

# 1793: The Neglected Legacy of Insurgent Universality

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Insurgent universality refers to the excess of equality and freedom over the juridical frame of universal human rights. It announces a politics beyond the state. While the histories of human rights usually give ample consideration to the proto-Declaration of 1789, they do not pay enough attention to the Declaration of 1793. However, the neglected Declaration of 1793 allows us to consider the forgotten history of active struggles—most notably, that of women, the poor, and slaves—a set of struggles that, in their concrete configurations, helped to shape the Declaration’s radical claims. Comparing these two declarations by examining their respective contexts and contents, this paper delineates the limits of rights declarations as juridical texts and presents a critique of their universal aspirations. At the same time, however, the paper outlines an alternative conception of universality that the 1793 Declaration brings into view in the very tension between the concepts of citizen and man that it deploys. In contrast to the juridical universalism of 1789, the insurgent universality of 1793 is one that both opens up the political form of the state and introduces possibilities for radical social and political change.

## **From the Liberal Frame to Politics Beyond the State**

Human rights, wrote Bruno Bauer, were “only discovered by the Christian world during the last century,” and this idea “is not innate to man, but is rather achieved in struggle against the historical traditions.”<sup>1</sup> Indeed, human rights are neither a gift bestowed by the state nor the consequence of the progressive development of right. Neither the revolutionary statement of the first Declaration of 1789—“men are born and remain free and equal in rights”—nor the assertion of the Declaration of 1793—“all men are equal by nature and before the law”—define a metahistorical content but rather one that is political and historical.<sup>2</sup> Affirming that men are equal by nature means reinventing nature in two different ways. On the one side, ancient privileges cannot be justified by nature or birth; on the other side, the declaration that

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men are equal by nature heralds a new kind of human subject—one who does not exist prior to the practice and declaration of their rights.

There are two ways to consider the “man” of these declarations. The “rights of man” can be assigned to subjects that are designated as “men,” insofar as they are the addressees of those rights. By contrast, “man” can be understood not as the presupposed subject of the Declaration, but as the common name of those who practice the self-assignment of rights. In the former case, the rights are considered from the perspective of the state; in the latter they are the expression of a political praxis by individuals who act together. Indeed, as Ernst Bloch noticed, it is “not tenable to hold that man is free and equal from birth. There are no innate rights; they are all either acquired or must be acquired in battle. The upright path is inclined to be something that must be won; even the ostrich walks upright and yet sticks its head in the sand.”<sup>3</sup> Walking upright is a historical conquest, as are human beings and human rights. On the one hand, equality, freedom and human dignity reactivate the tradition of revolutionary natural rights; on the other hand, they transcend the political framework of the modern state and introduce political universality beyond juridical universalism. From the perspective of these two concepts—universality and universalism—it is possible to outline diverse legacies, which lead to different conceptions of universal human rights and politics.

Prima facie, it is important to note that the political content of the first French Declaration is polemically oriented against the Ancien Régime and its privileges, whereas the second expresses the excess of political universality.<sup>4</sup> Indeed, the tradition of the first declaration shows how individuals strip themselves of their social characteristics in order to become “simple individuals” and therefore citizens of the state.<sup>5</sup> This is the origin of an ever-expanding universal suffrage of the subjects of right, which both abolished the old privileges of the aristocracy and replaced them with new privileges: the privilege of a subject that is male, white, and a property owner. Citizenship today represents the ultimate privilege of status as an instrument for exclusion and discrimination.<sup>6</sup> The second declaration, instead, finds its own background in the insurgencies of women, the poor, and slaves, those who together questioned the presumed abstract character of the citizen. The Declaration of 1793 must be read together with the insurgencies that directly and indirectly took part in its drafting. These insurgencies, rather

than asking for pure inclusion, challenged the social and political order and opened up the political form to change.

The two perspectives could not be more dissimilar. On the one side, the Declaration of 1789 constitutes the origin of the legacy of juridical universalism. This is the universalism that comes from above and that implies a subject of right who is either passive or a victim who requires protection. Insurgent universality, whose character distinguishes the second declaration, on the other side, does not presuppose any abstract bearer of rights. On the contrary, the concept refers to particular and concrete individuals—women, the poor, and slaves—and their political and social agency. Paradoxically, the universality of these particular and concrete individuals acting in their specific situation is more universal than the juridical universalism of the abstract bearers of rights.

Comparing the two declarations, we immediately notice important differences, specifically with respect to the liberty of opinion, religion, and assembly:

The first notable dissimilarity concerns the right to express one’s thoughts and opinions and the limitation of this right by the state. Indeed, in the Declaration of 1789, as in the following declarations of human rights in the nineteenth and twentieth centuries, the liberty to express one’s own opinions and to profess religious beliefs always hits a limitation: article 11 outlines the freedom of communication of opinions, but adds that one should not

**Table 1**

Declaration of 1789	Declaration of 1793
Art. 10—No one should be disturbed for his opinions, even in religion, provided that their manifestation <b>does not trouble public order as established by law.</b>	Art. 7— <b>The right to express</b> one’s thoughts and opinions by means of the press or in any other manner, the right to assemble peaceably, the free pursuit of religion, <b>cannot be forbidden.</b>
Art. 11—The free communication of thoughts and opinions is one of the most precious of the rights of man. Every citizen may therefore speak, write, and print freely, if he accepts his own responsibility for <b>any abuse of this liberty in the cases set by the law.</b>	Art. 32— <b>The right to present petitions</b> to the depositories of the public authority <b>cannot in any case be forbidden, suspended, nor limited.</b>

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“abuse” this liberty, and article 10 proscribes the manifestation of this liberty from troubling the “public order.”<sup>7</sup> In view of this dialectic of liberty and its limitation, a legitimate question arises: What is the border that distinguishes “use” from “abuse,” and “public order” from “disorder?” Both sides of this question are related to the power of the state to decide whether or not to restrict liberty for reasons of public order. This is not an anomaly concerning only the Declaration of 1789, but it also affects contemporary theories of human rights. Indeed, a close relationship is put into place between the declaration of rights and the restriction, and even the suspension, of those rights in case of emergency.

If the Declaration of 1789 is crushed between the grips of rights and their potential limitations, the Declaration of 1793, on the contrary, does not express any such limitation. The “right to express one’s thoughts and opinions” and “the right to present petitions” are declared without any restrictions. Further, the 1793 Declaration announces rights of another nature—what I call insurgent natural rights. Instead of claiming protection by state or supranational powers, insurgent natural rights express the political agency of human beings beyond the state.

The contrast becomes even clearer in the set of articles shown in Table 2.

**Table 2**

Declaration of 1789	Declaration of 1793
Art. 2—The purpose of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and <b>resistance to oppression.</b>	Art. 33.— <b>Resistance to oppression is the consequence of the other rights of man.</b>
Art. 7—No man may be indicted, arrested, or detained except in cases determined by the law and according to the forms which it has prescribed. Those who seek, expedite, execute, or cause to be executed arbitrary orders should be punished; but citizens summoned or seized by virtue of the law should obey instantly, and <b>render themselves guilty by resistance.</b>	Art. 34.— <b>There is oppression</b> against the social body <b>when a single one of its members is oppressed:</b> there is oppression against each member <b>when the social body is oppressed.</b>
	Art. 35.—When the government violates the rights of the people, <b>insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties.</b>

Both declarations contemplate the right to resist, but there is a difference. The fact that the article on resistance in the 1789 Declaration is listed as the second article does not mean that it is more important than the last three articles of the 1793 Declaration. Indeed, the subsequent articles actually mitigate its strength. Article 6, for example, reads that “the law is the expression of the general will,” and then in article 7 it is stated that “citizens summoned or seized by virtue of the law should obey instantly, and render themselves guilty by resistance.” The principle of representation, which is the core mechanism of the modern state, is here deployed. As long as the law is the expression of the general will, citizens must obey and resistance is labeled a crime. Moreover, the “general will” expresses the unity of the political body that cannot be disaggregated into conflicting parts. Here Rousseau’s notion of the “general will” encounters Hobbes’s principle of representation: a “multitude of men are made one person when they are by one man, or one person, represented. . . For it is the unity of the representer, not the unity of the represented, that maketh the person one.”<sup>8</sup> In this way, the representative makes the invisible unity of people visible, giving existence to the people as comprising the nation as political subject. And since the nation is the embodiment of the people, “a partial, separate and unequal representation,” states Sièyes, “would be a political monstrosity.”<sup>9</sup>

The Declaration of 1793, in contrast, undermines the mechanism of the representation of the people as a unity and totality, which constitutes the theologico-political core of the modern state.<sup>10</sup> Article 4 states that the “law is the free and solemn expression of the general will” and continues by announcing that the law “can command only what is just and useful to society.” These additions are not innocent. Law is not just the expression of the general will that is represented by the state. It is also a matter of dispute between people and government: the “law ought to protect public and personal liberty against the oppression of those who govern.”<sup>11</sup> Affirming this, the Declaration of 1793 expresses a gap between those who govern and those who are governed—or, those who want to defend themselves from the oppression of the government and preserve their “natural and imprescriptible rights.”<sup>12</sup>

This political discourse achieves its own climax in the last three articles of the 1793 Declaration, which together constitute a declaration within the declaration. From the perspective of the state, they are scandalous articles or, paraphrasing Sièyes, they introduce the monstrous.<sup>13</sup> Article 33 declares that the right to resist is the consequence of the rights of man, which include

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the right to be free, equal and not oppressed by the government. Individuals have not (yet) renounced the exercise of political power beyond and against the state. Indeed, articles 34 and 35 respectively declare that if only “a single one of its members is oppressed,” then “each portion of the people” [chaque portion du peuple] has the right to insurrection. Had it been stated that oppression occurs only when the social body is oppressed, then the decision about the social body’s oppression would have been vague and eventually determined by the representatives of the state, who do not have any interest in upholding the possibility of insurrection against themselves. On the contrary, the sequence of the last three articles leaves in the hands of the people the right to judge if and when there is oppression, and thereby grants to each “portion of the people” not only the right to but also the duty of insurrection.

### **The Declaration of 1793: Historical-Political Context**

If the 1789 Declaration is polemically oriented against the Ancien Régime, announcing the constitution of the modern nation-state that frees individuals from old feudal bounds, the 1793 Declaration, read in the historical context of the discussions within the convention and the voices of the subaltern, shows the tendency to keep the constituent process open beyond nationality and the framework of the representative political system. Indeed, in the Declaration of 1793, resistance is not a right that the state has to guarantee. Instead, ongoing insurrections are everyday practices that keep the political system open. Article 28 of the 1793 Declaration stipulates: “A people has always the right to review, to reform, and to alter its constitution. One generation cannot subject to its law the future generations.” This opening up of the system must be understood both synchronically and diachronically. Individuals are political subjects that have agency before, against, and beyond the state; the constitution and the declaration express only a temporary compromise between those who govern and those who are governed. The many insurgencies that took place in 1793 anticipate the declaration in practice, dictate its agenda, and innovate constitutional theory.

The Declaration of 1793 was a compromise, not only between diverse political perspectives among the conventionists, but also between the Convention and the crowds. The insurrections of the slaves in Saint-Domingue during August 1791 informed the new political agenda of the revolution in Paris; the insurrection of August 10, 1792 forced the Legislative Assembly to

abolish the active-passive citizenship distinction while the insurrections of May and June, 1793 reopened the question of whether the deputies should speak in the name of France or in accordance with the people's will as expressed in squares, assemblies, and societies.<sup>14</sup> In this political context, the Declaration and the Constitution, which were drafted and approved on June 24, were not just the results of a quarrel between individuals or groups within the Convention. As a practical and theoretical battlefield, the Declaration includes among its authors even those who were excluded: Olympe de Gouges, who penned the Declaration of the Rights of Woman; the anti-slavery rebellion leader Toussaint Louverture; the naturalized French citizen Anacharsis Cloots, the "citoyen de l'humanité" who argued for a universal republic and the sovereignty of the human race; and Jean-François Varlet, one of the leaders of Les Enragés, who "thought that the essence of democracy lay not in formal constitutions but in the constant readiness of the people to assert their fundamental sovereignty by action;"<sup>15</sup> and many others. The authors of the Declaration were not only Condorcet, Héroult de Séchelle, or Robespierre, but included the Sections, the Paris Commune, and people who may not have had any formal part in drafting the Declaration.

The first draft of the 1793 Declaration, presented to the Convention on February 15, was based on Condorcet's ideas.<sup>16</sup> In his plan, Condorcet included the right to resist, but he tried to legalize the "means of resisting oppression" (article 31), suggesting that "the mode of resistance [. . .] ought to be regulated by the constitution" (article 32).<sup>17</sup> Indeed, his constitutional project included a Title VIII—a provision that developed a complex mechanism of "people's censure" on the acts of national representation by the primary assemblies. Read in its historical context, this procedure was certainly democratic and aimed to defend the rights of the minority; however, it also aimed to reduce the political weight of the most active portion of the citizens. Condorcet expected that, thanks to his constitutional mechanism, "the active portion of citizens will cease to appear as the entire people."<sup>18</sup>

In contrast, Robespierre and other Jacobins considered bizarre any attempt to determine by law when the law is oppressive. The people, Robespierre stated, should make such decisions—the mode of resistance could not be regulated by law.<sup>19</sup> Against Condorcet's attempt to enclose resistance within legal means (articles 31–32), Robespierre, in his draft for a Declaration of the Rights of Man, presented on April 24 to the convention, proposed article 31, which held that "subjecting resistance against oppression to legal

forms is the ultimate refinement of tyranny.”<sup>20</sup> However, when Condorcet’s idea of enclosing resistance within the boundaries of law was defeated, Robespierre’s polemical article was no longer necessary and, therefore, not included in the Declaration. Instead, the final version of the Declaration included the three articles on resistance and oppression that Robespierre had originally proposed in his plan. The debates on insurrection included two fundamental questions: what is the kind of oppression that prompts people to resist, and who can exercise the right of insurrection? Hérault-Séchelles, one of the redactors of the 1793 Constitution, stated that since the character of the insurrections cannot be determined, the questions should be best left to the “genius of the people” and its justice.<sup>21</sup>

From the point of view of the insurgencies, the articles on resistance were much more a kind of compromise between the Convention and the crowds than the outcome of the quarrel between Girondins and Montagnards. The Girondins, as Brissot stated at the Convention, thought that it was time “to end the insurgency” and pointed to the need to neutralize insurgencies through the constitutional mechanism, thus transforming the right of insurrection into the “right of censure.”<sup>22</sup> The Montagnards, by contrast, spoke the language of the insurrection and acted under the pressure of the many assemblies and societies of women, the poor, and the transnational revolution of slaves. However, they only spoke the language of the insurgency that they “were able to encase in a parliamentary revolution with some of the features of the coup d’état.”<sup>23</sup> The result of the June 2 insurrection was the elimination of the Girondins. As soon as the Montagnards had the power, they began to eradicate the insurgencies. From the standpoint of the women, the poor, and servants, the Terror was nothing but the Jacobin anti-crowd policy that ended the revolution by arresting the enragés, closing the Société des républicaines révolutionnaires, and atomizing the crowd.<sup>24</sup> The Terror, if one wants to give sense to this term, was the powerful instrument of the production of political unity, which synchronized and neutralized the insurgent temporalities of the revolution. The Declaration of 1793, written under the pressure of insurgent universalities, was not an expression of the Terror, but rather its first victim.

The stages of the drama are well known. In June–August, the Declaration and the Constitution were approved and ratified by public referendum. On October 10, 1793 the Convention suspended and then indefinitely postponed the application of the Constitution in the name of the revolutionary



provisional government of France. On December 25, Robespierre stated that exceptional circumstances—including conspiracies, counter-revolution and war—required, for the salvation of the people and the revolution, the derogation from constitutional principles.<sup>25</sup> Suspending the Constitution, the Jacobins experimented with the modern state of exception, the “sovereign dictatorship,” and the practice of constituent power by the revolutionary government.<sup>26</sup>

Robespierre himself emphasized the difference between a constitutional government, whose goal is “to preserve the republic,” and the goal of the revolutionary government, which is that of “founding the republic.”<sup>27</sup> Saint-Just stated: “What makes a Republic, is the total destruction of all that is opposed to it.”<sup>28</sup> In the name of the fusion of the Convention and the French people, all oppositions were eliminated step by step. This program for the construction of the modern state was achieved by the Thermidorian Constitution of 1795, whose articles 17–18 affirmed that “no part of the citizen can assume the sovereignty.” The sovereign subject had thus become the totality and the unity of citizens—the singular collective, the people. There were, however, other revolutionary pathways within the revolution—pathways that contain, in their legacies, possible futures that are encapsulated in the past.

### **Insurgent Universality**

Insurgent universality has to be understood concretely: it is constituted by individuals who act in common and put into question the hierarchical organization of the social fabric. The practice of insurgent universality, whose echoes can be found in the Declaration of 1793, is structured around the gap between juridical citizenship and the practice of citizenship of women, slaves and the poor. These groups were not merely the excluded who demanded inclusion, but the true citizens who questioned the political and social order beyond the formal recognition of legal citizenship. They comprised the parts that were not reducible to the people of the nation-state, and those whose actions even exceeded it. In other words, they expressed the excess of the “rights of man” over legal citizenship. They thereby questioned the theoretical framework of the constitution and anticipated other trajectories of political modernity.

1. *Women.* During the French Revolution, women “acted as citizens despite the fact that they were formally denied the rights of citizenship”<sup>29</sup>;

**Table 3**

Declaration of 1789	Declaration of the Rights of Woman and the Female Citizen of 1791 <sup>1</sup>
Art. 6—The law is (est) the expression of the general will.	Art. 6—The law should be ( <i>doit être</i> ) the expression of the general will.

1. Darline G. Levy, Harriet B. Applewhite, and Mary D. Johnson eds., *Women in Revolutionary Paris, 1789–1795* (1980), 87–96.

in so doing, they reconfigured both the relationship between government and the governed and the distinction between the private and the public sphere.<sup>30</sup> Comparing the Declaration of 1789 to the Declaration of the Rights of Woman, written by Olympe de Gouges in 1791, we can see how the political form is opened up by insurgent claims of women.

Olympe de Gouges rewrites article 6, replacing the indicative present “is” with the natural right tense “should be.” In contrast with Hobbes’s theory of representation, the law is not the expression of the general will, but it is subjected to the judgment of the people: thus, there opens a gap between the law and the general will. If the law is unjust or if the government violates the rights of people, the collectivities of true citizens have the right to practice insurrection, which, according to article 35, belongs to “each portion of the people.” Instead of permitting the constituent process to end, egalitarian insurgencies continually open up the political system to the possibility of reform. The insurgent citizenship of those who have no formal part but act as true citizens challenges the constitutional order and keeps open the constituent process, which cannot be reduced to the power of a constituent assembly.<sup>31</sup> In her rewriting of the Declaration, de Gouges audaciously adds one line to article 16: “The constitution is null if the majority of individuals comprising the nation have not cooperated in drafting it.”<sup>32</sup> Since women, blacks, and the poor—all of whom were now acting as citizens—had been excluded from drafting the constitution, the existing constitution had to be considered null. Insurgent citizenship had exceeded the terms of legal citizenship and the boundaries of the constituent power embodied in the National Assembly.

Women were already acting as citizens, beyond the legal recognition of their citizenship. In 1792 Pauline Léon claimed a revolutionary citizenship for women, which included the right to bear weapons. No wonder the deputy of the Legislative Assembly replied by saying that if the petition of Léon were

honored, “the order of nature would be inverted.”<sup>33</sup> The deputy understood what was at stake, even if from a very conservative point of view: insurgent universality refers to an order of natural rights that transcends the given order and its hierarchies, an order that the conservatives would like to freeze by calling it the “order of nature.” Here, importantly, two concepts of nature confronted each other head-on: on the one hand, nature was called upon to legitimize the existing order of relations and its immutability; on the other hand, revolutionary natural rights referred to the right of man to be human and concerned the disordering of the unjust existing order. Women did not want to and could not become male patriarchs, just as the slaves did not want to and could not become privileged white slave owners. Instead, both of these insurgencies adopted the generic concept of the human that was implied in both declarations and pushed it against the confines of legal citizenship and the mere politics of inclusion.

2. *Slaves.* On a broader scale, the Haitian anti-slavery uprisings influenced the French Revolution and pushed the French revolutionaries to edit article 18 of the Declaration of 1793, which stated: “Every man can contract his services and his time, but he cannot sell himself nor be sold: his person is not an alienable property.” Indeed, the 1793 Declaration is the long neglected document of abolition.<sup>34</sup> The Haitian Revolution was not an appendix of the French Revolution; instead, by interacting with the official documents of the revolution, the slaves in Haiti pushed the French Revolution’s effects far beyond its national borders. The Haitian Revolution extended both freedom and citizenship transracially and transnationally and therefore did not lend “itself to political appropriation as a definition of national identity.”<sup>35</sup>

Making visible the universal idea of freedom, the Haitian Revolution revealed other possible pathways of modernization that were linked to other traditions within and outside the West. Aimé Césaire was right in saying that “to study Saint-Domingue is to study one of the origins, one of the sources of Western civilization.”<sup>36</sup> Actually, he was doubly right: he was right because modern western civilization is founded on colonies and their exploitation, and he was also right because Saint-Domingue, as “one of the sources of western civilization,” shaped a constellation whose spatial-temporal boundaries exceeded nationality, built bridges with other excluded subjects, and introduced a new radical concept of universality, one whose legacy branches into many trajectories of human emancipation.<sup>37</sup>

As C.L.R. James noticed, slaves did not want to be slaves; they have always wanted to be free.<sup>38</sup> During the Haitian insurgencies, the universal idea of freedom encountered all the past attempts and theories of liberation that the oppressed have always practiced. This deeper idea of freedom appears in the French Revolution and galvanizes an alternative pathway of universality beyond Europe and modern European universalism. Freedom can be neither destroyed nor protected by power in the name of passive subjects. The hero of the Haitian Revolution, Toussaint Louverture, knew this when he wrote to Napoleon in 1799: “It is not a freedom of circumstance, conceded to us alone, that we wish; it is the absolute adoption of the principle that no man, born red, black or white can be the property of his fellow man. We are free now because we are the stronger. The Consul maintains slavery in Martinique and Bourbon; we will thus be slaves when he will be the stronger.”<sup>39</sup>

The idea of freedom that Louverture wanted to defend cannot be constrained; it is instead the practice of free individuals. Its nature is transracial, transnational, and transtemporal—building bridges among traditions. The heroes, the parties, and the masses of the French Revolution, wrote Marx, “achieved in Roman costumes and with Roman phrases the task of their time.”<sup>40</sup> If the French Revolution quoted Rome, the Haitian revolts of August 1791 reactivated Voodoo traditions, which operated as a regenerating energy that “enabled the slaves to break away psychologically from the very real and concrete chains of slavery and to see themselves as independent beings.”<sup>41</sup> The reference to those traditions not only brings a particular energy to the present, but also makes it possible to envision new ways go beyond it, towards past possibilities that can be reactivated in new ways in the present.

3. *The Poor and the Foreigners.* Something of this transnational nature of freedom merged into the 1793 Constitution. Article 4 extended the exercise of the rights of French citizens to every man born and living in France of twenty-one years of age and to “every alien, who has attained the age of twenty-one, and has been domiciled in France one year.”<sup>42</sup> Reactivating the ancient law that the inhabitants of medieval communities had practiced, authorities granted citizenship to foreign residents after a year of residency. It is hard to imagine something like this in today’s democracies, which are instead obsessed with national identity and the fear of aliens.

The expansive dynamic of insurgent universality went even further. The poor began to challenge the census system—a system that bound active

citizenship to property and, by doing so, merely substituted for the feudal aristocracy the new aristocracy of white, rich men. Here, however, something really interesting happened: by demanding inclusion, the poor put into tension the universal revolutionary natural rights and the right to private property that was operating as the basis to justify exclusion. The tension between these two poles intensified and became a contradiction between the natural right to exist [droit à l'existence] and the unlimited economic liberty of property.<sup>43</sup>

This contradiction was a practical one. It was based on the insurgencies of the poor and was expressed in the economic program of the sans-culottes on September 5, 1793: a ceiling was imposed on the price of bread against economic speculation, but a maximum limit was also demanded for the accumulation of property, because the unlimited economic liberty and concentration of property in a few hands violated the right to exist and the freedom of the rest of the population.<sup>44</sup> Actually, in his proposal for a declaration presented on April 24, Robespierre included two articles (articles 7 and 8) which explicitly bounded the right of property ["Le droit de propriété est borne"];<sup>45</sup> however, after June 2, when the Montagnards "were the masters and could make their ideals prevail," they did not insert any of the radical articles on property into their declaration.<sup>46</sup> The Jacobins had used the language of the poor in order to appear more democratic than the Girondins and woo the crowds, but when they had the power they ignored the discussion on the maximum and put the Revolution on the tracks of the right to property.

The question of a maximum for both prices and property was instead debated in the everyday assemblies of the people whose spokespersons were the Enragé. Théophile Leclerc stated: "All men have an equal right to food and to all the products of the land which are indispensably necessary to preserve their existence."<sup>47</sup> And Jacques Roux in his address presented at the Convention declared: "Freedom is nothing but a vain phantom when one class of men can starve another with impunity. Equality is nothing but a vain phantom when the rich, through monopoly, exercise the right of life or death over their like."<sup>48</sup> Their words revealed an insurgent universality that questioned the entire political order, the division of labor between those who govern and those who are governed, and the rules that regulated property relations. According to the Enragés' demand for a limit to the right to accumulate property, it was the natural right to life that actually established

such a limit because the life of a human being was more sacred than the “property of villains”; freedom was nothing if economic liberty became the right to create a new “merchant aristocracy,” which Roux defined as more terrible than the aristocracy of the noblesse.<sup>49</sup>

The Enragés were defeated but the insurgent legacy of the poor continued with the protocommunist Gracchus Babeuf whose nickname recalled the ancient Roman reformer and who linked the principles of 1793 to the revolutions of 1830 and 1848 with his praxis. The question is not what would have transpired if the Babeuf’s Conspiracy of the Equals had not been defeated; nor is it whether this defeat was inevitable due to the “underdeveloped state of the proletariat,” as Marx argued in the Communist Manifesto.<sup>50</sup> Counterfactual histories and the philosophy of history share the same unilinear conception of historical time. What the 1793 interruption shows us instead is an alternative pathway of modernization—a path whose legacy extends through modernity, and exceeds its heroes, deeds, and misdeeds. Many revolutionary temporalities interacted within the French Revolution. They retrospectively show us different political and social possibilities beyond the conservative Thermidor, the Napoleonic epilogue, and the rearrangement of the modern nation-state.

### **Looking for New Institutions: The Imperative Mandate**

In insurgent universality, concrete subjects, men and women, questioned the social and political order that confined them, in the private sphere, to servitude and misery. They did not demand an abstract equality that would refrain from challenging the social order; instead, they practiced a dis-ordering of the order. Just as the natural rights of the 1793 Declaration exceeded and questioned the law, so did the term “man” exceed the citizen and become the bearer of the most radical political question: the need for justice. Insurgent universality took upon itself precisely this question and the risk that it involved. As a result, this insurgency not only interrupted the continuum of a specific historical configuration of power, but it also disclosed and anticipated new political pathways, which indicated alternative trajectories beyond political modernity. These pathways were molten in the red-hot magma of many experiments, abandoned or repressed: these experiments were the virtuous “skidding off course” [dérapiage] of the Revolution during which slaves, women, and the poor gained a voice and acted as if they were citizens.<sup>51</sup> The legacy of these experiments must be understood in a

constellation that brings the rights of man, insurrection, and the imperative mandate together within a new political framework in which all of these terms are reconfigured.

The hidden focus of the entire debate on the right of insurrection was whether the revolutionary movements should be brought to an end and, even more important, whether they could be allowed to challenge the unity of the nation represented by the Assembly.<sup>52</sup> The Enragés aspired to replace the parliamentary system with one where the representatives would be mandatories of the primary assemblies, thereby restoring the ancient imperative mandate [*mandat impératif*] but in a new form.<sup>53</sup> The imperative mandate, which had been suppressed in the name of the new sense of national identity and unity in the initial stages of the Revolution, was recalled to life by the Enragés.<sup>54</sup> The discussion on the imperative mandate was entangled with the meaning of the term insurrection, which neither was an abstract concept nor invoked the extreme use of violence in cases of exception. Insurrection referred instead to the practices of the sectional societies and the new type of popular organizations established by the *sans-culottes*.<sup>55</sup>

The Enragé Jean Varlet, in his Proposal for a Special and Imperative Mandate, contended that an important article should be added to the Declaration: "The sovereignty of the people is the natural right possessed by the assembled citizens to elect every public official directly; to discuss their own interests, to draft mandates for the deputies [. . .] to reserve themselves the capacity of recalling and punishing those of their agents who transcend their power."<sup>56</sup> Through mandates, stated Varlet, people could exercise their own sovereignty in the primary assemblies and establish their "guarantee against legislative tyranny."<sup>57</sup> Finally, Varlet argued that the inclusion of this natural right in the Declaration would require the revision of all of the articles of the constitution that stood in opposition to the sovereignty of the assemblies.

Imperative mandate was not an abstract concept; it was a dimension of the insurgent practices of the assemblies, which challenged the theory of the emerging modern state. It is in this conjuncture that Héroult-Séchéelles stated that the primary assemblies should retain the right to judge or, as Robespierre proposed, even to revoke the deputies.<sup>58</sup> On the opposite side, the Girondins and other Jacobins upheld the general will against the particular wills of the sections and the assemblies.<sup>59</sup> For instance, the Jacobin François-Agnès Montgilbert affirmed that the right to resist belonged only to the people and not to the particular will of some citizens. Indeed, he said,

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putting the latter in place of the general would mean that there is “no longer a government and the social contract has been broken.”<sup>60</sup> The prohibition of insurrection was the corollary of the principle of national representation, since insurrection could only express the will of a part of the people against the people’s representatives. However, this was only the voice of the representatives; the subaltern voiced a different demand.

The crowds behind the new political experiment of non-representative democracy did not have the time to give it a new name; rather, they borrowed two concepts—the pre-modern notion of “imperative mandate,” on the one side, and the term of “insurrection,” on the other. The imperative mandate, this anachronistic concept, was premodern only insofar as it was not modern; it expressed an alternative trajectory of political modernity, which was not based on the idea of political unity. When the subaltern demanded the imperative mandate, this demand was closely related to insurrectionary practices, understood as the natural right of the assembled citizens. Insurrection was indeed the everyday political practice of the Paris Commune, the forty-eight sections and the sectional societies. And, even more, it was the practice of the binding mandate, which undermined the sovereign unity of the people and the representative principle of democracy.

The modern state knows only the “free mandate” in which each deputy, regardless of the specific locality from which they are elected, represents “the people” as a whole; each speaks in the name of the people and not for a part of the people.<sup>61</sup> For this reason, each law that is approved by the majority of the representatives is considered to be the expression of the people’s will, which each citizen must obey. Free mandate is thus the consequence of the unity of the sovereign people and its political representation. Imperative mandate, on the other hand, binds deputies to the instructions and directions of a particular assembly, which has the right to revoke them: it shatters the dogma of the unity of the people’s sovereignty and goes beyond the framework of representative democracy.

If the Revolution was experimenting with an alternative pathway of political modernity, Le Chapelier tried to hinder this possibility at the beginning of the Revolution by affirming that there was no place for associations and clubs—the “so called associative life of democracy.” These were the models that replicated the corporations of the past era and were prohibited from rivaling “the assembly in what must be its monopoly: to represent the people as a unified entity.”<sup>62</sup> Later, the Jacobins in power synchronized the different



insurgent temporalities of the Revolution in the name of the national unity of the French people, which they created and made visible by representing it. On February 5, 1794, Robespierre stated: “Democracy is not a state in which people, continually assembled, regulates by itself all public affairs; even less is it a state in which one hundred thousand fractions of the people [...] would decide the fate of the whole society.”<sup>63</sup> The Jacobins crushed the democratic experiment and their assemblies, and built political unity and identity focusing the polemical strength of exclusion against internal and external strangers, who became the “enemies of humanity.”<sup>64</sup> With their concepts of unity and representation, the Jacobins were sympathetic to both the Girondins’ and to Sieyès’s obsession for the “totality of the Nation against the vagaries of a few electors.”<sup>65</sup> The virtuous *déravage* was crushed in the name of the unity of the general will, and the dominant pathway of the representative state was restored.

## Two Legacies

The two proto-declarations of the Rights of Man and the Citizen inaugurate two different legacies. In each case, the “rights of man” are brought together with the “rights of the citizen”; however, the and that links these two syntagms can be understood either as a conjunction or as a disjunction. In the former case the rights of man overlap with the rights of the citizen, while in the latter case they diverge and the rights of man exceed legal citizenship. Diverse political consequences follow. If one interprets, as Balibar does, the man and the citizen as overlapping concepts, the result is a process of inclusion into citizenship and thus “an institutional, public inscription of freedom and equality.”<sup>66</sup> Balibar’s idea of “egalitarian sovereignty” opens a permanent tension between the politics of rights and their irreducibility to institutions; even if this tension leads to the democratization of democracy as an open process from below, democracy nonetheless remains constricted within the polarity between constituent and constituted power. As a result, Balibar’s discourse oscillates between the moment of the auto-constitution of the people and the “representation of the sovereign in its deputies, inasmuch the sovereign is the people.”<sup>67</sup> In other words, his discourse is articulated within the political form of the nation-state, and it reduces the excess of the rights of man to the institutional, public inscription of freedom and equality. The juridical framework of the state is not in question, nor is the juridical understanding of universalism. Balibar’s point of reference is still the Declaration of 1789.

Advocating the legacy of the Declaration of 1793, we instead think politics in the gap between the rights of man and the rights of the citizen. We have seen the dialectic that traverses articles 10 and 11 of the Declaration of 1789, where liberty, as soon as it is proclaimed, is subjected to limitation by the power of the state for the protection of public order. This dialectic is articulated in the relationship between rights, the subject of rights, and the power that protects them. A similar dialectic is present in the catalogue of liberties born by the revolution of 1848. Here each liberty is proclaimed to be an unconditional right of the citizen while, at the same time, it is limited by laws that are supposed to mediate the liberties of different persons with each other and with “the public safety” in harmony.<sup>68</sup> Reading the Constitution in the historical-political context of the rise of Louis Bonaparte in France, Marx made the point that both those who were demanding freedom and those who were denying freedom appealed to the Constitution, the legal boundaries of which were not able to hinder the dictatorship of Napoleon III.<sup>69</sup>

If one wants to follow the juridical legacy of human rights, the dialectic between the simultaneous declaration and limitation of liberties is echoed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in 1950. In the second paragraph of each article, the European Convention denies systematically what it declared in the first. For instance, the first paragraph of article 9 grants “freedom of thought, conscience and religion,” but in a second paragraph appends an exception, which states that the “freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals.”<sup>70</sup> A similar antinomy marks article 8 on “private and family life,” article 10 on “freedom of expression,” and article 11 on “freedom of assembly and association.” The climax is achieved in article 15, in which the “protection of the public order” allows the sovereign state, “in time of emergency,” to derogate from the mentioned rights and liberties. The same dialectic also resonates in the 1948 Universal Declaration of Human Rights: article 29 of this declaration states in the second paragraph that the exercise of human rights is subject to the limitations “of meeting the just requirements of morality, public order and the general welfare in a democratic society,” as determined by law.<sup>71</sup>

In each case, public power has to establish the boundary between use and abuse in order to prevent the use of liberty from becoming abused against

the equal rights of others or against public order. It is up to the state to define what constitutes both abuse and the public order. How is it, then, that the individual can also be protected from the abuse of state power? Stated differently: while fundamental rights exist to limit the power of the state in order to protect the private sphere of the individual, it is the same state that nevertheless has the power to decide whether and when these rights should themselves be limited. Indeed, as the Declaration of 1789 has specified, the “safeguard of the rights of man and the citizen requires public power.”<sup>72</sup> And here is the contradiction: the public power can always displace or even abolish the limitations that it imposes on itself, especially in the name of a true or presumed emergency. This aporia can be displaced to the international register, but it cannot be suppressed.

Furthermore, this current conception of universal human rights is also problematic because it is based on a construction of the political subject as completely passive. This is a subject whose human dignity has to be protected against the possible violation of its rights, exposure to humiliation, and degradation.<sup>73</sup> Even if one can agree that this is for the best, one must nevertheless recognize what it means for this subject to always appear to be a potential or actual victim. The “man” of the rights declarations, however, can easily be considered as abstract, and in fact many conservative thinkers have pursued this critique. As long as the subject of human rights is not the individual who belongs to a political and social context, the man of the declarations seems to be a human being without any further specification. According to Arendt, for instance, “the Latin word *homo*, the equivalent of ‘man,’ signified originally somebody who was nothing but a man, a rightless person, therefore, and a slave” or “certainly a politically irrelevant being.”<sup>74</sup>

Further, Arendt’s idea of the “right to have rights” corresponds to the right to belong to a political community as *bios politikos*, which stands in marked contrast to the human as “bare life,” or the “abstract nakedness of being human and nothing but human,” which is the result of not being part of the political institution of community.<sup>75</sup> According to Arendt, the loss of “home and political status become identical with expulsion from humanity altogether,”<sup>76</sup> and this loss of belonging to a political community in turn corresponds to the loss of rights and protections. Arendt thus contemplates the human outside of the political community as a deprived form of life; she either does not see or is not interested in seeing the human whose political agency exceeds and dis-orders the political order. Arendt’s position has been

reframed by Agamben, who assumes that the concept of man is subsumed under the concept of citizen. According to Agamben, since the essence of the *homme* lies in the legal belonging to the nation-state, the latter can declare a state of exception and through the radical de-juridification of individuals reduce them to the status of *homo sacer*.<sup>77</sup> From this perspective one can develop a theory of the state of exception, but one cannot develop any idea of emancipation.

In 1793 Pierre Guyomar, a member of the Convention and author of “*Le partisan de l'égalité politique entre les individus ou problème très important de l'égalité en droits et de l'inégalité en fait,*” offered the counterpoint to those who condemned the concept of man for being abstract. Indeed, during the discussions for a new constitution, Guyomar evoked the Latin etymology of the word *homme*: “*homo* [in ancient Rome] expressed by itself these two words consecrated by usage, man, woman. . . . Let us liberate ourselves rather from the prejudice of sex, just as we have freed ourselves from the prejudice against the colour of Negros.”<sup>78</sup> Let us use Guyomar’s statement as a starting point for a political definition of the idea of man: the term *homo*, or *l’homme*, refers neither to a white, rich, male subject of rights nor even to what Arendt defined as “a political irrelevant being,” nor to a citizenship that had to be demanded as a “right to have rights.”<sup>79</sup> On the contrary, *l’homme* refers instead to the universality of being human, or a universal human republic in which individuals, whether they were formally included or excluded, would act as citizens. In such a rendition, the generic term *homo* exceeds the horizon of citizenship and separates “the rights of man” from “the rights of citizen.”

It is precisely the divergence of these two ideas that leads us to the legacy of insurgent universality. The women, the slaves and the poor in the French Revolution did not simply dispute their status in the order so as to demand inclusion in the formal equality of an unjust political order.<sup>80</sup> They can certainly be designated as “the part of those who have no part,” but this should not be construed to imply that their demand was to become a part of what already existed.<sup>81</sup> Instead, the subaltern subjects intensified the gap between *homo* and citizen, thereby urging us to think universality beyond the political form. In insurgent universality, the human is the subject who, by acting as a citizen, albeit beyond one’s legal status and the putative boundaries of citizenship, puts both the social and the political order into question. One can say that performing the universality of the human in the “rights of man” is not only the questioning of right but, furthermore,

the questioning of society itself.<sup>82</sup> Furthermore, this kind of universality is anything but abstract; it has to be understood in the historical context in which assemblies and societies were experimenting with politics beyond the framework of representative democracy. The women, the slaves, and the poor practiced universality beyond the nation, performed political citizenship beyond legal citizenship, and accused even the most radical Jacobins of being “insufficiently universalist.”<sup>83</sup>

There are, thus, two legacies. The Declaration of 1789 questions the feudal order, introduces individuals into the nation-state, defines their private and political rights, and opens up an expansive dynamic of the production of civil rights; the Declaration of 1793 questions the political and social order by individuals who act as citizens beyond legal citizenship, practice their freedoms without the limits imposed by state, and eventually question the reasons of obedience or disobedience.<sup>84</sup> Universalism is related to the abstraction of individuals in relation to the power that purports to protect them; insurgent universality, on the contrary, concerns the agency of concrete individuals who act beyond the nation and the horizon of political representation.

From the perspective of insurgent universality, whose forgotten legacy I want to reactivate as an alternative pathway to political universality, only one right of man really exists: the human right to be human. The term *l’homme* not only exceeds the divisions within the political and social order, but also transcends the provincialism of space and time. On the one side, the rights of man are declared within time but transcend time. They make present the past legacies and experiments of liberation by building bridges between the past and the future. On the other side, their space of influence is transnational; not because they aim towards a world-democracy, but because they exceed the boundaries of any legal citizenship. Indeed, understanding the anti-slavery rebellions as one of the revolutions within the Revolution allows us to indicate that the political space in which that insurgency takes place is not the nation, but the Atlantic world.

The wrongs to which the subaltern are subjected occur not only because they are excluded from the representation of the sovereign people. Such experiences also come about because the dominant construction of citizenship, based on the autonomous, free, and rational subject, is built as the antithesis of their subjectivity, which is constructed as the “heteronomous,” “irrational,” “emotional,” and “immature,” non-white, non-male, non-Western subject. It is therefore important to underscore that the demand of the subaltern was

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not inclusion but a challenge to the very construction of their subjectivity as the antithesis of citizenship. Their insurgent political practice questioned the social partitions that the juridical universalism of 1789 had pushed into the private sphere.

The questions of women, slaves, and the poor were political and social at the same time. Challenging both the political and the social fabric allowed these subjects to open new emancipatory pathways: in such openings the emancipation of the slaves exceeded the nation; women's emancipation questioned the gendered division of labour; and the poor questioned property, demanding a ceiling. The matter of the dispute did not concern the privilege of being included as citizens into an unjust order. The practice of insurgent universality exceeded legal citizenship and questioned instead the politics of race, gender, and poverty undergirding the aristocracy of the white, male property-owner enshrined as the citizen in the new configuration of exclusions, hierarchies, and inequalities within the paradigm of the legal equality of the nation-state.

History shows us how the layers of exclusion are continuously reconfigured in response to the emancipatory claims of human beings. Insurgent universality dis-orders the social and political order and, by doing so, challenges the distinctions between the political and the social, between public and private. When women left the privacy of their homes and dared to act as public citizens, they reconfigured the public sphere and the so-called private sphere as well.<sup>85</sup> As Joan W. Scott explains, "The attempt to achieve this project involved an act of self-creation, in which a woman defining herself as woman enacted the public/political role usually performed by men."<sup>86</sup> From this perspective, the transformation of external circumstances was strictly related to the self-transformation of the human. In the *Pétition à la Municipalité* of May 1792, Olympe de Gouges wrote that she "made herself a man for the country" and in a *Réponse* to Robespierre, she defined herself "more man [homme] than woman."<sup>87</sup> These assertions do not mean that she questioned her sex. Rather, on the basis of the excess expressed by the term *l'homme*, de Gouges questioned the specific form of individuation and the social and political roles implied in the gendered division of labor. Refusing the existing opposition between the public and the private, productive and reproductive, political and domestic, rational and sexual, the women's insurgency rejected the division of labor on which both Sieyès and the Jacobins based their notion of representation.

While the entire social and political order was being challenged by the insurgencies of women, slaves, and the poor, the process was not limited to them. Anyone could take part in the rebellion since what they questioned was not only their particular social position but the position of everyone within the existing, unjust order. This was not a gesture of abstract solidarity from a privileged position. Real solidarity is a kind of bond that involves the questioning of our own position across all existing relationships. For example, the order based on slavery cannot be challenged by merely putting into discussion the social position of the slave, but rather such questioning calls for the evaluation of each person's position in the existing order. It is the practice of dis-belonging that shapes insurgent universality.

To conclude: what is the reason for reactivating the legacy of the Declaration of 1793 today? The crises of both representation and the nation-state force us to think of different pathways to political modernity—those that have not been followed and are not channelled into the idea of the political unity of the nation-state. These alternative pathways reconfigure the relationship between the social and the political, the private and the public, the individual and the collective. Insurgent universality is a different pathway, an alternative legacy that does not assume that the human being is a subject only by way of its need for protection, but recognizes the human as the very agency that exceeds the social and political order and aims to change the external circumstances as a function of its self-transformation. For this reason, insurgent universality intersects with the rhythms of the three forms of emancipation—the political, the social, and the human—within a universality in which differences are not eradicated but rather exist together.<sup>88</sup> The price of this coexistence could certainly be conflict, but, after all, conflict is an essential dimension of human togetherness and thus of politics.

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