

the tasks of political philosophy

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What are the tasks of political philosophy? You do not formulate such a question on your own initiative. You are asked to respond to it. You would not even contemplate it otherwise. This was the case for me when I was invited by the convenors of the *Collège de Philosophie*² to take part in a conference reviewing the current philosophical landscape. I gladly accepted this request because it forced me to leave the path which is familiar to me and to situate myself in what constitutes a complex territory. From this exercise, even if the picture I propose is to be rejected, we shall at least, benefit from having an overall map by which to find our bearings. The usefulness of such a tool is self-evident and the number of

arguments I am presenting remains limited.

To conform with the customary requirements of this exercise, I will endeavour to offer an impartial and comprehensive view of what is being done in the field of political philosophy. I will, at the same time, put forward my personal opinion on what remains to be done. I will argue in favour of a particular task, a task that political philosophy, to my mind, must engage as a consequence of the historical situation in which we currently find ourselves. I will situate this task in the context of those other tasks that political philosophy legitimately pursues.

Why political philosophy? We have to acknowledge that this discipline possesses a contemporary relevance that seems to have gradually developed over the last two or three decades. What is the significance of this relevance? Politics is a constant feature of the human condition. Thus, ever since philosophy came into being, political philosophy has also existed. At the very least, there has been discourse by philosophers on politics. In this respect, one must say, political philosophy is a step removed from current events. This, however, does not prevent it, at times, from occupying a more prominent place than usual, when it acquires a sense of urgency and centrality, when it resonates with collective interrogations. There is good reason to think that, indeed, these are the times in which we are now living.

Let us straight away dismiss the simplistic cliché proposing that this revival of political philosophy is nothing but a fad. The duration and diffuse character of the phenomenon, combined with its somewhat general appeal in the wider public, are sufficient proof that we must do away with this specious notion. The truth is more interesting: we are now facing a wide-ranging intellectual shift, one that needs to be related back to the developments that have taken place in our societies since the economic crisis of the 1970s. This shift is directly related to the social transformations and the ideological metamorphosis that have been observable ever since. Three elements appear to stand out.

Firstly, there is a striking link between the contemporary relevance of political

philosophy and the demise of the revolutionary idea, the questioning of Marxism and the political breakthrough of anti-totalitarianism. I cannot imagine this idea being challenged by anyone. The deep consequences of this ideological swing need to be taken into account. It forces us all to consider the problem that emerged with totalitarian regimes: Marxism cannot account for what was done in its name. How can one account for the political form created under the auspices of dialectical materialism but with the interesting characteristic of contradicting its premises? At the same time, how can one understand democracy as a political phenomenon³ if it is not reducible to the capitalist economy and the power relations of bourgeois society? These questions are well-known, but rarely discussed in any sustained fashion, and this is why I take the liberty of reviving them. If we are to free ourselves, permanently and completely, from Marxism, what can we put in its place? The current configuration of political philosophy was first shaped by this uncertainty.

Secondly, it must be noted that the current, particular relevance of political philosophy goes hand in hand with a striking aspect of the transformation experienced by our societies over the past three decades, which is the rise of the law⁴:

- an ideological rise—one need only think of human rights;
- a practical rise—juridical regulation having been given an increasingly expanded role;
- a political rise—that is not limited to the influence gained by constitutional courts, but concerns, more broadly, the place allocated to juridical control and arbitration as opposed to the political process.

This rise of the law is linked sociologically to the assertion of the individual.

Finally, from an intellectual standpoint, the contemporary relevance of political philosophy, owes much to the crisis of the social sciences, the crisis of the very notion of society, of this notion's explanatory powers and capacity to guide public action. This crisis has resulted in a resurgence of the normative perspective, which the objectivism of the social sciences had invalidated up to this point.

We are witnessing the rebirth of the moral viewpoint as the perspective through which prescriptive legitimacy is apprehended. We are returning to the question of knowing how things should be in reason and in law.

HISTORY, LAW AND THE POLITICAL

I will in fact speak of three things: history, law and the political in the strict meaning of the term; in more explicit and developed terms, I will talk of the history of political philosophy, of its links with history in its simple sense, then of the philosophy of political law, and finally, of the application of philosophy to political phenomena.

In the first instance, I will examine the conditions in which the history of political thought—which, in any case, is already being formulated because of the momentum inherent to the academic system—could acquire its particular significance or its true scope, and on the basis of which types of questions.

Secondly, I will attempt to understand the significance of the central phenomenon of recent times, the rebirth of political law, since the theory of political law constitutes the biggest part of what one calls political philosophy. Why has the problem of the foundation in law of the political order now come back to the forefront? What does it mean? What contributions does this foundational approach make? What can we expect from it? What are its limitations?

Thirdly, and lastly, I will argue for a *philosophy of the political*, by far the least represented branch in what is currently produced in the field. While it constitutes a minor strand, in my view, from a civic perspective this is the one that is of most use; and from a philosophical perspective the most fertile.

the genealogy of modernity

I cannot but start by noting that these three entry points correspond to what we can straight away identify as the three major innovations characterising modernity in the political domain. It is possible and indeed convenient to connect these

three innovations back to three names—Machiavelli, Hobbes and Hegel. These are the names of three pioneers and, consequently, they possess a symbolic value.

Modernity began with the emergence, in the 16th century, of a realistic approach to all things political; it became manifest in the emergence of a new perspective on the reality of politics, reflecting a new political reality. Modernity then passed through the introduction, in the 17th century, of a new approach towards the foundation of the political order in law, based on a conception of law that was itself essentially renewed. Finally, modernity represented the emergence, at the beginning of the 19th century, of a historical point of view that modified entirely the status and the perception of the political. Doubly so: first, it turned the political into a problem to be resolved within history and through history; and second, it subjected the political to a radical review, in the name of the illusion it presumably constituted.

I present this overview to make my first point less banal, to remove from it, as much as I can, anything that is too predictable and could be seen as announcing a sterile, conventional discussion. We cannot avoid it totally, however: the first task of political philosophy is to formulate its own history. This is obvious, I am bound to be told. We know it too well, especially in the French university tradition, which tends to merge philosophy with the history of philosophy, a tradition which has recently embraced political philosophy but only to turn it straightaway into a kind of museum artefact, hastily reducing the discipline to being the study of authors and works—and what's worse, of a corpus of authors and works deemed legitimate, according to very questionable criteria.

To evade this fated trend, it is useful to remember the reasons why we are interested in this history, the controversial questions it raises and the challenges that are involved. Incidentally, the task is perhaps easier on this historical ground than on any other. The history of political thought is relatively less likely to lose its *raison d'être* than the history of philosophy in general. Undoubtedly, it is more difficult to forget why we construct this history of political thought and what we need from it; this task seems less exposed to the risk of becoming ossified, of

becoming a routine activity constituting its own objective.

That said, to lament this aberrant degeneration of philosophy stifling living thought under the weight of antiquarian memory is not enough. The powerful reasons that command it need to be understood. This degeneration is the negative side of what makes our intellectual situation distinctly different from that of our predecessors. We are now able to gain access to ourselves, to our identity and to the truth of our condition only through the past from which we emerge and which we are leaving behind. This is an unprecedented situation—one which we are far from understanding adequately and one which never ceases to fool us. I will use an example that is suitable for our topic, an example that is to be found in one of today's most influential intellectual trends—that inspired by Leo Strauss. The representatives of this trend urge us to liberate ourselves from the modern illusion of history, to rediscover the political truth of human nature, whose secret the Ancients presumably uncovered. In a remarkable contradiction, they, nevertheless, spend all their time explaining to us in great detail the paths by which this exile from nature occurred in history. They denounce history and yet they do nothing but speak of it. No matter what they say, they are, in spite of themselves, well and truly modern. Now, it seems to me better to be modern knowing that this is what we are and trying to be so coherently. We must learn to be consciously responsible for this new environment in which our thinking is forcibly situated, one which distinguishes us from our predecessors.

We did not sufficiently reflect on the imperatives and pitfalls of this mental environment and as a result we now have to endure its pathological expressions. For want of an accurate assessment of the resources it offers and the difficulties it creates, we are constantly shifting between hyperamnesia and reactive amnesia. On the one hand, we are in the grips of a past whose weight stifles the present. On the other, as this weight becomes greater, even as museums, libraries, and archives keep growing, we are increasingly tempted to live without them, as if they did not exist. We have never been so obsessed with the past; we have never before been to this extent capable of living in the present, as if we did not have a

past. If, in some places, the past threatens to push out the present, in others, In spite of themselves, we face the threat of living in a present without a past. The two perils work together as a system.

When it comes to the history of political philosophy, we potentially have a greater chance of escaping this double peril than in other disciplinary contexts. Here, in reaction to the obsession with the past, the concern for the present can be argued more strongly and easily. Here, in reaction to the closure within the present, the genealogical dimension is more tangible than in other context; the essential quest for an understanding of our beginnings steers us towards a reflection on the past.

We live in regimes that distinctively lay claim to a legitimacy that is neither traditional, natural, nor transcendent. Neither the ancestors, nor the cosmic order of things, nor the gods dictate our laws. For two centuries, no more, a very short period of time if measured against the five millennia documented in writings (to consider only these), our regimes have been characterised by a twofold peculiarity: that of having their configurations set in written constitutions, but above all that of professing principles of law; and that of resting on juridical norms that make of the human will the driving force behind the political bond.

A historical situation that has this additional originality of referring back to a genesis defined by books, a situation which, let us say in passing, is very different from that of the Ancients. Political thought anticipated on actual history. It prepared the revolution in the definition of legitimacy. Over a century and a half, from Grotius to Rousseau, we saw a problematic unfold which emerged from books and ended up becoming actual history, a problematic to do with the rights of individuals and the just political order that must come out of these subjective rights. Since the time of the revolutions of the rights of man that took place at the end of the 18th century, the reorganisation of the political community through new legal foundations (on which theorists had previously reflected) has become part of the very customs of our societies. It took two centuries for this process of incarnation to be completed, but we achieved it. This constitutes the distinctive

mark of our present.

From this situation emerges naturally a three-pronged program of reflection:

1. How were these approaches and foundational thoughts born, with their potential for a radical break? On the face of it, it seems difficult to isolate them from those new political realities brought about by the modern political age: firstly, from the new relationship between religion and politics, starting with Luther's Reformation or appearing simultaneously with it, as with Machiavelli; then from the new inner and outer consistency acquired by the sovereign States. Within States, this consistency was acquired in response to the challenges of the religious wars. Externally, it appeared in response to the challenges of the military revolution and those of the new politics defined by the balance of power.

2. How, at the end of the 18th century, did these forms of foundational thought find an institutional embodiment in the aftermath of the American and French revolutions that placed their principles on the agenda? By what means did it become part of reality in the 19th century and right up to our time, and in such paradoxical circumstances—that is, through an element, *history*—which at first seemed to contradict their rationalist ambition and, in the end, to destroy it? At first, as far as its consciousness established itself early in the 19th century, history seemed to bring an accusatory critique of the law, at least in its early ambitions: if there is history, no foundation in law is possible, as the law is itself a creation of history. After two centuries, we have now reached an interesting point where the problematic is reversed: the law, which history has materialised in its foundational scope, has actually reached the point where it condemns the illusion of history.

But at what cost was this concretisation of human rights secured? To what extent has it become a reality?

3. This *direct* genealogy requires a reflection on our situation and origins that encompasses a broader historical scope. Precisely, to what extent does this modern and contemporary situation of ours distance us from our most remote

Greek or Roman ancestors? To what extent does it separate us from them? For, as unexpected as it is, our situation does not condemn the authors of antiquity to irrelevance. Quite the contrary. If, on the one hand, we are today in a period when the rights of man have become the real touchstone of political legitimacy, on the other, we can also say that we are at a moment in time when, in our eyes, Aristotle's politics are acquiring fresh relevance. It is an aspect of our reality, one that justifies up to a point (the question being how this point is measured) those attempts to "return to the Ancients" proclaimed and put into action by some eminent authors, with the intention of going against the illusions of modernity. We have a dual genealogy. We are the product of two beginnings: one that was interrupted, the beginning of antiquity, and then a second one, of which we are the direct offshoot, the modern beginning. The latter took on many elements coming from the former but profoundly transformed them. Next to them it introduced elements that were essentially new. These took us far away from the Ancients, from their understanding of political and juridical phenomena, but without breaking off all the ties we have to them. The essential question then becomes that of distinguishing between origin and reinvention, between what came to us from them, be it directly or indirectly but whilst maintaining, nevertheless, a line of continuity. This is what leads us to rediscover the Ancient thinkers from within our own world, in awareness of how far this world is from theirs.

the three revolutions of the political

In other words, defining modernity constitutes the major challenge for the history of political philosophy, in itself and with respect to what came before it. I now wish to turn to this internal definition, after having analysed the form assumed by the genealogical interrogations that arise from the most basic review that we are able to conduct with respect to the distinctive nature of our political condition.

We operate within a constitutional-legal order. The activity of politics appears in a regulatory framework governed by well-defined juridical norms. This leads to questions to do with the content of norms, with the historical creation of this

situation and its originality in relation to previous periods in history. To this, we could add some reflections on the conditions in which this constitutional-legal order was implemented.

Because of its object, this *anamnesis* has some requirements when it comes to the approach and method to be used, requirements which it would be useful to highlight but which, for now, I have to put aside, though, in order to focus on the systematic inventory of political modernity. Indirectly, this inventory will lead me back to the question of the requirements.

Looking at what the names of Machiavelli, Hobbes and Hegel encompass, I will be forced to indicate the manner in which their works should be treated and situated within their respective historical periods. No need to insist on this too much to bring to light the fact that a certain contextualisation of the works seems to be the condition for their significance to be thoroughly understood.

To use Leo Strauss' famous expression but with a different meaning, political modernity unfolded in three "waves". In other words, political modernity took on the form of three *revolutionary transformations of the political*, which successively introduced critical innovations in the field: first, the *concept* of politics; then the *justification* of politics; and finally, the *milieu* in which politics can find an expression and materialise.

1. The first "wave" is the one to which Machiavelli's name can be attached. It is commonly acknowledged as being connected with the concept of *pure politics*, a political activity approached, realistically, as self-contained and as serving its own purpose, outside of all religious and moral considerations. One must, indeed, consider the irruption of Machiavellian "realism" as the first moment in, or as the result of, a wide-ranging movement of redefinition of the political, which unfolded throughout the entire 16th century and ran well into the 17th century. This movement occurred in parallel with the religious revolution of the 16th century—Luther's Reformation took place exactly at the same time as the writing of

Machiavelli's major political works. While Machiavelli's *The Prince* and *Discourses* were written between 1513 and 1519, Luther displayed his theses at Wittenberg in 1517. The movement achieved its final form by incorporating in the definition of the political the outcomes of the theological revolution with which it coexisted, a situation which surely must be considered as the matrix of modern consciousness. In the context of the religious divisions introduced by the Protestant Reformation and the ensuing civil wars, a party in favour of "politics" gathered strength—and we may very well say a party of the political, in the sense that the political took precedence over religion. The authority of the sovereign appeared to this party as the only chance for peace. The "civil magistrate", the monarch and the prince—in short political power, regardless of how it is named and no matter its characteristics—must rise above the ecclesiastical authority and render "sacred matters" subordinate. The religious revolution which unfolded at the beginning of the 16th century, became, towards the end of that very century, a *religious revolution of the political*. From this revolution our modern political concepts were born, the first of which being the fundamental concept of the *State*. The State emerged as a concept defined by *raison d'État*, namely a State to which religion submitted; and it is defined, at this level, by *sovereignty*. The State possesses a supremacy that is metaphysically absolute, operative on the scale of the human realm since this supremacy even commands over those serving the divine.

The first way to define modernity thus concerns the total novelty which marks the symbolic shaping of the political (*mise en formes*), which begins to emerge around 1600 and achieves maturity towards 1650. The definition of modernity depends, in particular, on the understanding of these new symbolic forms, those of power and commanding authority.

2. We identify the second wave with the name of Hobbes, even more so than that of Grotius, even though referring to the latter would, from an historical perspective, have equal merit. This second wave is strictly linked to the first. Once we have clarified the rise of the sovereign State of divine right, then of the State defined by *raison d'État* that emerged from the political and theological revolution

of the 16th century, we are able to understand how a new *problem of legitimacy* appeared in this new political order. Invoking a religious dimension existing above the established religions was no longer adequate; the new order had to be supported from below and it required a new *foundation*, which is provided by *the law*. The development of modern natural law came to address this very problem. In respect to this intellectual endeavour, one can speak, of a *juridical revolution of the political* insofar as what was involved was an attempt to redefine the political bond on the basis of a new, normative source of the law, one that was established by the fundamental rights of the individual.

Hobbes introduced a new principle directing the formation of the political community. It can be summarised in a very simple postulate: there can only be *individuals*. This is the principle from which we must examine the juridical origins of the political. The fundamental consequence of this organisational principle is the *subjectivation* of the political realm. As a general rule, the appearance of the modern subject has been approached within the confines of the field of knowledge. In reality, it is not any less to do with the field of politics. The philosophical challenge of modern natural law, from Grotius and Hobbes to Rousseau and Hegel, was that of redefining the political through the perspective of the subject and doubly so. First, on the side of the political component, the citizen, in the form of the subject defined by individual rights, and secondly, on the side of the political whole, of the political community, in the form of the political subject. This double determination defines the originality of modern democracy, in contrast with that of antiquity.

3. The third wave is intimately linked to Hegel's name, and corresponds to a remarkable happening, the consequences of which we have so far only barely touched upon—the emergence of *history*, a new reality for human consciousness. This wave of change appeared over a few short years, around the 1800s. Hegel was first to give it a fully developed theoretical meaning. But it must be stated straight away that Hegel's work was in fact only just the beginning. The concept of history continued to develop beyond Hegel. This history of historical consciousness, of

how it broadened and deepened over the course of the 19th and 20th centuries still remains to be written.

The emergence of history, once again, entirely modified the status of, and the approach to, the political, so much so that we can now speak of a *historical revolution of the political*. It is crucial to have a full understanding of the significance of this revolution, because it represents the factor that today influences most directly and most decisively the way philosophy approaches the political as a problem.

Its impact can be summarised in one sentence: the irruption of the historical viewpoint leads to the political being displaced, second to history (*seconдарisation*). Despite the break with the thought of Ancient Greece, modern natural law and the individualistic philosophical theories based on the artificial idea of social contract remained in continuity with ancient thought on a crucial assumption—the *explicit primacy conferred upon the political*. The point of view of the political coincides with the point of view of the organisation of the human community, as a whole. If we want to examine a human community as such, we must grasp it from the point of view of the political, which is the element through which a human community defines and organises itself. History brought with it a totally new, all-encompassing conception of the human collective. The concept of *society* replaced that of *body politic*. Within society as a whole, the political domain represents nothing more than a specific sector, hence my using the term *seconдарisation*. Politics now appears as one subsector of human matters, alongside others; it is no longer perceived as what commands over all these different sectors or organises them. Whether we look at it as a *derivative* factor, which can be explained in relation to other factors considered as possessing a greater structuring role, be it the economy or the class divide, or as an *irreducible* factor, one that refers to an independent and permanent dimension of life in society, the *seconдарisation* of its role is ultimately the same.

This idea, now embedded, and unquestioned, in our minds, constitutes the main challenge (and this word is not too strong) for a philosophy of the

political. Is the political only fundamentally this? Is it only this secondary field of social life confined to the subordinate place to which the historical revolution, from the beginnings of the 19th century, encouraged us to reduce it? Do we need to recognise that, below this surface appearance of subordination, the political has an organisational strength, an instituting function⁶, which is now hidden in our societies, but nonetheless effective? To a certain extent, this would imply reconnecting, within the historical world that has become ours, with the ancient and classical understanding of the political. If we can no longer contemplate the political as having an explicit, primary organisational status, even if it has now become totally implicit, doesn't the political remain the all-encompassing and instituting factor, as identified by a long tradition of thought? But the fact that this role, which once occupied first place, has now moved into implicitness or into unconsciousness, imposes the need to rethink quite fundamentally what it means. I believe that this need to explain what the political is, and what place it now occupies in our societies, today constitutes for political philosophy its most fundamental problem.

I must point out that Hegel's philosophy lies at the interface of this discontinuity between two understandings of the political. He still focuses on the ancient understanding of the primary status of the political. His way of thinking sits within this assumption, and this is why it continues to belong to the intellectual world of modern natural law. And yet, he was the first thinker to introduce the conceptual tools which eventually allowed this way of thinking to be overthrown. From this perspective, one can see that Marx well and truly accomplished the reversal initiated by Hegel. But this reversal was long prepared by the liberal thinkers of the early 19th century, such as Constant, Guizot and Bentham, insofar as they were already concerned with the need to give official sanction to the independence and freedom of civil society and to limit the reach of political power. Liberal philosophers were the first to strip political power of its ancient status of *cause* and to confer upon it instead, that of *effect*; in their writings, the political ceases to be viewed as a primary organisational principle and is reduced to being

a secondary product of society. Marx simply radicalised this liberal reversal by transposing it within history and within its dialectical development, just as Hegel had first suggested. In Marx's work, the dethronement of the political reaches an extreme point. It is relegated to the rank of superstructure, a superstructure understood as essentially repressive next to a constituent infrastructure identified with the mode of production.

The emergence of the historical component of modernity does not only modify the status of the political, it further invalidates the problematic of foundation imposed by modern natural law. Once we learn to think in historical terms, the first thing that matters is change. What matters, on the one hand, is the need to identify this change and to define its driving force; and then, on the other, its direction. After this shift to history, any attempt to return to an earlier perspective stressing the point of origin, determining what must be from components defined by birth, from primordial norms, now appears as lacking any grounding in reality. The possibility of grasping these primary reference points vanishes. The attempted return loses its very meaning. The law itself can only be seen as a product of historical development. The essential question is not that of the law's capacity to signify social obligation, to indicate *an* ought-to-be in purely abstract terms. It becomes rather that of understanding the specific conditions in which this abstract obligation comes into existence. These conditions can only be perceived as being created through the movement of history. This occurs even if one is willing to recognise that the law has its own consistency and the political also.

I have already alluded to the fact that two versions of political thought can exist within the intellectual universe of history, one that is liberal and one that is radical. One always thinks of the revolutionary thesis according to which the law is an illusion and the mask behind which hides political domination defined, only with respect to relationships of conflict, a domination that can only be explained by a class divide imposed by the system of property ownership and the relations of production. But alongside this radical thesis, there is a more moderate thesis that rejects the view that the law is an illusion and politics just a balance of

power. By contrast, this thesis gives an independent reality and a positive role to the law and to politics. However, it depends no less on the same assumptions and the same interpretation of how the collective works. It likewise located the primary moving force behind collective life in civil society and the freedom of action of its individual members. Except for the following difference: it considers this situation as a form of historical progress, whose crowning achievement is the system of representative politics. This system presumably enshrines a truth, the truth of politics. It does so by giving form to a power that is defined purely as the expression of society. The social is thought to occupy centre stage and the political is defined only as what serves social relationships through the channel of representative politics, as what regulates them by means of the law. At the basis of the liberal understanding of history⁷, there is the same reversal of the primacy of the political into a primacy of the social, as can be found in revolutionary socialism. Just like revolutionary socialism, liberalism rejects what it sees as the illusory independence of the political and of the law in their ancient, classical claims to create *a priori* the norms which direct collective existence. A major difference lies in the fact that liberalism recognises the autonomous reality of the political and the law and that it will not contemplate its elimination. Liberalism restricts itself to imposing on the political and the law an instrumental form of limitation, whereas socialism aims at making the social regain control over the political and the law, to absorb them in the self-government of the social space. Liberalism and socialism share the refusal to assign to politics and law the power to institute and define that has traditionally been attributed to them.

This is why we can speak of the 19th century as having constituted the stage of an extensive attack on a perceived *political illusion* encouraged by an expanded notion of history. A radical critique of the understanding of the political as organising principle ran through the 19th century, and by extension, the notion of political law as foundational law. It must be noted that this radical critique coincided with the development of politics (*la politique*), understood as the realm of activities linked to the formation of and control over power, in the framework of representative

political regimes. The practical expansion of politics (*la politique*)—and simultaneously, of the law—was perfectly correlated with the relegation of the political (*le politique*) to a secondary status on the theoretical plane. In the field of knowledge, the ancient explanatory power of this notion was denied validity. History encouraged the belief in a *science of society* which turned its back on the old ways of thinking that accounted for collective existence. It fed an ambition, that of establishing an objective science of social reality, a science of *social facts*, a science, in short, free of the normative illusions that were at the heart of ancient politics as well as of modern natural law: only history and society could account for politics and law, certainly not the reverse.

If we want to grasp the significance of the trend reversal that we have been experiencing over the past thirty years, we must not forget the conceptual parameters of this problematic. We are losing the illusions we once had regarding history, even if history once appeared as making us lose our illusions regarding politics and the law. We are distancing ourselves from the historical and social perspective—or rather we are discovering that history and society are in fact not what we used to think they were. And, paradoxically, this discrepancy leads us back to the law and to the political. Everything happens as if we were repeating the same experience but in the opposite direction and at an increased speed: history takes us back to the law and the law takes us back to the political. This surprising historical path explains the renewed relevance of political philosophy.

FROM HISTORY TO THE LAW

We are witnessing the resurgence of *political law*, namely of a theory concerned with the foundation in law of the political community. This resurgence takes place from within the intellectual element of history and society. For we are not in a situation where the pendulum is simply swinging back, a situation in which we could go back in time and would allow political law to be reinstated and take centre stage to replace the historical element, as if the latter had never existed.

The knowledge that was gained cannot be unlearned. But that knowledge has been changing. For a long time there endured a somewhat selective perspective emphasising only history and society. Social consciousness was transformed; within its framework, this allowed new progress for the juridical foundational approach. The exclusive domination of the social sciences is no longer relevant. Even if it seemed, once and for all, to have rendered meaningless the normative approach to collective phenomena, every new day increasingly reveals how this domination is being replaced by a philosophy of regulation, which the social sciences must now accommodate, within a new allocation of tasks. The juridical perspective now permeates sociology and inspires it.

What makes political philosophy so visibly topical is this rebirth of the normative dimension, operating alongside, and in connection with, the objectivity of social science. The theory of political law is the indisputable star of the field, to the point where it becomes, for many, the whole of the field and defines it entirely. To my mind, this is not the case, as I will discuss later, but this objection, which I will expose below, must not prevent recognition of the outstanding significance of the phenomenon.

The re-emergence of political law is most assuredly one of the greatest intellectual events in our recent history. It can be dated back to the publication, in 1971, of John Rawls's book *A Theory of Justice*. This work's widespread reception and tremendous success turned it into a landmark and symbol. The picture would not be complete if I did not mention Jürgen Habermas's seminal work *The Theory of Communicative Action*, published in 1981. This book constitutes a "continental" manifestation of the trend, one more concerned with integrating the knowledge that emerged from the last century's critical thinking, but still confirms it. After two centuries during which it was forgotten, we are now witnessing the rebirth of the problem of legal foundation as a burning question for the discussion of political phenomena.

the reasons explaining this resurgence

I will formulate three observations concerning this resurgence, in order to grasp the new features taken on by this foundational problematic compared with its previous manifestations.

1. It is impossible to ignore the correlation between this return of law and the major transformation of economies and societies since the beginning of the 1970s. In hindsight, every day a little more, we can see that what started as an “economic crisis” is turning into a global metamorphosis that touches on every single aspect of our societies. Its ideological impact is well known. In parallel with the major transformations occurring in industry and the economy, recent years have been marked by the striking decay of the faith in revolution. This decay acted as the backdrop for the breakthrough of anti-totalitarian thought which operated in unison with a generalised reaffirmation of democratic principles and values, both associated with a massive advance of individualism within our societies. But, underneath these changes too often discussed superficially, a more profound shift was at stake; a shift in the very conditions of self-understanding for our societies, together with a complete transformation of the reference system through which actors are able to conceptualise their world, in its time. This is a major shift in our relationship to history. It has taken the form of a crisis of the future, of which the decline of the revolutionary idea was the most obvious symptom. Together with the possibility of envisaging the future coming into crisis has been the ability of historical thought to shed light on the nature of our societies by analysing their evolution, and, with it, its capacity to provide guidelines for their self-transformation in the form of forecast and projection.

The mode of thinking foreshadowing the law is making a comeback and presents an answer to the dual deficit, theoretical and practical, opened up by the crisis of the future; it corresponds to a different way in which our societies can approach the question of what they are and what they are to be. This mode of thinking offers them a different way to define their identity: what we are cannot be revealed by the becoming to which we are subjected; only our foundational principles can do so. It opens up for our societies a new way of projecting

themselves and wanting to exist: at the very same time, these principles show us what they must strive for, in which direction they must go. Foundational law thus re-established itself as an instrument of intelligibility and as a means of action, as a political driver for social change.

2. In retrospect, we are discovering that, if the transition from the domination of history to that of the law was so readily possible, the reverse movement was an optical illusion. We need to reinterpret the history of the 19th century and that of the first half of the 20th century from this perspective. We now see that this period—marked by a critique of the illusions and lies of natural law seen as invalidated by its artificial nature, its abstract rationalism and its formalism—was in fact a period of gradual materialisation of the point of view of the individual and his/her rights. This period unfolded through those mass collective realities that were used to oppose the abstract character of natural law: the community, the nation, the State, social classes and work as a collective process. Both the 19th and the early 20th century claimed to be the age of social realism, as opposed to the juridical idealism of the Enlightenment. Except that all these real collectives showcased by the reflection on the socio-historical in fact operated as many drivers of individualisation. They were the incubators that enabled the individual to evolve from the admittedly “abstract”, or even utopian figure of the 18th century, into a “concrete” individual. The mode of thought foreshadowing the law was able to come to terms with this process of historical and sociological actualisation and at some point to start again, armed with a new credibility. It is in the context of the long social effort to create and construct the individual as endowed with rights, that it became possible to base upon that individual the reconceptualisation of the social body.

3. This situation allows us to understand how we are no longer situated in the cognitive space of natural law, even though, in formal terms, we are rediscovering its foundational logic. The similarity in the approaches does not prevent them from assuming different meanings. The theory of natural law

proceeded through a mythical rationalisation of its point of origin. It projected back into the abstract, non-historical past that defined the status of nature the search for a fundamental norm to justify the composition of the body politic, a norm which, in itself, was outside time.

The advent of historical time condemned this hypothetical backward looking stance (*passéisme*) and the a-temporal character of this foundation in nature. When it comes to the contemporary resurgence of the juridical perspective, we are obviously not going back to this ante-historical view of time. The critical specificity of the current foundational philosophy, such as we see it reborn today in contrast with its predecessor in the 17th and 18th centuries, lies in the fact that it operates within the historical environment. We have gone beyond the classical opposition between natural law and history. We can express it differently: if there is a return of the law, this return is uncoupled from the idea of nature. We now have the content of subjective law without the basis that first allowed it to be formulated.

What follows is a significant change in its implementation. The relationship between being and ought-to-be is no longer the same. There are two perspectives on the same reality: what presents itself as a *fact* in history can be perceived on the opposite end through the normative prism. To describe our societies the way they are, and to describe them also as they should be, are not two completely different tasks—in so far as describing them for what they are amounts to examining them in their efforts to come into being, efforts which involve their unceasing labour upon themselves and objective of self-reform. The reference to the original foundation was initially synonymous with claiming to possess an ideal basis located outside of historical time, which, had it been allowed to prevail, would have consolidated the political community in a permanent form, sheltered from the corrupting vicissitudes of being as becoming. It has now become a way to give a face to the future, to define a regulatory ideal for historical actors. In all cases it is conceptualised in immediate proximity to the possibility of it being realised. The being of our societies, in so far as it is historical, is made up of oughts, of

anticipation. This is how the juridical perspective operates as a substitute for the failing capacity to forecast.

a catching up role

Once we have established the civic and political function that the law has recovered, we are able to understand its role since the 1970s and what, to this day, remains, the intellectual task of these renewed foundational modes of thought. This task is essentially one of *adjustment*. The task also enables these foundational thoughts to be distinguished from their precursors. Despite their express reference to the past, the natural law philosophies of the 17th and 18th centuries constituted, historically, a form of conceptual anticipation. They invented and developed a new idea of human society, of its foundation, norms and finality, within a society that remained largely traditional and dominated by religion. Our situation is very different. For us, the role attributed to foundational thought is to render explicit a legitimacy in the making, one which has gradually established itself in our societies as safeguards for individuals and democratic freedoms materialised in the practices of our societies. The foundation of this latent legitimacy had to be conferred upon it after the fact, in terms of the fundamental legitimacy of human rights. As the exemplary case of the Welfare State demonstrates, this in fact involved undertakings which established social and political compromises to which a technical basis needed to be given, through insurance mechanisms or redistributive processes.

In other words, little by little, throughout the last two centuries, we have learned, to draw new practical lessons from human rights, quite different from the original ideas formulated by its first theorists. We have come to look differently at what kind of institutional *incarnation* the primary freedom and equality of individuals should be given. These new developments need their theoretical foundation. At this point in time, we are asked to align the formal principles of the law with the implicit form which our societies are acquiring, to provide a legal basis to realities or new demands that are confusedly perceived as legitimate, even though these

have often been established in the name of other orders of justification.

This catching up which involves a process of translation, an effort to render explicit the common understanding of legitimacy and to give it a foundation unfolds in the three registers that traditionally belonged to natural law philosophy. In the first instance these three aspects apply to natural law *stricto sensu*, to what we would now call the sphere of fundamental rights. Secondly, they apply to political law, in which they seek to define the consequences of such fundamental rights for any conceivably legitimate political order. Finally, they apply to what was traditionally called the *jus gentium*, namely the right that prevails *between* political communities and nations, or, to use what constitutes today a more appropriate expression, to cosmopolitan law in the Kantian sense.

1. Thus, the first register has to do with the nature of fundamental rights—the way they are understood, the way their meaning is defined, something which changes a lot from the moment one no longer seeks to give them a fictional basis in nature in order to establish them. Next to their significance there is, however, another issue that involves their extension. In this respect, the key question is that of *social rights*. It first concerns their existence and then what their exact content should be. This question is: in fundamental law, that is, from the perspective of human rights, what is to become of the Welfare State that was established within the framework of liberal democracy—but not without struggle—and which now constitutes a crucial dimension of liberal democracies, transforming them as such into social-liberal democracies. Should it be seen as a phenomenon that does not need the law to be able to prevail? This assessment is shared by the supporters of pure liberalism, for whom such social rights cannot exist, and revolutionary Marxists, who understand social rights as the product of a compromise between classes rather than the outcome of the development of the law in bourgeois regimes. These views remain relatively marginal. On the contrary, the dominant sentiment and prevailing common sense in our societies concern matters of fundamental law—even concerning the very truth of human rights. If we look beyond the political contract between individuals considered as free and equal,

and the consequences resulting from this contract with respect to the people's sovereignty and public freedom, we, as a whole, converge on the view that this contract has other consequences. These consequences have to do with the way social justice should prevail within such a political community. Instinctively, we sense that these consequences are directly related to the core of the essential rights possessed by the individual. But, in point of fact, what are these consequences exactly? This constitutes precisely the problematic examined by the "first Rawls", regarding *A Theory of Justice*.

However, more recently, after social rights, a new question has appeared: that of cultural rights; and this question raises perhaps even more formidable challenges. How should we define the rights that concern a person's identity, which, we perceive, represents in fact components of their dignity, but to which it is so difficult to give an objective form?

2. Then, what is involved is a catching up, an effort to make things explicit, to establish foundations, within the register of political law. Here also the expansion of democratic life has made visible other ways of understanding what constitutes the legitimacy of a regime.

For example, we have witnessed the development of new requirements with respect to pluralism and, consequently, regarding also the forms of collective coexistence and the role of public authority. This phenomenon has changed the way in which the State's liberal neutrality could be conceptualised. It did not go beyond a negative view of the State's necessary withdrawal from the area of beliefs and ways of life—it was simply thought that the State should definitely not interfere in such matters which are not its concern. We are now acquiring a positive image of the role it plays in the organisation of political pluralism. We expect the State to actively recognise the existence and diversity of religious, philosophical and existential options. We are compelled to rethink freedom, and go beyond the classic image of freedom of conscience, to consider its embodiment in a form of social pluralism that creates for State power new obligations and

new limitations. This is the question raised by the “second Rawls”, the author of *Political Liberalism*.

In addition, in similar fashion, we have witnessed the emergence of new demands in terms of public deliberation, of participation in decision-making and of procedural guarantees relative to public choices and the way these are arrived at. It is an imperative that we translate into expert jargon when we speak of the new precedence of procedure over substance. A new democratic formalism has indeed been invented and is taking form. What must the democratic process be from the perspective of the law?

3. Lastly, catching up in terms of cosmopolitan rights, in a world that is moving towards unification (“globalisation”), a world in which States have closer ties with each other, a world of lowered borders and blending populations. How can we rethink human rights at a time when something close to a new global civil society is taking shape? In this respect, we can no longer remain within the pre-eminence of national law as it exists today; we must instead consider the rights of individuals in the midst of nations. The rights of minorities, of individuals in relation to the States, rights in the international space, the rights of the international society of States which bear on the individual States that constitute it. These questions are far from new, but the direction taken by today’s world compels us to give them new juridical answers.

Under these three aspects I have considered the task of catching up, of making explicit what has been a nascent legitimacy, of establishing the new democratic common sense, only from the perspective of the content of the law. But I believe that we can similarly speak of an adjustment at the level of the *philosophical form* assumed by the foundational problematic. The work of Rawls or that of Habermas also deal with the need to redefine (for the first) or replace (for the latter) the problematic associated with the notion of contract. It is a matter of reflecting on how collective legitimacy can be engendered anew, as derived from the rights of the individual and as validating them, in light of the achievements of contemporary

philosophy and its critique of the classical rationalism in which this foundational issue first emerged. How can we conceptualise subjective rights, namely rights that are inherent to personhood, without any reference to a presumed state of nature or a human nature? How can we conceive of a social contract without positing some transition from a state of nature to a social state? Should we look beyond the frame of reference where the individual is at the centre or do we need to remain within it? Further, do we not need, rather, to start from intersubjectivity and communication, in order to avoid the monological illusion or that of egology? It is not simply a question of updating the content of the law, it is necessarily a question of making the philosophy of political law contemporarily relevant in philosophical terms; but the difficulty here lies in finding our way through what being contemporary actually means.

FROM THE LAW TO THE POLITICAL

Once again, it is not tomorrow's society which invents itself through this return to foundations, it is the present which becomes clearer. No alternative form of legitimacy is emerging from this effort of clarification; we are simply learning to become more consistent with ourselves. Unlike the heroic age where the abstract constructs of theorists allowed the appearance of a new way to conceptualise politics, we now exist in a society where human rights are institutionalised through their role of foundation, source and reference. Human rights are already partially incarnated, they are known for their propensity to find ever more forms of institutional incarnation. The task we face is simply that of conducting this process of concretisation in a more judicious and systematic way.

Alright, I may be told, this may be true but there is still a long way to go from the promised principles to their effective social existence. Human rights may well now be accepted in the theoretical realm but their implementation still remains incomplete. This is where the philosophy of political law, even if it no longer has the power it once had of sketching a new world, remains an irreplaceable critical instrument, an engine, a regulatory ideal, perhaps even our last utopia.

I would not want to deny this capacity of human rights to drive change but I believe nevertheless that one cannot avoid the question of its limitations, both intellectual and practical. To what extent does the logic of the law allow us to understand the nature of democracy, namely the nature of the regime that allows the gradual manifestation of human rights and aims for it? And to what extent does this same logic allow us, beyond legitimate criticism and discontent, to act upon democracy and transform it? This critical and utopian dimension of the law opens up a crucial problem: it cannot allow us to think through what allows it to be effective. The perspective of the law cannot account for the context in which the law can prevail. At this very point the transition needs to be made to the perspective associated with the political. The political perspective is needed because of the limits of all juridical foundational thought.

We are thus witnessing a resurgence of the law but in its wake, also a resurgence of the political. Such a resurgence takes us one step back—from a historical perspective—towards the most profound stratum of modernity's foundations. A certain crisis affecting the forms of thought focusing on history and society have brought us back to those focusing on the law. From here, a certain crisis affecting forms of thought focusing on the law is bringing us back to forms of thought focusing on the political. The more prevalent the perspective of the law becomes, the more pressing is the need to return to the perspective of the political.

The political is reborn in our eyes as a problem that exists as a consequence of the limits involved in attempting to establish foundational law. This attempt reveals itself as hanging upon a principle that eludes it. To be realised it needs to rest on a base that it cannot itself create. In other words, the attempt to ground society in the law, itself, needs foundations. This is not a theoretical problem, only of concern for those overfond of abstraction. Rather, it constitutes a fundamentally practical problem, one at the core of all those uncertainties that haunt contemporary democracy. This is exactly where the shift to the political operates. From political law, we are referred back to a reflection on the political because the political is what makes the law possible, what limits its realisation or forces it. In this respect,

the return to political law brings with it a return to the political *stricto sensu*, which is synonymous with the *critique* of this return—the word critique being used in its strongest sense—in so far as it comes down to establishing the claims of this return to political law and at the same time to bringing out its limits.

Before proceeding, I must say here a few words about the distinction between *the political* and *politics*. I have already used and stressed this distinction, in what I hope was a clear and rigorous manner, but I have not yet defined it. It is now time to fill the gap. From a historical perspective, the distinction becomes fully meaningful. All societies possess a political dimension. Only our society enabled the establishment of a separate political domain in which social actors are at liberty to engage in politics (the only exception were ancient democracies, in which this freedom was relatively short lived and very limited). This is the domain of democratic freedom, in which citizens are able to gather and debate the *res publica*, to exert influence over it within the context of an open competition for power. I propose to use the word *the political* only to designate the political essence of all human societies and to retain the term *politics* to refer to the specificity of the democratic political regime that of possessing a sector that is separate from all other social activities, devoted to the creation and the control of government. From here we can therefore state that *politics* is, in our type of society, the form assumed by *the political*. The question to be asked here is whether *the political* is totally absorbed in democratic *politics*, or whether there isn't some political component, some portion of the political that remains outside of the democratic element. This is the same as asking whether the type of society where the political dimension changes so much that it becomes democratic politics—where it becomes the object and substance of a deliberative activity on the part of citizen—still remains a political society, on the same basis as the other types?

By asking such questions, we articulate in a different manner the questions to which today's prevalence of the law leads us. For the domain of politics—which is the domain within which opinions are expressed, within which the public debate takes place and governments are appointed through elections—is also the domain

within which the law is applied and put into practice. Political activity constitutes the means whereas the law defines the end that these means must serve. In a democracy, the essential debate is in fact concerned with knowing which is the best way to give the law a concrete realisation; the civic aim of political law theory is to throw light on this debate: which are the correct ways to translate into reality the foundational norms which we have chosen for ourselves. We can thus reformulate the question I have raised. This question was, to what extent is the political absorbed in the system of democratic politics? It is possible to convert this question into another: to what extent can the law submit to the political, the law being defined as the doctrine dealing with the foundations and purposes of democratic politics? Here is the central question brought up by the very progress of our societies, a question which, for a long time, is bound to give us food for thought.

the lesson of totalitarianisms

This inquiry into the political, it must be said, has a historical background. It would be incorrect to make it stem entirely from the questions raised today by the realisation of the law and the fulfilment of human rights. It has one major forerunner in the 20th century. The reflection on the political first reappeared under the test of the tragedy that unfolded in August 1914. It re-emerged as a result of the sequence of totalitarianisms that emerged from the apocalyptic battlefields of the First World War. The totalitarian tyrannies were first to reimpose, in European thought, the political perspective. They represented a brutal resurgence of the political within the so-called “bourgeois” world, in other words the liberal world which makes the political secondary and subordinates it in favour of economic interests and representative politics. This violent return of the repressed assumed two opposed and complementary appearances. With the Nazis, it took the form of a reassertion of the political that was explicitly stated, advocated and displayed under its most barbaric aspect, a naked domination which, what’s more, was anchored in a race-based division of humanity and was destined to blossom in war. In quite opposite fashion, with soviet communism,

this return of the repressed appeared as a denial of the political, a return of the political that was all the more appealing for the fact that it was pursued by a regime that invoked the primacy of the economy. In its actions, soviet communism provided the starkest negation imaginable of its own doctrine. The regime established in the name of the economic infrastructure's primacy was the regime that effectively demonstrated the structural primacy of the political as a presumed superstructure. Far from transcending capitalist exploitation and bourgeois domination, the collective appropriation of the means of production proved to have given birth to a new structure of political domination in which economic extortion was reintroduced, starting from the political structure.

Totalitarianism appears as a political form whose existence cannot be reduced to any economic explanation whatsoever—one can no more explain Nazism with reference to the needs of “almighty capital”, there is no need to expand on this. Totalitarianism is a pathological political form, one which, conversely, forces a comparison with liberal democracy as a political form. The contrast private/public property or capitalism/socialism is far less significant than the contrast democracy/totalitarianism, that is, a contrast that highlights the fact that the political truly plays a primary and organising role. Next to totalitarianism democracy appears a paradoxical form of society in which the political is concealed in this role, to the benefit of politics and in a way that establishes the conspicuous, primary position of civil society and its interests. The political allows other forces to have pride of place besides itself, gives them independence, starting with the economy, to the point that it creates an optical illusion: the idea that the economy comes first, representative politics limiting themselves to the regulation of its hegemony. In reality, the political is still here, even in a configuration where it no longer possesses any preeminent role. In the background, however, it still determines the free-play of economics, and the forces of civil society, as revealed by its pathological return to a commanding position in totalitarian societies.

Such was the first political lesson the 20th century taught us at a high cost. Such was the way our spontaneous and immediate understanding of the political

dimension was first proven wrong, this immediate understanding having been conditioned by the historical revolution of the political and the relegation of the political that it led to. This was a massive, brutal lesson, an absolute rebuttal. At the same time, it was so confronting a lesson for our ordinary way of thinking that the phenomenon was allowed to remain under everyone's gaze, for fifty years, without it being really seen or understood. If something was eventually learned from this lesson it was only minimal, in purely pragmatic and moral fashion: what was once called formal freedom is, in every case, preferable to real tyranny. This is an essential message. I would not deny it. However, with the benefit of hindsight, now that the case appears definitely closed, one cannot help but notice, with some dread, how the fundamental lesson has not in fact been integrated into our knowledge in any depth.

There is good reason to believe that we have come out of the era of totalitarianisms, they are virtually unanimously condemned but the question of their significance remains an extremely minor concern. They have been comprehensively disapproved and banished but they will not have been understood collectively. In a way, unless we develop, even belatedly, a thorough historical account and conceptualisation of our experience we will have lived through this ghastly ordeal without gaining anything. Pondering what this says about our societies and their capacity to understand themselves can only leave us puzzled and depressed.

Now that a second historical lesson about the political is taking shape in front our eyes, one cannot help but contemplate the matter, even if it is a very different kind of lesson, one cannot help but wonder whether our societies will be better equipped to face it. In light of past experience, one is inclined to doubt it.

how the political is revealed when it is lost from sight

We are, indeed, witnessing today the re-emergence of the political as a problematic issue but in a different manner, poles apart from totalitarian violence. The political is reappearing in the present moment, in the wake of the success of democratic

principles, as a result of this very victory, as an unexpected consequence of the law's return. The uneasy and imposed rediscovery of the political towards which we are once again led, is unfolding from within democracies, as an internal critique of the illusions that democracy possesses about itself, and as a critique of the unintended dysfunctions generated by these illusions. This distinguishes it positively from the one that came before.

This return to the problematic issue of the political is required here and now because of the need to understand what constitutes the true meaning of democracy, what enables its existence and what it may become. The return of the political has surfaced and is becoming necessary as we face a new type of crisis facing our triumphant democracies. This has nothing to do with the questioning to which these democracies were subjected during the totalitarian age, by which they were either rejected, be it under the guise of a return to the past, or via futuristic attempts to transcend them. That challenge came from outside their very nature and form. By contrast, the current crisis is facilitated by the very implementation of democratic principles. This crisis appears to lead, at some point, to democracy losing its vitality, if not to a dissolution of its framework and of the instruments through which it is put, more profoundly, in practice. In its overall expansion, in the development of its juridical principles, democracy ends up attacking itself. As democracy moves forward, the implementation of its legal norms ends up turning against the political conditions in which it is exercised; the implementation of its legal norms eats away at these very conditions insidiously. Which is why, even if it is hidden, diffuse, even if it is as far as it possibly can be from the paroxysm of the totalitarian era, the contemporary crisis is, in its essence, of a comparable depth.

An analysis of the crisis that is creeping in forces us to re-examine the political from an angle that we did not previously perceive it. The political, or this dimension of democracies they tend to forget or deny. The problem is no longer the uncontrollable resurgence of this dimension but its fading away, and the chain of knowledge failures stemming from this disappearance. Bolstered by the self-evident character of their principles, democracies end up considering themselves

as having no history, as being simply in conformity with the way things are from nature and consequently as the regime that ought to have always and everywhere prevailed. They lose sight of the historical exception that allows them to exist. Not only that, the same impulse leads them to consider the structure within which they are inserted and the apparatus through which they function as obstacles to their fulfilment. It is as if blind enthusiasm for their pure doctrine leads them to cut off their own supporting limbs. This internal problem of democracy explains the contemporary relevance of political philosophy, if it is understood as a philosophy of the political. It is around this contradiction now revealing itself—between the visible and hidden sides of democracy, between the law to which it appeals and the political on which it is based—that a reflection on the political is bound to stay with us for a long time to come.

In the light of this unprecedented configuration we are first required to reconsider the nature of democracy, as defined by a combination of politics and law, a combination that not only allows the law to find its realisation but also circumscribes it. The task requires us to examine the very particular form the political assumes in the modern era, under the name of “State”, as well as the continuous transformation of this form right up to our time, transformations that explain both its structuring role and its surprisingly inconspicuous character. But beyond this modern specification, we are called to reassess the very nature of the political in general, starting from the variety of forms it can assume.

Let us thus examine more closely the contradiction that develops between the logic of legal foundation and the political effectiveness of democracy. It is present at two levels, starting on the surface and then reaching into the depth.

At the first level, the foundational ambition serves to make the content of democracy problematic. It modifies the way it is understood. It imposes the idea of a minimal democracy in which individual rights take precedence over collective power. The very way the word ‘democracy’ is now understood indicates the shift experienced in the latest historical period. In its classical definition,

the term used to refer to the capacity of political bodies to self-govern. It now simply conveys the guarantee that personal freedoms will be respected. The idea of popular sovereignty is overshadowed by the idea of individual sovereignty. To put it differently, by contextualising this trend historically, one can say that one side of the liberal-democratic synthesis came to prevail over the other. Liberal democracy, such as it was painstakingly elaborated in the 20th century possesses two associated but distinct aspects: the major problem it faces is that of harmonising the protection of private and public freedoms with the conversion of these singular freedoms into a common power, into the whole's self-government. Even if it has been recognised that its practice must be respectful of individual rights (as it was conceived to manifest it), this self-government is also understood to constitute a separate and superior form of power in so far as personal freedoms are realised through it. This second dimension of liberal democracy has taken a back seat to the other. The least possible amount of social power in exchange for the most possible amount of personal freedom: such is our new ideal. This ideal was translated into a vision of the way democracy functions now reduced to the procedural coexistence of individual freedoms. The problem to be resolved is that of securing the compossibility of the initiatives of individuals and the groups they form in such a way that these can enjoy a maximum of latitude in the pursuit of their own goals, whilst avoiding their impingement on one another. The objective of democracy is therefore to organise and manage "reasonable pluralism", it being understood that everything pertaining to substantive ends is referred back to the side of individual actors and of the communities of belief with which they identify. The political regime, such as it is, must not know any such ends. It must only consist in developing the framework and the definition of the procedures that ensures the peaceful coexistence of free actors and the compatibility of their rights.

This understanding of democracy, however, is one-sided. It fails to recognise another necessary dimension of democracy. Granted, democracy does consist in managing coexistence and pluralism legally. It nevertheless, requires also

something else. It is and must be the entire collective governing itself, and not simply the freedom of its parts. In this perspective, more rights for everyone, indeed, becomes less power for all. The political community ceases to govern itself. There remains only a political market society, whose overall form is seen as the outcome of everyone's different initiatives, at the end of an automatic process of aggregation, in which government only remains responsible for the rules of the game. Even if it corresponds to the profile of democracy in formal terms, shall we take this regulation of powerlessness for democracy itself? This is to say that the rights-based version of democracy is a mutilated form of democracy, one that is losing sight of democracy's political dimension, properly speaking. It forgets the reality of political community, the level on which, in the last instance, democracy's existence depends. For what kind of sovereignty do individuals possess if this sovereignty allows mastery over the collective whole to slip away or to put it better, if it contributes to collective impotence? What kind of freedom is a freedom that is exercised in common but causes the choices determining the future to evade all citizens? For the political community still exists even when it is denied, just as the governments' capacity to direct subsists despite the limitations imposed on it. The way actors are enclosed in their particular interests, belief or identities effectively ends up handing all consideration of the whole being over to the managerial stratum. So much so that the general feeling of alienation is aggravated by a loss of power in favour of oligarchy when it comes to the part of decision-making that continues, day after day, to shape collective life. Hence the confused feeling of being disempowered that accompanies the undeniable progress of freedoms. The promotion of the individual legal subject and of his or her prerogatives ends up obscuring the existence of the collective political subject of democracy.

What's more, the effects caused by the surge of the law are not limited to this confusion. They go even deeper. At a second level, not only working to render democracy blind to its own objective, the foundational approach also sets out to undermine its actual conditions of existence. It starts destroying democracy's

own basis because, from its very nature, democracy aspires not to have any. The foundation only deserves its title if it is self-sufficient and if it has the capacity to command over collective existence as a whole. In this sense, it is possible to speak of a legalistic utopia. Its pragmatic mode of operation must not prevent us from recognising its radical character. Human rights have a specific logic and their own specific dynamics. Their ambition is nothing less than to absorb progressively into the law the very parameters of the political. This logic and these dynamics are thus led to turn against the framework within which they emerge. How could the universality of principles accept the contingent limitations imposed on it by a given territory? How could the principles recognise their dependency on historical particularity? This universality extends beyond the narrow framework of nations. It demands to rise above territorial and time constraints. In similar fashion, foundational universalism cannot but have distrust towards the States that were established on the basis of nations, or even to look upon them with revulsion. When it makes comparisons with its ideals of contractual transparency and procedural integrity, all that foundational universalism can see in those age-old power structures is arbitrary authority and an excessive use of force. To move away from this obsolete legacy it aspires to dissolve, it works to establish a global civil society of pure individuals, without politics or without politics other than the legal management of coexistence among individualities and their specificities, the only form of being-together it can identify with.

The legal foundational approach leads to a *crisis in the foundations* of democracy. It is a crisis of an unusual kind. An excess in the foundations produced the problem, not a lack: the fact that the foundations are in competition with one another. The cause of the crisis is none other than the foundational ambition itself, in so far as in these circumstances, it calls into question the foundations without whose support it cannot build anything. This approach dismantles the pedestal on which it rests whilst claiming that it can stay upright using its own means. It challenges the real community within which it materialises and the instrument of power which makes it effective. On top of making democracy blind to its own objective

it makes it blind to its very conditions of possibility as it disqualifies the political form that allowed its development and now sustains its practical realisation. This is a rather extraordinary historical configuration, one in which something akin to a form of democratic fundamentalism, invoking the purity of its principles, ends up making their institutional embodiment impossible to conceive and ends up depriving democracy of its means of realisation, whilst it throws it into a kind of vacuum.

This blindness and looming self-destitution explain how political philosophy today possesses its civic function as well as its philosophical necessity. Its fundamental questioning is inspired by this internal loss of balance which turns democracies against their historical-political supports and prevents an understanding of both their foundations and limitations.

What allowed democracy to arise? What makes democracy possible? Such are the questions that needs to be re-visited in the light of the uncertainties and contradictions of the present era. Once we have pushed aside what seems self-evident—and yet remains misleading—in these principles, which hides the question and draws democracies into a process of self-destruction without precedent, what do we identify as supporting this exorbitant dominion exercised by these principles? For no matter how illusory this dominion is, it has to have a powerful backing. The rediscovery of the political hinges on this critical point and it is poles apart from its distant or closer forms. We are no longer dealing with majestic heights, of orders coming from above, of imperious commandment or total domination. We are called upon to conceptualise the political in light of both its foundational force and the risk of its disappearance. This development that makes the political ever more central, and we must re-examine its modern morphology (*mise en forme*) on account of the practical foundation underpinning the task of juridification, and which simultaneously makes it vulnerable to dissolution, in so far as it makes the political indiscernible. I refer to the Nation-State, the vessel that made democracy possible and favoured its expansion to the point where it now tends to disown it, where it believes it can do without it.

the nature of democracy

From this perspective, the question of defining the nature of democracy becomes that of understanding the linkage that exists between the law and the political and how it is facilitated by a specific form of the political. We can no longer afford to be naïve. We cannot imagine legal principles that would apply solely through their own force and bend any kind of raw material to their will. The appearance and development of democracy presupposed a very specific form of political community, one that makes conceivable two phenomena that are highly improbable if one looks at the experience of human history over past millennia: a power that can be appropriated collectively and a collective bond that can be individualised. The old forms of powers, by definition, imposed their authority on the community that they ruled in the name of the religious externality they represented, making a conspicuous display of otherness and heteronomy. Whereas, modernity, under the name of “State”, invented a power conceived as the agent of the community’s immanent motivations, a power in which the community can recognise and project itself. Everywhere the collective bond worked against the individual and was known as such only because it was thought to exist before individual persons and to incorporate them, only because it was defined before the components it bonded and imposed its authority without them having any influence on its organisation. In place of this, through the entity that came to be known as the “nation”, modernity invented a form of belonging that could be individualised, a political bond whose elements are considered to exist before itself, in such a way that the bond can only appear as having originated from their will to forge ties—human beings come first, they associate later or put differently, they are born free and equally free, according to the principle that defines human rights. These ideas must be seen as underpinning democracy.

Such is the miracle performed by the Nation-State, the original outcome of European history over a millennium, a creation whose logic and long term dynamics still remain to be elucidated. I will discuss this miracle only briefly, my

only ambition being that of indicating the direction which such a needed task should take. The Nation-State is the symbolic form of the political (*mise en forme*) that corresponds to the exit from religion. Fundamentally, this shaping involves the construction of a form of collective unit that functions as an alternative to religious unity, an alternative that channels through the political specifically what used to go through religion. That the first wave of revolutionary change associated with modernity, that of the 16th and 17th centuries, concerns the political is not a coincidence. What started to be put in place with the State—a form of State equipped with a conceptual understanding of itself—came to be the basis for everything else. To propose a systematic description of this political form, one has to establish a contrast with the ancient, religious structuring of being-together. On every point it overturned the religious structure, be it the mediating role of power, the hierarchical bond, the organic and holistic form of belonging or the submission to the foundational past. It replaced the imperial logic of universal containment that constituted the obligatory framework for the creation of religious unity—humanity being brought together in its submission to a single authority whose task was to fuse it with the invisible—with a new logic of legal territorialisation that relocated the realisation of universality within the boundaries of a particular space existing alongside other similar spaces. Here lies perhaps the Nation-State's most decisive innovation: the plurality inscribed in its very principle, which implicitly posits the existence of several parallel foci for the realisation of the same universality, of several close versions of a universality that does not actually materialise anywhere in a substantial form. One can thus see that even though many wars were fought in Europe that invoked nations, these, nevertheless, represent the political form that has rendered conceivable something which history seemed to hold as impossible: a genuinely peaceful form of co-existence between distinct political units, a coexistence based on the recognition of their sameness and of their shared ideals. The break with the imperial logic, however, also means a complete transformation in the status of universality. It is no longer, by principle, situated above, close to power and the centre of the supernatural order which power personifies. It shifts to the bottom,

it goes over to where the individual is, the individual becoming the only possible basis for a universal value, once the attachment to the supernatural dimension no longer determines collective organisation. Here one recognises the revolutionary transformation associated with natural law, which came in the wake of the sovereign State's creation and gave birth to the principle underpinning the modern understanding of legitimacy. A permanence across time established itself in parallel with territorial embeddedness and thanks to it, it became possible for the dependency on tradition to be dissolved and for collective action to be projected into the future. The Nation-State is the political form that made conceivable and feasible the historical revolution, that is, the recognition of a common past that allows a common future to be wanted.

The spirit of the Nation-State as a political form, in contrast with the older political formations, can be found to reside in the way it concentrates, specifies and monopolises the political bond. The monopoly conferred upon the sovereign State defines it. Such a monopoly does not stop social authorities from continuing to exist but it strips them of the political role they used to have before. There is only one truly political power, separate from and above the hierarchies of status, whatever they may be, this is a power to which all are directly accountable, a power that only recognises individuals—with no other entity allowed to come between this power and those that have been made its subjects. Moreover, since the sovereign State's "absolute" superiority is commensurate with the metaphysical enclosure of the human domain and with the immanent character of the reason governing its organisation, this superiority of the State makes of it the major vehicle for the repatriation into the political community of the supreme necessities that dictate its very existence. It is the agency through which the community's needs are served and with which it can identify. The separation of the sovereign authority triggers its redefinition as an authority whose essential character is functional, representative and impersonal. Alongside the individualisation of the relationship of obligation, this redefinition paves the way for the collective appropriation of power.

The State's monopolisation of sovereignty is matched by the nation's monopolisation of social inclusion. Likewise, the nation's monopoly does not stop other forms of social affiliation (based on the place of residence, on work or condition) from continuing to exist but it takes away from them any kind of constituent role in the definition of the collective bond. There exists only one form of belonging that is absolutely constraining, one sole form of inclusion acknowledged in public law, because it concerns the existence of the political community, the other forms of inclusion being left to the good will of actors and the spontaneous mechanisms of collective life. Here, thanks to this disconnect between the properly political bond and social ties, it becomes possible to conceive of a collective space that can be juridified in accordance with civil rights. Here, on the basis of social relationships becoming autonomous, there emerges as well the possibility of conceiving of a field of politics, allowing society to express itself, a field of politics that is distinct from the domain in which being-together is created by the political in imperative fashion.

With this simplified characterisation of the Nation-State as political form, we have the main insights needed to address our problem. They must now be developed. This characterisation allows us to shed light on the linkage between the law and the political that appears with democracy and the history of this linkage right up to the present stage—whilst remaining within a historical assessment of the problem. Establishing a list of the distinctive features of this political form is, indeed, sufficient for us to bring out the historical dynamics with which their creation was associated. These dynamics have operated over the longer term, the revolutionary transformation of the 16th and 17th centuries representing, in this respect, only a starting point. The modern transformation of the political that started at that point went on to develop over five centuries. We are precisely under the impact of one of this transformation's very significant outcomes. Modern society developed from within the old world which, for long a time, left its mark over it. Over a long time, it remained under the imprint of the organisational primacy conferred upon the old powers and the old social forms of belonging sustained by religious

transcendence. The abstract and representative State first displayed an attitude of superiority making it a natural successor to the monarchies' splendour. The nation of equals often readily appeared as a form of tyrannical exclusivism that was every bit as constraining as the most holistic societies of the past. So much so that the relationship between this political framework and the legal norms designed to regulate the bonds between the people enclosed in this framework long remained invisible. As a result, modern natural law developed through a process of extrapolation in the realm of ideas, if not through a kind of fictional projection, according to the secret logic of the State matrix and without its debt to it ever becoming at all visible. Admittedly, this apparent mutual externality decreased once modern principles won over and the representative form of government was officially established. All the same, these two different sets of parameters were for a long time sufficiently in tension with one another for their affinities to remain unnoticeable. The authority of States and the demands of nations interfered too much with the prerogatives of individuals for the co-involvement of these phenomena to be sufficiently doubted, even if it was strongly suspected.

Totalitarian regimes brought the tension to its highest level to the point of making it appear as an outright contradiction, crushing subjective rights under the unconditional primacy of the political. Far from such extremes, democracies continued to pursue their patient work of reconciling these two different orders of demands, both relatively heterogeneous and relatively affiliated with one another (or there would be no possible transaction), they appear akin to the tension that exists between the eternal constraints imposed by reality and the inner logic of the modern ideal.

Then, in the course of the past half-century, something happened that completely changed the parameters of the problem. An additional step was taken in the move away from religion that stripped the State and the nation of all they had been able to retain that was part of the old imperative transcendence of the political. In parallel, their formula developed fully. The modern revolutionary transformation of the political bond (and by extension that of that the social bond) reached its

fulfilment. Political unity finally took over from religious unity, the difference between them being based on the fact that they have radically opposite appearances. Religious unity is imposed explicitly, from above. Political unity is created from below, implicitly. From its position of superstructure, which it owed to its old ties to the religious, the political moved to that of concrete infrastructure, this infrastructure providing support, from the shadows. The multiplication of the Nation-States' structural and integrative functions went hand in hand with them being tilted into the dimension of invisible foundations.

Liberating its dynamics on the surface, this slide into the depths of collective life gave free reign to the individualisation of social bonds and expanded subjective rights. The democracy of human rights is the direct product of this transformation of the political into an implicit basis of collective life. The new freedom that appeared within the human social bond was made possible by the existence of a deeper bond operating as a tacit agreement. Human beings are linked to each other, they hold together but in a way that is not visible to them and that does not impose direct constraints on them, and they are linked in such a way that they are given leeway to define their relationships explicitly, according to the law. To put it differently, the invisible bond that exists between them leaves them free to define their relationships in a conscious manner, as if they were not from the start connected to each other. Our society can pose as a society of individuals, that is, it can take the risk of not appearing as a united and coherent society based on the model followed by all the societies that preceded it. This is because it has powerful means to remain a society at its disposal, despite the fact that its members have become unbound. Those means are provided by its political form. This incredible novelty lies in the uncoupling of what is said and what is done, of the political that is implicit and politics that are explicit, of the unconscious side of the collective organisation and its conscious one. This uncoupling is the condition upon which our unprecedented freedom depends. At the same time it is the source of all the dangers we face.

For nothing ensures balance and harmony between the visible and hidden sides

of our regimes. On the contrary, as has been seen, the tendency of human rights politics is to take over and to refuse help, whichever source it may be coming from and whatever it may be. This tendency is encouraged by the way the Nation-State's functions operate in an implicit dimension, human rights politics no longer perceiving in the Nation-State anything but social dues left over from another era and limitations that need to be transcended. That is how the deliberate legalisation of the bonds between human beings ends up undermining the substratum of their invisible ties. Just as, in former times, we saw the political striving to obliterate the rights of individuals, now we are threatened by another danger, that of seeing the rights of individuals destroy the political form that holds individuals together and gives them power over their common world, that is, seeing individuals destroy what upholds them.

This situation forces us to review the way we think about the Nation-State as a political form, though a reflection on its recent transformations. This is the key to formulating a theory of democracy, a theory accounting for the linkage existing between the political and the law, a theory capable of bringing out the conditions that make this linkage possible as well as showing its limitations. We can no longer be content with the idea that the Nation-State was the historically contingent framework that offered, at a given moment, a more or less favourable shelter for the juridification of the social bond (on the basis of the subjective rights of individuals). We can no longer be content with the idea that it is, however, now overwhelmed by the magnitude of the task, to the point that it must give way to what would be the realisation of a global society for the entire human species, nothing more and nothing less. If the process that saw Nation-States become an empirical reality was largely subject to historical contingency, the principle behind the Nation-State as political form is not itself subject to the same contingency, and the Nation-State is not destined to become obsolete any time soon.

On the one hand, therefore, it is a matter of envisaging a full congruence of the political and the law, of the Nation-State form and of the conception of humanity associated with human rights. This does not mean that such a congruence already

exists, far from it, but that it belongs to the realm of what can be realised. It means that one must imagine a future form of democracy based on a close fit between the power of the collective and the equal freedom of individuals. We still have a long way to go in the task of reshaping the forms of belonging and of power in a way that will make them perfectly suited to the individualisation of the community of citizens. If such a synergy is to become reality, then the political must survive, it must avoid being denied recognition or being repressed, it must be acknowledged in its constituent role. Put differently, it has to be recognised that the law is not self-supporting, that it relies on the inclusion of individuals in a specified collective framework and presupposes their obligation towards a power capable of making its expressions effective.

On the other hand, it is a matter of measuring the limits that the political imposes on the law in order to allow its realisation. Or, to put it differently: measuring the limits the political imposes on politics in order to give politics the means required for their specific task, that of realising the law. It goes without saying that political power must guarantee a representation of the diversity of individual preferences that is as attentive and faithful as possible but only if it remains a power capable of embodying the paramount nature of collective choices. It goes without saying that the political community must allow as much space as possible for the expression of its components' individuality but only if it remains a coherent community, possessing an identity that is substantial enough for it to evoke historical continuity in the minds of its members and for it to constitute the basis for a common project.

In the same vein, it goes without saying that this community must, as much as possible, be open to the outside world, as possibly conscious of the duties arising from its coexistence with other similar communities, similarly populated with human beings that are free and equal in front of the law. But only if it does not become blind to the need for human communities to have their specific boundaries. There is no such thing as a universal society of the human species. Humanity is such that the universality it is capable of conceiving has to be produced on the

basis of a self-aware particularity. This is why, even if it would not make much sense to consider the existing nations as immutable (in view of the accidental character of the circumstances that shaped them), it is still not totally absurd to see in their essence something that has permanence. They allow specificity to open up to a universal dimension. Without this, it is hard to see how democracy could exist.

I need to stress how the perspective I propose differs from a purely realistic account of democracy, one opposing the conscious ideals to which democracy lays claim and the constraints involved in political practice. Such a gap exists and the contribution made by political realism deserves to be given utmost attention. But the theories of democracy inspired by political realism are not up to the task at hand, one that is far more subtle. This task comes down to constructing a theory with the capacity to give legitimacy to the idea that democracy has of itself, whilst bringing into light the illusion that inhabits it and the limitations against which it is bound to come up. For that discourse, those principles, those ideals are not a mere mask and cannot be reduced to being just a dream: they really do shape the social and political reality of our regimes, and to an increasingly wider extent. We must account for this executive validity. But simultaneously, we must account for the dangers associated with this approach, for the self-destructive ambition threatening it, for the boundaries to which it is blind but on which it nevertheless depends for its existence.

It is necessary to instruct democracy, to bring into light the concealed dimension that supports the claims it asserts and at the same time restricts them. To put it briefly, we have to make the transition to a truly critical theory of democracy, one that can think through both the conditions required for its possibility and though its limitations. Only a critical theory, I must add, can be genuinely realistic. This is because it accounts for all the dimensions through which democracy operates, including the fictions that it believes in. Only a critical theory can fully bring together the political and the law as two coexisting, conniving and yet contradictory realities.

It is worth formulating our perspective in, yet, a different way by placing it within a comparative landscape. If we reflect on democracy in this way, with respect to the political, we are forced to think through two different things, simultaneously. We have to examine both what differentiates democracy from all the types of political order that preceded it and what, nevertheless, relates it back to all the political regimes ever known. We have to examine the transformation of the political that made it, to a large extent, become politics and in the process opened it up to an ever greater degree of juridification, to a legal redefinition that has become ever more demanding and been ever deepened. But we must do so without losing sight of the fact that this transformation does not prevent it from remaining fundamentally what it always was, in with all societies ever known.

the nature of the political

From the question of what constitutes democracy, we are naturally led to the question of what the political is, *per se*. The underlying role it has in democracy, which we are coming to recognise compels us to reconsider its previous forms and to re-examine the function it possesses in general.

Recent developments are enlightening. The concealment of the political behind politics, its slide into implicitness has lifted what had previously weighed on its definition since the aforementioned historical revolution of the political, a revolution which toppled its ancient position as society's primary domain organisation and reduced it to being a secondary and derivative phenomenon. In fact, for a while, the political retained an ambiguous status, one that made it difficult for its significance to be grasped. Admittedly, it is politics based on representation which came to be accepted, society having become the primary authority and the source from which governments proceed. At the same time, as I stressed with respect to the historical course of the Nation-State, the political, for a long time, retained its old sense of superiority. Political powers, may well have come to originate from the collective through the mechanism of elections, and yet they nevertheless continued to look down upon it. Hence the confused arguments

which continued to surround this hybrid political form in which subsisted the trace of ancient domination, combined with modern functional specialisation. In the course of our previous century, by casting the political into the shadow, the transformation which caused the splitting of the political and of politics was, in this respect a moment of liberation. On the one hand, there is a new domain of politics, which functions as a particular segment of social life—to speak like Luhmann, a system that differentiates itself from other social systems or subsystems, on the same plane as economics, science or education. Then, there is this underpinning reality of the political that can only be identified through the disastrous consequences that stem from the fact that it is misapprehended. A reality that is now totally stripped of its former prerogatives but which can, as a result, be grasped by thought, in its most fundamental function. What was only partially possible to decipher during the whole epoch during which the political appeared as the lynchpin of collective organisation (or retained aspects of this preeminent role) now becomes fully readable as it topples into the infrastructural dimension. Its specific function becomes isolated, so to speak. The political does not pertain, properly speaking, to what defines a human community, but to what allows it to exist—to what allows human beings to constitute themselves as human beings within this community. To use a very loaded term but alone adequate: *what is at stake in the political is transcendental*.

This now apparent place and role of the political allows us to do justice to the perspective of the Ancients, whilst taking our distance and going much further than them. The political is what, in the last instance, structures societies, it is what makes them hold together. This, however, does not imply that the political controls their structure nor that it dictates the correct way of life. It can merely construct their consistency, confer upon them their unity and identity, provide them with a hold over themselves whilst leaving it to other authorities to define their concrete organisation. This is precisely the situation of our societies where the dynamics of history and society on the one hand, and the logic of the law on the other, now shape the content of collective life. A content that is mirrored,

discussed and regulated in politics, behind which the political stands quietly, in charge of supporting the operation of the collective body without participating in it directly. What we know as the separation of civil society from the State rests upon and depends on the separation/linkage of politics and the political. Here is the tremendous novelty which the now fulfilled modern revolution allows us to grasp: the political remains *instituting*, whilst no longer being *determining*.

In the age of religion these two functions were not only merged, determination in fact obscured the dimension of society's (self)-institution. Society's ordering (*mise en ordre*), through which the political extended religious unity, concealed the community's self-production. The uncoupling of these two functions, within a framework that sees political unity substituted for religious unity, allows us to conceive of a role of the political that is even more crucial than what the Ancients conceptualised, since the existence and the subsistence of something that can be seen as a being-together depend on it; at the same time, conversely, this uncoupling reveals that the political possesses a much less constrictive nature, a much more flexible one than one could think, as it can accommodate a large spectrum of social relationships and inter-individual bonds. Further still, it encourages it. The political is no longer, as before, the operative force behind an imposing and overarching drive to establish a totality. It is now the operative force of an underlying unification that allows society's divisions to find an expression on the surface. It is the cohesive factor thanks to which contradiction can be allowed to express itself.

This uncoupling throws light on the misleading aspects of the phase of liberation we are now experiencing and helps us understand them better. It clarifies the ambiguities inherent in the resistible withdrawal of the State because it distinguishes between the different levels at which this withdrawal operates. The State may move away from managing all collective activities directly, it may cease to appear as the supreme navigator, the prime mover, but its function, nevertheless, grows by as much elsewhere, in another register. What subsisted of its former determining role disappears, whereas its instituting role is reinforced, under the

surface. The power of this instituting role drives the process of liberation, which broadens the scope of action for civil societies, individuals, markets. The world where the political no longer commands is a world which still depends, more than ever, on the political. The dangerous situation in which the world finds itself is due to the fact that it tends not to see it.

This way of understanding the place and role of the political quite simply reactivates the question of transcendence in another conceptual domain than the one in which we have customarily encountered it and where it was first formulated. I have already alluded to it. The question first became prevalent in the register of knowledge: what allows us to know and how much can we know? We encounter it again in a vastly different domain of experience: what allows a human community to exist and to hold together if one considers that it does not belong to the realm of what is naturally given, nor to that of deliberate creation, even if it possesses features of these two orders of reality? If it were an organism, the problem would not even be worth discussing all we would need to do is to establish the anatomy, the physiology and, as it may be, the pathology of the social body. Such is not the case: society needs to bring itself into being and to decide what it is. This, however, does not mean, that it is the outcome of artifice, the product of a contract freely negotiated between beings that are originally unconnected—another scenario with which there would not be any problem either. It would be sufficient to know the specific clauses of the agreement that gave birth to this artificial association. In reality, individuals are always already bound to each other, the community in which they belong exists prior to any reflection on the conditions of their relationships. In this respect, the community does, in some way, fall within the scope of natural givenness (*donation*)⁸, even if this nature has a remarkable property, it is not only amenable to an intervening reflective action but also calls upon an activity of self-constitution and self-definition. It is a nature that has to be wanted, within boundaries that constitute an essential part of the problem. This means that a society can only exist as a society of persons, by which I mean beings endowed with self-awareness. This self-awareness precludes their

being reduced to being only parts of a whole, and gives them the capacity to want to create their society. Such a society, far from being the product of their will, is what allows this will to be exercised, in so far as society is, furthermore, capable of grasping itself as a global and collective entity that exists through and beyond the persons composing it. What makes possible this paradoxical and enigmatic mode of being? The reply is and can only be: *the political*. It is through the political that this task of institution unfolds, between nature and artifice, a task that defines the specificity of human communities. It represents the primordial structuring of collective existence that guarantees its inner coherence whilst leaving it open to reflection and action on the part of its members. The political constitutes the mode through which humans, nevertheless, possess some power over the common world that transcends them.

The objective of this text was to indicate the way forward, to chart a path, to establish the parameters of a new approach. I think I reached the limits of what was possible to establish, in this context. As my end point reaches dizzying heights of complexity, something I am well aware of, I would not want to end without offering some additional clarifications on what, otherwise, runs the risk of appearing as an undecipherable enigma. Even if I cannot claim to be providing an exhaustive definition of the political, it is still possible for me to give a substantive idea of what the political consist in and to remain at the same time within the boundaries I set for this brief presentation of my research program.

To summarise the main message in one abrupt statement which I will then need to unpack: humanity is political because it appears, always and everywhere, as a plurality of communities that are processually autonomous. It would not be political if there existed what classical authors called a *societas humani generis*, a society of man. The political is the force that brings order into this discontinuity across the different collective units of humanity. These units have to define themselves independently from one another but, at the same time, with respect to one another. For this purpose they are endowed with power over themselves. They do not merely exist, they actively make themselves. This is why it is appropriate

to describe them as autonomous, provided that one adds that the labour through which they refer back to themselves and organise themselves is not effected in just a conscious and deliberate manner but also in a processual fashion. Properly speaking, the political consists in the ways through which this concrete autonomy operates, or to put it differently, it consists in a system of mediations, those that put a community in relation with itself and make it capable of instituting itself. These constituent mediations seem to come down to three: power, conflict, and norm. Power, or the externality of a singular person whose word applies to all; conflict, or the questioning of what applies to all; norm, or the “ought”, which creates a common space because it is imposed on all, equally. Such are the three irreducible and specific dimensions that are responsible for the fact that human communities, as opposed to animal societies, possess a capacity of practical self-determination, are concretely reflective and govern themselves in processual fashion.

Over the longer timeframe of human history, the expression *par excellence* of this processual autonomy, was paradoxically its self-negation in religion. In this perspective we can define religion as the use of processual autonomy to establish explicit heteronomy. Indeed, positing that one does not control oneself, that what one is one owes to others, to anterior and superior ancestors or gods in fact constitutes, very much so, just another way to control one’s destiny. But conversely, processual autonomy is also what makes possible the prospect of an explicit form of autonomy. It constitutes the operative starting point from which the democratic aspiration can develop, as the antithesis of religious renunciation. A new problem arises in this configuration: the project of autonomy, once fully formed, tends to see itself as self-sufficient and to be ignorant of the foundations on which it rests. Such is precisely the point we have reached, as a result of the strength gathered by the move out of heteronomy; from this comes the crisis of democracy we are now experiencing, a new type of crisis. We can reformulate the principle that defines this crisis in the following way: the pursuit of explicit autonomy, through politics, represses and negates the processual autonomy

guaranteed by the political in which it is rooted and which, alone, can provide it with substance. The task of democracies will be to overcome this fatal divide and to re-connect the two sides; they will need to find the means to bring together the politics of deliberation and the dimension of political institution.

When it comes to these conditions of being-together we are truly allowed to speak of a transcendental challenge because they are ultimately synonymous with the conditions of being-oneself. With these conditions we are dealing with the kernel of the human-social phenomenon, with what allows us to exist for ourselves, individually and collectively. We are endowed with personhood. That is, we are beings capable of knowing they exist and, to certain extent, capable of wanting to exist because, together, we belong to political communities that possess some power over themselves. Individuals endowed with consciousness can only exist in the context of collective bodies that are organised politically, that is, in the context of collective bodies endowed with identity and with their own capacities to act. The structures which produce this self-determination at the collective level are closely related to the structures that guarantee every one's reflective self-assertion. They are not the same but they belong to the same category operating at a different level, and they are interconnected. It is necessary to reflect on these two lots of structures, on their interdependence as parts of a whole.

This reflection on the political thus ultimately opens up onto a vast transcendental anthropo-sociology, but it constitutes only one chapter.

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NOTES

1. The translator wishes to thank Cristina Savin, Louise Bernasochi, as well as Virginie Pfeiffer, for the invaluable support they provided when they were graduate students in translations studies at Monash University (Melbourne, Australia).
2. The *collège de philosophie* is an independent research centre and think tank founded in the 1970s. This text was originally prepared for a seminar at *collège de philosophie* in 1998, and was subsequently published in *Revue du Mauss*: Gauchet, Marcel, 2002, “Les tâches de la philosophie politique”, *Revue du Mauss*, 2002/1 no. 19, La Découverte, Paris.
3. Translator’s note: Gauchet uses the term “fait politique” which corresponds to an expression used later, “social facts” (*fait sociaux*). The term “fait” alludes to its use in French sociology and anthropology, starting with the work of Marcel Mauss.
4. Translator’s note: The article discusses the growing role of the law as a system but also the reasons behind this growing influence: the progress of individualisation and the new role played by the notion of fundamental rights. The connection between these two phenomena (ideological, practical) to which is added an institutional one (the appearance of courts safeguarding these fundamental rights and their greater power) appears clearly in the French text through the dual meaning of the word “droit”, one of those words that is, as a result of history, without equivalent in English. The word corresponds to what is designated as “the law” (the system of laws, i.e. positive law) but also to what is conveyed by the English word “right” or “rights”. The problem discussed in the article and conveyed by the expression “le droit” thus concerns the appearance, with the progress of individualisation, of a new form of law as a system of rights or “un droit des droits”. This idea is implicitly evoked in the author’s use of “le droit” but this, unfortunately, cannot be conveyed fully in the English translation.
5. Translator’s note: The French expression *mise en forme* refers to the process whereby the political body acquires a collective identity through a symbolic self-representation. The notion first started to be theorised by Gauchet in the 1970s and drew inspiration from Ernst Cassirer’s *Theory of Symbolic forms*. From then on it was used to develop a comparative analysis of the different political forms known by humanity (tribe, empire, City-State, kingdom, and Nation-State). *Mise en forme*, a nominalisation of the verb “mettre” has a dual meaning. It refers both to the process whereby a symbolic identity is created (and is thus related to what the text later analyses as “processual autonomy”) and to the outcome of the process, i.e. the symbolic form of the political body, its morphology. In its first meaning it has been translated as the gerund “symbolic shaping”.
6. Translator’s note: The words “instituting function” translates the French expression “fonction d’institution”. ‘Institution’ is a notion which is central to Gauchet’s thought and originates in his intellectual exchanges with Claude Lefort and Cornelius Castoriadis.
7. Translator’s note: the author speaks of the “liberal option” by which he means the ideological understanding of what he calls the liberal reality of modernity (“fait liberal”). Gauchet has

developed an account of ideology and contends that there are only three possible fundamental responses to the new social reality (conservatism, liberalism, socialism). This theory was first outlined in “Croyances religieuses, croyances politiques” (Le Débat, 3(115), 2001,3-12).

8. Translator’s note: The author’s vocabulary, his use of the terms being-oneself, being-together, givenness bears the marks of his early engagement with phenomenology, especially the work of Merleau-Ponty.