What Happened to the Human of Human Rights? An Anti-Humanist Examination

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Abstract: The contemporary human rights crisis shows that their juridical capacity is not sustainable and does not include in itself the political opportunities to overcome this crisis, not leaving space for ethics on the subject of rights that will anticipate his needs. On the contrary, such ethics is dominated by the foundation of human rights and their essentialization through the proclamation of human nature as their stable, definitive and final ground. Moreover, the anti-humanist interpretation of the attempt to establish stable and finite foundations clears the way for a different political positioning and more importantly, for the insistence on the unfinished subject of rights, and with that for questioning of the anthropological constants that can be forcibly proclaimed as the predestined foundations of the political community.

Keywords: Human rights, Philosophy of Personhood, Biopolitics, Roberto Esposito, Anti-humanism

I.

Thinking of fundamentality from the perspective of human rights necessarily leads to the points of their foundation, to sources of their legitimacy or, in short, to the search for a juridical essence. That essence is humanistic and inevitably draws human nature to itself. This humanistic essence is justified by the metaphysical tautology used to explain how and why human rights belong to the human being. At the heart of these explanations, human nature is contained in certain legal-positivist signifiers, such as reason, dignity, and morality. Thus, the thesis that human rights, as they are legally formulated in *Déclaration des droits de l'homme et du citoyen* of 1789 (the French Declaration) and the *Universal Declaration of Human Rights* of 1948 (the Universal Declaration), belong to the human being only because one is a human, because of one's birth as a human, associating human nature to

the fundamentality of human rights, determining in it points of foundation, enclosedness, and prescription. However, is this humanist attempt to fixate human nature as source, foundation and essence of the human rights sustainable? The raised question inevitably opens an ontological disruption in the concept of human rights. Their principles are shaken, as are the aforementioned signifiers of human nature, imposed as source of rights. The humanistic assumption that a human being, by his very birth, is entitled to human rights, by virtue of his human nature and its legal-positivist signifiers, as well as the attempt to make this assumption universal, have failed to contribute to a clear protection of human existence or of life itself. On the contrary, they disclosed the existence of original mistakes in the establishment of this universal system of protection. The human being by his very birth is not a subject of law, and human rights do not precede the birth of a human being, nor is he entitled to them if he is not a citizen, that is, if he does not belong to the modern political community or the nation-state. Even in such context of citizenship, human biological existence or the very existence of one's body is channelled through power relations, and only then can one become a subject whose status is legally regulated. Hence, what unites all people is not an assumed common human nature, but the mere biological, corporeal existence as ground for political interventions and for the violence these interventions carry with themselves.

Biological Given

The founding documents of human rights – the French Declaration and the Universal Declaration – contain a legal presumption of human nature as source of rights, and of birth as the point of their activation. However, the analysis of the first articles of these documents necessarily leads to paradoxes and contradictions, or the so-called original mistakes in the human rights concept[1]. This analysis can be multifaceted, covering different perspectives on this topic and looking for different outcomes, but the focus of this essay will be on life itself, the mere existence and the biological given. First of all, there is the historical aspect of the problem. This refers to the evident historical and political burdens of the two declarations, which have been overlooked in their content and in the imperatives they should enforce. The natural basis of rights, reflected in the notion of everyone being born free and equal, in that sense, has an artificial appeal to an ahistorical human nature, independent from the juridical order and power rela-

[1] All human beings are both free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood» (*The Universal Declaration of Human Rights*, 1948, Art. 1); «Men are born and remain free and equal in rights» and «The aim of every political association is the preservation of the natural and imprescriptible rights of Man» (*Déclaration des droits de l'homme et du citoyen*, 1789, Art. 1 and 2).

tions, and has an active protective status against dangerous, violent, and exclusionary interventions. Following the positivist logic of the founding documents, to be born is sufficient for the rights to introduce freedom, equality, and dignity in life. In this way, the subject of rights eventually becomes inconceivable and the question – To whom belongs the life of freedom and equal rights granted with birth? – critically reflects the historical events that urged the establishment of the human rights founding documents. This abstract human being who seemed to exist nowhere, reasonably takes the side of the excluded, those who do not form a claimed part, whose life and even death served as a basis for building political communities and maintaining them. In fact, the line starts with the ancient cities (*polis*) and runs until the nation-states or the modern political communities and at the same time the sovereign units, which precisely have the founding documents as their legal center. The genealogical digging into the practices of exclusion and political violence towards the voiceless, invisible, drowned, leads to the obvious rebuttal of the source of «natural, inalienable and sacred» rights, which are proclaimed as such for the first time by the French Declaration. Namely, the greatest political atrocities take place when their objects «lost all other qualities and specific relationships – except that they were still human», that is, when the position of mere existence of being «nothing more than human» is attacked, a position from which the founding documents' requirement of «abstract nakedness of being human» is clearly met. Given some political conditions, it is difficult, concludes Hannah Arendt, bearing in mind the particular political situation of World War II, «to say how the concept of man upon which human rights are based – […] could have helped to find a solution to the problem» of *conditio inhumana*. Despite some inconsistencies, it is clear why Arendt's criticism, articulated only a few years after the adoption of the Universal Declaration, still strongly influences and shapes the critical perspective of this concept, especially with the following thesis:

> If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.[2]

Finally, being nothing more than human reveals two perspectives on the foundations of human rights. The two are mutually misleading one another and show how proclaiming nature or history as a valid source of human rights represents, in fact, a proclamation of a specific political organization. This political organization contains in itself the criteria for designating the subject of rights and its inscription in the juridical order. At the same time, it includes the criteria for exclusion and rejection of the unqualified, mere existence of others: of those

[2] H. Arendt, *Origins of Totalitarianism*, Meridian Books, Cleveland 1958, p. 300.

who are not part of the political community, those who don't belong to it, and are neither politically nor juridically affected. Therefore, both proclamations of nature or history as a legal essence or sources of human rights are not fully enclosed and stable. Human rights do not belong to the human essence because of human nature, nor could a person determine their own essence in the course of history and stabilize it as a source of rights. There is no nature that is equated in it and its inner antagonisms do not allow one to refer to a solid substance, or in this case, to a natural substance of human rights, while the search for the source of rights in history undoubtedly leads to the conclusion that rights are dependent on status, social prestige, even on dignity (in the archeological terms of roman political and legal practices or dignity as *dignitas, dignus, dignor*). That law is being hollowed as whole in this sense, means that: «[its] grounding in nature, in the order of creation, in history, in reason, and ultimately in humanity understood as the essence of man, is illusory»[3]. If nature and history as source of rights, or more generally, if the idea of source of rights is revoked, what is left to be pondered and where does the search for a legal essence of human rights end? One of the answers to this question reflects the textual tradition of Michel Foucault, particularly his work on power and the need to think of it differently (à *penser autrement*). The explanation of the productive side of power (that does not conform only to bans, censorship and occupation), of the effects it entails, suggests that in the modern political community, human existence is confronted with the political technology of the body: a body that is intrinsically productive, and gives the mere biological existence a legal and political materiality precisely through the creation of the subject, that is, the person. A human being becomes a subject through power relations. Therefore, human rights are effects of power relations. Having human rights depends on the so-called «micro-physics of power». The former is possible and happens in the closed system of the nation-state, in the city (*polis*), and the citizens or the subjects of law, the human rights-holders, are constrained within the juridical order. Returning to Arendt's interpretation, «the status of subject of rights does not "grow out" of human nature; rather it is a "product" of institutions that are by definition convention and artificial»[4].

The biological given, faced with the technologies of governmentality and of legal normativization (that is, political biology), has seen horrifying forms of "humanism" throughout Western history: from colonial projects, the horrors of the Third Reich to the *Universal Declaration of Human Rights* of 1948 – all with different implications, and in general, a different understanding of the notion of human and what a human represents, as well as of his adaptation in the political organization. By focusing on The Declaration and how it articulates the biological given, one can notice the insistence on the idea that political and social organization go beyond the categories of citizenship and sovereignty. This

[3] W. Hamacher, *The One Right No One Ever Has*, Philosophy Today, 61.4, 2017, p. 949.
[4] H. Arendt, *Origins of Totalitarianism*, Meridian Books, Cleveland 1958, p. 58.

is because it primarily focuses on the biological given, that is, the mere biological existence, or as Roberto Esposito says in his brilliant study of the person and personhood: «[the] biological given pre-existed both and was inalterable in its overall structure»[5]. Nonetheless, society builds itself and incorporates the biological given in such way that it is broken down into a material basis of the products of discipline, surveillance, regulation, control, or – all in all – it is broken down into the overall functionality of the dispositif. However, as a stake in the further actions of power and law, the biological raw material does not remain unprocessed. On the contrary, the concept of human rights throws light to the transition from mere biological existence to a product-subject of law and politics. Again, taking into account the political conditions of the 19th and the 20th century, this was done in the following order: the crushing of the subject to the bottom of its own existence – as it was the case of the Nazi camps prisoners – in the democratic world was reversed and thus disqualified, this time according primacy to the subject: «the perfectly understandable reaction of the democratic culture that emerged victorious from the Second World War was to restore some distance between the rational or spiritual element of human beings and their mere corporeal given»[6].

If we take into account the precision with which Esposito defines the person – «[a] human being is a person precisely because (and only if) it maintains full control over its animal nature»[7] – it is necessary to locate the category through which this transition from a mere biological existence to a subject of law and a human rights holder is made possible.

Again, returning to the analysis of the founding documents of human rights, what was discussed above becomes evident and that category appears in all its obviousness – reason. In the French Declaration, it becomes clear from its full title that there is a fine distinction between and designation of two realities – the corporal one or that of human, and the rational one or that of citizen. On the other hand, in The Universal Declaration this can be remarked through the vocabulary and the chronology of the terms «human being» and «person» in the beginning of Article 1, compared to the rest of the text and the other articles. The human being establishes control over his animal nature, bridles the body, and does so by making inner replicas of the dispositif and its institutions, interiorizing them. Thus, the human being concentrates his own political capacity into the rational reality, by relying on reason. If reason is designated as a legal-positivist threshold where a human being moves towards a subject of law or to a person, then what does the stake in shaping the person represent? Considering the category of personhood as the main analytical tool for understanding this peculiar compound – a human being and a citizen, a body and soul, law and life –

[5] R. Esposito, *Third Person*, Polity Press, Cambridge 2012, p. 6.
[6] Ivi, p. 87.
[7] Ivi, p. 89.

Esposito supports the further discussion that comes forth through the multitude of answers to the last question with the following quote whose extensiveness corresponds to the strong breakthrough made in his book *Terza Persona*:

> Divided into a 'life inside' and a 'life outside', into a vegetal life and an animal life, the person is traversed by a power that is foreign to it, which shapes its instincts, emotions, and desires into a form that can no longer be ascribed to a single element. It is as if a non-human – something different from and earlier than animal nature itself – had taken up residence in the human being; or as if it had always been there, with dissolutive effects on the personal modality of this being. From this moment on, the role of politics – now inevitably biopolitics – will no longer be to define the relationship between human beings as much as to identify the precise point at which the frontier is located between what is human and what, inside the human itself, is other than human.[8]

Property

After analyzing some indicative terms from the first articles of the founding declarations, such as «birth», «human being» and «reason» it appears challenging to further analyze property as a political category.

Having rights is the political syntax through which the daily, material references to basic human rights commitments can be articulated in the documents important for their guarantee. The subject of rights establishes a relation with them, searching for the political force circulating in the community, and at the same time emphasizing the community's own juridical basis, precisely through appropriation, that is, the relation of possession, or property in general. Rights *as* property point out the way in which the subject previously possesses his private right of ownership, or the order of appropriations in which the subject of rights or the person is formulated. The formulation of the subject of rights, taking into account the Western-centric definition and its translation into the main documents that guarantee the international validity of rights, once again, is clearly related to the terms used in those documents – dignity, reason, morality. Therefore, what is the relation of property to those legal-positivist signifiers and what does this mean for the subject of rights or the person? The tradition of the Enlightenment introduces the topic of property in the discussions on the subject of rights and human rights in a less naive way than John Locke manages to defend property as an affirmative political category: «every Man has a *Property* in his own *Person*. This no Body has any Right to but himself»[9].

There are two important aspects of this inclination to property as a political category: the subject can introduce the person in the political life and, by establishing ownership over it, it can participate in the political arena; however, the mechanism of domination and exclusion is activated as a byproduct. The latter

[8] Ivi, p. 24.
[9] J. Locke, *Two Treaties of Government*, Cambridge University Press, Cambridge 1988, p. 287.

refers to a dangerous model, the one of the *polis*, a model that calls for a form of life not politically qualified (*z*) – that is, life itself or Arendt's abstract nakedness of being human – is excluded, put under control and disciplined. To be in control of one's own personhood means, first of all, to establish control over the source of mere life – the body – and this objectification of the body is included, and even clearly required in the documents that founded the human rights system. Namely, the replica of the *polis* model, now more intrusive as an internal mechanism of domination and exclusion, in order to ensure the subject of rights precisely required by the legal positivism, reveals the property–person relation.

> [T]he body – over which the person exercises his or her proprietary dominion – is thought of as thing, as a bodily thing or a reified body. Therefore in each individual the dispositif of the person works at the same time toward personalization (in the rational part) and toward depersonalization (in the animal or bodily part).[10]

The concept of having rights or property as a formulating category for the subject of rights does not take place under conditions of protection and well-being. On the contrary, having rights implies participation in the system that guarantees those rights and the position of the subjects is reflected in the fact that they «decide not only to "use" their rights but also to build such and such a case for the verification of [power]»[11]. The cases of affirmation of the power, which establishes and assigns the rights seen through the prism of the property–personhood relationship, reveal that the subject is exposed to the effects of power, and by preserving the part of reason as a signifier that corresponds to the legal-positivist logic of the distribution of rights, in fact, simultaneously leaves his body and opens it as a space for interventions of power, thus the scar of verification of power remains on the body.

Dispositif of the Person

The third complexity that will be presented in this text concerns the intercept, gap and collision of the two parts – human nature and subjectivation – when the person emerges as the exclusionary subject of rights. This part can be completely exhausted through Roberto Esposito's aforementioned work on person and personhood. In his book *Terza Persona*, he elaborates that, from the perspective of difference between the human being as a biological being and as a subject, the unique field on which these two aspects of existence can overlap is personhood. He chooses personhood because it includes the universal possibility of overlapping of the two spheres of law and humanity since, as he points out, human rights are understandable and at the same time critically examined through the lexicon

[10] R. Esposito, *Third Person*, Polity Press, Cambridge 2012, p. 92.
[11] J. Rancière, *Who is the Subject of the Rights of Man?*, The South Atlantic Quarterly 103:2/3, 2004, p. 303.

of personhood. With an emphasis on the separational capacity embodied through various forms of life, Esposito states that personhood is the best candidate for the ongoing battles of our time and can be pivotal in answering the question – Who is the subject of human rights? From the perspective of human nature, working with person and personhood, Esposito explains that, again, one can recognize the internal dynamics of hierarchy, subordination and separation, which are imposed with the need for agreeing on a unified source, a ground for the legitimization of human rights, namely by occupying human nature as a juridical essence. Through juridization of human rights, the law determines what a human being presents and what in a human being is human, especially taking into account the person whose status has now been extended (at least legally, but not in reality) to all living beings who have reason and dignity. Reason as a legal-positivist signifier, in this sense, disrupts the human being, because it emphasizes that, apart from the body, there should also be something superior to the biological given and the corporeal experiences. Thus, rather than being inherent to the entirety of the human being, subjective rights apply «only to the upper part, which is rational or spiritual in nature, exercising its dominion over the remaining area, which is devoid of these characteristics and therefore thrust into the regime of objecthood»[12]. This means that the question – What is a human? – corresponds to legal-positivist signifiers such as reason, sublimated in human nature and then turned into a juridical essence of human existence. If we look back on to *zoon politikon* and Aristotle's allocation of the animal in the human: the rational animal and the objectivising animal or bodily (corporeal) characteristic of the rational subject, Esposito concludes that having rights means having personhood. Personhood in this sense can be understood as a relation that consists of various and numerous effects, which are organized in a performative totality. The previous is visible in the two realities of the «person as an artificial entity and the human as a natural being, whom the status of person may or may not befit»[13] or in what Esposito calls dispositif of the person. And the dispositif of the person is functioning as an internalized *ius proprium*, since:

> [t]o be the owner of a body, the person cannot be coextensive with it', but there is an imposed obligation for the owner to produce a separational difference to maintain itself as a holder of rights, to fit to the juridical essence and the legal-positivist signifiers or to exist exclusionary as a person – specifically defined by the distance that separates it from the body.[14]

Once again Esposito, extensively:

> It might be said that the rights claimed for the legal personality have as their object its selfsame subject, and that they are consequently the most contradictory expression

[12] R. Esposito, *Third Person*, Polity Press, Cambridge, 2012, p. 11.
[13] Ivi, p. 9.
[14] Ivi, p. 13.

> of the logical dispositif that assigns to the subject the property – and therefore the objectification – of itself. But this is exactly how the dualism that was supposed to be overcome ended up being reintroduced, only in an even more powerful form. Far from disappearing, the splitting action penetrated from the outside inside, dividing the human being into two areas: a biological body and a site of legal imputation, the first being subjected to the discretionary control of the second. Once again, and perhaps even more than before, the person is not the same as the human being in its entirety. The person is actually superimposed onto the human being – but also juxtaposed with it – as an artificial product of the very law that defines it as such.[15]

Finally, from aspect of the subject of rights, that is, from the dissolution of the same to the difference between a human being and a person, Esposito believes that personhood is not a lexical novelty, but a «formal construct» and that is stabilized in the logic of citizenship already visible in the ancient mechanisms of delimiting the reality of the person, and at the same time «with the exclusion it establishes toward those who lack it». Esposito's thesis is based on the failure of The Universal Declaration to fill in the rupture, or «separating filter», between man and citizen, clearly outlined in The French Declaration, and even previously with the separation in Roman jurisprudence between *homo* and *persona*. Esposito supports the same thesis with the legacy of the objectifying formalism of Roman law and the differentiating legal definition of the status that the slaves had along with the other subordinates (*alieni iuris*) and the free people (*ingenui*).

II. *Whose birth?*

The philosophy of the person, when it comes to human rights, unambiguously leads us to some of Simone Weil's ideas regarding exactly the person. In her essay *La personne et le sacré*, she concludes that what is meant by human rights since 1789 with The French Declaration cannot «fulfil the role assigned to it» because of its «intrinsic inadequacy», namely, it collides with the need to define the meaning of human personality. According to Weil, this is precisely the problem, because the attempt to define human personality, at a level that further coincides with «public morality», «opens the door to every kind of tyranny».

> For the full expression of personality depends upon its being inflated by social prestige; it is a social privilege. No one mentions this to the masses when haranguing them about personal rights. They are told the opposite; and their minds have not enough analytic power to perceive this truth clearly for themselves. But they feel it; their everyday experience makes them certain of it.[16]

[15] Ivi, p. 83.
[16] S. Weil, *Anthology*, Penguin, London, 2005, p. 84.

The dichotomy – person versus social prestige – turns the commitment to human rights into an absurd commitment, because it necessarily leads to inequality. In this way, Weil points out that the subordination of a person to any collectivity (e.g. the nation) is a «mechanical fact», which complies with the same order where the gram is a smaller unit than the kilogram. In that sense, such submission to the collective shows that a person cannot enjoy certain natural rights, especially if their source lies in the higher, dominant unit of measurement that subjugates, as is the case of the gram versus the kilogram. «There is something sacred in every man, but it is not his person. Nor yet is it the human personality. It is this [human] no more and no less»[17] – these sentences of Weil, in a touching way, are a first move towards the claim that one is nothing more than human. It is from this position that the force that tightens and fixes, corresponding to the essentialist, fundamental understanding of human nature, should be unburdened from the political community and the political capacity, contaminated with its juridical form of rights.

Again, in the light of the first few amendments to the two Declarations regarding the presupposition of birth in order to assign rights to one's existence, following Weil's logic about the subjugating order of the kilogram and the gram, the question that is posed– Whose birth? – validates the concept of rights. The aforementioned dichotomy of body – biological given or mere existence of this human that is nothing more than human – versus the person, traces a possible direction towards an answer to this question. We have seen that mere existence or the biological given are to be considered useless in an organized community whose identifying language is the one of the law and that, actually, one's existence is subjected to the juridical order by attaching reason to it: reason works thus as a legal tool to assign legal subjectivity and by that, rights and social prestige or dignity. Therefore, the birth of the human as nothing more than human can be recognized and disciplined or, in legal terms, *normativized* and can be transformed into a legally useful form of life only in certain conditions, that of the *polis*, the nation or any other sovereign unit. Only in these conditions is the assigning of rights possible, and the figure of the refugee as a limit-concept reopens the perspective that statelessness is equal to rightlessness. By allocating rights according to nationality, we are faced once again with the problem of the presupposition of birth following the order of the kilogram and the gram, since the birth of bare life can be a legal basis for existence only if already measured in the higher unit, i.e. the birth of the nation. Although heading from the other direction, the Arendtian formula of the decline of the nation-state and the end of the rights of man discovers this destiny of human rights: the birth of a bare life, the existing of the biological given and the birth of a human that has no other qualities but being a human is of no juridical use if not being at the same

[17] Ivi, p. 70.

time the foundation of sovereignty or if not giving birth also to the nation. The inscription of the biological given or the bare life in the political-juridical order of the nation-state is the answer to the question 'Whose birth?' and only in this way does it validate the concept of rights, since the birth of the nation (*natio, nascita*) opens the possibility for the so-called sacred and inalienable rights to be protected. What appears here is that «*birth* (*nascita*) comes into being immediately as *nation*, so that there may not be any difference between the two moments», while rights are «attributed to the human being only to the degree to which he or she is the immediately vanishing presupposition…of the citizen»[18]. The interconnection between human life and the life of the community, mentioned before through the model of nation-state, exists as such and on its stability was insisted already with the first-western organized political communities or the antique *polis*. The interceding force of human nature, although cannot be grasped as a unified, enclosed and homogeneous matter, is activated when the overlapping of life with a sovereign unit, or in this case the *polis*, constitutes an order. The key transformation of life, even of the artificially defined human nature, is happening in the framework of this order; since for the former to be constituted, life needs to be settled in strictly controlled forms. The human that is nothing more than human doesn't incorporate in itself the political attributes of the community, his subjectivity is not already drawn in the sphere of law in which norms and punishments, through reason, are enforced and respected; on the contrary, he still represents an untamed life force which as such cannot be of use for the sovereign unit, but always stands on the threshold of appropriation (*ius utendi et abutendi*). Hence, the principle of exclusion toils through the cracks of the overlapped space in which the human and the sovereign unit are resting in the same birth, as already familiar: the political livelihood in the *polis* was not reachable for all and excluded a multitude of lives as the ones of women, slaves, noncitizens. The order, therefore, organizes life through difference that contains violence in itself and the prospect of living differently (divided) pushes towards the likelihood when some are living a true and a full life, only as a result of others who are not taking part in the community and because of that are living lives that are not true and full.

«The polis, or political association, is the crown: it completes and fulfils the nature of man: it is thus natural to him, and he is himself "naturally a polis-animal"; it is also prior to him, in the sense that it is the presupposition of his true and full life»[19]. Aristotle's attempt to draw the *polis* in making human nature perfect, as already analysed in a specific framework of manhood and politics, opens a series of problems for the ones without a part in the community or those who do not live true and full lives: the noncitizens, the not 'fully human' creatures or female and male slaves, women etc. «Aristotle cannot start with just any member of the

[18] G. Agamben, *Beyond Human Rights*, Open No.15, 2008, p. 93.
[19] Aristotle, *Politics*, Oxford University Press, Oxford 1995, p. 8.

population; while the polis exists for the perfection of man's political nature, this perfection or this nature does not extend to all men, let alone all individuals»[20]. In this difference or better said division that emerges between the living forms of full and true lives contrasted with the ones that are not calculated in the perfection performance of the *polis*, we can discover the dynamic of ruling over or that of hierarchy and domination. It is precisely this dynamic that throws us back to the argumentation of the dispositif of the person, since the division of a ruling element against a ruled one strings itself in the area of rational over irrational rule, soul or the upper part of the human that pursues its virtuosity over the body. By these ontological claims, the prevalent order of the *polis* and the actual order of the nation-state are using the superiority of reason, formulating it as a required legal site of rights and liberties. «The supremacy of [reason] is the basis for phenomena as far-reaching as man's domination of all earthly things...and as particular as a specific master's command of his slave»[21].

III. *Beyond subjective and towards intersubjective rights*

Human rights provide a coherent system of knowledge (*connaissance*) about the human and its nature, insofar as we understand knowledge as conforming to a set of rules and the concept of human rights as a mechanism of power. Additionally, if we proceed with examining the conditions of health and vitality of the one fundamentally declared basis of this concept – life itself, we are faced with a system of knowledge that enables certain forms of life and by that a division of what a (healthy and vital) life could possibly mean. Extending the anti-humanist examination towards the principle of human rights or to their most superior one, that of universality, it becomes traceable how this knowledge about human life is shown through power relations that take humans as living beings as their objects and through modes of subjectification, but also through the various biopolitical combinations of these three elements that disrupt the principle of universality of human rights, exactly on the level of vital life processes. Therefore, taking into consideration the human genome, used in state projects, by the pharmaceutical and biomedical industry for a genomic strategy for diagnosis and drug development, the population differences are being shaped in a systematically racial way. The question 'Whose birth?', put in another critical framework of examining the principle of universality, has its extension in the question 'Whose genome?', since: «[t]he science itself, and the recognition of the variability of the human genome…immediately open[s] up a new way of conceptualizing population differences – in terms of geography and ancestry – at the molecular level».[22] There are factors that interact in producing a divided sense of what life is, and of reasoning

[20] W. Brown, *Manhood and Politics*, Rowman and Littlefield Published, Totowa 1988, p. 35.
[21] *Ibidem*, p. 39.
[22] N. Rose and P. Rabinow, *Biopower Today*, BioSocieties 1, 2006, p. 207

about vitality and health. Although on a very open level, the principle of universality strives to overwhelm this division, the other way around only tightens the exclusion and the estimation of some lives as livable and some not. The universal idiom of human rights is actually driven by this system of knowledge that functions with the other two elements (i.e. power and subjectification) and their various combinations; it means that the knowledge for the human and its nature is necessarily addicted to an «idea or model of humanity…and now this idea of man has become normative, self-evident, and is supposed to be universal»[23]. This idea shows how humanism is employed by the concept of human rights. Humanism, or this idea of universal human rights, is requiring from its subject to be encapsulated in a normative and self-evident status, rigidly regulating the possibilities of the frontiers of freedom, but also regulating another and opposing set of affective and experienced knowledge or genealogy that is related to «the arbitrariness of institutions» and to resistance aiming for a «space of freedom we can still enjoy and how many changes can still be made». In this sense, it is very important to note that the subject of rights should not incorporate some «universal necessities in human existence». The previous constellation is opting towards a stabilized, strictly defined and a finished subject, not an unfinished subject of power relations that can be politically positioned in the inventions of our future that are more than we can imagine in humanism.

The presupposition that subjective rights are a juridical representation of the universal necessities in human existence, as we have seen through the dispositif of the person, is dangerous on a twofold level: first, it struggles against the plurality of experiences and how they can be embodied in different forms-of-life, but also in communities other than the sovereign units from antiquity to modern times; second, by using reason as a legal tool for unifying the experience that incorporates the universal necessities. The disembodied reason is humanism's subject of human rights, and subjective rights are the framework in which this disembodied reason serves as a referential point for systems of knowledge and of power or overall for the established order. Other political or equally ontological and ethical landscapes of beings and communities and social ties (*cum*) are possible, since human beings by themselves are not reduced to «this or that substance, this or that destiny»[24]. Deactivating the humanistic presupposition for human nature as a «foundational recourse, an escape within a pure form»[25] means that the search for other possible social imaginaries is going beyond the stillness of foundation, principle of ruling and by that of becoming (*arche*). The space of the common opens up as dynamic for the experience and transformative for the

[23] M. Foucault, *Truth, Power, Self*, in L.H. Martin et al, *Technologies of the Self: A Seminar with Michel Foucault*, Tavistock, London, 1988, p. 15
[24] G. Agamben, *The Coming Community*, University of Minnesota Press, Minneapolis, 1993, p. 42
[25] M. Foucault, *What is a Critique?* in S. Lotringer (ed.), *The Politics of Truth*, Semiotext(e), Los Angeles, 2007, p. 63

necessities. And when the struggle against the domination or more precisely the one imposed on the body is claimed as a potential one, it means that the potential to open social imaginaries to different be-comings lies in the generosity of inter-corporeality. Therefore, with thoughts of transforming subjective human rights as intersubjective, I am concluding with Rosalyn Diprose:

> [T]he possibility of transforming social imaginaries rests with the potential of these bodies who benefit from the ideas and values that structure the civil body to be open to different ways of being. This possibility rests not so much with accepting an alternative image of sociality but with an openness to others already operating within intersubjective relations.[26]

[26] R. Diprose, *Corporeal Generosity*, State University of New York Press, Albany, 2002, p. 172