significant as long as antagonism is granted with ontological priority. In other words, it is not his distinction of exteriority and interiority with regards to antagonism but his insight into the neutralization of the political difference and depoliticization of the political field that attracts Mouffe. In this fashion, they condemn consensus democracy for aiming to dissolve the antagonisms, and consequently, undermining the existing power relations in the social. Liberal deliberation aims to overcome these antagonisms through deliberation and persuasion; thus, agonistic clashes, which are the basis of political discussion, are considered as undesired differences to be tackled with and resolved. Yet, since they are indestructible in nature, liberal politics can only achieve to repress them by ignoring certain political, social or economical struggles or denying recognition to certain identities.

2.4. Subject of the Political

The distinction between the political and the politics, along with antagonism as the ontological status of social relations, set the ground for understanding the political. However, its relation to democracy still needs examination, especially regarding the subject of the political. This section will delve into the question of the subject while focusing on the concepts of hegemony, articulation, and plurality.

2.4.1. The Concept of Hegemony

Radical democracy is a politics of hegemony. Laclau and Mouffe conceptualizes hegemony as a logic that operates in relations that constantly emerge and disappear in the social (Laclau and Mouffe, 1985: 90). Its operation creates meaning (Howarth, 2015: 8-9); very significant to radical democratic theory

because it is framed as a theory of discourse and elaborated mostly on linguistic terms. Hegemony is this struggle for creating meaning "that never stops" (Marchart, 2007: 131); this implies that Laclau and Mouffe do not consider politics as rare moments of rupture and destruction. Laclau argues that the fixity of the institutional politics and traditions are the result of sedimentation; "routinization and forgetting of origins" (Marchart, 2007: 139). The possibility of change is always on the horizon as long as the hegemonic struggle continues. New singularities can always hegemonize the empty signifiers as the social changes (Howarth, 2015).

2.4.2. Hegemonic Space: Necessarily Contingent Relations of Chains of Equivalences

Collectivity and contestation appear in infinitely different ways. Laclau argues that the need for a universal ground does not disappear from politics; on the contrary, politics is foremost determined by how this need is understood and fulfilled (Laclau, 1996: 59). What we usually refer to as political power is an important part of this universal ground. The political, for Laclau and Mouffe, is characterized by unsutured relations in the social and the contingent chains of equivalences. This means that the endless plurality of the political is grounded on the absence of the ground. There can be no structure which can make the social appear as a totality such as liberal deliberation or Marxist class consciousness. The unavoidable antagonism and the lack of a ground is reflected in their political theory which is based on a constant battle for power among subjects who only emerge during the fall of objectivity (Howarth, 2015: 48).

Hegemony and the chains of equivalences are these aspects of the political. The constitution of the subject in radical democracy entails the very impossibility of a sphere of communication between established subject positions, since this communication itself is the dissolution of the position. Relations of differences form chains of equivalences not in a pre-determined sphere of communication, but by a radical representation of singularity (Laclau and Mouffe, 1985: 128).

Subject emerges in her articulation of her position within relations of differences only to affirm that she is not subjected to this position anymore. So, one communicates not to express certain political contestations but to become the embodiment of many interrelated oppression relations. Due to the necessary absence of ground, radical democratic subject cannot be subjected to the relations of the power and articulate her position in these relations at the same time. Her performative act destroys the symbolic ground that makes her oppression possible and frees her from being completely absorbed in the society, it does not save her from the inequality and injustice. Therefore, the democratic subject of the radical democracy always has agency. Although the moment of her emergence is contingent, it is also necessary.

Necessary contingency refers to the indecisive ground of the political in Laclaunian political ontology; the indecisiveness means that it is open to hegemonization but not to closing. Marchart argues that there is always a hegemonic rationale behind every foundationalist theory (Marchart, 2007: 13). Anti-foundationalism is about keeping the site of foundation always open and contingent. The foundation as such, "their ontological status" should be proven contingent (Marchart, 2007: 14). Contingency is the forgotten roots of the institutions and practices of the politics (Laclau, 1990: 34). The society's oblivion to this contingency makes possible the illusion of fullness.

2.4.3. Articulation as a Political Process

Mouffe argues that the passions and feelings are articulated in politics through agonistic representation; each adversary recognizes the others' right to defend their own views peacefully. Having defined the political as essentially conflictual, Mouffe argues against the idea that the politics should, or even, can, create a consensus. As established earlier, articulation aims for hegemony. Let us now examine the process of articulation.

Articulation is realized through empty signifiers which create the effect of universalizing the concrete. Empty signifiers express concrete abstracts and they create the illusion of fulness of the society (Laclau, 2000: 192). They are empty because social imaginary depends on not the direct image of the society perceived by any singular point because this single perception cannot be universalized (Laclau, 2000: 191). Instead of an immediate encountering, our perception of the world is always mediated through the structures of meaning.

Articulation is not articulation as such but a practice of moving with/on the chain of equivalences and organizing its movement (regularity in dispersion). Only then we can speak of hegemony. This understanding of hegemonic formation is the radicalized version of Gramscian analysis of the historical bloc (Laclau, 1985: 136). The difference is that the historical bloc, here, is not determined by a historical a priori or bound to any necessity or evolution, it operates within a contingency.

Articulation presents an organization on the chain of equivalences by actually making them presentable and rendering any hegemony possible. The articulating subject announces her presence and by this act of expression/presentation/announcement, she steps outside of her reality -to reconstruct it-. In the words of Laclau and Mouffe, articulatory subject belongs to the general discursive field and exterior to the other discourses (Laclau and Mouffe, 1985: 135).

Howarth points to the difference between the radical democracy with reference to populist democracy and articulating subject who organize the chains of equivalences, formulated in *Hegemony and Socialist Strategy* (1985) and model of agonistic democracy which requires a justification of universalism (Howarth, 2015: 14-16). Laclau claims that the construction of empty signifiers in the hegemonic struggle can universalize the demands and will of the articulating subject because of "the constitutive asymmetry between universality and particularity" (Laclau, 2001: 7; cited in Howarth, 2015: 16). The asymmetry

implies the operation of power in the hegemonic links. Therefore, according to this perspective, the subject is "pure form of the structure's dislocation, of its ineradicable distance from itself" (Howarth: 2015: 45-46). Through articulation, she forces the structure to reveal its lack of center; dislocating it.

2.4.4. Plurality vs Populism

Laclau conceptualizes plurality as a consequence of undecidability within the structure (Laclau, 2007: 89). The incessant displacements of power link the particular and universalizing through "equivalence of plurality of demands" (Laclau, 2000: 55). According to Mouffe, plurality is evident in the ontology of the radical democracy. The question of plurality, I think, remains as one of the most problematic aspects of agonistic radical democracy.

Laclau and Mouffe assert that antagonisms are the result of desires and interests which are not expressed or articulated properly in the political (Laclau and Mouffe, 1985: 125). When the political subject has a linguistic access to the political, she would be a part of chains of equivalences and achieve an identity. By achieving identities and allowing their expression, democracy becomes agonistic. It should be noted that there is no observation regarding the society in the theory of radical democracy. Laclau and Mouffe do not speak of already-existing antagonisms but the constitutive role of democracy of agonisms.

One may argue that the question of plurality within the legal framework should also be examined instead of just focusing on the infinite possibilities of singular subjects. Because, I think to ensure the openness of the structure relies not only on the hegemonic sphere in which the decisions of the subjects are articulated as political wills and demands, but also in the sphere of law which can be also theorized on the same framework of articulation.

2.4.5. Concluding Remarks

Laclau and Mouffe's theory of radical democracy is based on the distinction between politics and the political. The political refers to the space in which infinite passions and conflicts of individuals are expressed; it is the ontological basis of human co-existence. Politics is, in contrast to the political, implies the already-established institutions. Politics as in "every day politics" based on the symbolic space created by the hegemonic practices in the politics. This distinction is important to radical democracy for radical democracy can be defined as politics of hegemony. Laclau and Mouffe posit the political power as hegemonic and contingent. They define the subject of democracy as a part of a chain that consists of many singularities. This chain is always in flux and it is never completed. New parts -new political subjectivities-can become part of it anytime -through a contingent moment of the political- and there is no fixed identity determined as the hegemonic identity. Popular democratic subject of Laclau and Mouffe is always temporal based on this hegemonic logic. Thus, the social and the political is always unsutured. This unsutured structure implies that the meaning is always open to new interpretations of the world or new abstractions. This linguistic conflict defines the political. Empty signifiers are the concepts that create an appearance of unity and meaning although they can be used in conflicting discourses; such as nation, justice etc. Human rights, according to Laclau and Mouffe, is an empty signifier. It has the appearance of a universality and it suggests a unified meaning but it is possible to use the discourse of human rights to articulate different political objectives. This play of articulation is one of the hegemonic practices.

I want to argue that instead of thinking human rights as an empty signifier, we should focus on the articulating subject of the hegemony. Following the distinction between the political and politics, one may argue that the subject of the political acts with a certain set of meanings and values and also, a set of political wills and judgements in politics. While articulation and chains of

equivalences partly explains how the political is based on judgement and wills, it does not give a satisfying account on the mechanisms of the hegemony and the political power. I believe Lefort's interpretation of the empty place of power in modern democracy clarifies the boundaries between the subjects and the political power; therefore makes the role of judgement for the political clearer. In the more general scope of law, one may argue that this conceptualization of judgement will link the autonomous political subject to democracy through human rights.

CHAPTER 3

LEFORT'S PERSPECTIVE ON HUMAN RIGHTS AND DEMOCRACY AS A LEFTIST

I believe Claude Lefort fits particularly well in this study on human rights and the left through a post-foundationalist framework. His formulation of symbolic representation is sporadically referred to by Laclau and Mouffe as a point of comparison for their theory of social with a lack and radical democracy. Given the chronology of these writers, it may be asked why Lefort comes after the theory of radical democracy in the outline of this thesis. The reason for this is that this thesis aims to present a general narration of post-foundationalist and leftist theory of human rights. I consider his engagement with the question of human rights politics in French philosophy in the 1970s combined with his background as a phenomenologist and left politics as a promising foundation to re-think and revise our post-foundationalist ontology of the political and to lay the ground for a leftist justification of human rights. The following section examines the possibility of judging human rights as an evolved form of natural rights. Within this picture, Lefort's theory almost establishes a bridge between the critical legal perspective of Douzinas and post-Marxist political theory of Laclau and Mouffe. This bridge is made of a focus on the evolution of international law of human rights along with its Marxist critique and Lefort's interpretation of modern democracy with an empty seat of power based on his analysis of the work of Machiavelli.

The question for Lefort is not whether human rights exist or not. He takes human rights as a reality and examines the processes that bring about the systems and institutions related to human rights. According to Flynn, it is plausible to suggest that Lefort's phenomenological reading of the oeuvre of Machiavelli and Marx help him to comprehend reality through the "infinite commentary" of great

thinkers without falling into any reductionism (Flynn, 2018: 17). Lefort considers this perspective as immersing oneself into the disguised meaning of the text and being open to be bewildered by it (Flynn, 2018: 5). He does not consider history as "a sequence of discrete events" or "a 'moment' in an all-encompassing movement of totalization" (Flynn, 2018: 17). In other words, by committing to theorize based on "an intentional theory of interpretation" (Flynn, 2018: 3), he chose to examine history in its completeness.

He has a distinct interpretation of democracy and the political. Main aspect of Lefort's political theory is his adoption of the concept of the symbolic as a principle lens that "governs access to the world" (Breckman, 2012: 32). Also he deals with the question of democracy with regard to its historical evolution and with regard to the relation between object and subject of the power. His political theory is developed through the very engaged readings of Machiavelli and Marx under the influence of post-structuralist views.

One may begin to think that human rights act as the absent ground for law in Lefort's theory. For the purposes of this thesis, I will frame the theory of Lefort focusing on: 1.) his examination of power and symbolic representation, 2.) The social and political will, and 3.) his conception of justice with regard to 'other' and 4.) evolution of human rights law as the main ideal and institutional consequences that follow this interaction.

3.1. Symbolic Representation and Power

This section will elaborate on the role of the symbolic in Lefort's theory of democracy and power by focusing on his interpretation of Machiavelli and Marx. Lefort argues that the political is the space between the society and its view of itself as a totality (Accetti, 2015: 123-124). He examines how this space is interpreted with reference to the shared meaning of power at any given point in the history of its transformation. This transformation can be seen broadly as

secularization of power; which is in line with the larger post-foundationalist perspective.

First part of this section will examine the transformation of the political power from brute force into the capacity to negotiate wants and wishes of the people based on Lefort's interpretation of Machiavelli. The following part, I will outline the symbolic institution of power in democracy in contrast to totalitarian alternatives we witness. The last part will compare the symbolic constitution of power to the ideological constitution.

3.1.1. Machiavelli: Understanding Political Power in its Relation to the Symbolic

Lefort claims that the *virtù* -princely power- described by Machiavelli must have appeared against the intuitions of his readers who were used to associate the power of the prince with a metaphysical beyond. Machiavelli defines *virtù* as the excellency of the prince, is a capability that is above the fortune (Lefort, 2012: 128) and the expected means of politics then, violence (Lefort, 2012: 131). This depiction of the king does not imply any sense of entitlement or worthiness for the authority of the prince to govern. Lefort posits that Machiavelli mainly advises the new prince not to rely on anything other than his force and then, continues detailing "a politics of virtù in which force is restored to its right place" (Lefort, 2012: 130). What is absent here is the definition of right place; the restoration of force is not pre-given. Rather, the exercise of politics itself seems to be an end in itself. According to Lefort's interpretation, princely power is "the exercise of a mastery that gradually draws man out of the present conditions and allows him to impose his will on the course of events" (Lefort, 2012: 130). Therefore, Lefort recognizes a shift in the nature of the political power from a natural or God-given entitlement to almost a craft of governing. Also, rather than seeing the political power as the object of desire, he speaks of a will to be realized. I think we can assert that Lefort's examination so far reveals

two dimensions of the political: its lack of foundation other than itself and its capacity to make a judgement and act upon it.

Lefort, then, continues with Machiavelli's demonstration of the importance of the people's consent to the prince as the motivation of *virtù* and examination of the meaning of the recurring theme of "'good' of the people", "'friendship' uniting them" along with "cruelty" and "force" as necessary acts to gain the control of country (Lefort, 2012: 132-133). There is an unspoken dimension of politics that is implied in this paradox: the relation that connects the prince to the people. Then, to the great bewilderment of Lefort, Machiavelli suddenly asks the reader "to remember that the term virtù is never detached from a moral sense" in spite of the obvious absence of any advice about any criteria other than its consequences to assess an action (Lefort, 2012: 133). Then, Machiavelli seems to evaluate the power of the prince with reference to his "glory" (Lefort, 2012: 134) and insists that it is nearly impossible to have both the *virtù* and the glory for a prince at the same time (Lefort, 2012: 138). Lefort argues that, by contrasting political power and glory -one may see it as an early form of legitimacy-, Machiavelli was "already implying that political action cannot be defined without taking into account the representation that men have of it" (Lefort, 2012: 138). Therefore, Machiavelli adds another dimension to the political: representation.

Lefort's reading of Machiavelli clarifies his perception of the realm of the political with regard to symbolic ground of the power, the paradox between power and legitimacy, and the embedded representation of the people in power even when it is disclosed. Flynn claims that the ontological shift Lefort recognizes in the oeuvre of Machiavelli is the reconceptualization of power; it is not considered as embedded in the body of the king but as non-localizable (Flynn, 2018: 4). The reactions to the evanescent aspect of power engender diverse notions of the political. One may think of "anti-Semitism", for instance, that is mainly a confrontation to the corruption of power or, even "Descartes' evil genius" (Flynn, 2018: 4). In other words, political power has a neutral or

formal quality behind the disguise of a metaphysical legitimacy and Machiavelli shifts the theoretical discourse through his seemingly haphazard oversight of this pretense. This realization can lead to different reflections about the nature of the political and power. Now, I would like to discuss the influence of this realization on conceptualization of the political of Lefort before his examination of democracy and ideology.

Lefort concludes that the political has a separate terrain from the politics (that can be considered as more involved with the pretense of metaphysics) and the social (that relates more to the people's perception the political power) to be sustained; however, it still relates to representation of people and symbols in the politics. Therefore, this space is shaped depending on the negotiations between different classes of people in a society according to their desires and the political authority. Lefort realizes that if the aim of the political organization is to control the social conflicts / to force people to give up on their own ends for the sake of the common, ruling power should ground itself on a representation beyond these different interests or ideals (Breckman, 2012: 31-32). In other words, society cannot be defined by any one of its parts. It is the symbolic representation that provides a pretense of unity through institutions and convictions; the crucial point is that this representation cannot be depicted as the summation of all its parts; the final depiction is beyond all the parts because it involves the very divisions between these parts. Flynn explains the impact of the dissociation of the symbolic from this kind of simple juxtaposition of empirical data in relation to the role of religion in pre-modern societies:

> The symbolic structure gives evidence of society's exteriority from itself. It is the dimension of the other. This externality of society with itself was in pre-modernity expressed in the disjunction between the sensible world and a supersensible world. […] Religion is imaginary interpretations of the symbolic. The symbolic is not within society, it is that which constitutes the relationship of the within–without. (Flynn, 2018: 19)

In other words, the society gains an inside-outside and consequently, creates a framework of accessing the inside and outside through the symbolic. The

interpretation of symbolic takes the form of religion in pre-modernity; then, it must have taken another form in modern society. But, before delving into the symbolic in modern society, I would like to discuss the relevance of Lefort's analysis to radical democracy. Laclau and Mouffe's conception of society as an incomplete and unsutured composition clearly evokes Lefort's analysis of the society and the symbolic. An illusion of unity of society and its constitution based on this very illusion itself are present in both theories. However, the representation of unsutured society is primarily framed within the antagonisms and identities that is articulated around the chains of equivalences, whereas Lefort does not define such a structure of this constitution; he simply focuses on the function of the symbolic and its relevance to political theory.

One can argue that Lefort's depiction of the symbolic and its political connotations are in the axes of experience -in the sense that how we perceive the world after the suspension of our initial judgements- while the symbolic of radical democracy, as in discussed by Laclau, refers to the distinction between describable and indescribable (Breckman, 2012: 32). In other words, Lefort's symbolic is shaped 'by' the people's desires and interests and political motivation of governing the people (it is our empirical experience); but the Lacanian symbolic itself -as a forgotten cause- 'shapes' the reality in which we live in (symbolic determines our sense of experience). Lefort is not concerned with the real of Lacan, meaning "a real beyond all symbolic orders" or "real as permanent source of disruption and trauma for the symbolic order"; Laclau and Mouffe employ this framework to make sense of the conflict and division within society as antagonisms (Breckman, 2012: 32). According to Lefort, division and the symbolic dimension of power already exists. In an interview, he claims:

> […] it is necessary to introduce a distinction between what belongs to the order of the symbolic and what belongs to the order of the real. Real power moves from one to the other. But symbolic power, no matter what the opinion of the majority is and whether it decides to put this or that particular government or individual in power, is a factual power—there is an essential dimension of power that I call its symbolic dimension. And there is no way to realize that

> power; it is for this reason that I speak, in a more simple way, of a "power of nobody. (Rosanvallon, 2012: 10)

Therefore, the symbolic power will always have an institutional existence. Lefort's aim is to prevent the identification of this symbolic power with its institutional existence by keeping the seat of the power empty.

3.1.2. Empty Place of Power: The Order of the Symbolic and the Political

Lefort examines the 19th century philosophers' fondness of religiosity as "a pole to reconstitute unity" and their effort to impose this idea into the democracy and argues that considering belief as a basis for social unity misses the point of the modern democracy: the elimination of "the markers of metaphysical certainty" (Flynn, 2018: 9). As I have tried to argue before, Lefort aims to conceptualize the empty place of democracy as emptied rather than ontologically empty from the start. In other words, his reading of Machiavelli and his larger discussion concerning the dissolution of metaphysical markers uncover the evolution of the symbolic.

According to Lefort, the Prince, despite seeming like a guidebook for the young prince, presents a novel ontology of the political as an alliance between the prince and the people (Flynn, 2018: 2-3, 5). Machiavelli does not suggest the prince to appropriate any appearance of religious or natural superiority to be able to exercise his authority. The content of his advice is about the relation between the prince and the people or the treatment of the people by the authorities. According to Lefort, this implies that the basis of the authority of the prince is "his recognition in the eyes of his subjects" (Flynn, 2018: 6). In addition to the absence of metaphysical and religious basis, power does not have any anthropological motivation for its constitution either. In fact, Machiavelli speaks of distinct desires belonging to two classes of people in the society; those who want to oppress (grandee) and common people who want to flee that oppression (Flynn, 2018: 7). Motivation behind the political power is not linked to such

desires but a pure desire to govern these relations. Lefort argues that this distinction positions Machiavelli apart from the political theories of Hobbes or Aristoteles who always aim to connect the political power to a pre-political nature about humans (teleology in Aristotle; state of nature in Hobbes) (Flynn, 2018: 5, 7).

> It is that entity in virtue of which relations between people are ordered within the framework of the state, a dimension of (rather than a figure within) society. A dimension the originative cause of which it would be as useless to seek in any particular human motivation as in a religious or metaphysical principle. (Lefort, 2012: 110; cited in Flynn, 6-7)

This claim is crucial to understand the weight of the symbolic for the political. To argue that conflicting desires belong to conflicting classes in society whereas power belongs to the prince enlightens a very critical distinction between democracy and totalitarianism in the theory of Lefort. According to him, the symbolic dimension is to be 'kept' empty; otherwise, a total equivalence between power and identity would result in a form of absolutism (Breckmann, 2012: 34):

> […] if modern democratic society's quasi-representation of itself remains an empty place, it is empty not because it is structured by lack or incompletion, which is the transcendental condition of the symbolic in Lacan's system, but because modern democracy institutes the symbolic dimension of power as empty.

According to Lefort, democratic autonomy requires the operation of "the insight of religion", because human existence has always been bound to something beyond their creation (Breckman, 2012: 30). Thus, the symbolic sustains this outside or other that society cannot internalize fully but always have as its ground of togetherness. This impression of exteriority is constitutive for the political. That is why Lefort insists on the empty space of power in modern democracy rather than linking the power to any kind of belief. One may argue that this lack of belief resembles a belief in itself. However, I think we should recognize the insistence on the empty space of the place of power as a deliberate

decision, as a judgement based on our will. Considering belief as a valid point of reference would turn the symbolic into sheer ideology, as claimed by Marx.

3.1.3. Ideology: Symbolic without Representation

Lefort engaged in a debate concerning the Marxist critique of human rights politics. Examining this study, Lacroix describes a moment of the politicization of human rights as the "Lefort Moment" based on his response to critique of human rights as individual rights of egotistical men (Lacroix, 2013: 677). The historical setting behind this debate was May 68 and the human rights becoming the benchmark of politics after the birth of political subject identified as gays, prisoners, women so and so forth (Lacroix, 2013: 678). The proliferation of political identities puts the Soviet Bloc against the liberal democracy which is described around civil rights and individual freedoms.

Lefort argues that Marx, being trapped in the ideology, misses the political potential of human rights (Lacroix, 2013: 679). He claims that Marxian critique of rights overlooks its political potential to articulate the political will and considers them merely. According to Lefort, examination of rights or any other concept for that matter, cannot reduce the concept to its single contemporary aspect. Instead, he aims to see the rise of human rights within the larger frame of evolution of rights. He does not see the emergence of human rights as an unexpected turn of politics or a rupture in history either. This leftist tendency to overestimate the potential of social relations and underestimate the force against them is called "false contingency" (McLoughlin, 2016: 16). In other words, according to Lefort, human rights law should be considered in a continuous history of international relations and theory of state.

Within this framework, Lefort examines the concept of rights as such and draws the conclusion that the history of rights presents "a constant erosion of the boundaries that the state has attempted to draw around itself" (Lacroix, 2013: 679). It is plausible to claim a similarity between the conception of metaphysical

justification of state power and these boundaries. Therefore, it can be asserted that rights are part of the constant deliberation and negotiation between the state and different classes of society that prevents the closure of the symbolic. It is, in that sense, the opposite of the ideology. According to Lefort, while regarding social conflict as the primary reality, Marx overlooks the symbolic (Breckman, 2012: 32). He maintains that the materialism in Marx negates the expression of division, symbolic order and "the relation between division of social agents and representation" (Breckman, 2012: 32).

3.2. Justice as the Third in the Symbolic

3.2.1. Justice of the Third

Lefort's reading of Machiavelli reveals the dimension of political power as accountable for the well-being of the people based on the critical relation between the authority, grandeur and the common people. Machiavelli, in this sense, implies the existence of a political terrain of action which consists of different classes. The space of the political is not only important because of its institutional existence for free individuals forming a community, as in Arendt; but also it introduces a sense of a third party within the community. Lefort thinks the trace of a symbolic third is crucial as it draws boundaries between political subjects and the symbolic; which is crucial for representation. Lefort claims that what Machiavelli includes in the political is exactly this third when he advises the young prince to not be immersed in his own authority:

> If the point of the Prince is to advise fundamentally, it is to advise the prince as to the nature of the state and his place in it. For example, not to rely on mercenaries; not to isolate himself in a fortress, not to surround himself with advisors who will flatter him and enforce the illusion that he is personally the source of his own authority. (Flynn, 2018: 6)

This quote is very telling as it stresses the importance of refraining from the illusion of one's self-righteousness. I believe that is the core of the paradox of community and individual. The difference between a monarchy and democracy

is the multitude of those who have the same phenomenological status with the prince because of their equal right to vote. One's ownership over her self and her claim to the community is at odds in democracy. I think examining the political power of the prince in relation to "the nature of the state and his place in it" (Flynn, 2018: 6) elucidates this so-called paradox. To expect one's relation to the social to be gapless, as in the sense of equating representation to identification, would lead to totalitarianism.

> […] totalitarianism is the attempt to give a post-religious firm foundation to the political in the dimension of the real, through a foreclosure of the symbolic order. Whereas democracy is the test to live with the recognition that the place of the political is a symbolically empty place. (Flynn, 2018: 9)

In other words, Lefort recognizes that the relation between the prince and his subjects cannot be summarized as a contract (Lefort, 2012: 142). Rather, subjects obey the prince in order to escape from the will of the Other within the unavoidable class conflict (Lefort, 2012: 140). Prince fills a void by directing people's fear from the Other to itself. According to Lefort, only "when the desire to not to be oppressed, which in itself is powerless to grasp its object, to realize itself in the form of a power that would at the same time be a non-power, finds its counterpart in reality, in colliding with a third who inscribes it into political reality" (Lefort, 2012: 144) people can be realized fully. In other words, human rights represent people's will to be counted as someone with rights in a world in which many troubles of politics come as a legal one.

So the metaphysical foundations that are dismissed in secular history is not limited to God, it includes the subject whose desires require full identification with community. Justice is relational in the sense that it requires one's recognition of herself by a third; not by the rest of the community but a third that contains both the rest of the community and the division between herself and the rest of the community. Following parts will examine the disruptions in the symbolic.

3.2.2. Humanitarianism without the Third

The dissolution of metaphysical foundations of the subject is also discussed by other french theorists such as Badiou, Ranciere, Agamben (McLoughlin, 2016: 8). These post-Marxist thinkers broadly focus on the new political discourses which stem from the subject of human rights as isolated human beings. According to Agamben, the crucial function of rights was to justify the power of the state, not to restrain it (McLoughlin, 2016: 10). In other words, rights substantiate the citizen before the state as an entity to be governed within limitations. Thus, by claiming rights, one would establish the proper boundaries between the state power and herself. Human rights, on the other hand, according to Agamben, do not substantiate this human but, on the contrary, make her a vague figure: "the universal and abstract figure of Man is, he argues, a modern incarnation of bare life" (McLoughlin, 2016: 10). Consequently, this bare life actually has no boundary between the state power other than abstract ethical norms (McLoughlin, 2016: 12).

These comments can be directly linked to the requirement of the third in the political. The loss of the third, I think, can manifest a problematic in a spectrum. Bare life of Agamben refers to a fragile human being whose only recognition from the state is based on his biological animal being; this is the one extreme on the spectrum of a political without a third. In this case, the third of the symbolic is replaced with some blurry ethical norms. On the other extreme, one may argue that the third is completely enmeshed with the ruler and the ruled. This is the totalitarianism of the party.

Boonen asserts that human rights turn into "a form of domination" because they provide the structures for domination for the oppressor and cannot protect people from domination (Boonen, 2019: 14). Ranciere argued that human rights become a ground for western powers to intervene in the east on the basis of humanitarianism (McLoughlin, 2016: 8). The subject of the human rights actually become stripped of all her rights linking her to a community and a

passive receiver of *human rights* in humanitarian intervention. She is almost given a support package filled with food, clothes and rights and she gains the capacity to use her legal power just like her capacity to use her labor power in a free economy. She becomes a double proletariat with her alienated human rights and her alienated labor. Balibar claims:

> […] just like commodity fetishism -that seemingly independent movement of commodities— influences and constraints the behavior of those participating in the market, legal fetishism— 'the juridical masks' which individuals have to assume to be able to be 'bearers' of commodity relations. (Balibar, 2017: 73; cited in Boonen, 2019: 12)

What Boonen sees problematic in the legal fetish or legal form is not that the rights themselves are articulated after a political process but the fact that once the political demands or wants are expressed in the form of rights and become "actual legal entitlements" they stopped being political (Boonen, 2019: 17). In other words, Boonen argues that Lefort's critique of Marx regarding minimizing the political potential of human rights is valid when we think of Marx's stress on ideology; however an analysis of the prevalence of legal term, meaning the requirement of a standard language to express wrongdoings and resentments, which can also be derived from Marx, still calls for further examination (Boonen, 2019: 18).

3.2.3. Dissolution of the Third in the Party

Lefort examines the Soviet system in which the symbolic completely identifies with real. He argues that the third vanished as a reference for justice as the party becomes the law and law becomes the party. In other words, nothing can be framed outside of the existence and principles of the symbolic; thus symbolic loses its vocabulary to represent the division: "If the party is above everything, then that also means that nothing outside the party. […] Consequently, there is in the administration of justice no neutral actor" (Lefort, 2002: 459).

Nevertheless, this does not mean the loss of law. Arendt, failing to acknowledge this distinction, concludes that totalitarian regimes are marked by full eradication of law: it is not the rule of law but the law of history or the law of nature that totalitarianism follows (Lefort, 2002: 450). Her objection to the exercise of law of nature or history relates to its arbitrariness caused by nature's or history's supposed ontology as movement, as a fixed logic of progress. Arendt thinks that a philosophical shift emerged in the 19th century "that consisted in interpreting everything as being a stage in process"; resulting in totalitarianism that "elevates movement to the status of a law, and in so doing discloses its very significance" (Lefort, 2002: 451). Lefort claims that the arbitrariness and rigidity perceived by liberal critics like Arendt dismiss the fundamentality of the party as "a body closed in on itself, it is not localizable in space and time" (Lefort, 2002: 454).

Contrary to the claim of infinitely free exercise of law in the hands of Soviets, Lefort observes "a perversion of the law" (Lefort, 2002: 454). Leforts elaborates the effects of the loss of the thirds as the "logic of incorporation" which requires both the accuser and the accused identify themselves with the party to the point that the accused culprit is considered to be obliged to provide proof of his guilt (Lefort, 2002: 458). He refers to Solzhenitsyn regarding the Moscow trials: "It was all that same invincible theme song, persisting with only minor variations through so many different trials: 'After all, we and you are Communists! […] You are an old party member. Tell me what you would do in my place?'" (Solzhenitsyn, 2007: 146, 419; cited in Lefort, 2007: 167).

Nevertheless, to convict the whole idea of communism on the grounds of the loss of the third in Soviet regime misleads us to associate the liberal politics of human rights as necessarily *good* and also, the loss of the third. Badiou argues that equating every communist inspiration with a disrespect for rights serves to justify capitalist-parliamentarism and liberal legality (McLoughlin, 2012: 9). McLoughlin asserts that even Lefort tends to a human rights politics based on recognition and overlooks the need for radical transformation of capitalist relations (McLoughlin, 2012: 17). I conclude that, in this case, Lefort's inclusion

of the third in the theory of democracy still needs further contemplation and refinement; especially in terms of the limitations of the notion of the representation without properly acknowledging the other of the community.

3.3. Human Rights Law

This thesis aims to suggest a theoretical framework for the political value of human rights from a Leftist and post-foundational perspective. It is important to remember the possibility that human rights politics generates strong skeptical reactions. The following section will focus on critiques, while the next one will present Lefort's view on human rights law.

3.3.1. Arguments against the Politics of Human Rights

McLoughlin maintains that leftist critique of Soviet totalitarianism inspired an ethical framework to understand a myriad of different problems in French theory especially after the 68' movement (McLoughlin, 2016: 4). These thinkers, called new philosophers, argued for rights, autonomy of the individual, moral grounds for politics and subsequently, human rights (McLoughlin, 2016: 4). In this picture, collective action seems to have lost its merits and the concept of power in politics started evoking an evil that should be confronted (McLoughlin, 2016: 5). A peculiar type of politics emerged which replaced the ideals of "social obligation and reciprocity" with demands of "recognition" for the oppressed identities (Lefort, 1986: 262; cited in McLoughlin, 2016: 6). Lefort's focus is again on the changing connotations of political power and the gestation of law as a response to these historical changes (Lefort, 2013: 118).

> The right to work, for example, is generated by those excluded from the sphere of work who experience this injury as a denial of a social right. This demand intervenes in a political situation consisting of the state and a social power 'which has a multiplicity of elements, apparently distinct, and less and less formally independent' arranged around it. The demand for a right to work 'reveals the presence of social power in places where it had been practically invisible' and has the potential to shatter the existing arrangement of social

> power predicated upon a certain configuration of state and capital. (Lefort, 1986: 263, cited in McLoughlin, 2016: 7-8)

Although Lefort stresses the new social powers that result in injustice; the demand for rights is still grounded on the recognition of individual sufferers of injustice by the state power. Lacroix asserts that the dismissal of human rights politics by the French left relates to the detachment of rights from the political subject (Lacroix, 2013: 678). Specifically, Manent and Gauchet blame Lefort for diluting democracy to individual rights by minimizing the importance of "political preferences that have made the modern democratic process possible" (Lacroix, 2013: 680). Manent argues that Lefort dismisses the political aspirations of the people that constitute democracy (Manent 2007: 7; cited in Lacroix, 2013: 680) and core of democracy is the "alliance between rights and power" but it transformed into "demand for an empowerment of rights" (Manent, 2007: 16; cited in Lacroix, 2013: 681). Gauchet straightforwardly considers rights politics as "a democracy cut short" without its political quality (Gauchet, 2007: 17 cited in Lacroix, 2013: 680); meaning "expansion of legal norm" replaced the realm of political will (Gauchet: 1998: 115 cited in Lacroix, 103: 681). In other words, discussions regarding the potentiality of human rights politics reflects the questions regarding the political authenticity of rights. As a reader of Machiavelli, Lefort does not consider the question of morality as part of the political and he aims to understand human rights' potentiality in relation to political power (McLoughlin, 2016: 5).

Marx obviously recognizes the complex relation of contesting desires within society but he does not think that juridico-political analysis may have an emancipatory capacity either. Marx argues that the idea of political emancipation via rights implies that citizenship is independent from peculiar positions in civil society so the rights struggle depoliticized the root cause of the oppression (Boonen, 2019: 4). In other words, rights politics frames the issue of liberation and equality external to the embedded differences -economic, social, cultural- among society; it reduces the participation in the community to formal

citizenship; and it dissolves the political relations of civil society. Therefore, Marx regards modern law as prioritizing civil rights over political rights by putting the individual at the center stage of the political state, resulting in the citizen losing its power (as the individual gains power) to be able to ensure "participation in the community" (Boonen, 2019: 5). This view positions the citizen and the individual in contrast to each other.

The growing domination of legal normativity can also be discussed in relation to Hannah Arendt's remark on the invasion of free society by law. From a very different point of view, Arendt also thinks that human rights do not have political significance when it comes to transformation and change. According to her, process of law necessarily makes it against the new; it stabilizes change by guarding the natural movement; it prohibits plurality and it suppresses free individuals that seems the only force capable of change (Lefort, 2002: 456). Arendt considers rights politics not as a politics, because, according to her, the political is foremost related to virtùe and action. So, from her vantage point, Lefort would seem to be suggesting a merely procedural realm of the political without the social. Interestingly, Laclau's remark on Lefort refers to the lack of the democratic subject: "The difficulty with Lefort's analysis is that it is exclusively concentrated on liberal-democratic regimes, and does not pay due attention to the construction of popular-democratic subjects" (Laclau, 2005: 166). Therefore, both Arendt and Laclau consider law as merely formal and lacking the capacity to form relations in the political and social.

According to Laclau, Lefort's empty place is just "a datum of the constitutional law" (Laclau, 2005: 170). In the theory of radical democracy, emptiness is deliberately "produced" through the logic of hegemony (Laclau, 2005: 166) and this production is political while Lefort's emptiness just identifies a procedure. Moreover, Laclau points to the lack of subject in Lefort's examination of democracy: "The difficulty with Lefort's analysis is that it is exclusively concentrated on liberal-democratic regimes, and does not pay due attention to the construction of popular-democratic subjects" (Laclau, 2005: 166). In other

words, Lefort's focus on regime makes his theory formal and non-political. Lefort, however, explicitly stresses that law is not limited to its formal capacity to regulate human interactions in any way (Lefort, 2012: 344). He defines a complex relation between the subject and authority and interconnectedness between accident -we may say, contingency- and already established legality (Lefort, 2012: 344-345).

3.3.2. Law as the Condition of Living Together

Lefort's answer to Marxist critique of human rights has two main aspects; firstly, the rights' capacity to establish relations, collectivity, and the transformation of the limits of power even before the evolution of modern democracy; and, secondly, Marx's neglect towards the question of the power (Boonen, 2019: 6). The democratic revolution separated power, law and knowledge; thus the seat of power was emptied (Boonen, 2019: 6). In that case, while thinking about the subjective rights, we should take into account the expression of power and the empty seat of king and understand that rights are also symbolic; rather than ideologically creating a meta-reality (Boonen, 2019: 7). Because the emptiness of the seat of the king also means the absence of a guarantee for rights: "as a result of this separation rights are deprived of a fixed anchor point and consequently 'go beyond any particular formulation which has been given of them" (Lefort, 1986: 255-258; cited in Boonen, 2019: 6).

Claiming an identity and demanding rights accordingly do not expand democracy. For Lefort "invention of democracy" and "claiming human rights" are interconnected (Cohen, 2013: 125). According to him, the claimed rights already had a political content; many of them aim to create a public space for equal participation of citizens (Cohen, 2013: 128). Also, claiming rights means coming together as a group and articulating a common demand, which is itself political (Cohen, 2013: 129). All these, in Lefort's eyes, amount to a "mutation in the symbolic order" (Cohen, 2013: 129). Therefore, Lefort considers law as the condition of human coexistence and he elevates this exchange in relations,

rather than individual action, to the center of history. While examining the Arendtian critique of rights, he suggests that:

> […] admitting as she does that laws are changeable in consequence of particular circumstances amounts only to taking into account discrete actions, thereby ignoring the gestation of new social relationships, new ways of thinking, new representations of what is good or evil, of what is just or unjust, right or wrong, also real or imaginary, possible or impossible: a gestation that operates in the thickness of the social under the juridico-political surface".(Lefort, 2002: 456)

3.4. Subject of Democracy vs Subject of Rights

This section will examine the subject of democracy and human rights' relation to her in Lefort. Rather than accepting the origin of the political as plurality or antagonism; Lefort focuses on the subject's specific relation to the community established within the political. I have already argued that Lefort's formulation of human rights politics is inclined towards seeking recognition. This means that we should examine the representation in democracy with reference to the wider community. I think Lefort contributes to this examination as accepting the citizen's attachment to democracy as a given; just as Machiavelli when he refrains from articulating the metaphysical ground of political power. Therefore, we should draw our attention to this presupposition regarding the democratic subject.

Blackell argues that there is a division in the citizen's object of attachment in Lefort's theory: "it demands both a deep attachment to the notion of the people and a deep suspicion of it at the same time" (Blackell, 2006: 58). This interpretation raises questions about "the citizen's object of attachment" in democracy (Blackell, 2006: 52). According to Blackell, Lefort's conceptualization of power in democracy as "absent-presence" and expectation of "a partial gesture of love to a metaphysical limit of democratic political society" from the citizen is a departure from classical conceptualization of citizen's link to the political order as interest or virtùe (Blackell, 2006: 61). Blackell argues that although Lefort questions the "forms of political subjectivity

relative to different regimes", he does not give any specific picture of the political space of democracy, in consequence we cannot get what is expected from the form of subjectivity of this regime (Blackell, 2006: 53). He criticizes "Lefort's conception of the symbolic order of power in modern democracy" as a "meta-description of processes by which political societies form themselves" (Blackell, 2006: 53). In other words, he does not see any definition of good society or democracy in Lefort.

> […] how can the democratic citizen love the realm of the eternal, the invisible in the visible, and the dimension of the other even as she does so with full recognition of the partial nature of this gesture? Love is necessary precisely because it is not the psychological mechanism of mimesis or representation: it is the mechanism of bridging difference. (Blackell, 2006: 61).

I think what is taken for granted by Lefort is the subject's capacity to judge and form political will. What Blackell called love above can be seen as a kind of judgement towards the political. He points out the almost self-defeating nature of this gesture; the necessity of love towards something unknown brings about a sense of volatility in modern democracy. I think Blackell's employment of the term love, a feeling, to identify citizen's access to the unknown in the political is not inconsequential. Feelings lack causality; they cannot be explained in deterministic terms. I think that's why Blackell interprets the attachment to the symbolic representation as such. Whereas, according to Lefort, knowledge, not just power, loses its markers of certainty in modern times (Lefort, 1986: 186). Acknowledging this point, in my opinion, makes judgement a more appropriate word to identify our political experience. It is an ethical decision that links the subject to the democratic community, that I will delve into in detail in the next chapter which focuses on the views of Douzinas. At this point, it suffices to note that the experience of the world cannot meet modern scientific criteria of testing. The ever-changing relations in society cannot be regulated according to verified scientific data. Society does not have a computer code (yet). Democracy requires the participation of the people and their infinite experience. Thus, the citizens have an agency as decision makers, which can be better put, as the capacity of judgement rather than love.

In other words, Lefort employs the political as a space in which citizens would think and frame their thoughts through an intentional interpretation of their experience with the world and articulate their will accordingly. In this sense, the political only have access to what it experiences and, since experience is not an objective source of information, the reference point in political thinking cannot be determined. Lefort argues that by expanding the civil rights based on the popular demands voiced by governments and parties, the system of legislation also expands the realm of authority through new responsibilities of the administration (Lefort, 1988: 36). Every new right comes as the expansion of existing rights: the rights to associate expands the freedom of expression, cultural rights expands the right to education, so and so forth (Lefort, 1988: 36-37). Political experience is tightly attached to rights. This is a right-giving and covertly coercing state. It indirectly shapes the realm of freedom and turns coercion into liberation. The source of a right becomes nothing but "its demand" (Lefort, 1988: 37).

> The naturalistic conception of right masked an extraordinary event: a declaration which was in fact a self-declaration, that is, a declaration by which human beings, speaking through their representatives, revealed themselves to be both the subject and the object of the utterance in which named the human elements in one another, 'spoke to' one another, appeared before one another, and therefore erected themselves into their own judges, their own witnesses. (Lefort, 1988: 38)

I think the will to make judgments on oneself relates to our original commitment to the law. According to Lefort, the principle of democracy is this will to make judgement (Marchart, 2007: 87). It is this aspect of human rights I find still revolutionary. Humans actually show the courage to be their own judges rather than obeying the rules of Nature, God, Gods, or laws of history.

One may associate this understanding of human rights with Kantian notion of universal law. At first, Lefort's analysis of law as born out of the relations between humans seems different from Kant's understanding of human rights which are the product of a universal reason. To Lefort, the law of humanity is

engendered from and established on "the intricate connections of beings, perceiving, thinking, and acting in their common world, that underlies the symbolic constitution of every community" (Lefort, 2000: 155). What we have here is two roots of human rights as universal law based on the public use of reason and the symbolic based on experience. However, Kant also examines another way to reach judgement. He makes a distinction between determining and reflecting judgements. Determining judgements presuppose an objective concept which is later applied to intuitions. This concept is determined based on individual objects, or all individual objects are classified within the objective concept (Kant, 2000: 26). In contrast, reflective judgement does not have a concept with which we test our experiences. Indeed, reflective judgment is the very process of reaching empirical concepts based on a comparative reflection on intuitions. Determining judgements require understanding, which is the capacity to apply concepts; reflecting judgements require imagination, which is the capacity to synthesize intuitions. Imagination reflects on experiences and understanding and tries to extract a concept. Now, it is plausible to argue that Kant's reflective judgement connects to our perception and experience in our common world, which is the symbolic constitution of community.

3.5. Concluding Remarks

Lefort's theory of democracy and empty place of power explain political power as a distinct entity, from individual desires and wills, which are all motivated by thedesire to rule. According to Lefort, instead of focusing on the metaphysical justification of this power, we should consider its mechanisms as belonging to the symbolic and instead, shift our attention to the negotiation between the political power and the people. The full representation, according to Lefort, means full identification of the power with the people and this brings out the conception of one people. Therefore, it is impossible for democracy but the defining character of absolutist regimes. Based on comparisons between totalitarianism and modern democracy, Lefort draws the conclusion that the space between the symbolic and the real should always be protected, because the

constitution of justice depends on this empty space. Lefort's theory of democracy has obvious similarities with radical democracy; however, the subject of radical democracy emerged out of the articulation of the ontological antagonisms while, according to Lefort, the subject of democracy is emerged through her specific relations with the community.These relations are not pre-established like antagonisms. According to Lefort, the empty place of power in democracy is directly related to the temporality of the decisions made in democracy; more clearly, it is the voting that makes democracy open. In radical democracy, the emptiness is in the chains of equivalences in which every part has the potential to claim the hegemonic place of power at any time. This incompleteness stems from this indecisiveness.

Commitment to the law, therefore, is not grounded upon any metaphysical beyond other than the judgement of the people. It is the part of the symbolic we rely upon while accessing the world. Lefort's understanding is symbolic is different than the symbolic in radical democracy as Laclau and Mouffe think the symbolic as an ever-present space for the political articulation. Lefort's symbolic gives us the frame to make sense of the world. It is the space for experience. Therefore, we cannot provide an empirical or metaphysical ground for law; human rights is the product of our reflecting judgement based on our experience within the symbolic and our use of reason.

CHAPTER 4

CONCEPTUALIZATION OF HUMAN RIGHTS AS THE ABSENT GROUND OF LAW: DOUZINAS'S VIEW

In modern democracies, human rights are expected to act as the scaffolding for justice. However, as observed by Costas Douzinas, people everywhere suffer from a severe sense of injustice which is quite easy to identify, but somehow harder to conceptualize (Douzinas, 2000: 368). He argues that the operation of human rights law is hindered by many confusions regarding the notions of human, law and justice. As a theorist of law, he examines the possibility of an alternative understanding of human rights within the modern law as a response to this suffering.

Based on a critical perspective, Douzinas establishes a link between human rights and natural rights. I want to argue that this link fills the theoretical gap between politics and the law. This chapter will first explain Douzinas's approach to legal texts, rights and the law, and his characterization of the subject of the law. Then, I will clarify his analysis of the separation of justice and ethics and, demonstrate why this separation is crucial for the questions that I will be posing to human rights. In the final section, I will discuss his conceptualization of human rights as natural rights and as openness to other.

4.1. On the Law: Towards a Deconstructive Reading of Law

Costas Douzinas, Ronnie Warrington, and Shaun McVeigh explain the historical and political advancement of the concept of rights based on a textual analysis connecting legal theory and postmodern deconstruction (Douzinas, Warrington and McVeigh, 1991: ix). They claim that the interpretation of text is central to both legal theory and the postmodern critical theory. While postmodern critical

theory tries to extricate the law of any text regardless of genre, jurisprudence tries to understand texts of law which "itself claims the power and the ability to translate into its own language all human discourse and action" (Douzinas, Warrington and McVeigh, 1991: ix). Both approaches focus on the underlying set of norms and rules that construct the text at hand. In other words, postmodern critical approach aims to unfold the inner logic of the law of the text itself which is distinct from the legal content it aims to convey. This linguistic analysis would help elicit the subject of the law. Moreover, deconstructive approach would help us understand why human rights disappoint the world continuously better than formalistic explanations such as the lack of legal recognition for certain identities of the law or insufficient institutional capacity of international or state organizations to fulfill the demands. Deconstructive analysis enables us to re-think the connection between the law and political identities or the (in)compatibility of the demands of liberal democracy with the needs of the real people.

As far as Douzinas, Warrington and McVeigh are concerned, the legal texts may at first appear to be about "the rule of white middle class males" but a further analysis shows that no law actually have ever succeeded in becoming "a gapless whole" (Douzinas, Warrington and McVeigh, 1991: xii). No law is unchallenged; its parts are continuously being disputed by the groups who are excluded from the governing bodies; ethnic, racial, gender minorities and so forth. Efforts to question laws' "claim to present a timeless universal rationality" from a practical perspective are ever present (Douzinas, Warrington and McVeigh, 1991: xii) and indeed, this questioning itself is political.

Now, let us examine the claim that law cannot be gapless whole. According to Douzinas, law is an effect and, at the same time, a cause in society and nothing by itself can determine everything. The relations between subjects and institutions do not occur on any predetermined spheres. While discussing justice as a problem of economical, political and legal question, Douzinas, Warrington, and McVeigh (1991) examine the relation between Marxism and law in detail.

As for the other authors scrutinized in this thesis, an elaborate Marxist critique constitutes a crucial basis for his theory. He fundamentally criticizes the base-superstructure metaphor with regard to legality.

Considering Marxism as "part of the most honorable traditions of western radicalism" , the authors claim that it should be freed from "all aspirations to unification and all claims to possession of the ultimate truth", parallel to his perception of law (Douzinas, Warrington and McVeigh, 1991: 111). He regards Marxism as part of the positivist modernism as it claims a correlation between the theory and the real (Douzinas, Warrington and McVeigh, 1991: 112). The main argument of classical Marxism which puts forward that there are laws of history to be discovered and utilized for revolutions is already challenged by the "social fragmentation and radical heterogeneity" we experience under advanced capitalism (Douzinas, Warrington and McVeigh, 1991: 114) The advancement of the welfare state -development of an advantageous formula for working class rather than blunt oppression- is the proof of always contingent advancement of history and as such marked the crisis of Marxism (Douzinas, Warrington and McVeigh, 1991: 114).

Douzinas focuses on the problem of Marxism because of he intends to develop a non-unified perspective on the dilemmas of legal theory in late capitalism. He argues that the biggest challenge of post-Marxism is the "base-superstructure metaphor" (Douzinas, Warrington and McVeigh, 1991: 115). Asserting rights the contingent historical evolution of rights, he clearly diverges from the deterministic understanding of Marxism as Laclau and Mouffe do (Douzinas, Warrington and McVeigh, 1991: 114-115). What is problematized in Marxism is its aspect which resists politicization. Both the theory of radical democracy and Douzinas’s post-Marxist reading of law argue against the historical determinism and the priority of economic structure over other spheres of society. After juxtaposing principal post-Marxist examinations of law, Douzinas concludes that law is meta-normative; which can be considered as a post-foundational perspective.

Douzinas discusses the brands of thought in critical legal theory that attempt to overcome the positivist modernism created by the base-superstructure model. Classical Marxist interpretation of history -that economy is the cause of social structure, or that superstructure is the effect of economy- reflects upon the mechanical cause-effect causality. The first criticism attacks the externality of different parts of the system to each other which makes it impossible to understand in which ways they affect each other in unidirectional ways (Douzinas, Warrington and McVeigh, 1991: 116). The expressive causality model maintains an idea of an essence that penetrates all layers of the system so that the layers are not completely external to each other (cited in Douzinas, Warrington and McVeigh, 1991: 116). Structuralist causality model, on the other hand, stresses the interplay between these layers as a separate process while keeping the independency of these layers in terms of their specific conditions and history. However, the structure is still mostly dominated by the economic level.

Constitutive theory of law sees the society and its law as interwoven with no recognition of any independence. Following Lynn Hunt (2004); Douzinas, Warrington and McVeigh state that constitutive legal theory interprets law as the both constitutive of the social and being constituted by it (Douzinas, Warrington and McVeigh, 1991: 119). From this point of view, law can be both the effect and the cause in the affairs of society. They conclude that:

> […] law is metanormative, in the sense that it is the formal and institutional transcendence of the prelegal customs and the official expression of the key concepts of the dominant ideology. Law's nature is the result of its mode of emergence from the pre-modern world and of its imbrication in ruling class ideas. (Douzinas, Warrington and McVeigh, 1991: 122)

The metanormativity of the law applies to the relation between law and justice (Douzinas, 1994). Law cannot be determined by any *a priori* definition of justice: it is the very ground for the truth to be tested on. The problem is the blindness to this absence of ground. This framework enables us to examine the law from a post-foundationalist perspective. Douzinas claims that, at the point

where we exhaust all pre-modern and modern grounds of ethics, we have no choice other than deconstructing the old traditions of our philosophies in order to reconstruct a new ethics that will accommodate the empirical reality of our society (Douzinas, 1994: 406). According to Douzinas, human rights have the power of constituting a society solely on the grounds of their declaration. The inevitable incompleteness of law is duplicated in the groundlessness of human rights.

Therefore, it is plausible to claim that the authors' critical approach towards law has a political weight: "If law is politics by other means, a deconstructive reading of law means other politics" (Douzinas, Warrington and McVeigh, 1991: xiii). Douzinas, Warrington, and McVeigh consider the deconstruction of law as a political act, contrary to the classic readings of law which are rather deterministic. In this respect, Douzinas' attitude towards politics is comparable with Laclau, Mouffe and Lefort. Their post-foundational perspective is primarily pertinent to the impossibility of the wholeness of society, democracy, the political, and law. In order to understand the absence of foundation within the human rights, Douzinas has to discuss the notion of human, and how it become the legal human. Following section will present this discussion.

4.2. The Changing Notion of Human

Douzinas' analysis of human rights enables us to see that our view on the political and legal capacity of human rights is shaped by our changing understanding as to what constitutes human and her legal subjectivity throughout a long history. Douzinas considers the very concept of humanity, as the unifying logic underlying human rights, as the consequence of a contingent ideological relations which is in line with metanormative analysis of law. This section will deal with the processes through which an almost mystified understanding of human becomes the core of human rights law. According to Douzinas, one should not provide essential definitions of human or rights as these concepts are actually products of Western history (Douzinas, 2001: 189). What we broadly

call human rights today, according to Douzinas, is a form of positive law centered around a distinct human subject with perceptible traits, accessible needs and feelings (Douzinas, 2001: 20). This positivity is by no means intrinsic to rights but it is the consequence of a very peculiar set of conditions Douzinas calls the secularization of human rights.

Secularization of human rights refers to a broader historical and philosophical process that shifted the center of rights from nature to human. It constitutes the legal part of more general "secularization of the foundation of authority and meaning in modernity" (Douzinas, 1994: 512). Douzinas argues that the shift from natural rights to human rights are the result of two main steps: elimination of singularity for the sake of a common humanity (multiculturalism) and the codification of rights (over legalization of social, economic and political spheres).

4.2.1. Construction of a Common Humanity

Douzinas's critique targets conceptualization of human rights in the intersection of multiculturalism, Western hegemony and Christianity. For him, secularization of human rights relates to the universalization of distinctly Western values, and this ideological aspect should not be overlooked while discussing human rights. He asserts that human rights are a specific product of Christian tradition of universal human merging with language of the Enlightenment (Douzinas, 2001: 94). Catholic idea was to institute the power of the Church globally and, Douzinas claims, togetherness and unity of humanity became the main discourse, contrary to difference and separation. The idea of modern human was presented as the summation of reason, soul and freedom (Douzinas, 2001: 95). The idea of equal humans and commonality leads to the value of acceptance (of differences), but not without certain political consequences. Douzinas considers the discourses of "the modern imperialism and postmodern multiculturalism" to be resulting from the development and application of these ideas (Douzinas, 2001: 95). He argues against the utopia of unified humanity which will ground on human

rights. As far as Douzinas is concerned, multiculturalism is part of an older tradition of legal universalism which is, both in ancient and modern versions, based on the dichotomy between "the *humanum*" and "the *barbatum*" (Douzinas, 2000: 211); that is to say, 'we' and 'the other'. Humanity is based on the common essence of humanity which is itself defined very differently in different political and legal theories: "freedom and dignity" for liberalism, "equality and liberty" for socialism and left liberalism, "a multiplicity of values and life-plans determined in each community by local conditions and historical traditions" for multiculturalism (Douzinas, 2000: 211). He then continues:

> In all cases, however, individual and collective human possibilities are demarcated and defined in advance, through the axiomatic determination of what it is to be human and the dogmatic exclusion of other possibilities. (Douzinas 2000, 211-212)

He insists that rather than erasing the plurality and creating a dubious community, the true object of human rights should be to resist such erosions and to perform a critical function against "the (impossible) ideal of an emancipated and self-constituting humanity" (Douzinas, 2000: 165).

4.2.2. The Construction of Legal Subject

Even though much of its philosophical and political roots are multi-faceted and cannot even be attributed to one single epoch in history, legal humanism creates a peculiar kind of subject whose existence is made possible by the gradual development of the idea of equal humans and common humanity. According to Douzinas, irrelevant to any aspiration towards justice, modern law "turns concrete people into generalized legal subjects" through abstraction and universalization (Douzinas, 1994: 12). He agrees with Marx who considers the legal subject as "an empty vessel" (Douzinas, 2000: 100). Marx draws attention to the isolated position of the legal subject as "as egotistic man, man separated from other men and community" (Douzinas, 2000: 93). Douzinas's critique of

legal subject, nevertheless, concerns the philosophical shift regarding the subject's epistemological position in relation to her world:

> The unique other is turned into a citizen, she is put on the scales of justice, her demands are synchronized and thematized under the categories of law and compared with those of others. Every balancing, by reducing uniqueness, is an act of injustice, every comparison of the incalculable is violent. (Douzinas, 2000: 353)

That is to say, construing legal subject eliminates the singularity attached to specific context of her existence and simply count her in a group of similars. She has to become recognizable before law in order to resolve a very unique situation for herself. Therefore, according to Douzinas, justice becomes identical with a vision which cannot respond to any inquiry regarding the value anymore without compromising its objectivity (Douzinas, 1994: 412). The ability of law to secure justice in social and political issues becomes a matter of efficient application of rules in appropriate contexts.

Our failure in fighting injustice due to our obsession with legal subjects is most visible in the case of immigrants. As far as Douzinas is concerned, the suffering of the refugees is double (Douzinas, 2000: 360): A refugee first lives through the terror of the conditions that caused her flight in the first place and then, she is forced to articulate this terror in the universal language of law. Law requires "this translation of the unique feelings into knowable realities" in order to proceed normally (Douzinas, 2000: 360).

4.3. On the Human Rights and Legal Subject

Central to Douzinas' political philosophy is the idea that law is never completed and always infiltrated by the outside and the law is attached to the universalizing rationalizations that try to encapsulate society within a gapless structure of meaning. The construction of legal human can be considered as an attempt to provide a background for this gapless structure. We can now turn to his critique of human rights. His deconstructive analysis of human rights involves a

genealogical analysis of human and rights, and a psychoanalytical reading of the subject of law as a desiring being.

According to Douzinas, human rights respond to two contrasting realities of people: the will to belong to a community and the need to be recognized as unique. Such complexity shows itself at individual, legal and political levels. There is a relation between rights claim and one's identity. A right demand is connected to two things at the same time: the face value of rights (what rights are about), and the recognition of the subject's position as worthy of respect and rights. Douzinas asserts that "to say that you cannot do this to me, it is against my rights" would imply the law's equal treatment of everyone, the power of rights to affirm one's "free will, moral autonomy and responsibility" and confirmation of one's capacity to moral judgement (Douzinas, 2007: 38-39).

Douzinas describes identity as a negotiation between the self and the world, and rights are part of this negotiation: "Any relevant laws or rights, such as those created by anti-discrimination, hate speech or public order law, become important tools in negotiating my self-image and my response to others" (Douzinas, 2007: 43). Negotiation is about the specific traits or conditions of a person different from supposedly shared traits and conditions. The conditions stemming from a specific context are identified and formulated as the content of the right demand. The very articulation of the demand shows that the subject of rights considers herself as entitled and equal to others. There is no prior entitlement or value reserved for the legal subject before this very act of right demand. In this sense, human rights are empty signifiers. They mediate between subject and symbolic order. Subject is defined by the right that she does not own, yet the right she does not own is the real of democracy.

The international human rights substitutes for the real of democracy. As clarified in the chapter on Lefort in this thesis, democracy represents the empty place of power left by archaic powers."Universal positivised rights close the gap between empirical reality and the ideal gap left open by the French split between man and

citizen" (Douzinas, 2000: 117). In other words, universal rights are not natural rights; they are specifically designed to turn the revolutionary desire of equality into an empirical reality. Therefore, we should consider human rights as the representation of the absent foundation of the society of equals.

Human rights language has become an indispensable part of identity construction, but it comes with dilemmas. Having rights based on a common essence of humanity implies that being recognized as human makes someone part of a whole and an equal member. It puts emphasis on the similarity or commonality; it is the sameness that makes everyone being entitled to equal treatment. This argument seems at odds with plurality and free will central to both liberal traditions and radical democracy. The reason for such tension is that the universalizing logic of human rights causes a number of problems derived from the reduction of singularity to abstract legal person. Let me focus on these problems:

1. Differential treatment of fragile groups is trickier to justify when it is juxtaposed with the belief about the sameness of the people. The symbolic order created by the desire for unity and empirical hardships stemming from the uniqueness of the human condition become the subject of political conflict.

Douzinas asserts that law cannot provide justice due to its blindness to people's peculiar traits, by referring to human rights:

> Caught between law's recognition of abstract equality and its indifference towards their material inequality and concrete needs, the poor are the best examples of failing of legal rights as a tool for identity recognition and construction. The law tries to remedy the failings of legal rights through the creation of human rights. (Douzinas, 2000: 40)

2. Another very important ramification of the equalizing logic of human rights is humanitarianism of human rights. The construction of hegemony of human rights and moralization of political decisions and even military interventions in the name of human rights are the proofs of such failure. After the Cold War, the

doctrine of human rights enabled the Western states to intervene in their former colonies (Yolsal-Murteza, 2017).

3. The issue of multiculturalism is also connected to the dilemma of legal subject. Through the universalization of human, "the real human person becomes an abstraction- a point of locating a bundle of rights and duties. His concrete traits and needs are irrelevant to the law" (Douzinas, 2007: 40). In other words, the real needs of people become tricky to translate into human rights law which belongs to an abstract person. Douzinas claims that economic and cultural rights are presented as an attempt to bypass this problem. These rights are supposed to give humans substance by recognizing their empirical needs and conditions. Nevertheless, Douzinas considers the wish to be differentiated, to be recognized within one's own special conditions; as one need that cannot be fulfilled by law (Douzinas, 2007: 42). The wish to be differentiated is a desire that is intrinsic to the human condition. Therefore, differentiation of identities is not just a political problem but it is a psychological necessity. Only by accepting differences, differential treatments become possible. It is very difficult for law to regulate the scope and practice of differential treatments. The possible misunderstandings about different needs, institutional inabilities in meeting them or misuses can be solved with open communication, deliberation and regular reviews. The real problem here is the always changing, unstable nature of identities itself as clarified by Laclau and Mouffe. Law seems to have no chance, but only to provide a complete set of rules and exceptions for every imaginable specific condition. Today, different identities and differences are indeed consolidated in Western societies but not without concessions. Differences are not destroyed directly but reconstructed so that they can be accepted or normalized. To put a finer point on it, Western mentality acting as the point of reference for normalcy decides what part of a different culture can be retained and what should be left behind. According to Douzinas, this is a source of oppression created by multicultural recognition (Douzinas, 2007: 44). The rights become a tool to dominate different cultures in order to determine the acceptable boundaries of

one's identity which in turn grounds one's capacity to participate in the institutional system on these limitations.

> The traces of this ontological totalitarianism litter the body of philosophy. In its modern version, individual consciousness has become the starting point of all knowledge and, as a result, what differs from the self-same has been turned into a cognitive question, into the exploration of the conditions under which the other's existence can be known; this way, the other becomes my knowledge of the other. (Douzinas, 2000: 345)

4. Multicultural recognition then turns into an inflation of rights. Although connected with multicultural recognition, inflation of rights is about the impossibility of fulfilling the original desire to unity. Douzinas argues that rights' main function is "to guarantee the genealogical binding or filiation of the subject to the institution" (Douzinas, 2001: 200).

With the inflation of human rights, laws become blind to the requirement of the link between the subject and the institution which should be supportive of her autonomous life but starts seeing it as undermining the symbolic order. As he claims: "Today, rights seems to protect humans from the institutions. What used to be the site of commonality turns into a collection of atomized beings defending themselves" (Douzinas, 2007: 50).

This overcodification changes the way we engage with politics from the core. With the intention of protecting individuals with the shields of rights, state actively limits the political sphere. The question regarding people's relation to institutions loses its political significance and becomes an issue of legal procedure. However, Douzinas claims, following Marx, by overlooking the metanormative aspect of law, we lose sight of what is really protected by its interventions and operations (Douzinas, 2000: 101). Given the reality of late capitalism and neoliberal democracies, it can even be argued that law stands as the primary protector of private property as property owners lose their political power but not their economic power (Douzinas, 2000: 101). In this sense, rights become the defender of economic power of one class against the potentially

disruptive politics of people. I think the lawful arrest of Migros workers while protesting low wages in front of the house of the company owner is a striking example of this. Law cannot protect the worker's rights as these rights are virtually neutralized within the ideology of legal discourse. Although the right to protest is recognized by law, its realization is undermined by other laws; such as the right to privacy -of the capitalist master-, as in this case.

People also become an aggregation of rights. While talking about the inflation of rights, Douzinas refers to William MacNeil (1998), who regards rights as dismantling the body into parts and functions: "the rights to privacy isolates the genital area and creates a zone of privacy around it; free speech severs the mouth and protects its communicative but not its eating function" (Douzinas, 2001: 199). Such examples explain how human rights attempt to broaden the sphere of legalization. Through transferring our desires and fears into rights by relentlessly codifying them, we are unintentionally handing over our "natural integrity" (Douzinas, 2001: 200) which was paradoxically what should have been located in the core of rights.

According to Douzinas, this over-codification of life, and the rise of legal person create a naive sense of resistance against neoliberal capitalism and allows space for the imperialist projects of humanitarianism by exporting rights (Douzinas, 2007: 293). The quest for re-linking law with ethics aims at the uncoupling of "capitalist exploitation and political domination" (Douzinas, 2007: 293). This, in turn requires a new alternative politics of human rights. Before examining the subject of human rights from the perspective of political theory, we should look into the psychoanalytic analysis of Douzinas which is important to understand the function of human rights for the post-foundationalist version of groundless society and democracy.

4.4. Desire of the Law: the Forgotten Unity

Douzinas's psychoanalytical approach is crucial for his understanding of human rights. He examines law from the perspective of French psychoanalyst Lacan. Douzinas claims that, following Lacanian psychoanalysis, subject is constituted upon the fear created by separation from the original unity (with the mother), and the desire to be united again (Douzinas, 2007: 45). This implies an irreparable loss for the subject or a lack upon her constitution. The claim that the 'I' begins with this disengagement is very crucial to Douzinas's reading of Lacan and for his larger political theory on the subject of human rights. This negativity and division guide his reading of law: "I must accept division and negativity, I must accept that I am what I am not" (Douzinas, 2007: 46).

Douzinas founds his theory on the ground of the impossibility of a positive law of human rights as this negativity of being surrounds the subject. Subject's admission to the symbolic order of language is the acceptance of negativity and division. For psychoanalysis, primary law is the language that attempts to fill the gap between the self and the world: "[…] the ego from the start is alter, an other; it is born in its encounter with the big Other, the linguistic-legal universe symbolised by a sign that Lacan calls the master signifier" (Douzinas, 2007: 47). Douzinas asserts that desires are learned to be expressed through language. More clearly, the master signifier presents the child a way to mediate her desire to the world. But in this mediation, the real desire -mother, the original unity- is substituted with other things that are deemed to be valuable and signified by the law. Therefore, the subject is already constituted through something other than her real desire in the symbolic universe presented by language.

A forgotten unity, according to Douzinas, is at the heart of subjectivation. He argues that, based on Lacanian theory of the subject, this residue of primal union with the mother is real the object of desire. Subject never fully overcomes this loss and always desires it: "the cause of desire is always deferred because return to the real is impossible and barred" (Douzinas, 2007: 47). Douzinas argues that

the constitutive secret of humanity has a similar impossibility: “The original separation and exclusion of other people and nations” (Douzinas, 2000: 357) hidden in the constitution of society continue to be a constant source of fear and, at the same time, a strong motivation to participate in politics. The memory of this exclusion reveals itself “in xenophobia and racism, in hatred and discrimination” (Douzinas, 2000: 357). In order to cope with this, the subject fabricates a story of fullness.

In line with the antagonism explained in the chapter on Laclau and Mouffe’s theory of the social, Douzinas thinks that society is defined by a lack. As examined earlier, radical democracy considers the political as constituted upon antagonisms which can ever be dissolved but instead, should be articulated in the form of political demands in hegemonic structures. Douzinas claims that rights replace our original desire for unity, the real. In other words, it reveals the feelings of fear and desire at the heart of the legal subject. Subject needs a sense of unity - a sense of being in common. When there is no higher authority like God or King who symbolically provides this unity, we articulate this need in the language of rights. Douzinas stresses that since the real of Lacanian subject can never be obtained through the medium of language, the legal subject will never be truly united with the society: “rights always agitate for more rights: they create ever new areas of claims and entitlements, but these always prove insufficient” (Douzinas, 2001: 197).

It is important to understand this negative relation between the subject and rights claims because it is part of the discussion of ethics of human rights. Subject can be called an individual who is the subject of the modern law; she owns her rights, the rights give her recognition as a legal subject. Or, the subject can be called negatively, in relation to others; as not the owner of rights but as part of the system of rights in her unique being as a singularity. This relation implies that rights are part of the identity negotiation for the subject which was explained earlier in this chapter.

We have now explained the tension between the construction of self and community from a Lacanian point of view and between the universal legal subject and peculiar identities. The following section will clarify Douzinas's problematization of -lack of- ethics in human rights law and help us understand his critique from a perspective of political theory.

4.5. (Empty) Politics of Human Rights: Identity

Until this point, Douzinas problematized human rights in terms of its historical and psychoanalytical evolution and characterized the subject of human rights as desiring subject. We now need to review the concepts of identity and political judgement as the sites for the articulation of the will, as clarified by Laclau and Mouffe earlier in this thesis.

As we have established earlier, according to Douzinas, the basis of rights is connected to a psychoanalytical desire for unity. Universal language of law reflects people's desire to be recognized and be included. If we accept this premise to be true, the discussion of identity is complicated by the impossibility of redeeming the forgotten loss in a specific way. The desire to real reveals itself at the societal and political levels as empty signifiers such as nation, people, homeland etc. Human rights are presented as one of these empty signifiers by Laclau and Mouffe. One might agree that this is essentially true, but human rights, within their historical, philosophical and psychoanalytical specificity, as I have tried to explain, are more than a notion that symbolically constructs a nodal point holding our reality together, because the notions of human and her rights has also constructive influences on the empirical reality. In other words, it is possible to consider human rights first as the object of the desire constituting the subject, and second as the effect of reality or politics of human rights. Neither of these aspects can be neglected because, I think, the constitution of political identities is connected to human rights on both levels in different ways. After elaborating on these two aspects, I will delve into the idea of human rights'

potential as the articulation of singularity as suggested by Douzinas' political philosophy.

4.5.1. On Justice: The Impossibility of Justice without Ethics

Central to Douzinas's analysis of human rights is the unfolding and suspension of legal misconceptions in order to be able to open a space for the reconstruction of human rights on the basis of a coherent conceptualization of justice. Douzinas asserts that postmodern politics lacks the background to conceptualize justice. He examines the problem of justice, and the response given by human rights to that question, from a critical reading of law by emphasizing the de-linking of rights from ethics as the source of the problem. According to him, ethics is related to our capacity for critical thinking and making judgement, and justice is most pertinent to our critical capacity to judge unique contexts of wrongdoings. To address the disengagement of law and ethics should be an important point of the discussion concerning justice. Douzinas suggests that the severance of ethics from the question of justice omits intrinsic elements of justice, such as identity and desire. These are intrinsic because they make up our worldly existence in relation to society. Removing ethics from the discussion of justice and thereby, limiting this discussion to excessive legal codification result in reducing people to merely legal subjects. This creates a severe need for ever more rights since they have no other way of communicating their desires and identities. The increased appeal to human rights single-handedly proves the failure of our domestic legal systems and corruption of ethical order. The incompetence of our whole operation of human rights -including references to it in the international, domestic and individual level struggles without no definitive conclusion -or even, a common ground for communication- actually results from our deficient conceptualization of justice.

Therefore, the reconstruction of the link between justice and ethics is fundamental for our decaying legal systems, and this is what Douzinas precisely aims for. The following section will examine the history of the separation,

prominent ideas regarding the definition of justice with reference to ethical conceptions and possibility of law with reference to ethics.

4.5.2. Background of the Question of Justice with Reference to Ethics

Douzinas states that the history of separation of justice and ethics can be traced back to the pre-Platonic epoch when nature and order broke apart as separate spheres (Douzinas, 1994: 406). He links justice with an aspiration for a better world order and hope for a divine or worldly intervention (Douzinas, 1994: 406); implying a sphere of action which is not conceptualized merely as natural or worldy, but co-created by the powers of nature and the society together. To be clear, Douzinas draws attention to a shift occurring in our conceptualization of justice, which clearly affects our laws and legal institutions. One may argue that justice can be identified as a pressing desire for change when a serious sense of dissatisfaction and oppression pervade society. The issue at stake is how this desire is conceptualized. Therefore, it is important to follow the thread.

Socrates, among the early theorists of justice, attempted to ground justice on rational arguments (establishing "harmony" or "balance" within parts of soul and society) but, later, seeing the common tendency to choose evil over good, he shifted his attention to non-rational notions such as happiness or religion (Douzinas, 1994: 407):

> […] the first clear formulation of the *aporia* of justice: to be just is to act justly, to be committed to a frame of mind and follow a course of action that must be accepted before any final rational justification of their desirability or superiority. (Douzinas, 1994: 408)

Therefore, the possibility of considering reason as the medium of justice entered the stage of theory. The underlying motivation is to establish a positive system that can create just -good- resolutions for possible countless wrongs which disturbs the affairs of society. Nevertheless, Socrates recognized the impossibility of the task at hand: reason cannot attain good by itself (Douzinas,

2000: 34). Based on this conclusion, Douzinas asserts that we stop thinking that there is a law that can attain justice with a sort of capacity to adjust itself to the paradoxes of society. The ground of good is always beyond the limits of our vocabulary; articulating the notion of good cannot be codified beyond the context in which it appears (as good). More clearly, reason is circumscribed by the language of knowledge, but the notion of good cannot be simply translated into knowledge (Douzinas, 1994: 408).

Douzinas also discusses Aristotle's idea of the good, because he also attempts to constitute a notion of good that is capable of justice. According to Douzinas's reading, for Aristotle, good is accessible to the virtuous citizen of the Greek polis who is driven by his inner purpose, *telos*, with the guidance of prudence and experience (Douzinas, 1994: 408). The possibility of justice relies on the classical polis and the *telos* of this communality. Douzinas asserts that the concept of *telos*/end/purpose is closely connected with nature and Aristotle emphasized the prudence of the judge in making the just decision (Douzinas, 2000: 38). Therefore, Douzinas concludes that a judgement based on *telos,* proposed by Aristotle, as the basis of justice already escapes the closed logic of reason (Douzinas, 2000: 42). Neither Socrates nor Aristotle delivered a justification of law on a positive conceptualization of justice without reference to an externality. Instead, their efforts illustrate the *aporia* of justice.

Kant is another prominent figure in Dozinas's review of the concept of justice. He is especially important for Douzinas's analysis of human rights, since his understanding of the law-making subject is what justifies the modern human rights legislation (Douzinas, 2000: 191). Kant claims that law is authored by the subject who will adhere to it by himself based on the supposition that there is a body politic consisting of people "who are similar, if not identical in reason and inclination with the ego" (Douzinas, 1994: 413). The author of the law is "the autonomous agent who follows the law posited in the categorical imperative out of a pure sense of duty and respect" (Douzinas, 1994: 410). The basis of justice is extracted from an idea of good (Plato) to the citizen of the polis who decides

upon the good (Aristotle) and eventually, an autonomous subject who acts according to his will and his belief in a universal community of similars (Kant) (Douzinas, 2000: 192). Douzinas still thinks that even the Kantian subject who acts on his practical reason cannot proceed without relying on the other people's use of the same capacity of practical reason. Douzinas points to the assumption of this universal community as a problem of Kantian approach: The subject who writes the law is merely the moral duty bearer who has no worldly identity, aspirations or interest whatsoever, but writes the law out of a sense of absolute duty (Douzinas, 2000: 3). Although the import of subject and judgement into the discussion of morality has created a revolutionary shift in our conceptualization of justice (Douzinas, 2000: 193), as far as Douzinas is concerned, the presupposition of "a universal community which should act as a regulative principle" (Douzinas, 2000: 195) makes Kantian justice inapplicable since no such community exists empirically.

Until this point, I have tried to clarify the impossibility of a conceptualization of justice on predetermined notions of good or subject. All these perspectives attempt to define justice based on some kind of rationale; good, harmony, reason, or free(d) will of enlightened individuals. Douzinas asserts that justice comes before all of these; it is "the ground upon which all claims to truth and the law arise and are judged" (Douzinas, 1994: 419). The association of justice with law or with any other system, for that matter, reduces it into just another rule blind to injustice as it is taken apart from the context which calls for it. We call for justice, we demand justice. Law can be written and rewritten. This difference calls for a consideration of ethics when we speak of justice. The just solution by no means can be calculated based on a predetermined idea of good available to everyone, or a rational vindication.

Before clarifying Douzinas's suggestion about relinking the ethics and law and his analysis regarding natural rights and human rights, I would like to briefly draw a parallel between the controversy regarding the separation between law and ethics brought forth by Douzinas with the distinction between politics and

the political explained in the chapter on Laclau and Mouffe. Both problems are essentially about the plurality of possibilities and elimination of them for the sake of a simple and calculable societal or political organization. Plurality, for Laclau and Mouffe, comes before hegemony. I claim that their reading of society and politics reflects a plurality of desires and, therefore, brings on singularities as the subject of politics as Douzinas's conceptualization of justice refrains from grounding on any predetermined criteria. Also, just like the political is for the proliferation of this plurality and not its oppression, yet its articulation depends on chains of equivalences; law should sustain "the uniqueness of the other which gives way however to the need of accommodating the many" (Douzinas, 2000: 353).

4.6. Politics of Human Rights: Openness to the Other

In order to understand the other, we should return to the Lacanian theory of subject. Following Lacan, Douzinas asserts that the existence of a father, an authoritative figure who imposes the law is necessary and at the same time, impossible (Douzinas, 2001: 201-202). Law always needs an absolute legislator outside of its immediate operation to ensure its legitimacy. Subject's desire to be united, based on Douzinas's reading of Lacanian psychoanalysis, is actually law's desire to be intact, in other words "closed, coherent and gapless around a grand legislator or principle" (Douzinas, 2001: 203). Human rights pretend to fill this vacancy in modernity which reflects subject's "wish to become again complete or to be fully loved" (Douzinas, 2001: 307). In this sense, right claims are actually expressions of subject's "unattainable 'right to be loved'" (Douzinas, 2007: 48). However, the law is never gapless and there is always a lack even though it is substituted by human rights or any other figure of history (Douzinas, 2007: 49). In his own words, Douzinas describes:

> As the fatherly figures retreat, laughed out of court by women, ethnics, gays, transsexuals and all kinds of minorities unwilling to accept the father's deceit, another signifier must occupy the impossible but indispensible position of the guarantor of the completeness of law. (Douzinas, 2001: 202)

These figures of substitution are empty signifiers. Human rights as an empty signifier act as the filler of the lack that is inherent in the law. Human rights discourse, as far as Douzinas is concerned, pretends to regulate society on the ground of rationality and a suppossed universal value of human rights:

> The discourse of universal human rights thus presents a fantasy scenario in which society and the individual are perceived as a whole, as non-split. In this fantasy, society is understood as something that can be rationally organized, as a community that can be non-conflictual if only it respects human rights. (Douzinas, 2007: 94)

The consequence of this phantasy is the "return of the repressed" (Douzinas, 2001: 357). The foreigner or the refugee, according to Douzinas, always comes back and reminds the disunity at the heart of our law. Otherness of the refugee and her claim to be recognized by law reveals that "our complacent enjoyment of rights is predicated on the exclusion of the other" (Douzinas, 2001: 358). I think we can discern the return of the repressed without the dramatic case of the refugee. By calling the domestic violence as violence against women and calling the personal as political, women rights activists introduce the womanhood as a political category. Therefore, they insert the exclusion and repression at family's foundation, which is another very strong empty signifier that holds together the rule of patriarch. That is why I believe, genuine right claims create an effect of profound shock in society. They virtually disrupt the sense of harmony which used to make everyone to feel normal and safe. The supposed unity of the subject dissolves in the moment of right claim because it reveals the split within the subject -for instance, in the case of family violence the subject of women is split between being a victim of patriarchy in the public space (woman) and being a member of the family in private (wife).

4.6.1. Universality as the Basis of Human Rights: the Overlooked Other

Rights provide political recognition to its claimer. Both the woman and the refugee cases exemplify this. In *the symbolic*, where the subjects are limited within the constraints of law, being recognized by law provides a space for

partial autonomy. What we call the constraints of the law, on the other hand, can also be considered as the absence of rights for the other. While limiting people's autonomy, law provides protection from others' potentially harming actions. The negotiation of rights, then, is directly related to one's perception of herself and others in their bilateral relation. Here, Douzinas problematizes the absence of the other from the discussion of human rights; not the necessary limitation law imposes upon its subjects. He suggests to shift our gaze to the one who benefit from the system of rights without actively enjoying the rights from the one who actively enjoys the rights. It should be noted that this distinction does not relate to distinction between negative and positive rights; it rather motivates us to consider human rights outside the perspective of the right-holder.

Douzinas asserts that rights imply the right-holders' "ability to make moral decisions and to raise legal claims" (Douzinas, 2007: 38-39). Human rights are not the declaration of this moral capacity; rather the very articulation of rights produces this effect. Introducing individual as right-holder achieves a sense of equality and at the same time enables a sense of personal gratification (Douzinas, 2001: 191). Hence, human rights suggest value, worthiness, dignity and moral capacity of the subject. Douzinas argues that the inclusion of subject's moral capacity in the law evokes Kantian understanding of "free and rational action of the autonomous agent" who uses her will to behave in a certain way not for the sake of a predetermined good but on the grounds of her own reasoning (Douzinas, 1994: 409): "The recognition of will's involvement in action is a typically modern move that distinguishes pure from practical reason" (Douzinas, 1994: 410).

Therefore, according to Douzinas, the inclusion of the concept of will in the calculations of practical reason of autonomous subject gives law its modern turn. This point is crucial to understand the role of modernity in the constitution of the subject of the human rights and her relation to universalism. There are no philosophies of good or a teleology as a ground for law other than universal admissibility of it:

> In the absence of an overarching teleology or an acceptable theory of the good, morality loses its empirical intersubjective basis and must be grounded solely on the isolated subject. But as rationalism suspects subjective morality because it smacks of subjectivism and relativism, it positions the ethical substance in the universal form of the law. (Douzinas, 1994: 410)

Douzinas' analysis is related to law's focus on universality as a legitimizing ground and its relation to identity constitution in the politics. As universality turns into the basis of generality, modern legal and political systems are organized in such a way that they constantly demote the different in order to reach the same. Including the notion of will in this picture gives the subject a level of autonomy. Douzinas wants to retain will in relation to judgement in this picture and re-frame it with a more inclusive perception towards others. To this end, he refers to Levinas and his ethics of other.

4.6.2. Understanding Natural Rights as the Rights of the Other

Douzinas argues that the original freedom of the will is already signified in the history in the form of natural rights (Douzinas, 2000: 93). The ancient dichotomy between nature and order, and nature's metaphysical superiority open the way for challenging injustice. The main argument of his book, *The End of Human Rights* (2000) is that nature is a revolutionary invention and it establishes the concept of right in order to establish justice in opposition to authority of custom as law. According to Douzinas, the contingent developments in the history of rights turned natural rights into human rights. The secularization of rights and modern imperialism result in a specific treatment of differences and local communities; postmodern multiculturalism as we call it.

As far as Douzinas is concerned, natural rights are "legal entitlements of the isolated individual, whose social relations and moral rights and obligations are so many routes to the achievement of the unencumbered self" (Douzinas, 2007: 93). The problem with secularized human rights is that they neglect these social and moral bonds by validating every difference and processing them with a standardized logic of humanness. Validation of differences, in this sense, is

actually organizing them in a pre-determined system and diffusing their essences.

The task in front of Douzinas is, then, to find a way to re-constitute the radical openness of natural rights in the human rights. Natural law, according to Douzinas, does not refer to anything natural; on the contrary its philosophical roots reveal its revolutionary capacity. In his own words:

> Natural right offers an alternative to historical determinism and to conventional and authoritative opinion. Because justice is by definition critical of what exists, philosophy adopts nature as the source of its prescriptions and claims a natural "objectivity" for its right. But this ideal is not given by God, revelation or even an immutable natural order. It is a construction of thought and its actualisation is deeply political. (Douzinas, 2000: 37)

Rights are important to isolated individual not because they protect them from the institutions, but because they establish the link between the individual and society, and should be conceptualized in such a way that identity-building *via* rights would support the plurality of society. The key in this analysis is the performative aspect of rights. The performance of the law depends on people's identifiability as certain identities, and the existence of proper codes for the organization of their affairs: "(law's performance) is predicated on predictability and the subsumption of facts to an authorized repertory of narrative patterns. Its normative formulation makes the law a cognitive field, an object of representation, interpretation and description" (Douzinas, 1994: 423). That is why, law by itself can never be considered as a prescription for justice. More clearly, its operation is limited with what is known to it. The judge's deliberations should always take into consideration and favor the duties over rights when it is just (Douzinas, 1994: 423). Douzinas thinks that this emphasis on duties calls for the other into the discussion of ethics of justice.

To access the other is the core question for an ethics of human rights. The possibility to access the other is the legacy of Kantian moral philosophy: "The other is understood as long as she conforms to my idea of what I am or should

be" (Douzinas, 1994: 413). Hegel plays with the idea of other's uniqueness which cannot be fully sublated but only become part of a synthesis with the self (Douzinas, 2000: 345). Phenomenology of Husserl establishes the ground for the access to the other on the conceptualization of self's perception of the world as intention, while Heidegger focuses on a "we" that includes the self and other as participants in the world (Douzinas, 2000: 345-346). Douzinas claims that all these approaches underlying the ethics of modernity are based on a "belief in the idea of a sovereign self" (Douzinas, 2000: 346) which "is strangely immoral as it tries to assimilate and exclude the other" (Douzinas, 2000: 347).

Instead of this sovereign self, human rights should be grounded upon whom it necessarily excludes: the other. Following ethics of alterity (Derrida, 1978), Douzinas argues that "The other comes first. (S)he is the condition of existence of language, of self and of the law" (cited in Douzinas, 2000: 349). The other should be understood with reference to self but should always be respected in her uniqueness. After all, the idea of duty as the guide for judge is by no means related to anything but the unique other. In this sense, Douzinas conceptualizes rights foremost as other's rights who make a claim from the self. Ethics of alterity is based on "the demand of the other and my obligation to respond" (Douzinas, 2000: 350). The other is not defined with reference to any category besides this demand. She is actually the unique entailment that is the cause of my morality. She needs not to be defined by any principles, norms or categories as 'I' is the one who becomes someone by the other's unique demand. Therefore, identities are actually not based on right struggle, being the addressee of the other's creates the recognition of myself:

> If my identity is intersubjective, it is not done initially through laws and structures. I am unique because I am the only one asked by the singular other to offer my response and responsibility here and now to his demand. (Douzinas, 2000: 350)

Douzinas thinks that a politics of human rights is truly political as its performance itself establishes the sphere of political: "Human rights do not

belong to humans and do not follow the dictates of humanity; they construct human" (Douzinas, 2007: 45). Right claims do not construct the identity of the claimer; they operate in an already interconnected system of rights, a common polis:

> There can be no free-standing, absolute right, because such rights would violate the freedom of everyone except its bearer. There can be no positive right, because rights are always relational and involve their subjects in relations of dependence on others and responsibility of the law. (Douzinas, 1994: 419)

4.6.3. The Issue of Universality: Polis

Inclusion of the other in the theory of human rights is not the end point for the political theory of Douzinas. It requires the consideration of all the other(s) without reducing them into a totality. Liberating rights from the egotistical man portrayed by Marx and attributing them to the other does not itself solve the question of others, the community, the multiplicity. Douzinas argues that the existence of "all the other men" limits one's responsibility towards the other (Douzinas, 1994: 418) and "community also implies the commonality of law, the calculation of equality, and the symmetry of rights" (Douzinas, 1994: 419). This relates to the issue of universality. Therefore, 'cosmopolitan justice' is fundamentally about the existence of others and the universalization of -not an idea of good- our co-existence with others, *polis* (Douzinas 1994: 419). As he describes:

> The axiom of cosmopolitan justice: respect the singularity of the other. We should not give up, however, the universalising impetus of the imaginary 'polis in the sky' [...], of a cosmos that uproots every city, disturbs every filiation, contests all sovereignty and hegemony. (Douzinas, 2007: 294)

Therefore, the human rights are basically the articulation of the resistance against sovereignty, represented by hegemonic power (Douzinas, 2007: 295). The real universalising factor, the true commonality among people globally, is their opposition to the all-mighty sovereign that destroys singularity and freedom of people with the narratives of nationalism, citizenship and community; the true

link between people is “our absolute singularity and total responsibility beyond citizen and human, beyond national and international” (Douzinas, 2007: 295). The ethics of alterity is about protesting all relations of law that ban the other, the refugee, the singularity. Douzinas argues that while the modern systems of nation-states coupled with globalization is entrapped in their original desire to unity, ethics of alterity and cosmopolitanism of polis based on natural rights perform our radical desire to “what does not exist according to law […], what confronts past catastrophes and incorporates the promise of the future” (Douzinas, 2007: 298).

4.7. Concluding Remarks

Based on a discursive reading of the history human rights, Douzinas attempts to put forward a political theory of human rights. His understanding of human rights as the reconstructed version of ancient natural rights can be a solution to the problem of foundation of law by preventing it to be filled by fixed meanings.

Douzinas considers the law as both an effect and a cause in the social relations. He claims that we should examine rights through this meta-normative perspective and grasp their political meaning. He defines political identity as a negotiation between self and her world. Rights are tools in this negotiation. Therefore, rights do not refer to fixed meanings but they construct meaning as they mediate between subject and the symbolic.

Another important point in Douzinas’s reading of law is his interpretation of international law of human rights as an invention resulting from a revolutionary desire of equality and freedom. The problem concerns the transformation of rights into means of cultural recognition and identity politics and their immersion in an overly complicated legal language departing from their original meaning of resistance against power. His suggestion is to re-constitute the ethics in our frame of justice by incorporating the responsibility to the other into the horizon of modern human rights. He argues that human rights are actually the

rights of the other and their only justification is society's capacity to respond to the other.

CHAPTER 5

CONCLUSION

This thesis demonstrates that the post-foundational leftists understanding of the political and critical legal interpretation of law have the potential to establish a solid ground for human rights and democracy in relation to the incomplete nature of society, the elusive emergence and play of power and its negotiation with the forces of resistance, and citizen's paradoxical identification of a self through the society and her unique being. My conclusions are based on the examination of these three aspects of post-foundational left and critical legal thinking. Now, I will summarize the fundamental findings of this theoretical research; then, I will show how these findings support my initial insight regarding human rights and radical democracy. My examination of the fundamental concepts of these theories reveals the experience of the subject of human rights in modern democracy as the articulating subject of the political, the third of the law, and the other of the human rights.

Ernesto Laclau and Chantal Mouffe's account on radical democracy reveals the articulating subject of the political who has the capacity to form local links in the social and to establish a locus of hegemonic power. They emphasize that the locus of power is always open to change and the links between political subjects are the result of contingent nature of the political conflicts (antagonisms) and their articulation. Therefore, there is a necessary incompleteness in society and the political. The conceptualization of democracy relates to this incompleteness: democracy constitutes the social without a ground. The question of human rights, on the other hand, is only engaged with regard to the hegemonic capacity of sustaining a sense of unification in the society. Laclau associates the lack of ground in democracy with a contingent moment of beginning; which is none other than the French Revolution (Valentine, 2013: 207). He reads the revolution

as the emergence of a representative body of politics; therefore human rights as the empty universal that holds together these otherwise peculiar identities. The link between rights claim and subject is denied on account of presuming a liberal democratic citizen who is capable of rational deliberation and resolving antagonisms; whereas, the ever-present possibility of the emergence of subject or new hegemonic structures, for Laclau, is the underlying condition and aim of the political. He thinks the articulating subject and politics of hegemony do not aim to construct the political based on any rational capacity; on the contrary, by claiming the empty place of the political, it presents its own particularity in the embodiment of that empty universality (Laclau, 2005: 170). I think granting the subject such a position eventually reduces the political to identity politics and abolishes the empty ground on which it is supposed to be built. The groundlessness of the political is sustained by changing hegemonic relations between ever emerging subjectivities and the impossibility of any one identity abandoning its peculiarity to claim universality in the chain of equivalences. I argue this process does not tell us in what capacity any one group can claim to have an umbrella identity or why or how a proper name and place in this chain will ensure a democratic experience for any group.

The problem with this conceptualization of representation is that the equivalential chain can be only as democratic as its most influential member is. The structure itself does not assure democracy even with its incompleteness. The idea of hegemony is designed for a political model that requires one identity that holds the status of representation. The need for representation becomes what sutures the allegedly groundless social instead of claiming a universal will. So, there is the danger of totalitarianism that one cannot avoid. Secondly, this theory ascribes to the idea of a negative that the chain identifies itself with to an existential lack. This embedded negativity cannot be contained and can turn into an oppression: the point where internal conflicts cannot be contained within the pretense of peaceful agonisms, they can be transformed into the language of the villain ‘other’ very quickly. We should recognize that the real power of

hegemonizing subject is its capacity to name and to make the decision of inclusion and exclusion. Therefore, I think that Laclau and Mouffe's conceptualization of the subject of the political as the articulating subject should be broadened so as to include human rights; defining human rights as the capacity to claim to be included. This perspective on human rights has similar implications with the articulating subject of the political and it is clearly instituted as a legal form. If we sustain the idea that human rights is an empty-signifier and only a contingent value for the political, we deprive ourselves from a theory that will justify the claim to be included on an institutional ground without a center; meaning a medium ground between the political of the radical democracy and the unsutured social. The relation between the hegemonic power and the political chains has the capacity to determine scope and function of the concepts of universality and contingency for politics and history. However, as Laclau and Mouffe deny any liberal ground of deliberation and reconciliation, their claim that hegemonic struggle will ensure a democratic process in agonistic nature is left without a solid ground. That is to say, without at least defining the subject of the radical democracy as the subject of human rights, we cannot acknowledge the gap between the conventional self and the self as part of the society. Still, radical democratic subject is relevant, because claiming human rights should be understood as an effect of claiming rights or a contract between the ruler and the people; not as the logical conclusion of a historical debate regarding human or good life. The power to identify as any identity becomes the condition of the political. This act of identification, more than being an effect of the pluralistic sphere of the political, highlights the society's co-existence as a totality of people who show themselves, and see and recognize each other in society in a structure of meaning.

The subject of human rights and democracy, from the perspective of Claude Lefort, is not solely defined with her capacity of articulation and forming chains. The recurring theme of Lefort's work relates to representation of the people in democracy and the law as a result of the negotiation between the ruler and the people. Therefore, power is relational. He does not detach "invention of

democracy" from" claiming human rights" and considers the aim of rights as forming a public space for participation in the political equally (Cohen, 2013: 125, 128). His understanding of radical democracy is directly based on the people's experience of the power; thus, he can differentiate between the conventional self in the democracy -citizen or individual, and the excluded other. Lefort argues that human rights are unquestionably political as the political experience is framed by rights. Rights, as the condition of our shared life, free and limit our actions. Although, Laclau pejoratively labels the empty place of democracy as merely formal and procedural; Lefort insists on the political value of human rights. In his analysis of Machiavelli, Lefort argues that the political power is actually the representation of a will. He defines *virtù* -appreciated as the power of the prince by Machiavelli- in "the exercise of a mastery that gradually draws man out of the present conditions and allows him to impose his will on the course of events" (Lefort, 2012: 130). 144). The main unit of analysis in Lefort's political theory is power. Laclau and Mouffe refer to antagonism as the ontological basis of their theory and as almost the central motivation of the political; Lefort rather examines how the power is made sense/perceived and transferred within the political. In that sense, Laclau and Mouffe focus on the empty signifiers as the core of meaning creation and power comes to the scene only after hegemonic articulation of antagonisms. Lefort's conceptualization of power and its play through negotiations occurred in the symbolic directly draw political consequences.

Costas Douzinas also emphasizes the relational nature of the law and conceptualizes human rights based on the other of the law. The subject of the human rights, then, is the other of the law; who is not seen or included in the law. I want to argue that this is a revolutionary interpretation of rights politics. In this sense, claiming rights is not a process of bargaining between citizens and the state; it is the process of the declaration of one's identity. According to him, there is a meta-normative relation between law, identity and political subject. The way we interpret law is interlocked with the way we identify our experience

of our self and identity. Following this intuition, he examines the history of law and human rights based on its relation to subject formation. He argues that contemporary conceptualization of human rights is devoid of the original core of rights. Douzinas considers the original rights claim -natural rights- as the original freedom of the will (Douzinas, 2000: 93). He does not define human rights as the entitlements based on any nature. By reversing the abstractions regarding human nature, he claims the priority of right politics over nature: nature is a revolutionary invention and it establishes the concept of right in order to establish justice in opposition to authority of custom as law. He deals with the human nature from a critical perspective. He argues against the utopian value of human rights toward a unified humanity and, instead, insists that they perform a critical function against "the (impossible) ideal of an emancipated and self-constituting humanity" (Douzinas, 2000: 165). When we achieve to abandon this delusion of wholeness, we can see the lack in the law and conceptualize human rights as a way to tend this gap. In this sense, theory of radical democracy and critical legal thought intersect at two points: the incomplete nature of the social and the law; and the other as the real subject of the law. Thus, human rights indeed refer to right to have rights; as its claim amounts to a declaration of a new self. In other words, human rights law with a leftist understanding of the social can be considered as an incomplete whole and modern democracy as the institution of the third of the power and this emptiness serves to the openness to the new comer.

In a world of uncertainties and disbelief, I have tried to ease my fear of loneliness and desperation in the face of injustice by seeking a point of comfort in the future of human rights and imagining a path to a society of free and equal people. Different approaches to the political, democracy and law that this thesis elaborates can be seen ways to access this path. In my eyes, the political is always already open to the new comer and the history itself witnesses. The aim of political theory, then, should be to catch a glimpse of this new subject of the

political as it comes. Examination of human rights from the point of subject and a global ethical reflection point can achieve this goal, to a certain extent.

BIBLIOGRAPHY

Acetti, C. I. (2015). Claude Lefort: Democracy as the Empty Place of Power. In P. Mazzocchi, C. Holman, D. Penner, & R. Magnusson (Eds.), *Thinking Radical Democracy: The Return to Politics in Post-war France*. University of Toronto Press.

Agamben, Giorgio. (1993). *Infancy and History: The Destruction of Experience.* Verso Books.

Balibar, E. (2017). *The Philosophy of Marx.* Verso Books.

Blackell, M. (2006). Lefort and the Problem of Democratic Citizenship. *Thesis Eleven*, *87*(1), 51–62.

Boonen, C. (n.d.). Limits to the Politics of Subjective Rights: Reading Marx after Lefort. *Law and Critique*, *30*, 179–199. https://doi.org/10.1007/s10978-019-09238-7

Breckman, W. (2012). Lefort and the Symbolic Dimension. *Constellations: An International Journal of Critical and Democratic Theory, 19(1).* https://doi.org/10.1111/j.1467-8675.2011.00663.x

Cohen, J. L. (2013). Rethinking the Politics of Human Rights and Democracy with and beyond Lefort. In M. Plot (Ed.), *Claude Lefort: Thinker of the Political*. Palgrave Macmillan.

Derrida, J. (1978). Violence and Metaphysics. In A. Bass (Trans.), *Writing and Difference*. Routledge.

Douzinas, C. (2000). *The end of Human Rights: Critical Legal Thought at the Turn of the Century*. Hart Publishing.

Douzinas, C. (2001). Human Rights, Humanism and Desire. *Angelaki: A Journal of Theoretical Humanities*, *6*(3), 183–204.

Douzinas, C. (2007). *Human Rights and Empire: The Political Philosophy of Cosmopolitanism.* Routledge.

Douzinas, C., & Warrington, R. (1994). The Face of Justice: A Jurisprudence of Alterity. *Social and Legal Studies*, *3*(3), 405–425.

Douzinas, C., Warrington, R., & McVeigh, S. (n.d.). *The Postmodern Jurisprudence: The Law of the Text in the Texts of Law*. Routledge.

Flynn, B. (2018). Lefort as a Reader of Machiavelli and Marx. *Continental Philosophy Review*, *51*, 401–420. https://doi.org/10.1007/s11007-017-9431-7

Hobbes, T. (2008). *Leviathan* (J. C. A. Gaskin, Trans.). Oxford University Press.

Howarth, D. (Ed.). (2015). *Ernesto Laclau, Post-Marxism, Populism and Critique*. Routledge.

Hunt, L. (Ed.). (1996). *The French Revolution and Human Rights: A Brief Documentary History.* Bedford Books.

Hunt, L. (2003). The World We Have Gained: The Future of the French Revolution. *The American Historical Review*, *108*(1), 1–19. https://doi.org/10.1086/ahr/108.1.1

Hunt, L. (2004). *Politics, Culture, and Class in the French Revolution: Twentieth Anniversary Edition, With a New Preface (1st ed.).* University of California Press. http://www.jstor.org/stable/10.1525/j.ctv1xxx60

Hunt, L. (2007). *Inventing Human Rights: A History.* W. W. Norton & Co.

Kant, I. (2000). *Critique of the Power of Judgment* (P. Guyer & E. Matthews, Trans.). Cambridge University Press.

Laclau, E. (2000). Identity and Hegemony: The Role of Universality in the Constitution of Political Logics. In E. Laclau, J. Butler, & S. Zizek (Eds.), *Contingency, Hegemony, Universality, Contemporary Dialogues on the Left.* Verso Books.

Laclau, E. (2007). *Emancipations*. Verso Books.

Laclau, E. (2014). The Future of Radical Democracy. In L. Tønder & L. Thomassen (Eds.), *Radical Democracy, Politics between Abundance and Lack*. Manchester University Press.

Laclau, E., & Lilian, Z. (1994). Minding the Gap: The Subject of Politics. In *The Making of Political Identities*. Verso Books.

Laclau, E., & Mouffe, C. (London). *Hegemony and Socialist Strategy*. Verso Books.

Lacroix, J. (2013). A Democracy without a people? The "Rights of Man" in French Contemporary Political Thought. *Political Studies*, *61*(3), 676–690. https://doi.org/10.1111/j.1467-9248.2012.00983.

Lefort, C. (n.d.). International Law, Human Rights, and Politics (J. C. Selbin, Trans.). *Qui Parle*, *22*(1), 117–137. https://doi.org/10.5250/quiparle.22.1.0117

Lefort, C. (1986). *The political forms of modern society: Bureaucracy, democracy, totalitarianism* (D. Thompson, Trans.). Cambridge University Press.

Lefort, C. (1991). *Democracy and Political Theory* (D. Macey, Trans.). Polity.

Lefort, C. (2002). Thinking with and Against Arendt. *Social Research*, *69*(2), 447–459.

Lefort, C. (2007). *Complications Communism and the Dilemmas of Democracy* (J. Bourg, Trans.). Columbia University Press.

Lefort, C. (2012). *Machiavelli in the Making*. Northwestern University Press.

Lefort, C., & Curtis, D. A. (2000). *Writing: The Political Test*. Duke University Press.

Lefort, C., & Selbin. (n.d.). International Law, Human Rights, and Politics.

MacNeil, W. (1998). Law's Corpus Delicti: The Fantasmatic Body of Rights Discourse. *Law and Critique, 9*(1), 37–57.

Marchart, O. (2007). *Post-Foundational Political Thought, Political Difference in Nancy, Lefort, Badiou and Laclau.* Edinburgh University Press.

Marchart, O. (2018). *Thinking Antagonism: Political Ontology after Laclau.* Edinburgh University Press.

McLoughlin. (2016). Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Ranciere. *Law and Critique, 27*, 303–321.

Mouffe, C. (1993). *The Return of the Political.* Verso Books.

Mouffe, C. (2000). *The Democratic Paradox.* Verso Books.

Mouffe, C. (2005). *On The Political: Thinking in Action.* Routledge.

Mouffe, C. (2014). Democracy, Human Rights and Cosmopolitanism, an Agonistic Approach. In C. Douzinas & C. Gearty (Eds.), *The Meanings of Rights, The philosophy and Social Theory of Human Rights*. Cambridge University Press.

Rosanvallon, Pierre. (2012). The Test of the Political: A Conversation with Claude Lefort. *Constellations 19 (1).* 4-15. https://doi.org/10.1111/j.1467-8675.2011.00668.x

Schmitt, C. (2007). *The Concept of the Political* (G. Schwab, Trans.). University of Chicago Press.

Solzhenitsyn, Aleksandr. (2007). *Gulag Archipelago 1918-1956: An Experiment in Literary Investigation.* Harper & Row, Publishers: New York.

Valentine, J. (2013). Lefort and the Fate of Radical Democracy. In M. Plot (Ed.), *Claude Lefort: Thinker of the Political*. Palgrave Macmillan.

Yolsal-Murteza, E. (2017). İnsan Hakları Çerçevesinden Hümanizm ve Hümaniteryanizm. *Felsefi Düşün Akademik Felsefe Dergisi*, *9*, 270–288.

APPENDICES

A. TURKISH SUMMARY / TÜRKÇE ÖZET

Bu tez, insan haklarının radikal demokrasi ve eleştirel hukuk teorisi ve dayandıkları temecilik-sonrası düşünceye göre temellendirilme imkanını incelemektedir. Hukuk ve siyasi iktidarın kaynağı pek çok açıdan incelenebilecek karmaşık bir sorundur. Fakat, hukuk ve siyasi alanın temeline dair varsayımlarımız, demokrasi ve insan haklarının temellendirilmesinde kritik öneme sahiptir. Dolayısıyla; bu tezde, temellendirme-sonrası düşünceye dayanan sol teorilerin, insan haklarına dair açıkça ya da dolaylı olarak sunduğu argümanlar incenecektir. Açıklık ve pratiklik açısından, tezde Ernesto Laclau ve Chantal Mouffe tarafından sunulan radikal demokrasi teorisi, Claude Lefort'un sunduğu iktidar ve demokrasi kuramı ve Costas Douzinas tarafından önerilen eleştirel hukuk anlayışına odaklanılacaktır.

Gündelik siyasette kolaylıkla gözlemlenebilen, hukukun üstünlüğüne ve anayasal ilkelere duyulan artan kayıtsızlık ve insanların yargının adaletine azalan güveni karşısında, hukuk ve düzenin meşruiyetini temellendirdiğimiz zemini sorgulamaya başladım. Diğer bir deyişle, siyaset ve hukuk arasındaki ilişkinin doğası ve insan hakları ve adalet arasında olduğu varsayılan bağlantı üzerine düşündükçe, dikkatimi demokrasi ve hak kavramının temeline koyduğumuz ilkelere çevirdim. İyimser anlatılarda adeta adaletle denk tutulan insan hakları ve demokrasi gibi kavramlar, maalesef son yüzyılda tanık olduğumuz tüm olaylar karşısında cazibesini yitirmeye başlamıştır. Sıradan insanların gelecek karşısında duydukları endişeleri azaltacak kurumsal çözümlere olan güvenin eksikliği; yargı ve demokrasi kurumlarının yarattığı genel yozlaşmışlık ve beceriksizlik algısıyla birleştiğinde ortaya ilginç bir sorun çıkmaktadır. Aslında ciddi bir literatür bu konuyu ele almış ve siyasi diskurun hukukun bağımsızılığını nasıl sınırladığını ve hukukun olanaklarının ekonomik ve siyasi ideolojiler karşısında nasıl

araçsallığını araştırmıştır. Sosyoloji alanında pek çok çalışmada da adalet sistemlerine erişim konusundaki eşitsizlikler tartışılmıştır. Fakat bu çalışmalar liberal özne ve onun devletle ilişkisi ekseninden ileri gidememektedir. Tezimde ele aldığım düşünürlerin insan hakları ve demokrasiye dair kuramlarını incelerken, insanların birer insan hakları öznesi olarak kendilerine dair algılarına dayanan bir pencereden toplumun devlet otoritesi ve kurumlarıyla arasındaki ilişkinin doğasını inceleyeceğim. Bu ilişki şüphesiz özünde siyasidir; ayrıca psikolojik bir boyutu da olduğu unutulmamalıdır. Araştırmanın konusunu hukukun bir rejim ve siyaset alanı olarak demokrasideki statüsü ile sınırlamak kişilerin hukuk ve demokrasi ile kurdukları ilişkinin resmi boyutunun ötesini görmemize engel olacaktır. Başka bir deyişle, tezimde ele aldığım temel sorun öznenin hukuki varlığını ve siyasi otoriteyle ilişkisini deneyimleme biçimi ve öznenin kendi varlığına dair algısıdır: Özne siyasete katılım gösterirken kimdir? Özne demokratik süreçlere katılırken kimdir? Özne adalet kurumlarıyla ilişkilenirken kimdir?

Deneyim kelimesini tezdeki kullanımına ilham veren; önemli bir tarihçi olan Lynn Hunt'ın Fransız Devrimine dair çalışmalarında kullandığı kavramsallaştırmadır. Hunt devrimi öncelikle bir deneyim olarak görmekte ve öznenin deneyimini anlamak için sadece objektif belgelere dayanan bir tarihsel analiz değil; döneme dair subjektif verileri de içeren bir analiz önermektedir. Kişilerin subjektif algılama biçimlerinin olayların tarihsel analizindeki önemini varsayan bu tarz bir perspektif, beni bu siyaset bilimi araştırmasında insanların iktidar ve adalet kurumlarıyla kurduğu deneyimi incelemenin faydasına ikna etmiştir. Hunt 'toplum' gibi soyut konseptlerin ve fikirlerin de deneyimin konusu olabileceğini ve Fransız Devrimini anlamak için dönemin hakim diskurlarının yarattığı yeni manaların deneyimine odaklanılması gerektiğini savunmuştur. Deneyimin incelenmesi, temelde, ortak gerçekliğimizi tanımlamak için kullandığımı kelimelerde ve gerçekliği anlamlandırırken bize rehberlik eden ilke ve kavramsallaştırmalardaki değişim ile ilgilidir. Bu açıdan, bu tez bir zamanlar tahayyül edilemez gibi görülen şeylerin zaman içinde evrensel hakikatler haline gelmesini mümkün kılan mekanizmaları göstermeyi amaçlamaktadır. Evrensel

insan hakları bunun en aşikar örneklerindendir. Hunt'a göre insanların eşitliği fikrinin spesifik tarihsel olayların sonucunda ortaya çıkmış olması ama aynı zamanda 'aşikar' ve 'apaçık' olarak kabul görmesi bir paradoks teşkil etmektedir.

Bu paradoks deneyimin yaşanması ve yaşananın bilgisi arasındaki farkı akla getirmektedir. Özneyse, hem deneyimin hem de bilginin öznesi olarak, bu fark sebebiyle bölünmüş bir hâldedir. Diğer bir deyişle, öznenin deneyimi ve deneyimin bilgisi simetrik olamayacağı için bir belirsizlik ortaya çıkmaktır. Bu durumda herhangi bir hakikatin kesin bir temeli olduğu varsayımından uzaklaşmak gerekir. Buna dayanarak insan haklarıyla ilgili bu çalışma, temelcilik-sonrası bir çerçeveye oturtulmaya çalışılmıştır. Tezin odağında dilsel alanın özneyi kurucu rolüne odaklanan ve siyaset, toplum ve hukuk alanlarına daha yorumlayıcı bir yaklaşım sergileyen sol ve temelcilik-sonrası düşünürler yer almaktadır. Böylece, insan haklarını hak talebi ve kimlik siyasetine; hukuku ise sosyal alanın basit bir düzenlemesine indirgemekten kaçınmak amaçlanmıştır. Temelcilik-sonrası yaklaşımlar, merkezin zorunlu olarak yok kabul edilmesi sebebiyle, araştırmanın kapsamını daraltmayı zorlaştırmaktadır. Bu sebeple bu çalışmayı çoğulculuk, güç, evrensellik, olumsallık, siyasi arzu ve özne gibi önemli olduğunu düşündüğüm kavramların ele aldığım düşünürler tarafından yorumlanmasıyla sınırladım. Bu kavramların inşasının incelenmesinin insan hakları ve demokrasinin öznesini anlamayı mümkün kılacağını düşünüyorum.

Bu tezin hedefi; radikal demokrasi ve eleştirel hukuk teorisini temelcilik-sonrası çerçevede beraber düşünerek insan haklarının potansiyel siyasi değerini ortaya koymaktır. Şimdi bu teorik araştırmanın temel bulgularını özetleyeceğim; ardından, bu bulguların insan hakları ve radikal demokrasiye ilişkin görüşlerimi nasıl desteklediğini tartışacağım. Bu kuramlara dair araştırmam; modern demokrasi ve insan hakları öznesini siyasalın artiküle eden öznesi, hukukun üçüncüsü ve insan haklarının diğerinin deneyimi olarak ortaya koyuyor. Tezin üç ana bölümünde sırasıyla Mouffe ve Laclau'nun ortaya koyduğu bir merkezi

olmayan siyasal kavramı etrafında şekillenen bir tartışma, Lefort'un iktidarın boş koltuğu etrafında şekillendirdiği demokrasi anlayışı ve Douzinas'ın ortaya koyduğu hak kavramının etik manası üzerinde durulmuştur. Bu özet de aynı izleği takip edecektir.

Radikal demokrasi teorisi özneyi çekişmeli bir hegemonik alanda yaşanan bir siyasal deneyimin sahibi olarak kurar. Modern siyasi deneyim; yeni ortaya çıkan öznelliklere açıklık ve siyasi arzuların özneler tarafından artiküle edilmesidir. Gösterileni olmayan gösteren olarak tanımlanabilecek boş gösterenlerle kurulan sembolik alan gerçekliğin bir temelsizliğine dayanmaktadır. Laclau ve Mouffe'un radikal demokrasi projesi; her şeyden önce, siyaset ile siyasal arasındaki ayrım üzerine inşa edilmiştir. Siyasal olan, bireylerin sonsuz çokluktaki tutkularının ve çatışmalarının ifade edildiği alanı ifade eder; insanın bir arada varoluşunun ontolojik temelidir. Siyaset; siyasaldan farklı olarak, önceden belirlenmiş kurumlar ve düzenlemeler içinde alışıldık şekilde süregelen bir süreçtir. Bu siyaset, hegemonya pratikleriyle oluşan simgesel alanda yaşanan 'gündelik siyaset' olarak da tanımlanabilir. Bu ayrım radikal demokrasi açısından kritik sayılabilir; çünkü radikal demokrasi temelde bir hegemonya siyasetidir. Laclau ve Mouffe, siyasi gücün hegemonik ve olumsal olduğunu varsayar. Demokrasiyi birçok tekillikten oluşan bir zincirin kendini ifade edildiği ve iktidar pazarlığının yapıldığı bir alan olarak gördükleri söylenebilir. Bu zincir sürekli değişim halindedir ve hiçbir zaman tamamlanmaz. Yeni parçalar -yeni siyasi öznellikler- her an -politik olanın olumsal bir uğrağı aracılığıyla- onun bir parçası olabilir; dolayısıyla, herhangi bir kimlik sonsuz bir hegemonya beklentisi içinde olamaz. Laclau ve Mouffe'un popüler demokratik öznesi, bu hegemonya mantığına bağlı olarak her zaman geçicidir. Bu nedenle, toplumsal ve politik olan her zaman açıktır. Bu açık yapı, anlam alanının -dolayısıyla semboliğin- her zaman dünyanın farklı yorumlanmalarına veya yeni soyutlamalara açık olduğunu gösterir. Bu dilsel çatışma siyasal olanı tanımlar.

Dilsel farkı göstermenin bir yolu boş gösteren kavramıdır. Boş gösterenler; ulus, adalet gibi, çelişkili söylemler içinde kullanılabilmelerine rağmen bir bütünlük

ve anlam görünümü yaratan kavramlardır. Laclau ve Mouffe'a göre insan hakları boş bir gösterendir. Bir evrensellik görünümüne sahiptir ve anlamı kapalıdır; ancak insan hakları söylemini farklı siyasi hedefleri dile getirmek için kullanmak mümkündür. Bu da hegemonya pratiklerinden biridir. Bu tez, insan haklarını boş bir gösteren olarak düşünmektense hegemonyanın artiküle eden öznesinin deneyiminin önemli bir parçası olduğuna odaklanmamız gerektiğini savunmaktadır. Siyaset-siyasal ayrımından yola çıkarak; siyasalda ortaya çıkan öznenin siyasette bir takım istek ve yargılar doğrultusunda hareket ettiği söylenebilir. Bana göre; artikülasyon ve eşdeğerlik zincirleri, siyasalın muhakeme ve iradeyle ilişkisini kısmen açıklarken, hegemonya ve siyasal iktidar mekanizmalarına dair tatmin edici bir açıklama getirmez. Ernesto Laclau ve Chantal Mouffe'un radikal demokrasi üzerine açıklamaları, yerel bağlantılar kurma ve hegemonik bir iktidar odağı kurma kapasitesine sahip olan özneyi ortaya koyar. İktidar odağının her zaman değişime açık olduğunu ve siyasi özneler arasındaki bağların, siyasi çatışmaların (antagonizmaların) olumsal doğasının ve bunların artiküle edilmesinin sonucu olduğu da vurgulanmaktadır. Dolayısıyla toplumun ve siyasalın kapanmasını engelleyen bir eksiklik vardır. Demokrasi kavramı bu eksiklikle ilgilidir: demokrasi temelsiz toplumsalı oluşturur. Laclau Fransız Devrimini temsili bir siyaset yapısının ortaya çıkışı olarak okur; bu nedenle insan hakları, normalde ayrıksı duran kimlikleri bir arada tutan bir boş gösteren payesine kavuşur. Hak talebi ile özneleşme arasındaki bağlantı, rasyonel müzakere ve antagonizmaları çözerek sonlandırma kapasitesine sahip liberal demokrat bir yurttaş varsayıldığı için reddedilir; oysa Laclau'ya göre öznenin veya yeni hegemonik yapıların ortaya çıkmasının her zaman var olan olasılığı, siyasetin altında yatan koşul ve amaçtır. Hegemonyanın artiküle edebilen öznesi ve kurduğu siyasalın, siyaseti herhangi bir rasyonel kapasiteye dayalı olarak inşa etmeyi amaçlamadığını düşünür; tersine, politik olanın boş yerini talep ederek, o boş evrenselliğin somutlaşmasında kendi tikelliğini sunar (Laclau, 2005: 170). Özneye böyle bir konum verilmesi, nihayetinde siyasalı kimlik siyasetine indirgemekte ve üzerine inşa edilmesi gereken boş zemini ortadan kaldırmaktadır diye düşünüyorum. Politik olanın temelsizliği, sürekli ortaya çıkan öznellikler arasındaki değişen hegemonik

ilişkilerle ve herhangi bir kimliğin özgünlüğünü terk ederek eşdeğerlikler zincirinde evrensellik iddiasının imkansızlığıyla sürdürülür. Bu sürecin, herhangi bir grubun hangi kapasitede bir şemsiye kimliğe sahip olduğunu iddia edebileceğini veya bu zincirde özel bir isim ve yerin neden veya nasıl herhangi bir grup için demokratik bir deneyim sağlayacağını açıklamadığını savunuyorum.

Bu temsil kavramının sorunu; eşdeğerlik zincirinin ancak en etkili ya da popüler üyesi kadar demokratik olabilmesidir. Yapının kendisi, eksikliğine rağmen demokrasiyi garanti etmez. Hegemonya fikri, temsil statüsünü elinde tutan tek bir kimlik gerektiren bir siyasi model için tasarlanmıştır. Temsil ihtiyacı, evrensel bir irade iddia etmek yerine sözde temelsiz toplumsal olanı kuran şey haline gelir. Dolayısıyla, ortada yine bir totalitarizm tehlikesi vardır. İkincisi, bu teori, zincirin kendisini özdeşleştirdiği bir olumsuzluk fikrini varoluşsal bir eksikliğe atfeder. Bu olumsuzluk kontrol altına alınamayabilir ve bir baskıya dönüşebilir: Siyasal, iç çatışmaların barışçıl bir agonizm olarak kontrol altına alınamadığı noktada çok hızlı bir şekilde cani 'öteki' diline dönüşebilir. Hegemonyacı öznenin gerçek gücünün, adlandırma ve dahil etme ve dışlama kararı verme kapasitesinde olduğunu kabul etmeliyiz.

Bu bağlamda, Laclau ve Mouffe'un politik özneyi ifade eden özne olarak kavramsallaştırılmasının insan haklarını içerecek şekilde genişletilmesi gerektiğini düşünüyorum. İnsan haklarına ilişkin bu bakış açısı, siyasetin artiküle eden öznesi ile benzer bir siyasal ve toplumsal yapı tahayyülüne dayanır ve yasalar aracılığıyla kurumsallaşmıştır. İnsan haklarının siyaset için boş bir gösteren ve yalnızca olumsal bir değer olduğu fikrini sürdürürsek, merkezi olmayan bir kurumsal zemine dahil olma iddiasını haklı kılacak bir teoriden kendimizi mahrum etmiş oluruz; insan haklarını temel alan bir siyaset radikal demokrasinin ile boşluklu toplum anlayışı arasında ortada duran bir zemin olabileceğini gösterir. Hegemonik güç ile siyasal zincirler arasındaki ilişki, evrensellik ve olumsallık kavramlarının siyaset ve tarih açısından kapsamını ve işlevini belirleme kapasitesine sahiptir. Bununla birlikte, Laclau ve Mouffe

herhangi bir liberal müzakere ve uzlaşma zeminini reddettikleri için, hegemonik mücadelenin tartışmacı nitelikte demokratik bir süreci sağlayacağına dair iddiaları sağlam bir zeminden yoksun durmaktadır. Yani, en azından radikal demokrasinin öznesini insan hakları öznesi olarak tanımlamadan, toplumun bir parçası olarak geleneksel benlik ile benlik arasındaki uçurumu kabul edemeyiz. Yine de, radikal demokratik özne önemlidir, çünkü insan hakları iddiası, hak talebinin bir sonucu veya yönetici ile halk arasındaki bir sözleşme olarak anlaşılmalıdır; insan ya da iyi yaşamla ilgili tarihsel bir tartışmanın mantıksal sonucu olarak değil. Kimlik ve isim atfetme kapasitesi olarak iktidarın tanıma ayrıcalığı, politik olanın koşulu haline gelir. Bu özdeşleşme eylemi, siyasetin çoğulcu alanının bir etkisi olmaktan çok, toplumun bir anlam yapısı içinde kendini gösteren, toplum içinde birbirini gören ve tanıyan insanlar bütünü olarak bir arada var oluşunu öne çıkarır.

Lefort'un modern demokraside iktidarın boş yeri yorumunun halk ile siyasi iktidar arasındaki farkı açıkladığına inanıyorum; bu nedenle yargının politik alan üzerindeki rolü daha açık hale getirir. Hukukun daha genel kapsamı düşünülürse; bu yargı kavramsallaştırmasının, insan hakları yoluyla modern özne ve demokrasi arasında bir bağlantı kurabileceği iddia edilebilir. Lefort'un demokrasi anlayışında da benzer bir boşluk fikri vardır. İnsan haklarının siyasetle ilgisi, tam da iktidar ve halk arasındaki boşluğu koruyarak kendini dışsal bir üçüncü olarak kurması gereken hukuk anlayışında ortaya çıkmaktadır. Bunun tersi durumda, yani boşluğun ortadan kalkması ve iktidar ve halk arasındaki farkın kapanması durumunda ortaya rejim kaçınılmaz olarak totaliterleşecektir. Bu bağlamda, Lefort demokrasi ve hukuku bu boşluğun kurumsallaşması olarak kavramsallaştırır. Lefort'un demokrasi ve iktidarın boş koltuğu düşüncesi; siyasi iktidarı, sadece yönetme arzusuyla motive olan ve bireysel arzu ve iradenin dışında bir varlık olarak açıklar. Lefort'a göre, bu iktidarın metafizik meşrulaştırılmasına odaklanmak yerine, iktidarın kendini gösterdiği mekanizmaları simgesel alana ait olarak görmeli ve dikkatimizi siyasi iktidar ile halk arasındaki müzakereye çevirmeliyiz. Lefort'a göre tam temsil, iktidarın halkla tam olarak özdeşleşmesi anlamına gelir ve, böylece,

çoğulculuktan uzak, kapalı bir halk tasavvuru ortaya çıkar. Dolayısıyla demokrasi, mutlakiyetçi rejimlerin ortak özelliği olan bu özdeşleşmenin imkansız hale getirilmesidir. Lefort, totaliterlik ile modern demokrasi arasındaki karşılaştırmalar ekseninde, simgesel ile gerçek arasındaki boşluğun her zaman korunması gerektiği sonucuna varır, çünkü adalet bu boşluğa ve kapanmamaya bağlıdır. Lefort'un demokrasi teorisi radikal demokrasiyle açık benzerlikler taşır; ancak radikal demokrasinin öznesi ontolojik antagonizmaların siyasalda artiküle edilmesi ile doğarken; Lefort'un düşüncesinde demokrasi öznesi toplumla arasındaki özgül ilişkileri üzerinden ortaya çıkar. Bu ilişkiler antagonizmalar gibi önceden kurulmamıştır. Lefort'a göre iktidarın boş koltuğu, demokraside verilen kararların geçiciliğiyle doğrudan ilişkilidir; daha açık bir ifadeyle, demokrasiyi açık yapan seçimdir: demokratik özne her zaman tekrar seçime girebilir. Radikal demokraside boşluk, her parçanın her an iktidarın koltuğunu talep etme potansiyeline sahip olduğu denklikler zincirinin ayrılmaz/somut bir parçası gibidir. Bu boşluk, kararların geçici doğasından kaynaklanmaktadır. Dolayısıyla hukuka bağlılık, halkın yargısı dışında herhangi bir metafizik temele dayanmaz. Dünyaya erişim sağlarken kendimizi dayadığımız simgeselliğin parçasıdır. Lefort'un sembolik anlayışı radikal demokrasideki sembolikten farklıdır, çünkü Laclau ve Mouffe sembolik olanı siyasi artikülasyon için her zaman var olan bir alan olarak düşünürler. Lefort'un simgeselliği ise bize dünyayı anlamlandıracak çerçeveyi verir; deneyimin alanıdır. Bu sebeple de, hukuk için ampirik veya metafizik bir zemin sağlayamayız; insan hakları, sembolik içindeki deneyimlerimize ve aklımızı kullanma şeklimize dayanan yargımızın ürünüdür.

Claude Lefort açısından, insan hakları ve demokrasi konusu sadece onun artiküle etme ve zincir kurma kapasitesiyle tanımlanmaz. Lefort'un eserlerinde sık sık yinelenen bir tema, yönetenler ile yönetilenler arasındaki müzakerenin bir sonucu olarak halkın demokraside ve hukukta temsil edilmesiyle ilgilidir. Bu nedenle güç her zaman ilişkiseldir. 'Demokrasinin icadı' ve 'insan haklarına sahip çıkmak' arasında fark görmez ve insan haklarının asıl fonksiyonunu da siyasete eşit katılım için bir kamusal alan oluşturmak olarak görür. Lefort'un savunusunu yaptığı radikal demokrasi anlayışına göre, demokrasi doğrudan halk

ve iktidarın birbirlerini nasıl deneyimlediklerine ve nasıl bir bilgi oluşturduklarına dayanmaktadır; böylece demokrasideki geleneksel benlik - vatandaş veya birey- ile dışlanan öteki arasında daha doyurucu bir analiz yapılabilir. Lefort, siyasi deneyim haklarla çerçevelendiği için insan haklarının tartışmasız bir şekilde siyasi olduğunu savunmaktadır. Haklar, ortak hayatımızın koşulu olarak eylemlerimizi özgürleştirir ve sınırlar. Laclau, demokrasinin boş yerini küçültücü bir şekilde yalnızca biçimsel ve usule ilişkin olarak etiketlese de; Lefort, insan haklarının siyasi değerinde ısrar eder. Lefort, Machiavelli analizinde, siyasi gücün aslında bir iradenin temsili olduğunu savunur. Machiavelli tarafından prensin gücü olarak takdir edilen virtu'yu, "insanı yavaş yavaş mevcut koşulların dışına çeken ve iradesini olayların gidişatına dayatmasına izin veren bir ustalığın icrası" olarak tanımlar. Lefort'un siyaset teorisindeki temel araştırma konusu iktidardır. Laclau ve Mouffe, antagonizmaya teorilerinin ontolojik temeli ve neredeyse siyasetin merkezi motivasyonu olarak atıfta bulunurlar; Lefort daha çok iktidarın siyaset içinde nasıl anlamlandırıldığını/algılandığını ve aktarıldığını inceler. Bu anlamda Laclau ve Mouffe, anlam yaratmanın özü olarak boş gösterenlere odaklanırlar ve iktidar ancak antagonizmaların hegemonik artikülasyonundan sonra sahneye çıkar. Lefort'un iktidar kavramsallaştırması ve bunun sembolik olarak gerçekleşen müzakereler olarak ortaya koyması doğrudan siyasi sonuçlar doğurur.

Douzinas hakların ortaya çıkışını mümkün kılan tarihsel deneyimle insan hakları hukukunun formal görüntüsü arasındaki ayrımın altını çizerek, modern hukukun öznesinin adaletle ilişkisini aydınlatmaktadır. İnsan hakları tarihinin söylemsel bir okumasına dayanan Douzinas, politik bir insan hakları teorisi ortaya koymaya çalışır. Onun insan haklarını doğal hakların yeniden inşa edilmiş hali olarak anlaması, hukukun anlamla sabitlenmesini engelleyerek, hukukun kuruluşu sorununa çözüm olabilir. Douzinas, hukuku sosyal ilişkilerde hem bir sonuç hem de bir neden olarak görür. Hakları bu meta-normatif bakış açısıyla incelememiz ve siyasi anlamlarını kavramamız gerektiğini iddiasındadır. Siyasi kimliği, benlik ve onun dünyası arasındaki bir müzakere olarak tanımlar. Haklar bu müzakerenin aracı olabilir. Dolayısıyla haklar, sabit anlamlara atıfta

bulunmaz, özne ile simgesel arasında aracılık ederek anlamı inşa eder. Douzinas'ın hukuk okumasındaki bir diğer önemli nokta, uluslararası insan hakları hukukunu devrimci bir eşitlik ve özgürlük arzusundan kaynaklanan bir icat olarak yorumlamasıdır. Sorun, hakların kültürel tanınma ve kimlik siyaseti araçlarına dönüştürülmesi ve iktidara karşı direnişin orijinal anlamlarından uzaklaşarak aşırı karmaşık bir hukuk diline saplanmasıyla ilgilidir. Bu düşünce, ötekine karşı sorumluluk fikrini modern insan hakları ufkuna dahil ederek adalet çerçevesine etik bir boyutu tekrar dahil etmeyi amaçlamaktadır. Douzinas, nihai olarak insan haklarının aslında ötekinin hakları olduğu ve tek temelinin toplumun ötekine yanıt verme kapasitesi olduğunu söyler. Hukukun ilişkisel doğasına bu düşünür de vurgu yapmaktadır ve insan haklarını hukukun ötekisi üzerinden kavramsallaştırır. O halde insan haklarının öznesi hukukun ötekisidir; kanunda görülmeyen veya görüldüğü halde dahil edilmeyen. Bunun hak siyasetinin devrimci bir yorumu olduğunu iddia etmek mümkündür. Bu anlamda hak arama, vatandaşla devlet arasında bir pazarlık süreci değildir; kişinin kimliğini beyan etme sürecidir. Douzinas'a göre hukuk, kimlik ve siyasal özne arasında meta-normatif bir ilişki vardır. Hukuku yorumlama şeklimiz, benliğimiz ve kimliğimizle ilgili deneyimlerimizi tanımlama şeklimizle iç içe geçmiştir. Bu sezgiden hareketle insan haklarını; hukukun tarihi ve siyasal alandakine benzer bir özneleşme süreciyle ilişkisi üzerinden inceler. Douzinas ayrıca modern insan hakları kavramının, hakların orijinal özünden yoksun olduğunu savunur. Ona göre, asli hak iddiası -doğal haklar- iradenin asli hürriyeti olarak kabul edilmelidir. İnsan haklarını herhangi bir mahiyete dayalı haklar olarak tanımlamaz. İnsan doğasına ilişkin soyutlamaları tersine çevirerek, doğru siyasetin doğadan önce geldiğini iddia eder: Doğa devrimci bir icattır ve hukuk adı altında, yönetecinin otoritesine karşı adaleti tesis etmek için hak kavramını kurar. İnsan doğasını eleştirel bir bakış açısıyla ele alır. İnsan haklarının yarattığı tamlık/noksansızlık yanılsamasından kurtulmayı başardığımızda, hukuktaki eksikliği görebilir ve insan haklarını bu boşluğu kapatmanın bir yolu olarak kavramsallaştırabiliriz.

Bu anlamda radikal demokrasi teorisi ve eleştirel hukuk düşüncesi iki noktada kesişir: toplumsalın ve hukukun tamamlanmamış doğası; diğeri ise hukukun gerçek öznesi olarak. Bu nedenle, insan hakları aslında haklara sahip olma hakkını ifade eder; çünkü iddia edilerek yeni bir benliğin beyan edilmiş olmkaktadır. Diğer bir deyişle, sola yatkın bir toplumsal anlayışına sahip insan hakları hukuku, tamamlanmamış bir bütün ve modern demokrasi, iktidarın üçüncüsünün ya da ötekisinin kurumu olarak değerlendirilebilir ve bu boşluk, yeni gelene her zaman yer açabilmemizi sağlar.

Bu tez için düşünürken, belirsizlik ve inançsızlık dünyasında, insan haklarının geleceğinde bir teselli noktası aramaya ve özgür ve eşit insanlardan oluşan bir topluma giden yolu hayal etmeye ve adaletsizlik karşısında duyduğum yalnızlık ve çaresizlik korkumu hafifletmeye çalıştım. Tezimde detaylandırmaya çalıştığım siyasal anlayışı, iktidarın koltuğunun hep boş bırakıldığı bir demokrasi teorisi ve modern hukuka bir alternatif olarak önerilen hukuk etiği; bu yola ulaşmanın yolları olarak görülebilir. Benim gözümde siyaset zaten her zaman yeni gelene açıktır ve tarihin kendisi buna şahittir. O halde siyaset teorisinin amacı, siyasetin yeni öznesinin gelişine gözlerini açık tutmak olmalıdır. İnsan haklarının bu çerçevede anlamlandırılması ve evrensel bir etik konusunda düşünülmesiyle bu amaca bir ölçüde ulaşabilir.

B. THESIS PERMISSION FORM / TEZ İZİN FORMU

(Please fill out this form on computer. Double click on the boxes to fill them)

ENSTİTÜ / INSTITUTE

Fen Bilimleri Enstitüsü / Graduate School of Natural and Applied Sciences ☐

Sosyal Bilimler Enstitüsü / Graduate School of Social Sciences ☒

Uygulamalı Matematik Enstitüsü / Graduate School of Applied Mathematics ☐

Enformatik Enstitüsü / Graduate School of Informatics ☐

Deniz Bilimleri Enstitüsü / Graduate School of Marine Sciences ☐

YAZARIN / AUTHOR

Soyadı / Surname : Musabaşoğlu
Adı / Name : Elif Hannan
Bölümü / Department : Siyaset Bilimi ve Kamu Yönetimi / Political Science and Public Administration

TEZİN ADI / TITLE OF THE THESIS (**İngilizce** / English): A Study of Human Rights with Reference to the Theory of Radical Democracy and Critical Legal Studies: The Experience of the Subject of the Human Rights and Modern Democracy

TEZİN TÜRÜ / DEGREE**:** **Yüksek Lisans** / Master ☒ **Doktora** / PhD ☐

1. **Tezin tamamı dünya çapında erişime açılacaktır. /** Release the entire work immediately for access worldwide. ☒
2. **Tez iki yıl süreyle erişime kapalı olacaktır.** / Secure the entire work for patent and/or proprietary purposes for a period of **two years. *** ☐
3. **Tez altı ay süreyle erişime kapalı olacaktır.** / Secure the entire work for period of **six months**. ***** ☐

***** *Enstitü Yönetim Kurulu kararının basılı kopyası tezle birlikte kütüphaneye teslim edilecektir. /*
A copy of the decision of the Institute Administrative Committee will be delivered to the library together with the printed thesis.

Yazarın imzası / Signature ..... **Tarih** / Date .....
(Kütüphaneye teslim ettiğiniz tarih. Elle doldurulacaktır.)
(Library submission date. Please fill out by hand.)

Tezin son sayfasıdır. / This is the last page of the thesis/dissertation.