

# Equaliberty and Human Rights: a Critical Endeavour

*Igualibertad y derechos humanos: una tarea crítica*

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**Abstract:** This study aims to bring together the destructive and constructive dimensions of the critical approach vis-à-vis human rights. As such it aims on the one hand to reformulate aspects of critical legal and political scholarship, whilst attempting not to abandon the language of rights entirely to mainstream liberal discourse. What this paper argues is that the language or rights encompasses the regulatory idea of social transformation against structures of domination that should be at the forefront of any critical legal and political debate. Alongside the reformulation of some aspects of the ‘destructive’ dimension of critical thought, this study aims to bring forward a proposition that, based on the original problematization of French philosopher Étienne Balibar, attempts to offer an alternative view that goes past the current fragmentation of human rights and most importantly the distinction between freedom and equality. The concept of equaliberty rejects the separation between freedom and equality, the separation between the legal and the real, as well as solves the confusion between the two forms of property and the two forms of solidarity. The present study’s constructive dimension lies in the examination of the implications for law and politics that the introduction of the concept of equaliberty can bring about for the way we discuss human rights today.

**Keywords:** equaliberty, human rights, critical theory, Balibar.

**Resumen:** El presente ensayo se propone conjuntar las dimensiones destructiva y constructiva del enfoque crítico en relación con los derechos humanos. Por un lado, intento reformular algunos aspectos críticos propios de los estudios jurídicos y políticos, a la vez que procuro no ceder por completo el lenguaje de los derechos al discurso liberal imperante. En el trabajo se arguye que el lenguaje de los derechos engloba la idea regulativa de la transformación social en

contra de las estructuras de dominación, una idea que debería ocupar la primera línea de cualquier debate jurídico y político de carácter crítico. Junto a la reformulación de algunos aspectos de la dimensión “destruktiva” del pensamiento crítico, por el otro lado intento presentar una propuesta que, basada en la problematización original del filósofo francés Étienne Balibar, pretende ofrecer una visión alternativa que trasciende la actual fragmentación de los derechos humanos y, sobre todo, la distinción entre libertad e igualdad. El concepto de igualibertad rechaza la separación entre libertad e igualdad, la separación entre lo jurídico y lo real y adicionalmente resuelve la confusión que suele darse entre dos formas de propiedad y dos formas de solidaridad. La dimensión constructiva del presente trabajo reside en el examen de las implicaciones para el derecho y la política que puede conllevar la introducción del concepto de igualibertad en la manera en que hoy en día tratamos los derechos humanos.

**Palabras clave:** igualibertad, derechos humanos, teoría crítica, Balibar.

## I. Introduction

Any given critical endeavor has a destructive and a constructive side. Regarding the destructive or better critical aspect in relation to human rights, we can consider the rich production of critical legal studies, feminist authors, and Marxists, as well as studies by communitarian, structuralist, or postmodern philosophers. Their political purposes and concepts are different, but these studies develop the project of criticism, carried out both by conservative philosophers – who believed in strict social hierarchy, such as Burke, de Maistre, Bentham, – and by progressive thinkers, such as Marx, who uncover the selective, and class, character of universalist discourses on human rights. All these authors claim that the discourse of human rights is aporetic, oscillating between conceptual impossibility and pure and simple emptiness (see Binoche, 1989; De Smet, 2001; Douzinas, 2009).

The present paper reformulates some of these criticisms. Nevertheless, its main objective is to contribute with a constructive aspect of the critique of the discourse on human rights. It proposes a theoretical and legal alternative that would allow us to distance ourselves from apologetic rhetoric about human rights, without, however, giving up either the language of rights or the regulatory idea of social transformation against structures of domination.

## II. The Myth of Freedom

Myths are true. Not only because they contain a ‘portion’ of truth in an inverted, hidden, or even perverted way, making them myths and not lies. Myths are true because

they fulfil important social functions, being vectors of social stability or change. One of these true myths is the ‘freedom of the moderns’<sup>1</sup> constantly propagated by the ideologues of the dominant order, including jurists as apologists of power. This myth departs from the assumption that in the Middle Ages, a theocratic order prevailed in Europe. Individuals, their desires, and their ‘natural and inalienable’ rights were ignored by the holders of power. Authoritarian and violent, the powerful, kings, nobles, and clergymen, oppressed human beings who lived in a state of personal and political deprivation. This status–quo maintained Europe for centuries in the ‘darkness’ of violence and ignorance.

The myth of liberalism subsequently carries on by portraying the enlightenment as the era when the wealthiest citizens, guided by brave philosophers, demanded freedom of trade, religion, and scientific research. The individual became the center of the world – ‘anthropocentrism’ – gained autonomy and could exercise their rights, which were proclaimed not only in philosophical works, but also in Declarations of Rights since the late 18<sup>th</sup> century. By proclaiming and respecting human rights, states became states of law, constitutional states and, in some cases, democratic states. Freedom triumphed, paving the way for democratization and the guarantee of the well–being of all under a government by the people and for the people.

The main instrument of this social and political revolution was law, which expressed new ideals and radically changed its content to reflect these. A symbol of this was the new definition of law after the bourgeois revolutions. The legal order was no longer considered, as in the Middle Ages, an expression of divine order and hierarchy, a reflection of the nature of things, of objective laws or the interests of the collectivity. Kant expresses the new definition of Law, understanding it as a set of rules that harmonize the claims and desires of individuals, guaranteeing freedom as the General Law: “... is the intrinsic concept of the conditions under which the will of each can be combined and harmonized with the will of others according to a general law of freedom” (Kant, 1998, p. 337).

The consideration of Law as a means and guarantee of individual freedom, and therefore of individual freedom as the purpose of Law, is a central reference point in the thinking of jurists and politicians and is also used to define positive law today (Köhler, 1997, p. 9). The philosophical starting point of this new definition of Law is an individualistic, anthropocentric, and humanistic, approach to society. The individual is seen as the basis of social organization, the principal decision-making subject. In this view, society is merely a group of individuals alongside their desires, capabilities, and rights.

It is claimed that a society is well ordered, ‘just’, when it respects the aspirations of individuals, their beliefs, and preferences, putting the state and other organizations at the service of individual interests, and not the contrary. This is the fundamental thesis of thousands of pages and debates in the tradition of modern political philosophy, from Locke and Hobbes to Rawls, Habermas, and their followers.

Those who refer to the autonomy of the individual, to their freedom and rights, understand that our society is the best possible because it protects human rights. This, I argue, is a distortion of the real function of these rights. Let us imagine a country in which there is a state monopoly on television. A group of entrepreneurs organizes and finances a political campaign that aims to end this monopoly. They invoke, for this purpose, constitutional rights, and values such as the free exchange of a plurality of opinions, an improvement of the cultural quality of the programs, free expression and free competition. All those values are to be safeguarded via the investment and the innovative spirit of this group of entrepreneurs. A critic could say that the entrepreneurs’ motive is to profit from this activity, increase their political influence via the control of communication channels. The invocation of human rights and constitutional values would be an argument to legitimize interests in monetizing information and culture, manipulating viewers.

Both sides are somewhat right. But the interesting thing is that liberalism deliberately ignores the social consequences of the exercise of rights and the application of constitutional principles. In other words, liberalism translates social claims and conflicts into terms of individual rights, making power structures invisible, presenting oppression and exclusion as the triumph – of the myth – of freedom.

### **III. Radical Critiques to Human Rights**

Progressive critical thinking questions the myth of liberalism, considering that human rights are not instruments to build the ‘best possible society’, but to reproduce existing power relations. According to this criticism, the freedom of individuals has as its main result the protection of unequally distributed private property, preventing any challenge to it. Similarly, legal equality protects the capitalist system of commodity exchange, abolishing corporatist obstacles and protectionism. Now, economic competition without strong regulatory limits always favours the privileged classes in a struggle between unequals. The most well-known formulation of this criticism can be found in Karl Marx’s *Grundrisse*, written in 1856/1857:

Equality and freedom are thus not only respected in exchange based on exchange values but, also, the exchange of exchange values is the productive, real basis of all equality and freedom. As pure ideas they are merely the idealized expressions of this basis; as developed in juridical, political, social relations, they are merely this basis to a higher power (Marx, 1993, p. 245).

Concurrently, the capitalist system tends to universalize political rights, so that individuals feel like participants in this system, even though the majority are unable to significantly influence the decisions that affect their lives. Finally, the critical view asserts that the guarantee of social rights is not a measure of socialization of the national product, but a measure that allows stabilization of the regime, achieving the consensus of the excluded, the so-called 'social peace'. The best theoretical formulation of the critical approach can be found in the work of Soviet jurist Evgeni Pashukanis (Pashukanis, 2003).

Pashukanis departs from two assumptions. In primis, the anti-individualistic understanding of history: history moves based on the action of groups that determine political decisions, regardless of the will of 'free and equal' individuals. In secundis, a realistic reading of politics and economics. What is decisive is not what is proclaimed (the Duty to be, the abstract possibility of being free, equal, rich, happy etc.), but what really happens: The Being of inequality and lack of freedom. Despite the adoption of the political ideals and models of the bourgeois revolutions and their declarations of rights, today one third of the world's population lives in poverty and there are very high levels of social inequality. Some progressive forces consider that human rights, despite the criticisms, constitute a historical achievement that prevents the instrumentalization of rights by the dominant class. Other militants and intellectuals consider that the language of rights is fundamentally bourgeois, but that the claim of rights is necessary (improvement of living conditions) and is a political tool to raise awareness among the excluded masses. This shows that the criticism of rights, however radical it may be, does not ignore the emancipatory potential, even though it recognizes the limits imposed by a regime of social inequality on the exercise of "equal" rights.

#### **IV. Equality or Freedom?**

National constitutions and international treaties establish freedom and equality as basic rights. One wonders what the relationship is between these two rights. For liberalism, the important pole of the pair is freedom, because, as discussed above, it grounds the concept of law on the primacy of freedom. Indeed, liberalism holds that rights are individualized and aim to guarantee the freedom of their holders in the sense of absence of

external limitations (Grimm, 1991, p. 67-73). This tendency of liberalism can be seen in the use of the term freedom as a synonym for the term right: we refer to ‘individual’ and ‘fundamental’ ‘freedoms.’ No one refers to ‘fundamental’ equalities. This, I argue, is an indication that there is a permanent tension between freedom and equality: those who demand equality want to restrict freedom, affecting the assets or the ability to act of others (Rüfner, 1992, n. 55-59). This tension means that there is a need to choose: more freedom or more equality? In most cases, freedom is chosen, with the justification that equality would annihilate freedom, depriving individuals of their spaces. The result of this view is triple inequality: inequality between citizens and foreigners, so as to not affect the *ethnos*; inequality vis-à-vis the access to economic resources and political institutions (in order not to destroy the incentives for initiative and creativity); inequality in the results obtained (property, culture, social position) in order not to affect the freedom of individuals through the action of a potentially ‘totalitarian’ state.

In addition, liberals argue that equality is not an autonomous right that could oppose freedom, but only a rule for the distribution of freedom among its holders. It would be enough to recognize equal freedom to all, granting them the same rights. (Böckenförde, 1991, pp. 265-267; Kirchhoff, 1992, pp. 909-910). This argument is adopted by egalitarian liberalism (Rawls, 1993; Veca, 1990; Glazer, 2014) that criticizes social inequalities, but continues to understand equality as a formal rule, without a dynamic claim. Equality would serve to control the equal distribution of rights, based on predetermined rules, for example, the rule that the increase in resources of the richest cannot worsen the situation of the poorest. But as long as these rules are respected, egalitarian liberals consider that the results are fair without worrying about the real situation of society.

The thesis of the primacy of freedom is more incisively criticized by proponents of radical egalitarianism who wish to change the distribution of resources, making citizens truly equal. We find this thesis in the works of Rousseau, the young Marx, and Gracchus Babeuf, creator of the *Conspiration des Égaux* in the French Revolution. In this view, social equality is achieved by limiting the freedom of the strongest. This indicates that, from a theoretical point of view radical egalitarians and liberals both concur that there is a conflict between freedom and equality. The rather stark difference between them lies with the manner in which they respond to this dilemma. Egalitarians consider the restrictions imposed on the freedom of the strong as social justice, liberals as totalitarianism. We will see that both positions are based on a questionable premise, thus allowing for a theoretical reflection aiming at deconstructing the ‘freedom and equality’ binary.

## V. Challenging the False Evidence of the Meanings of the Words

Legal scholars try to find the best definition for their concepts, asking the classical ontological question: ‘What is X?’, for instance, ‘what is freedom?’ Historians of law formulate a more productive question: they try to find out what meanings the examined term has had throughout history and what its relationships are with the historical context (Clavero, 1997, pp. 158-159). By showing that there is not a single definition of freedom, but historically variable meanings related to the ideologies and practices of each period, historians make it clear that in order to “translate” writings from other times, it is not enough to know the structure and vocabulary of the respective languages. It is also necessary to know the cultural data of the time when a text was written: *ius* did not always mean ‘right’, nor *iurisprudencia* ‘jurisprudence’, nor *Constitutio* ‘Constitution’, nor *res publica* ‘Republic’. In particular, terms charged with axiological elements tend to change their meaning more frequently over time.

One example is the German word *frei*, which means ‘free’ in modern German. In the Middle Ages, the same word had a meaning that was almost the opposite of its modern meaning. A person was considered *frei* when they had strong hierarchical ties with friends and family. Dependence, submission, and loyalty between members of a group allowed those in need to ask for help from others in case of aggression. Thanks to this help, the threatened person preserved their freedom and property. Therefore, being ‘free’ did not mean having the ability to self-determine oneself, but rather being tied to a group and respecting its rules (Jerouschek, 1992, pp. 98-99). Following this methodological example, the critical view of human rights should reflect on the meaning of concepts in the history of law and politics. What did the drafters of the Declarations of Rights understand and intend when they referred to “freedom” and “equality”? It would be unlikely to assume that they used the terms according to their current meanings.

In this search, we will use the studies of the French philosopher Étienne Balibar as our main reference. Starting with an extensive text published in 1988 on equality and freedom and continuing his reflection to the present day, Balibar asks what the meaning of these terms is in the Declarations of Rights at the end of the 18<sup>th</sup> century, in particular, in the French Declaration of the Rights of Man and the Citizen of 1789. The philosopher re-examines the texts and reconstructs the meaning of the revolutionary words that have faded after two centuries of dominance of liberal thought. In the text of the Declaration of 1789 there is no opposition or hierarchy between equality and freedom. Both are proclaimed simultaneously in its first article, “Men are born and remain free and equal in rights”.

Equality and freedom are established as the foundation and substance of rights that the revolutionaries considered natural, necessary, and inalienable. The normative statement of “equality and freedom” is called by Balibar the proposition of equaliberty for the reasons that will be explained below. If we assume that the state of nature is that of the isolated person, free from any conditioning of their will, then any external influence (e.g., a state redistributive policy) constitutes an invasion of their sphere of freedom. This is the situation of the shipwreck survivor who for years lives alone on a deserted island, only having to fight against elements of nature. If one day another person appears, our shipwreck survivor will begin to suffer limitations on her freedom, having to meet the demands of others.

Equaliberty rejects this assumed starting point that defines freedom as the absence of external conditioning. It is a situation that never occurs in human societies, marked by coexistence with their multiple and reciprocal limitations. Within the inevitable game of interactions and conditioning, it makes no sense to consider the interference of others as a limitation of personal freedom. Let’s think of the case of the queue in front of a supermarket cashier. When a queue is formed, the consumer cannot pay immediately and leave the store, as she would like. But the obligation to wait for a given time does not limit her freedom; it is the appropriate way to avoid abuses, for example, allowing the strongest to push others or giving priority to those who tip. Complaints may relate to the way the queue is organized and the preferential treatment that should (or should not) be given to certain categories of people. But the practice of queueing only imposes an appropriate order of service on individuals that does not substantially limit freedom. This indicates that problems of individual freedom restriction are related to unequal treatment (determining who are the ‘similar’ agents and treating them similarly).

The approach of equaliberty recognizes the close connection between these rights. Equality is free, and becomes freedom, because it comes from the will of people to live freely and being equal. Substantial equality is a fundamental condition of freedom in two ways: positively, so that people can exercise their freedom; negatively, because unequal and unjustified treatment affects the freedom of the victim of discrimination. Therefore, there is no temporal or axiological primacy of freedom or equality in the field of equaliberty: they are strictly synchronous and equivalent. As Balibar writes, “Simply put, the situations in which both are present or absent are necessarily the same. Or, again, the (de facto) historical conditions of freedom are exactly the same as the (de facto) historical conditions of equality.” (Balibar, 2010, p. 48).



Balibar believes that these statements arise from the revolutionary declarations of the 18<sup>th</sup> century. The argument brought forward here is that it appears to confirm, through the political experience of more than two centuries after the great revolutions, that those in power maintain inequality in order to exploit the labour of others and suppress protests from the exploited. It is often claimed that in socialist countries, citizens were equal but could not exercise their individual freedom. According to this view, there were two models of society in the 20<sup>th</sup> century: capitalist societies, where individual freedom prevails at the expense of equality, and socialist societies, where equality prevails at the expense of freedom (see Bobbio, 2009).

In socialist regimes, people were supposedly equal, but who was depriving them of their freedom? A dominant class? If that's true, then there's no equality. Who would be afraid of exercising individual rights in an equal society? Oppression in "socialist" countries can only be explained by the absence of equality, with privileged groups interested in suppressing popular protest. Socialist states had efficient social welfare systems. But just like in capitalist states, the loss of freedom was related to social inequality. These considerations show that there is a historical and logical relationship of equivalence between the demand for real equality and real freedom.<sup>2</sup> When certain groups are given the freedom to be socially superior (inequality), the lower groups also lose their freedom. Since there are no societies or policies that only deny freedom or only deny equality, the distinction between the two reveals a myth of liberalism and indicates a conception of "unequal freedom" similar to that which prevailed in medieval Germany.

In combining the terms, equaliberty does not describe a situation ('we are equal-free'), but a tendency. Modern societies achieve equaliberty to varying degrees, with possible advances or setbacks. This offers a dynamic view of human rights in contrast to the static conception of legal scholars that simply aim to verify the existence or not of a certain right within a given legal order.

Equaliberty allows for the definition of what human rights are, and as such indirectly what democracy is. It is not a new right, nor a substitute for certain rights or deliberation procedures. It offers an ontological response to the question of what a human right is, that is radically different from the liberal response. The definition of rights in the perspective of equaliberty has two implications. In primis, the specific rights recognized by normative texts converge on a fundamental tendency; it is equaliberty that must be guaranteed to all to the greatest degree. In the second place, there are no good institutions that guarantee freedom and equality or good constitutions that satisfactorily proclaim rights. Equaliberty allows us to evaluate human rights from a subs-

tantive or performative perspective. They are the result of a social struggle that imposes the tendency of equaliberty or neutralizes it, via a possible “counterrevolution”. In all cases, the problem is quantitative: how much equaliberty is realized in a given society? Are people equal and effectively free? Are they free while being effectively equal? The demand for rights means the elimination of social obstacles to the trend of equaliberty.

## VI. General Formulations of Rights and Mediations of Equaliberty

Rights recognized by legal norms have a generic formulation and determine their recipients in an unrealistic way. ‘All’ men are free, and ‘all’ are equal. They are merely ideological formulations, as they express ideals and desires that are socially diffused, but do not correspond to political and institutional reality. The harmonization of the hyperbolic formulations of rights with the reality of a society divided into groups with divergent interests is the responsibility of institutional practice that limits or prohibits the exercise of rights in specific cases. This indicates the strength and weakness of any ‘human rights policy’, a term used by Balibar (1992, p. 238). These policies seek to fulfil the promises of the law and express desires and emancipatory ideals. But they face the continuous disappointments of practice that contradict the promises. Liberal constitutions generously proclaim rights and social guarantees, but this does not prevent illiteracy, poverty and even hunger. European Constitutions say that all are free, but this does not prevent the construction of a ‘Fortress Europe’ to persecute, marginalize and even physically eliminate immigrants, whose ‘crime’ consists of seeking work in countries that owe much of their well-being to the exploitation of the ‘third world’.

The proposition of equaliberty is extremely abstract. With an interesting formulation, Balibar shows how this term combines the concepts of equality, freedom, and democracy, demonstrating they are indissociable at an abstract level:

The term we translate today as democracy, known in Greek as *isonomia* and often translated as “equality before the law,” corresponds to what modern Western tradition associates with the binary “liberty and equality,” equal liberty (*aequa libertas*) or even, in a single word, equaliberty, as I suggested on another occasion. (Balibar, 2010, p. 349).

The abstraction and tendency to ‘merge’ concepts and traditions of political thought indicates that equaliberty requires mediations. These mediations are none other than private property and social solidarity.<sup>3</sup> In our constitutional systems, individual private property is a necessary mediation of equaliberty. It ensures that the individual will enjoy security and well-being, as the possession of the means necessary for the reproduction of one’s own life is a condition for the exercise of rights. Without owning

these goods, a person cannot think, work, rest, and ceases to be an owner of herself whilst becoming dependent, a beggar, a slave. In other words, everyone must be owners of the material and intellectual means, including knowledge, information, and culture, which allow them to meet their needs (see Baratta, 1999).

Liberal thought views that individual private property as described above is not different than the property of means of economic production or of social production, such as means of communication, schools and so on. This second form of property concerns collective goods and is different from strictly personal property, since it puts the owner of such means in a position of controlling social life. Thus, property over collective goods is not an individual right and functions as a social obstacle to equaliberty. The owner of a simple car does not have the same right as the owner of a car factory with thousands of employees. In the second case, property allows the owner to control the lives of others with the aim of providing profits, prestige, and power to the owner.<sup>4</sup>

The same could be argued with respect to solidarity as a mediation of the tendency towards equaliberty. Solidarity also includes two antagonistic forms. We can consider as solidarity both an authoritarian-paternalistic system and a system that provides for the creation of conditions for self-realization of a life project. In the first case, we have 'solidarity from above': hierarchical structures offer protection, but require the submission of those assisted, as occurs with families, 'philanthropic' organizations, and national/nationalist states. In the second case, solidarity is built 'from below': networks of collaboration and support emerge that encourage the free action of the participants, via empowerment, as typically occurs with cooperatives. This is the form of solidarity that promotes equaliberty. In summary, the proposition of equal liberty rejects: the separation between equality and freedom; the separation between the legal and the real (a separation that is expressed, for example, in the idea that the judge should not 'change society', but rather reproduce structures of domination to maintain income and power inequality); the confusion between the two forms of property and the two forms of solidarity, as each has a different impact on human rights.

## **VII. Social Exclusions and Demands for Equaliberty**

The exercise of rights in constitutional states generates multiple discriminations and exclusions. Enforcing rights within a social structure of domination results in the emergence of differential identities based on privileges. This is evident in the relationship between politics and human rights. With regard to the subjects of rights, the cons-

titutional state creates a distinction between citizens and foreigners as categories of people with intentionally and fundamentally different status. Each of these categories knows hierarchical legal distinctions, generating statuses, both legal and social, such as the prisoners, the unemployed, the homeless, and on the other side of the hierarchical spectrum, groups that enjoy various immunities and privileges. The differences are accentuated when examining the real ability to influence political decisions, with strong obstacles to the realization of equal freedom.

The second limitation refers to the objects, topics, of politics. Individual rights create wide spaces of individual autonomy, within which politics “does not enter”. This is the private sphere which includes not only personal issues, but also economic activities involving employees, consumers, banks, and state authorities, but which are ‘read’ as belonging to the sector of individual freedom and the personal privacy of the businessman. The protection of these ‘private’ rights prevents public control of issues that affect social life, leaving them in the hands of the socially strong.

The approach of equaliberty proposes a reversal. There should be neither privileged individuals nor limitations on politics. To overcome social obstacles, we must start from the identification of man with the citizen. This is an alternative formulation of equal freedom that, according to Balibar, also derives from the Declaration of 1789. Man ‘is’ the citizen; the private ‘is’ political (Balibar, 2014, pp. 9-11). This allows us to question from another perspective the primacy of individual freedom in relation to equality and the prevalence of the private world over political deliberation.

### **VIII. Some Concluding Remarks**

Despite its emancipatory potential, the concept of equaliberty has also been criticized for its lack of a total transformation of the social order and no prescription of the subject of history. These criticisms have been particularly pronounced by those who want to justify their break with any form of Marxism or their softer move towards some kind of ‘Post-Marxism’ in the 70s and 80s. Additionally, Balibar’s own engagement with the concept of equaliberty has been seen as problematic because of its association with Althusserian Marxism, which has its own set of criticisms in the Marxist tradition.

Another criticism of equaliberty is that it implies the contestation of many commonplaces of political philosophy, such as liberal democracy, human rights, the state, and the nation-form. However, critics argue that this contestation is not clearly outlined in Balibar’s work, leaving it up to the reader to determine the yield of his project

and the challenge it presents to a Marxist revolutionary project on the one hand and liberal political philosophy on the other.

One major criticism of Balibar's notion of equaliberty is that it is overly optimistic and fails to take into account the realities of power relations in society. As Antoine Artous argues, Balibar's focus on open deliberation and decision-making ignores the fact that individuals and groups with more power will have a greater ability to shape the decisions that affect them (Artous 2010, p. 97). Additionally, Alain Badiou critiques Balibar's emphasis on equaliberty as a means of overcoming evil, arguing that the concept is too focused on the individual and fails to address the systemic issues that lead to evil in society (Badiou 2001, p. 57).

On the other hand, some scholars have praised Balibar's concept of equaliberty as a way of rethinking human rights and challenging dominant power structures. James D. Ingram argues that Balibar's concept offers a useful framework for understanding how to create a society where individuals' identities are not defined by fixed characteristics and private ownership (Ingram 2014, p. 87). Furthermore, Andrew Jainchill and Samuel Moyn highlight Balibar's concept of equaliberty as a way of understanding the connection between democracy and human rights, and how it can be used to critique revisionist historiography and to understand the obstacles that dominant politics impose (Jainchill and Moyn 2004, p.130).

Furthermore, some scholars have also noted that Balibar's concept of equaliberty offers a way to understand the relationship between human rights and power relations and how it can be used to critique revisionist historiography and to understand the obstacles that dominant politics impose. Warren Montag and Hanan Elsayed emphasize the importance of Balibar's concept of equaliberty in understanding the relationship between democracy and human rights, and how it can be used to critique revisionist historiography and to understand the obstacles that dominant politics impose (Montag and Elsayed 2017, p.32).

In summary, while Balibar's concept of equaliberty has been met with criticism for its perceived optimism and focus on the individual, it has also been praised as a way of rethinking human rights and challenging dominant power structures. The political aim of equaliberty is the establishment of a social production regime in which the identity of each individual, citizen, is not organized based on Being (fixed identity) and Having (private ownership of collective goods). We must imagine a situation of social fluidity with decisions made after open deliberation involving all interested parties, without

legal or social exclusions. Competent is not the holder of an abstract right (vote or property), but all those who will be affected by a decision. This deliberation regime transcends legal subjects: the holder of rights dissolves into processes that guarantee rights (and reproduce identities) in unpredictable and situation-appropriate ways.

The politics of equaliberty is not legitimized in the name of general interests, but rather expresses the interests of those who have been excluded due to their culture background, gender, or race. It is an internationalist politics that not only rejects nationalism and wars, but also stands in opposition to the internationalism of the powerful (i.e., capitalist globalization), the uncontrolled market, and the glorification of individual freedom. Étienne Balibar was able to distance himself from the apology of the current order without renouncing the perspective of human rights. He offers us a new reading of human rights, rethinking the meaning of their initial formulations. Are we free being equal? Are we equal being free? Equaliberty is a conceptually more adequate and politically more progressive criterion than the rule ‘freedom and/or equality’ which corresponds to the current common sense about human rights. Equaliberty offers a criterion for controlling the satisfaction of human needs, identifying the social obstacles that dominant politics impose. Identifying these obstacles means taking the first step towards their overcoming.

## References

- Artous, Antoine, 2010: *Démocratie, citoyenneté, émancipation: Marx Lefort, Balibar, Ranciere, Rosanvallon, Negri....* Paris, Éditions Syllepse.
- Badiou, Alain, 2001: *Ethics: An Essay on the Understanding of Evil*. London, Verso.
- Balibar, Étienne, 2014: *Equaliberty: Political Essays*. Durham and London, Duke University Press.
- \_\_\_\_\_, 1992: *Les frontières de la démocratie*. Paris, Découverte.
- Baratta, Alessandro, 1999: “Bedürfnisse als Grundlage von Menschenrechten”, in Ulfrid Neumann & Heike Jung (eds.). *Festschrift für Günter Ellscheid*. Baden- Baden, Nomos.
- Binoche, Bertrand, 1989: *Critiques des droits de l’homme*. Paris, PUF.
- Bobbio, Norberto, 2009: *Destra e sinistra*. Roma, Donzelli.
- Böckenförde, Ernst-Wolfgang, 1991: *Staat, Verfassung, Demokratie*. Frankfurt/M., Surhkamp.

- Clavero, Bartolomé, 1997: *Happy Constitution. Cultura y lengua constitucionales*. Madrid, Trotta.
- Constant, Benjamin, 1989: *De la liberté chez les modernes: écrits politiques*. Paris, Hachette.
- De Smet, François, 2001: *Les droits de l'homme: origine et aléas d'une idéologie moderne*. Paris, Cerf.
- Douzinas, Kostas, 2000: *The End of Human Rights*. London, Hart Publishing.
- Ferrajoli, Luigi, 2001: "Diritti fondamentali". In Luigi Ferrajoli (ed.), *Diritti fondamentali. Un dibattito teorico*. Roma, Laterza, pp. 5-40.
- Glaser, Daryl, 2014, "Liberal Egalitarianism". *Theoria: A Journal of Social and Political Theory* Vol. 61, no. 140, pp. 25-46.
- Grimm, Dieter, 1991: *Die Zukunft der Verfassung*. Frankfurt/M., Suhrkamp.
- Ingram, James D., 2014: "Democracy and Its Conditions: Etienne Balibar and the Contribution of Marxism to Radical Democracy". In Breugh, Martin, Holman, Christopher, Magnusson, Rachel, Mazzocchi, Paul & Penner, Devin (eds.), *Thinking radical democracy: the return to politics in post-war France*. Toronto, University of Toronto Press, pp. 210-233.
- Jainchill, Andrew & Moyn, Samuel, 2004: "French Democracy between Totalitarianism and Solidarity: Pierre Rosanvallon and Revisionist Historiography". *The Journal of Modern History*. Vol. 76, no. 1, pp. 107-154.
- Jerouschek, Günther, 1992: "Die Herausbildung des peinlichen Inquisitionsprozesses im Spätmittelalter und in der frühen Neuzeit". In Nève, Paul & Coppens, Chris (eds.), *Vorträge gehalten auf dem 28. Deutschen Rechtshistorikertag*. Nijmegen, Gerard Noodt Instituut, pp. 95-126.
- Kant, Immanuel, 1998 [1797]: *Die Metaphysik der Sitten*. In Werke in 6 Bänden, v. IV. Darmstadt, Wissenschaftliche Buchgesellschaft.
- Kirchhof, Paul, 1992: "Der allgemeine Gleichheitssatz". In Isensee, Josef & Kirchhof, Paul (eds.), *Handbuch des Staatsrechts vol. V*. Heidelberg, Müller, pp. 837-972.
- Köhler, Michael, 1997: *Strafrecht. Allgemeiner Teil*. Berlin, De Gruyter.
- Marx, Karl, 1993 [1939]: *Grundrisse*. London, Penguin Books.

- Montag, Warren & Elsayed, Hanan (eds.), 2018: *Balibar and the Citizen Subject*. Edinburgh, Edinburgh University Press.
- Pashukanis, Evgeny, 2003: *The General Theory of Law & Marxism*. London, Transaction Publishers.
- Rawls, John, 2003: *A Theory of Justice*. Cambridge (Mass.), The Belknap Press of Harvard University Press.
- Rüfner, Wolfgang, 1992: “Art. 4, Abs. 1”. In *Bonner Kommentar zum Grundgesetz*. Neuwied: Luchterhand.
- Veca, Salvatore, 1990: *Cittadinanza. Riflessioni filosofiche sull’idea di emancipazione*. Milano, Feltrinelli.

## Notas

- 1 The term and classic exposition can be found in Constant (1989).
- 2 The statement that equality would be a concept arising from the “hybridization” of legal categories, typical of postmodernity, is inaccurate. Equaliberty is, on the contrary, a proposal for a conceptual union of concepts that liberalism artificially separated.
- 3 The concept of equaliberty cannot be applied to reform branches of law or state apparatus, as suggested by Heringer Jr. (2011), proposing to apply equaliberty as the basic idea for changing the penal system. Without establishing the exact type of mediations through more concrete concepts and practices, such as property and solidarity, equaliberty does not offer clear indications, resulting in the risk of its inconclusive and rhetorical invocation, as happens in the aforementioned text.
- 4 Ferrajoli (2001) criticizes property with interesting arguments, saying that it is not a fundamental right similar to individual freedoms. Unfortunately, the author does not distinguish between the two forms of property that we have just presented. His criticism is convincing with regard to property of collective goods, but the same does not apply to private property in the strict sense, which is an essential human right.

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