

# Concerning a Special Use of the Concept of “Humanity,” as a Political Norm Disclosed in a Complex Communication’s Structure

Paul-Antoine Miquel\* | Department of Philosophy, Nice University, France

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■ **Abstract**

We try to show in this paper, how the qualifier “human” has to be used, in the expression “humanity,” or “integrity of the human species.” It doesn’t disclose any human essence, and we reject what we could call “the Thesis,” by which such an expression would introduce a difference of being between us and other animals and by which we would know immediately from ourselves, what the humanity of a human species could be.

We argue on the contrary that the human species is constituted through a complex relation of power, by which, thanks to the growth of natural sciences, we are able to act technically and medically on the action of our future offspring.

Yet, this relation is also a symbolical one, which is founded on a non reciprocal principle of “constructability”: despite acting *as if* the humanity of the human species could be treated as a political problem that can be solved only with biological criteria, we must act *as if* the humanity of the human species *has to be thought in the same time as a political norm*. By this second “as if” we have to constitute ourselves as *the representative* of our future offspring in an open and democratic relation that we try to analyse and develop.

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\* CEPERC, UMR CNRS, 6059, Université de Provence.

p.miquel@unice.fr

Université de Nice, Faculté des Lettres, 98bvd E. Herriot, 06 Nice.

Centre Cavaillès

Ecole Normale Supérieure, 29 Rue d’Ulm, 75005, Paris.

## Introduction

Recently, a world famous French jurist named Mireille Delmas-Marty risked a comparison between “crimes against humanity” and a eugenic policy. Ethnic purification, enslavement or tortures are crimes, thanks to a new type of legislation coming from the Nuremberg process in 1945. A crime against humanity is not a simple war crime. It can occur in a peaceful and democratic State, even if it happens mostly during dictatorial periods. It concerns a population of persons and not a simple individual.

First, this expression doesn't qualify the “humanity” of a person, the moral personality of an individual.<sup>1)</sup> In its positive use, it expresses a so called “judicialisation” of humanity as a collective norm. Taking the very distinction coming from the positivist vision of law, the moral obligation has nothing to do with a legal norm,<sup>2)</sup> since nobody is punished. On the contrary, a legal norm takes always the form of a connection between a primary norm enunciating what legal is, and a secondary one by which a punishment is “imputed” to an illegal act. Yet, such a judicialisation of the norm of humanity is not compatible with the positivist approach, in philosophy of law. Torture or enslavement can be legal or tolerated for reasons of State (like in France during the German occupation) without any direct contradiction with the Constitution of a Country. Anti-Semitic laws were legally pronounced by Philippe Petain in France until 1940 after that the French deputies gave him legally full powers. Yet, they would be illegal today, regarding to the international norms of justice. Humanity as an ethical norm is not an abstract and an ideal one. Humanity is

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1) Delmas-Marty, M.(1996), *Vers un droit commun de l'humanité*, Paris: Textuel, p. 86.

2) Kelsen, H.(1962), *Théorie pure du droit*, Paris: Dalloz.

effectively judicialised, as a norm of law, in contradiction with the Kelsenian division.

The very distinction between law and ethics is shackled up by the international law. A constitutional regime is not legal just because it is constitutional and because its constitution is effective. It deals with the question of human rights. In the name of “humanity crimes,” an international criminal tribunal as a body of United Nations has been established in The Hague for violations of International “Humanitarian Law” committed in the territory of the former Yugoslavia since 1991. An International Criminal Court was established in Europe (The Hague) as a permanent tribunal to prosecute crimes against humanity. It came into being July one, 2002. 105 states are members of the Court in April 2008, even if China or United States didn't join it, at this moment.

Second, Mireille Delmas-Marty defines a crime against humanity, as “a systematic non respect of the singularity of the person, or of its equal belonging to a human community.”<sup>3)</sup> Yet, she argues, that through the development of biology and medicine, we deal with new ethic situations. Thanks to antenatal diagnosis, one can select artificially human embryos as one can also develop reproductive human cloning. Thus, a eugenic policy would be able to develop a program in which both principles of singularity and of equal belonging of each human being to a human community are denied, like in the so called *Brave new world*, written by A. Huxley. In this way of thinking, the last revisions of the French laws of Bioethics(2004) qualify reproductive cloning as “a crime against human species.”<sup>4)</sup> The initial law(1994) stated that: «Nul ne peut porter atteinte à l'intégrité de l'espèce humaine. Toute pratique

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3) Delmas-Marty, M.(1996), *Vers un droit commun de l'humanité*, Paris: Textuel.

4) Pulman, Bertrand, “Les enjeux du clonage,” *Revue Française de Sociologie*.

eugénique tendant à l'organisation de la sélection des personnes est interdite»  
Unfortunately, the Veil law(1976) was legalising therapeutic abortion that could harm, in a certain way, the genetic integrity of the human species. Thus, we face a very deep difficulty coming from the development of biology and of medical technologies. Yet, a “crime against human species” is not exactly a crime against humanity. What means the use of the word “human” in such an expression?

As a well known second example, let us quote now the version of the Precautionary Principle integrated in the French Constitution: “when the environment is at risk from serious and irreversible harm, even if this cannot be scientifically proven, public authorities must, through the application of the precautionary principle and according to their competences, implement procedures to assess the risks and adopt temporary and appropriate measures to prevent the damage occurring.” The draft Treatise establishing a Constitution for Europe included also a version of the Precautionary principle, as a triple negation principle: not having evidence about a risk is not a reason for not acting preventively.<sup>5)</sup> This highly controversial statement is particularly interesting for us, since the risk against environment, as an ecological one, involves again “the human species.” It is no question of its integrity, in this case. It concerns nothing but its existence. When carbonic gas is rejected into the atmosphere, the human existence can be directly or indirectly threatened, even if one cannot demonstrate explicitly that it causes a global earthy warming. Precautionary Principle doesn't deal with simple risks. It is just concerned by catastrophic situations.

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5) Calzada, Gabriel, Cécile Philippe and Xavier Méra(2005. 9), “The Precautionary Principle, a High Risked Principle,” *Institute of Economic Affairs*, pp. 60-62.

This paper is based on a simple assumption. The adjective “human” is used in such legal texts in a very specific way that upsets classical distinctions between norms and facts, subject and object, or nature and culture. As suggested in two recent French books(Schaeffer, Descola), it requires going beyond such traditional oppositions. Let us emphasize three points.

It is not concerned first, with the Kantian and the neokantian vision of morality, through and by which the humanity is nothing but the morality of the person—the personality—in opposition with our condition of living being. Morality has nothing to do with adaptation and utility, in such a deontologist perspective. Life is a trend going through obstacles toadaptation and goodness. It doesn't fit with duty and Practical Reason. In a Kantian approach, we are moral persons precisely in so far that we have to overtake our biological condition.

Yet, the special use of the concept of humanity that is mentioned previously is also negatively related to the idea of a human nature, that Jean-Marie Schaeffer calls “*the Thesis*,” as if it could be possible for us—or for God—to describe the essence of humanity, arguing that there is an ontological and an axiological difference in nature between the human being and other animals. Such traditional humanistic vision is out of our mind. As Schaeffer proposed to do it, we would characterize such a vision by the very idea that it could be possible *from inside* to *know immediately what humanity is*. This “cognitive prevalence,”<sup>6)</sup> by which the knowledge of our essence, or of our autonomy, can be immediately known from what we are, as pure subjects ontologically dissociated from the world of objects, is at the origin of the Cartesian version of

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6) Schaeffer, Jean-Marie(2007), *La fin de l'exception humaine*, Paris: Gallimard, p. 48.

the cogito, as of the Kantian a priori vision of morality, as “a pure Factum rationis.” We could add that it is also at the origin of the concept of General Will in *Le Contrat Social* written by Rousseau.

The question that we are posing here, concerns the preservation of the existence of the human species, or its integrity and/or its transformation, *as if* it could not be simply defined by its biological or genetic constraints. We will argue that the humanity of the “human species” is not a fact. It constitutes a norm, and the question of the evaluation of such type of norm has to be immediately engaged.

We don't have, as human subjects, any cognitive privilege in order to answer to this question, since it appears through and by the development of bio-medical sciences. The question and the solution are not immediately known by what we are, as subjects. They are *constructed* through a patient study concerning the impact of the bio-medical sciences on our societies. We need the help of social and natural sciences in order to solve this problem. We cannot oppose anymore the theoretical knowledge to the practical reason. Ethics and politics deal with economy, sociology and with biology. The answer to the question depends on the development of a knowledge process, as a condition, if not as a cause.

However, thanks to the techno-biomedical development, the humanity of the human species *is a product* of the human species. Thus, as *a product* of itself, what the so called “*Us*” will be, is not necessarily, what this “*Us*” “has to be.” It depends on what the human species will do, as if a very strange and specific *relation of communication*, between what the “*Us*” is, and what the “*Us*” will be, was structuring the human species. Jürgen Habermas<sup>7)</sup> faced this difficulty,

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7) Habermas, Jürgen(2002), *L'avenir de la nature humaine*, Paris: Gallimard.

speaking in “*Die Zukunft der Menschlichen Natur*,” of an “anticipatory socialization” between us and the future generations, *as if* we could spoke with them, at the second person.

By this contrafactual mode of communication, even if we are not engaged with embryos in a true inter-subjective and public community of human agents, we could have, for Habermas, an “ante-personal” relationship with embryos, through and by which we ask the question: if they could be here, would they agree with the way by which we are taking in the present medical and biological decisions concerning their future existence?

Yet, Habermas characterization of this mode of communication has to be rejected, since it introduces a “differentiation,” between nature and culture, subject and object, body and soul, etc. Habermas is assuming that this ontological gap has beenreversed (*dé-différencié*) by the techno-scientific development. It seems obvious indeed, that the German philosopher appears as a victim of what Jean-Marie Schaeffer would call “the Thesis.” He supposes that the knowing that an embryo is respectable and subject to dignity (*the Us*) can be found immediately in ourselves (*the Me*). An embryo is also a living organism and we are engaged with him in a certain “Form of Life” (*Lebensform*), which differentiates ontologically us from pure animals.

(1) *How could it be possible to analyse the relation with future generations, not only as a relation of communication, but also as a relation of power*, that is not immediately well known by us and from us, but constructed, on the contrary, by economics, financial, and scientific Media in a democratic form of power concerning our contemporaneous societies?

(2) *How would it be possible to add, that this relation of power could also be a symbolic relation of communication*, between us and other agents in the society,

and finally, between us and the future generations, not directly- as explained by Habermas- but through a certain sort of “representational power” which is also a symbolical one, “*as if*,” in a certain sense, we could be through and by our decisions, “the representative of our own embryos?” We would call this complex relation of representation, “*the constructability*” of the humanity, and we would try to analyse it in this paper.

## 1. An open relation of power

What could be the origin of the problem, first? In *The Descent of man*, Darwin is mentioning that “the primeval men” have certainly acquired “social and moral qualities,” like fidelity, sympathy or courage, through and by the help of natural selection. Yet, the bravest men would perish more often than others, thus it is “highly improbable” that they number could increase. However, moral and social qualities would increase in certain tribes, and it must be explained by other means than natural selection understood as “the survival of the fittest.” The development of social virtues is afforded “by the praise and the blame of our fellow-men,” that depends of social instincts acquired by natural selection. It means that the tribe will benefit of the moral qualities of an individual, and we are led implicitly to a group selection design.

Could it be the same case, with “civilized men?” Can we naturalize it, thanks to biological evolutionary constraints? Not, at all. The weeks in body or mind are quickly eliminated in the “savage” life. Yet, “civilized men” are building asylums, and medical men are “saving life of every one.” Thus “the week members of civilised societies propagate their kind.” No doubt that it is injurious for the men. Galton suggests that we can divide each society in two parts, trying to promote the men doted in moral and intellectual qualities, and

to slow down the reproduction of the others. Darwin is refusing this eugenic view. He argues that poor people are not easily able to reproduce itself, since the education of children requires a lot of money. And he suggests that the progress in civilisation is not completely explained by the use of simple biological constraints. What could be the difficulty, in this case? Darwin is not giving explicitly the answer.

Foucault’s philosophy starts with the idea that the man is dead, since it is also the object of different forms of knowledge, and since it is defined as a subject, by different forms of “subjections.” It is “constituted” as subject by various shapes of power relations. These one are integrated into “devices” (*dispositifs*), like the “sexual,” or the “incarcerating” one. Yet, trying to analyse what a relation of power is, we are led to this definition: “power” is the fact that “one is acting on the action of another one.”<sup>8)</sup> *Power “acts,” it is firstly defined by its efficiency.*

It could explain the very difference between “law” and “*normativity*,” for Foucault. The juridical law is negatively defined by what it excludes from it, and it gives a definition of the subject of law, as an abstract and universal entity present in the discourses, without any real efficiency in the behaviours.<sup>9)</sup> We are not from ourselves obeying to the law, and the way by which we acts is not the way by which the law is enacted. We obey to the law, thanks to various forms of disciplinary techniques involved in and developed by educative, administrative, or military institutions. We are constituted as subjects, through this disciplinary field, by which we are thinking and acting normatively. *Our norms are not coming from ourselves.* They are instituted thanks

8) Foucault, Michel(2001), *Dits et écrits*, II, Paris: Gallimard, p. 1055.

9) Legrand, Stephane(2007), *Les normes chez Foucault*, Paris: PUF, p. 38.

to special social and cultural devices and through disciplinary techniques. The soul is “a prison for the body.”<sup>10)</sup> It also means that each of us participates actively to the development of this process of subjection.

Yet the productivity of power is due to its “normativity.” Coming from the French philosopher Georges Canguilhem, this concept means first that we are instituted as subjects and as agents by this “immanent” relation of power that is lived. We are not necessarily reified by it. And second, the description of the relation of power is not the relation of power.

One possible description of the relation of power is the sovereignty’s pattern. Through it, the relation between sovereign and subjects is understood as a representative one. And, as a juridical system of laws, the State is constructed on the relation “interdiction- punishment.” However, this description has nothing to do with the real efficiency of the relation of power in such a Modern State. By the disciplinary technique, by incarcerating institutions —the prison, the asylum, the school— the relation of power acts on our actions as a control device of our deviant behaviours. It is not excluding the criminal, the fools, etc. It is integrating them into various social and cultural devices. *What is doing* the relation of power is also defining *what it is*.

Yet this relation of power is also a “symbolical” one. In the Modern State (XVIII), the so called relation of “representation” between the *sovereign and its subjects* is coming at first. The power is firstly negatively defined, as a repressive one. It is symbolized by “*le droit de faire mourir*.” The sovereignty could be described as a hierarchical relation between the organ of commands and the society. The power seems being organised like a theatre. It is represented and institutionalised, *in* the relation of power, *as if* it could be *outside* of the society,

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10) Foucault, Michel(1975), *Surveiller et punir*, Paris: Gallimard, p. 34.

as if it could be possible to find those one that “represent” it. Nevertheless, we have this very duality between power, as represented, and power as it works really. It works as “a network” of disciplinary, economic and financial “*micropowers*” in the society. This network is not only material, but also a symbolical and “discursive” structure, by which a “Strategy” is constructed without any Strategist. The relation of power is “intentional,” but the sovereignty is not “the Strategist.” It is nothing but a “superstructure” instituted by the Strategist, that is nowhere, since “it is coming from everywhere.” In this Modern vision of power, the duality is pregnant. It is an inherited vision coming from the Monarchy, and founded on the “Blood right.” It shows a tension, a contradiction between the form of the State and the norms acting in the society, by which this old relation of power is constructed.

Yet, this matter of fact is changing in the XIX Century. The Blood right is reversed by the Sex one, and the structure of power ceases being only founded on the duality between norms and laws. It is defined as a “*normalisation*” process,<sup>11)</sup> by which norms and laws are shaped and polished through and by a novel form of power. Following Foucault, the word “normalisation” is coming from an economic doctrine, growing up with liberalism and insisting on the concepts of market and of free concurrency. This vision is founded on the idea that State regulations are paradoxically generating poorness and unemployment. On the contrary, free concurrency is producing by “an invisible hand” welfare and economic activity. In this way of thinking we assist during the XIX Century to a very important turn, on which Foucault is insisting.

At the XIX Century, human health is related to productivity criteria, as

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11) Legrand, Stephane(2007), 235 sq.

required just in order to reproduce the working force of economic agents. Yet it is understood in the XX Century, as a good and a value in itself. Normalisation is the effect of “a technological power focused on life.”<sup>12)</sup> Demographic and medical requirements are coming first, and the capital starts being a human one. It is symbolized by “*le droit de faire vivre*.” But who is the Sovereign? It is not the Representative of the People in the State. The new Sovereign is nothing but the physicist, the scientist, the demographer, the economist. The radical mutation is operated: the power is a “biopower,” acting *on* and *for* living human organisms, and not only *in* the economic free market. This biopower is also immanent to the society but external to inefficient State regulations that are perishing. It is not only “controlling” from inside individuals, but also human populations. It is not arbitrary decided by a “free will.” It is instituted through and by biotechnical “knowledge,” coming from everywhere, without being anywhere, as a norm which is also a fact, as “an Us” that seems to be also objectively described.

Yet Foucault is also insisting on the most important point, for us: normalisation is not only present in our society as a matter of fact, but also as a political problem. We face a very new situation, since normative devices based on technology and knowledge act in a way that was not foreseen. They can change in an exponential way the biological criteria defining the human species and its environment, with the destruction of humanity as a very possible consequence. The question of “how is the human species changing,” and “how the human species can survive” is not outside of us. It depends of “Us,” as political and ethical agents. *Foucault notes that “our biology is reflected in our ethics and in our politics.”* What the human species will be depends on what

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12) VS, 190.

we will do. It ceases to be a matter of fact. *Normalisation is also a normative question.* The biopower, this “Us,” coming from everywhere, is not simply to be objectively described as “a Big Us,” with an impersonal Eye, as in the famous novel written by George Orwell. It is also to be evaluated in a democratic way by the citizen. This question *of the way by which biotechnology could be democratized* is posed by Foucault, even if not explicitly developed.

Of course, the argument could not be symmetrically reversed, since it means also that *our ethics and our politics cannot be reflected in our biology, and in our medicine.* With the help of evolutionary criteria we are not able to understand how politic criteria could be found in order to solve this problem. For instance, if we try to say, that good and bad genes have to be dissociated, that a social program of sterilisation of mentally ill or of poor people *must be* developed, it doesn't mean that we are coming back to external biological criteria. On the contrary, we take the biological criteria as internal political norms in *a eugenic way of thinking* that cannot also be a democratic one.

Are we coming back to a variant of “the Thesis,” to the idea that we could know immediately from us, that we must cease to modify our own biological criteria and our own environment? We will argue on the contrary, like Foucault, and against Habermas, that, in a democratic way of thinking, we are constructed as agents, by structural communicational power relations and devices, by scientific and technical networks of knowledge, and not immediately by ourselves. *Yet, it doesn't mean that we cannot be constructed as free and autonomous agents.* And here we are led to the most important question: since we are making use of (instrumentalising) the human species as a product of our technoscientific network of micropowers, since we are taking asymmetric decisions concerning future generations, without that they would be able to

discuss, or to criticize it, we have a relation of power on them. *Could it be an open relation of power that would constitute future individuals as autonomous agents, and not as simple by-products deriving from a manufacturing process? How* would it be possible to describe what this open relation of power could be, and *who* could be able to give such a description?

## 2. Beyond Naturalism and Naturalisation

### A. The naturalistic fallacy

David Hume was looking carefully what is immediately expressed by natural language. For instance, the very fact that we perceive a sensation as existent doesn't mean immediately that we perceive the existence of the sensation. A noun is not a verb or an adjective. Facing the question of passions, Hume found a new distinction. Of course, "bodily pains and pleasures are the source of many passions, both felt and considered by the mind." Pleasure and virtue are also "at least inseparable." Yet a virtue is not a simple pleasure. What a virtue is doing to me is specific, even if as a virtue, it will produce pleasure. Virtue produces pleasure as "contemplation of our moral rights and obligations," and not as a simple passion. From where does this specific pleasure come? Pleasure is always the "motive." Yet it doesn't mean that our action is reduced to a simple behaviour. It doesn't mean that the function of pleasure is explaining the structure of all our actions.

This functionalist language is not really present in the clever way of thinking of the Scottish philosopher. The first temptation indeed would be to replace the concept of "intention" by the concept of "pleasure," as a very function that the human machine is fulfilling. Yet the human being is not a simple machine

defined by functional properties, and the dynamic of passions is not a simple "arithmetic of pleasures." It could be the case, if, by a theoretical use of human reason, we could deduce what we have to do, from what it is. Yet, what we have to do cannot be deduced from what is. Axiology is not arithmetic, and beyond the appearances, the science of the human nature has very little to do with natural sciences.

This passage coming from the second part of the *Treatise of the human nature* is well known today, but it is also very often forgotten. When we are reducing values to simple facts, we are falling into *the naturalistic fallacy*. Speaking of an ethical or a political norm, we are not dealing with facts. Concerning facts, we make assertions susceptible to be wrong or true. Concerning values and norms, we are following obligations or we are giving orders. The mode of communication is not the same.<sup>13)</sup>

Of course, it can be argued that we can change the mode of communication, and that we can *describe values, as we describe facts* (Schaeffer, Descombes<sup>14)</sup>). We also reject this dualistic view dissociating facts from norms that is founded on the so called "Thesis." "I order that," can be replaced by "one has ordered that." Yet, could the biopower as a normative one be a simple process, that has to be described, or would it be also a problem that needs an ethical and a political evaluation? What is the right mode of communication that we have to choose? Let us explore more precisely the difficulty.

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13) Habermas(1981), *Theorie des Kommunikativen Handelns*, Frankfurt: Bd.2.

14) Descombes, Vincent(2004), *Le complément de sujet*, Paris: Gallimard.



B. What is descriptive, what is normative? Flouting the duality of criteria

One very common expression of the naturalist fallacy is: “*if one can do it, it will be done.*” If we look carefully this statement, we realize that it is a very confused one. The “Us” is not a simple “Me,” but it doesn’t mean that the “Us” *must be* reduced to a social and political process that could be strictly externally described by evolutionist or sociologic criteria.

Firstly, the “possible,” described as a simple modality, is “what it could be,” and not “what it is.” We can measure the probability of an event in a space of all possible events, yet it will not be a deterministic measurement. The teleportation of human beings in space is not impossible, yet such a possible event is not a fact.

Second, the possible as a potentiality, is not the “actual,” even if the reality of the possible is not denied. The earth, for instance, can fall down and be destroyed by the sun. Yet, thanks to the inertia principles, it doesn’t happen. The reality of a potential force that is actually *acting* is precisely to be defined by its very difference with its realisation.

Third, we were able to make planes, and cars, and rockets, and we made them indeed. Yet on the same footing *we are able* to destroy the planet today, does it mean that *we have to do it? This idea of an “Us” understood as an objective and impersonal biopower that acts on human agents, has also to be evaluated by us.* We would not accept the explosion of the planet or the extinction of the human species, even if this event could occur in the future. Thus, the very opposition between a subjective “Me” and an objective “Us” that has to be described without any evaluative judgement has to be removed.

Fourth, the idea that “nothing has to be removed,” leads us to the conclusion

that we are subjected to a normalisation process controlling all our behaviours and completely defined by biological or cognitive and sociological criteria. Yet on the same time “nothing *has to be* removed” is a normative statement that excludes the possibility that the “Us” could be something other than an impersonal form of lived normalisation controlling from inside what we would think and what we would do.

By this statement, the reduction of the biopower to biological or cognitive externalities is also *paradoxically internalized* as an ethical maxim or a political program, by which we must exclude all forms of ethical and political rules that are not compatible with the idea that the Biopower is also a Big Brother. By saying that: “if one can do it, it will be done,” we say again what the future must be. The future must be open to the free market, to the deregulation of all medical practises, to the reproductive human cloning and the germinal therapy, to an eugenic policy by which social classes has to be discriminated through and by genetic criteria. And we must reject all considerations of justice, all State regulations, since we have to refuse all visions of the biopower that are not reduced to a strictly *asymmetrical and hierarchical one*, through and by which human agents are controlled by the biopower, without that the biopower could be controlled and modified in its shape by human agents.

### C. Two examples

We will examine two different variants of this naturalistic fallacy.

The first one concerns the precautionary principle. Neo-liberal economists are fighting against, arguing that it is a “high risk principle.”<sup>15)</sup> It establishes that

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15) Calzada, Gabriel, Cécile Philippe and Xavier Méra(2005. 9), “The Precautionary Principle, a High Risked Principle,” *Institute of Economic Affairs*, pp. 60~62.

in case of “serious and irreversible harm” against the environment, even if the danger is not “attested,” public authorities must apply the precautionary principle, that will lead to develop new risk evaluation procedures on the one hand, and appropriate protect measures on the other one. According to the neoliberal interpretation, it is a pure non sense.

What would be the benefit, if, in order to slow down the rise of earth temperature for two degrees, we would destroy the economic growth and the industrial development of the most powerful nations by creating reduction of productivity and massive unemployment? The risk related to the application of the precautionary principle by the public States seems to be more dangerous than the initial unattested danger against what this principle was invoked. How could it possible to prevent an unattested danger, indeed? This line of argumentation is well illustrated by the recent US position, concerning the Kyoto Protocol: the best thing that a Public State *has to do* is nothing. Even if one could burn the whole forest with fire, let's invent the fire: “*que sera, sera.*”

This position is obviously circular. The sentence: “whatever will be, will be” doesn't mean actually that the becoming of the human species is treated as a matter of facts, and not as a normative question requiring State regulation and Justice. It means that this becoming *doesn't have to be* treated as a *normative* question. And finally, we are always engaged in a normative way in order to conclude that it has to be just a matter of fact. A policy of deregulation and disengagement of the State lays down paradoxically on a State policy.

Neoliberal economists could answer that they agree with this critique, but that they are privileging individual rights and private responsibility: “If the owner of a petrochemical factory is liable for prosecution when, without their consent, his toxic products affect the health and property of neighbours already established on the land, he will think twice before deciding upon the site for

the factory and the techniques to use.”<sup>16)</sup> This argument is very confusing and abstruse. The owner of a petrochemical factory is precisely not a State. He can be accused to disturb the health of its neighbours, thanks to the civil laws in the State, since this pollution problem is not directly concerning the planet and the destruction of the human species. However, the “human species” is not a person that can accuse another person, or a company. Such an accusation, concerning the destruction of the planet, *has nothing to do with civil law*. It concerns public and international law. And if we refuse this, we must conclude obviously that nobody can be accused, for a crime against “human species,” or for a “crime against humanity.”

The evaluation of the responsibility cannot be made at the level of the individual, *since it is precisely a collective and political responsibility*. That is why the State is dealing with it. We have the collective responsibility to prevent certain dangers concerning the human species, and that is why the precautionary principle exists. We will come back to this very point later, since the neoliberal position introduces a second confusing mix of notions, between a simple risk and a risk of catastrophic effect.

The second example deals with the reproductive cloning. The law of 2004 in France prohibits the human cloning characterized as a “crime against the human species.” The idea that humans might someday be cloned from a single adult somatic cell is not issued from a science fiction novel. A new technique called “somatic cell nuclear transfer” has been initiated on mammals in 1996 with Dolly's birth. A somatic cell taken from the mammary gland of the ewe

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15) Calzada, Gabriel, Cécile Philippe and Xavier Méra(2005. 9), “The Precautionary Principle, a High Risked Principle,” *Institute of Economic Affairs*, pp. 60~62.

with the genetic material to be cloned was fused with an original egg cell. The egg cell reprogrammed the donated DNA contained within its new nucleus, and Dolly was the result. The 27<sup>th</sup> February 1997, in a paper published in *Nature*, Ian Willmut announced Dolly's birth. The door for the human reproductive cloning was open. It can be done, by now, does it mean that, since it can be done, we have to do it?

Yet, it is not so easy to explain why it needs to be prohibited and how it could constitute a crime. Twins exist very naturally with the same genetic material in each mammalian species. One could argue that concerning reproductive cloning, it is the offspring that would be genetically identical with the parent, and that this new filiations' form doesn't get the same symbolical meaning. However, the human identity is far to be reduced to the genetic one. We will argue that if a crime is committed by the reproductive cloning, it doesn't concern the technique. It deals with the political and social extension that the technique could have in a human society.

Yet, our argument is not a deontological one<sup>17)</sup> based on a neokantian approach. For instance, we don't refuse to treat the human species as a mean, as an objective "Us" that could and has to be externalized, changed and controlled by a structural form of biopower. We still refuse that we could know immediately in and from ourselves, what treating the humanity as an end means. On the contrary, we are led with cloning in a way that cannot be understood through a Kantian argumentation. In order to treat somebody not only as a mean, but also as an end, he must exist as a moral person, as a personality. Yet, the future generations do not exist in the present. We are

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17) Hayry, M.(2003. 10), "Philosophical Arguments for and against Human Cloning," *Bioethics*, 17 (5-6): pp. 447~459

engaged by cloning and with the human species, in an asymmetrical relation by which its existence depends on what paradoxically the human species is doing in the present. It is obviously not a reciprocal relation, and Hans Jonas compared it with the relation between parents and children. It would be exactly the same case with antenatal diagnosis and with therapeutic abortion. Are we obliged to refuse it, because it leads to treat humanity only as a mean, and because it sets up the integrity of the human species? Again, the integrity of the genome is not the integrity of the human species. This argument is fallacious. We are not refusing cloning, just for this reason. However, are we led to the conclusion that this asymmetric relation expresses a closed and impersonal form of normalisation, by which the invisible hand of big brother is controlling our behaviours?

In a speech pronounced in 1963<sup>18)</sup> the evolutionary biologist J. B. S Haldane asked this question: "what evolutionary trends may be expected if evolution is consciously controlled?" The answer seems simple: "perhaps the first step will be the production of a human clone from a single fertilized egg, as in *Brave New World*. But this would be of little social value. The production of a clone from cells of persons of attested ability would be a very different matter, and might raise the possibilities of human achievement dramatically." In such a case, the political organisation of the future humanity would be defined, thanks to biological criteria, like in *Brave New World*, or in more recent novels or movies (*Blade Runner*(1982), *Gattaca*(1997)). The problem is not coming from the application of artificial selection, or reproductive cloning to the human beings. Our position is that we cannot try to define by pure biological criteria what the relation between us and the future generations could be, without to

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18) <http://www.transhumanism.org/resources/Haldanebioposs.htm>.

practise an inversion in principles. By the relation between “Us” and “future generations,” *biology is reflected in politics*, as Foucault says.<sup>19)</sup> And it is not politics *that has to be* reflected in biology.

Even when we are saying that politics *has to be* reflected in biology, we deal again with an ethical and a political normative position. Creating new social classes by genetic discrimination is outside of the biological field. We need ethical and political values in order to reduce political values to biological ones, *and we fall again in the contradictory statements characterising the naturalistic fallacy*. The “Us,” the biopower as an objective process, *has always to be evaluated by “us” and not the contrary*. The “Us” is not a normative effect that could be completely externalized by the description of the objective process through and by which this biopower is acting.

That biology could be reflected in politics means that the human species is no more the result of an evolutionary process defined by strict biological constraints; it depends on what we are doing to it. The relation of power through and by which we are responsible for the future generations, is nothing but a political one. This simple statement leads us to an important conclusion. “The existence” and “the improvement of humanity,” are not facts, they are also not a simple set of possible events that could be realized in the future. They are nothing but political norms. What the human species has to be? We are in charge of this question today, and that is the very new situation in which we are placed as philosophers, and as human citizens of the world.

Asking this question, we are not fighting against the biotechnical development, the therapeutic abortion, the antenatal diagnosis, and the therapeutic or even the reproductive cloning. Yet, if one understands the

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19) Volonté de Savoir, 187.

previous question, as a simple question of knowledge, he gives a closed form to the relation of power by which we are in charge of the future generations. Knowledge and sciences don't say how we have to act. Concerning this question, scientists don't have to speak for other people. They have the responsibility to accept that they are just privileged citizens. Knowledge is a great and dangerous source of power, and scientists don't have to use it alone. What we need is *a democratisation of this power*.

### 3. Democratizing the biopower

#### A. Democracy is not republic

Democracy deals with a complex relation of representation. In this one, the sovereignty is not simply a hierarchical structure. Democracy is not exactly a theatre, or it looks like a theatre in which actors are using the so called *Verfremdungs-Effekt*. As Alexis de Tocqueville explained it, a democratic form of power is defined by the concept of “popular sovereignty,”<sup>20)</sup> that has very little to do with the concept of “general will” (Rousseau). Popular sovereignty is expressed by “the universal suffrage” and the vote of the citizens, by which the representative of the citizen are elected. Finally, the sovereign is not “the people,” like in Rousseau. The so called “people” is not a moral person, and is not able to have any “free will.” Rousseau's concept deals with nothing but an abstraction. The sovereign *represents* the people, in a very specific way. Thanks to the public opinion, the liberty of press, the plurality of parties, even if the sovereign has the executive or the legislative power, *it is also selected by people*.

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20) Tocqueville, Alexis de(1981), *De la démocratie en Amérique*, Paris: GF Flammarion.

The more the liberty of press and the plurality of parties exist and the more this power of selection is strong.

On one hand, what is fair is defined in a political program through and by which the sovereign has been elected. Everybody, and particularly us, as philosophers would have any judgement concerning it. Yet on the other one, what is fair depends on what H. Arendt called the “enlarged mentality”<sup>21)</sup> by which every citizen’s mind is moving between various vantages concerning what is fair in the society. In this very sense, the democratic sovereignty is not *a priori given* in a program, and applied by the President, or the Prime minister. It is constructed through and by this complex communicational structure, by which every citizen participates to the political power. Thus, the relation of power, as a representative one, is not closed. It starts to be an open one. By these words, *we mean that-for structural reasons- the description of the relation of power, in a democracy, depends on how the relation of power is working.*

The power is not *immanent* to the relation as an entity that could be described immediately by somebody. It is also not a symbolical and normative relation that has a specific meaning (the norm of justice) that somebody could define, or have immediately in mind. Nobody knows, just from itself and immediately, what justice, or fairness could be. On the contrary, what is fair is not completely written in a political theory, or in a program. It depends on how, by their enlarged mentalities, the citizens are imagining, representing and finally deciding what fairness could be. *Fairness, is not an immanent entity, it is nothing but an emergent property of a so-called open relation of power.*

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21) Arendt, Hannah(1972), «Vérité et politique» *Crise de la culture*, Paris: Folio Gallimard, p. 307.

## B. Coming back to the Precautionary Principle

According to this first point, what would be a democratic relation of power between us and the future generations, concerning the existence of human species? In order to give a piece of answer, let us come back to the precautionary principle.

### 1) A problem coming from science

Firstly a simple “danger” has nothing to do with what we would call a “catastrophe.” When somebody takes his car, he risks his life without any effect concerning the future of the human species. A risk is currently defined by the relation between a possible event to which a value of danger can be assigned and the probability that this event could occur. If I am a good driver, and if I buy a good car, the risk is slowing down and that would be appreciated by every insurance company.

Yet Hans Jonas noted that a catastrophe is nothing but an event that can threaten the existence of the human species(*die Menschheit*), and in this case, the value of the danger is not relative, and cannot be susceptible to be defined by measurement. It is nothing but absolute. Consequently, even if the probability that this event could occur is very small, the Responsibility Principle—“*Prinzip-Verantwortung*”—acts as a categorical imperative. We have the unconditioned obligation to obey to it, as simple citizens, or as sovereigns. Following Jonas, this duty is a teleological, and not a deontological one; it is a transcendent appeal coming from Nature and addressed to our practical Reason. It is not founded on intellectual principles, like the autonomy of free will in the Kantian doctrine. The Imperative Responsibility obeys to an ontological and a teleological requisite that is coming from inside and that is also immediately known and lived by us, as such. The natural form of this

imperative is nothing but the responsibility to educate our children as simple parents. However, the rational one is an ethical obligation for the sovereign of a State to apply a so called “*heuristic of fear*,” by which the citizens would become conscious that the human species is vulnerable and has to be protected. In this way of thinking, the sovereign would know immanently and by itself as an emotional subject conscious of its finiteness the order coming from Nature, without the help of any prediction and of any external knowledge. He must threaten the people that must obey without protesting. He has the legitimacy and not the people.

Jonas helps us to distinguish a simple danger from a real catastrophe. Yet, if we refuse *the Thesis*, we must conclude that the Responsibility Principle is actually a high-risk principle, not only for the economic development, but also for the democracy. In our view, and contrarily to Jonas, nobody is able *to know from itself*, that a specific event—like the emissions of CO<sub>2</sub> in atmosphere, or the GMO, or the human reproductive cloning—threatens the human species. We need the help of science in order to decide it.

Yet, the Precautionary Principle is not the Responsibility Principle. It appears if and only if leaders in the administration, in the laboratories, and in the government are immersed in a “*scientifically controversial universe*.”<sup>22)</sup> Thus it is coming from science, and not from our internal and subjective knowledge. It means also that we don't have any immediate scientific answer. Let's explore more precisely this argument.

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22) Godard, O.(2000. 6), “Le principe de précaution, entre science et démocratie,” in *Philosophie Politique*, n°11.

## 2) The Contra Thesis

A conceptual distinction initiated by Dominique Janicaud<sup>23)</sup> shall be used in order to precise this argument.

First, a scientific universe becomes controversial for theoretical reasons disclosing internal and conceptual limits into the scientific rationality. This point should be illustrated by the mad cow crisis, or the global earth warming. Concerning the first example, the problem was not depending on the discovery of new empirical information. In 1994, it was related to the importance accorded by scientists to genetic inheritance, and to the fast universal acceptance of the Central Dogma of molecular biology originally enunciated by Francis Crick(1958).

The mad cow decease, the role of animal flour, the transmission risk to the human being can be *understood if and only if* we reject the idea that the infectious agent is a virus, or a bacterium, and if we admit that a group of phenotypes appears to be inherited through a “protein-only,” or prion mechanism in which the structure of a protein rather than its sequence is the molecular determinant of the phenotype. In order to do it, we must deal with the concept of a “protein based” inheritance that is not compatible with the so called Central Dogma.<sup>24)</sup>

Concerning the second example, the global warming models have internal conceptual limits, through and by which various pattern are equally compatible with the same facts observed, without any possibility to decide definitely what the good one is.

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23) *La puissance du rationnel*, 1985, Paris: Gallimard.

24) Wickner RB (1994) [URE3] as an altered URE2 protein: Evidence for a prion analog in *Saccharomyces cerevisiae*. *Science* 264, pp. 566~569.

Yet, the scientific and bio-technical knowledge also *acts* on the human species and the environment, it produces effects, and effects of “power”: it produces more bioscientific technologies with bioscientific technologies.<sup>25)</sup> Contemporary molecular biology opens to a wide range of technical and practical opportunities, like GMO, human reproductive or therapeutic cloning, genetic therapy on somatic or on germinal cells, therapeutic abortion, etc. This *pragmatic* and *performative* relation of power—through and by which knowledge acts on reality and is not a simple description of phenomena—, is also a normative one that concerns science, without to be scientific as such. In response to Jean-Marie Schaeffer, we will enunciate what we could call the *Contra Thesis*:

*(1) Social and natural sciences are not able to say what fair is, concerning the relation of power through and by which bio-technosciences are modelling the human species.*

The fact, that bio-technosciences produces power effects is not only to be described by one science. As a knowledge device, it acts on human actions; it produces a relation that has to be evaluated, through and by this construction. Technology is also *an appeal* to more technology that takes the form of an economic, technologic and scientific *device* or *design* emerging *of the use* of science and technology in the society, and by which we “are led” to the idea that such power effects are *also rational*.

Yet, “more is better” is not a destiny. We are not obliged by natural and human sciences to treat this normative statement as a matter of fact, as if we would just be in charge—as sociologists, or psychologists—to describe how it

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25) *La puissance du rationnel*: 11.

works and how it produces effects in the human society, and in the environment. The power effects of bio-techno-sciences are not *philosophical and ethical free*, since they can lead to catastrophic situations and threaten the future of humanity. We have, on the contrary, the obligation to make a critical evaluation of such normative statements. How could it be shown?

A “highly controversial scientific universe” requires a pragmatic answer which can also not be a scientific one to a question that the technological development is posing. As such, it was well analysed by French sociologists<sup>26)</sup> as a development that calls for political decisions concerning problems that cannot be simply sociologically solved. Social sciences are nothing but a medium, through and by which political options can be constructed. Practical philosophy is nothing but this reflexion that helps us to dissociate two forms of normativity.

By the first one, normative statements have to be described as they act, by social sciences. Yet by the second, normative statements *must be democratically evaluated and discussed*, by conferences of citizens, by bioethics committees, by non governmental associations, and of course by the parliament, before to be used by a State government, through and by a communicational structure, in which all this institutions are integrated. It means that such decisions can also be *judicialised*, as it was the case in the French law and in the French Constitution.

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26) Callon, M., P. Lacosme et Y. Barthes(2001), *Agir dans un monde incertain*, Paris: Seui.

### C. The concept of constructability of humanity

Thus the question is very simple: how far can a relation of power be fair, concerning the future of the human species? And who is able to say what such a fair relation of power is, since the answer cannot immediately come from us by an epistemic privilege accorded to the subject, and since it cannot immediately come from science?

Sociology and economy as positive sciences are obviously concerned by this question, since they are dealing with the normative impact of technology and natural knowledge as a power in our society. We saw that the market is not immediately regulating biotechnological problems since technology is able to threaten the future of humanity, and we remarked that a risk of catastrophe is not a simple risk. Thus, on the contrary, a conflict is engaged between market and democracy.

One way of thinking initiated by Amartya Sen, could be considering democracy, not as a simple mean for economy, but as an economic value *per se*.<sup>27)</sup> A danger of catastrophe would require a public democratic answer (and not only a neoliberal one that would be focused on the protection of individual rights). The defence of individual rights can lead to their own destruction. Thus, one do not have any individual rights to produce CO<sub>2</sub>, or to decide what our offspring would be by antenatal diagnosis, that could not be discussed in the same time on the public sphere, as a collective problem for the citizen of a State and finally for the human species.

Second, thanks to the sociological analysis, the precautionary principle can

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27) Sen, A.(2000), *Development as Freedom*. Anchor.

also be dissociated from the so called *Verantwortung Prinzip*. Yet, between Godard and Callon or Hermitte,<sup>28)</sup> one can read it, as a space of possible decisions between two very opposite positions.

For the first one, in presence of a catastrophe's risk, and when political authorities are placed in a highly controversial scientific universe, they must react immediately. Concerning the contaminate blood scandal, haemophilic needed immediate medical treatments. Yet the plausible contagious power of the HIV virus was not well evaluated in 1984, even if the virus was isolated and if its destructive power was attested. Was it just a specific and strange type of cancer, or could it cause the development of a new epidemic disease? However, it was very simple and not so expensive to warm the blood, and thus to avoid the danger.

For the second one, which is also the institutional doctrine in France, the risk must be "plausible" in order to justify the application of the P. P, even if the risk is not susceptible of a mathematical treatment thanks to objective or even subjective probabilities (since the space of possibilities is not well defined). Considering that the greenhouse effect is a dynamic property and not a simple statistical one taking in account that a global warming is actually measured, that CO<sub>2</sub> emanations are increasing, and that we can define precisely certain control parameters (like CO<sub>2</sub> emanation) by which the evolution of the global warming can be simulated and experimentally tested on computers, we shall also conclude that a catastrophic danger is plausible, even if not attested.

We would add that, even if the risk is plausible, situations in which a precocious action is engaged can lead—or not—to very dangerous consequences, by destroying the economic growth and also by creating a harmful impression of omnipresent danger inside the public sphere of

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28) Hermitte, M. A.(1988), *Le sang et le droit*, Paris: Seuil.



discussions and debates by which the public opinion uses to be constructed, that could increase negative economic effects. It could be the case for the CO<sub>2</sub> emanations which requires an adequate and proportional answer, and not the immediate stopping of all planes and all cars in the world. It would not be the case for a policy of non proliferation of nuclear weapons in the world.

It means that economic and sociologic analyses are presenting alternative models through and by which a public discussion can be established. An economist or a sociologist are not deciding themselves what the good model must be. It illustrates our idea that sociology and economy are thought as an open milieu by which political decisions can be constructed. They are not describing what could be a fair normative judgment concerning the relation of power that bio-techno-sciences fulfil on the future human species.

This judgement cannot be a priori described by any social or human sciences. However, one can describe a variety of models through and by which a plurality of judgements concerning fairness can be constructed. Yet, in order to be constructed, they must be performed by leaders, associations, parties, educative and broadcasting media, and finally by citizens. It would not be sociologists or economists decisions. It is theirs. The description of such judgements concerning a fair relation with our offspring must involve this performative level. That is all what we are saying, as philosophers.

What could be the “*constructability*” of humanity, in this way? Nothing but the fact that one must act *as if* this performative dimension concerning the plurality of judgements related to a fair relation of power of bio-techno-science on the future human species *could be maximised*, in the communicational structure *acting on* our cultural, social and economic world, as also *integrated* in him. By this very principle, we are not representing the future human species, as a simple future event that has still not happened. *We have to be the*

*representative of the future generation, as an “Us” that they should have to be, and not as an objective and impersonal “Us” external to what they would like to be.*

Could it be something like a transcendental rule? Our approach is not neokantian, since this “*as if*” is a *reflexive one*. *This philosophical subject is also constituted by this communicational structure*. It doesn't determine what we have to do. It is related with the fact that the question: “what we have to do” is not coming first, from our own subjective judgement, like in *Critic of Practical Reason*.

It has just a meaning, if it is *reflected* and constructed from the various judgements that leaders, experts, associations... and finally citizens would have in a democratic society in a complex communicative structures in which they are integrated and that human and social sciences are able to analyse and to exhibit as such. Our philosophical way of thinking concerning the constructability principle, *is a non foundational one*. Yet, it does not mean that it is not normative and that it doesn't engage our existence, our autonomy, and our liberty, thanks and sometimes against the scientific development.

## 복합적 소통 구조에 노출된 정치적 규범으로서의 '인류' 라는 개념의 사용에 관하여

양투안 미켈(니스 대학교 철학과)

■ **주제어** : 인류, 인간종, 권력, 소통구조, 구성성, 정치적 규범

우리는 이 논문에서 “인류” 또는 “완벽한 인간종”이라는 표현에서 ‘인간적’이라는 형용사가 어떻게 사용되고 있는지를 보여 주고자 한다. 그것은 어떤 인간적 본질도 드러내지 않는다. 우리는 그런 표현이 우리와 다른 동물들 간의 존재론적 차이를 도입한다고 보는 “테제,” 그리고 인간종의 본성이 무엇인지를 우리 자신으로부터 직접 알 수 있다는 “테제”를 거부한다. 이러한 테제와 반대로 우리는 인간종인류이라는 말이 권력의 복합적 관계를 통해 구성된다고 주장할 것이다. 이러한 권력관계에 의해, 그리고 자연과학의 성장 덕분에 우리는 미래 세대의 행동에 기술적으로 그리고 의학적으로 힘을 행사할 수 있게 되었다. 그러나 이러한 관계는 또한 “구성성(constructability)”이라는 상호적이지 않은 원리에 기초하는 상징적인 것이기도 하다. 우리는 마치 인간종의 본성(인류)이 단지 생물학적 기준에 의해서만 해결될 수 있는 정치적 문제로 취급될 수 있는 것처럼 행동하지만, 사실 우리는 인간종의 본성이 정치적 규범과 동시에 생각되어야 하는 것처럼 행동해야 한다. 이 두 번째

생각에 의해 우리는 우리 자신을 열린 민주주의적 관계 속에서 미래 세대의 대표자로 구성해야 한다. 이것이 우리가 바로 여기서 분석하고 발전시키려는 것이다.