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## **Which Critique of Human Rights? Evaluating the post-colonialist and the post-Althusserian alternatives**

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In a short pamphlet written in 1808 bearing the title *Who thinks abstractly?*, Hegel joined his contemporary debates concerning the importance of the recent French Revolution. His position basically reverts the arguments advanced by the German nationalists and by various conservatives like Joseph de Maistre or Edmund Burke: while these authors accuse the abstraction of the French principles (equality, liberty etc.) and oppose to it the richness of the local customs, traditions and common sense, Hegel argues that, on the contrary, it is the common sense and common people who think abstractly, while the presumably abstract principles of the French revolution open up the space in which a concrete understanding of human nature can take place.

In today's world, one could say that the legacy of human rights is in need of a similar Hegelian reversal. The general trend regarding human rights consists nowadays in a constant attack on the formal, empty, abstract nature of the declaration of human rights, and an emphasis on the possible alternatives to it, namely the plural, rich, vivid, authentic particular cultures, narratives, situations. To put it in Hegelian terms, this contemporary trend could be accounted as demanding a necessary passage from 'abstract right' to 'morality' – where morality is to be

understood as the sphere of the particular will, with its centring on identity, intention, demand and ought-to-be. If one is to push the structural comparison further, two more similarities between the Hegelian framework and today's debate on human rights will pop out: in Hegel's *Philosophy of Right*, the moment of abstract right is surpassed through the inherent contradictions of right, manifested in 'non-malicious wrong, fraud and crime': in all cases, the particular will, through its opposition to abstract right, reveals the universality of the latter as being only contingent, unstable, arbitrarily coercive. Not incidentally, most of the contemporary critiques of human rights can be accounted under these Hegelian categories – to paraphrase Kojève, it is as if all the current approaches to human rights could be exhaustively divided into left Hegelianism, or right Hegelianism. Furthermore, in the same way as, in Hegel's *Philosophy of Right*, it is the moment of fraud and crime (as the inherent failure of abstract right) the one who, paradoxically, gets under way the development towards morality and acts as the catalyst of the good, in the same way today, in contemporary accounts of human rights, it is the inherent contradiction of rights which exploded lately in the phenomena of humanitarian wars and democratic exclusions the one who seems to drive the need for a similar urgent supplement of morality.

However, not all critique of the abstract nature of rights has to lead in a moralizing direction. In what follows, I will discuss two of the inherent tensions in the sphere of abstract rights that have been unmasked or confirmed lately: the one between the formal object of human rights and their actual bearers, and the one between the position from which the discourse of human rights is enunciated (or criticized) and those in the name of which it is being proffered. I will start by analyzing these critiques in the work of three post-colonialist thinkers – Ratna Kapur, Upendra Baxi, Gayatri Spivak – and then I will evaluate them through the lenses provided by two approaches that I will call post-Althusserian – Rancière and Žižek. My thesis is that while the post-colonialist discourse tends to move from this critique of the contradictions of abstract rights to a demand of morality (under any of its guises, which we will see below), the post-Althusserian group seems to point towards a different way out, and repropose the abstraction of rights with all its contradictions as symbolic efficiency and as the only way of 'tarrying with the negative' of politics.

In her essay 'Human Rights in the 21<sup>st</sup> Century. Take a walk on the dark side', Ratna Kapur argues that 'assertions about the universality of human rights simply deny the reality of those whom it [sic!] claims to represent and speak for, disclaiming their histories and imposing another's through a hegemonising move'<sup>1</sup>. The abstract universality of human rights is, in fact, a „discriminatory universality', and one can see this in all the attempts of the West to relate to its other. There are three such attempts, and they are all equally discriminatory: 'The first is through the assumption that the difference can be erased and the 'Other' tamed and assimilated through some form of cultural or racial strip. The second is to treat the difference as natural and inevitable. And finally, there is the response that justifies incarceration, internment or even annihilation of the 'Other'<sup>2</sup>. So: assimilation, tolerance, or violent rejection – in all its logical possibilities, the

proclaimed universality is discriminatory. Hence, one must assume, for Kapur the only undiscriminatory universalism is a non-mediated particularism. According to Kapur, the problematic gap between the assertions of rights and 'those whom it claims to represent and speak for' can only be reduced by the '*centring* of excluded subjects, excluded zones and excluded histories'<sup>3</sup>. The story of human rights must 'be told from the perspective of transnational migrants'<sup>4</sup>, for example, because of the 'urgency of re-reading human rights from alternative locations, the excluded zones or from the perspective of excluded subjects'<sup>5</sup>. As Kapur puts it emphatically, they – the excluded ones – are 'the creditors'<sup>6</sup>. Unless the West opens the door, repay its debt of 'cultural erasure'<sup>7</sup> and allows them to tell the story as it really is, that is from their own perspective, there is no chance to 'put some life back into a project in desperate need of resuscitation and to give this body [the legacy of human rights] a soul'<sup>8</sup>.

With Upendra Baxi the case is more complicated. And yet the urgency of the passage from abstract right to morality, or the need to 'put some life' into the project of human rights, to 'give this body a soul' is also discernible in his writings. The starting point is, for Upendra Baxi, rather similar to Ratna Kapur's: the modern conception of human rights was based on the 'discursive devices of Enlightenment', which were in fact 'devices of *exclusion*'<sup>9</sup>. The passage from modern human rights to contemporary human rights is a passage from an exclusionary to an inclusionary approach, which is accomplished by '*taking suffering seriously*': 'No phrase except a romantic one – *the revolution in human sensibility* – marks the passage' from the first to the second. In a truly dialectical move, Baxi claims that the previous, formal and abstract conception of human rights was in fact 'essentialist'; while the contemporary one, based on the fetishization of pain and on the direct access to difference, is not<sup>10</sup>. The unending task that lays ahead of us is, for Baxi, 'one of *humanizing human rights*, going beyond rarefied discourse... to histories of individual and collective hurt... To give language to pain, to experience the pain of the Other inside you, remains the task, always, of human rights narratology'<sup>11</sup>. Following the terminology developed by Baxi in his *Human Rights in a Posthuman World*, one could say that he is moving here dangerously from a sort of resistance to theory/resistance as theory to a clear cut case of aversion to theory<sup>12</sup>.

With Gayatri Spivak, the case becomes further complicated. As a deconstructionist, Spivak knows very well that there's no direct and innocent access to alterity, that the subaltern cannot just simply start talking, that there's no immaculate self-presence of the subject which could simply replace or refill the abstract discursive frame. But this is precisely why her approach to human rights in the essay 'Righting Wrongs' is even more interesting. Spivak is perfectly aware that there is a certain tension between, on the one hand, the need to give a soul to the body and replace the abstract rights with morality (or, in her own terms, the need to effect the passage from rights to responsibility to the Other) and, on the other hand, her own theoretical deconstructionist background. And yet, Spivak attempts to solve this potential conflict not through the infusion of a sort of theoretical skepticism in the project of responsibility to the Other (after all, '*il n'y a pas de*

*hors texte*'), but rather through the suspension of this theoretical background as such. Witness her repeated confessions that the suffering of the rural poor of the global South is impossible to translate in the language of academic theory and scholarly research: 'writing this piece has almost convinced me that I was correct in thinking that I should not make it part of my academic discourse'<sup>13</sup>; or, 'I am not able to give scholarly information... I do not usually write about this activity'<sup>14</sup>; or, 'I leave this essay with the sense that the material about the rural teaching is not in the acceptable mode of information retrieval. The difficulty is in the discontinuous divide between those who right wrongs and those who are wronged'<sup>15</sup>. For Spivak, the discontinuous divide between those who right wrongs and those who are wronged is such that the suffering of the latter cannot be translated into the language of the former. But this radical divide is, according to Spivak, inherent in the very project of human rights, which is why the project of human rights is nothing but a kind of 'social Darwinism': '«Human rights» is not only about having or claiming a right or a set of rights; it is also about righting wrongs, about being the dispenser of these rights. The idea of human rights [carries within itself the idea that] the fittest must shoulder the burden of righting the wrongs of the unfit'<sup>16</sup>. For Spivak, the only chance to correct this structural injustice of human rights is through the appeal to responsibility, which is an 'antonym of right' and whose possibility is 'underived from rights'<sup>17</sup>. The responsibility approach as a miraculous process in which the dispenser of rights learns directly from the subaltern, and in which the educator is educated takes the form of humanities teaching. 'This is the different way of epistemic access, this the teacher's apprenticeship as suturer or invisible mender'<sup>18</sup>. Obviously, in the end, this alternative or supplementary project remains virtually untranslatable and almost impossible to communicate: it is just a 'licensed lunacy in the name of the unnamable other'<sup>19</sup>.

Of course, the different places and importance that these authors assign to their analysis of human rights in the framework of their own theoretical practice generates relevant differences between these accounts: for Baxi, the endured research on human rights revealed a complex and multidimensional reality, marked by various irreducible tensions (universalization vs. globalization; politics *for* human rights vs. politics *of* human rights etc.), which allows for a rich set of possible theoretical point of views; for Kapur, the re-evaluation of human rights is rather an extension of her theoretical critique from the perspective of feminism and post-colonialism; while for Spivak, as we have already seen, the topic of human rights imposes itself more like an exception to her usual academic research.

However, what is common in all these three approaches to human rights is the dialectic that takes place between the two tensions that I mentioned in the beginning: the full particular identity of the western male (the presumed subject of enunciation) is, apparently, fully transposed in the essentialist traits of the subject of the rights of man (the subject of the enunciated), and so the particularity of the former is just barely concealed under the proclaimed universality of the latter; consequently, the fallacious universality of the subject of the enunciated denies and precludes the

full particularity of the real referent – of the excluded ones. The underlining assumptions to all this narrative seem to be a curious combination of utmost confidence in language (or representation), and utmost distrust of it: on the one hand, on the Western side of human rights, language has absolute power, or, to put it better, it is a perfectly docile and passive channel of expression: through the declaration of so called universal rights, the particular identity of the western male is simply transposed in a different (and deceiving) form; on the other hand, in the non-Western world, language seems to be almost useless: the particular suffering of the excluded is readable only as long as it is not translated into the abstract frame of human rights. But, as Derrida used to claim, the simple reversal of metaphysics remains metaphysics, and the two seemingly opposed views (language as innocent channel of expression or as an obstacle to genuine communication) turn out to share the same premise. This fact is visible in the post-colonialists' idea according to which as soon as the excluded would occupy simultaneously the positions of the subject of enunciation, subject of the enunciated and referent, and as soon as we would start to listen without pretending to understand and translate, their demands would be audible in what the early Lacan would have called 'parole pleine'. Except that it is a pre-linguistic 'parole pleine'. More like a sigh. Paradoxically, the three postcolonialists seem thus to be obliged to suspend language in order to make room for undisturbed communication. Words may lie and deceive, but affects don't. This dream of non-disturbed self-transparency and self-expression beyond language remains a truly Cartesian utopia. There is no trace of false consciousness in it. Ideology or alienation seem to be operative only in the West, and even here they seem to be more like a deliberate process of camouflage than a political unconscious. As Richard T. Ford has rightly pointed out in a critique of the politics of identity, which can be prolonged here to address also this post-colonialist discourse, there is a sort of distortion in this approach to culture and difference, which puts all the emphasis on non-recognition versus (self)recognition, but leaves out the whole problem of (self)misrecognition<sup>20</sup>. Trauma and pain stand here as the infallible index of truth. Language is no longer necessary, its task of expressing and transposing the essence of the Other is much better accomplished by the pre-linguistic channel of compassion and empathy.

To push this critique even further, one should notice, with Žižek, that 'colonization was never simply the imposition of Western values, the assimilation of the Oriental and other Others to the European Sameness; it was always also the search for the lost spiritual innocence of *our own* civilization'<sup>21</sup>. From this perspective, Kapur's suggestion that we should treat the excluded ones as our 'creditors', or Baxi's idea that we should effect a 'revolution in human sensibility' by turning our ears to the stories of suffering from the global South are not so much ways to break free from the colonialist legacy, but rather a way to prolong it. The postcolonialist particularist resistance in the name of the genuine authenticity of the 'bon sauvage' is already inscribed in the colonialist discourse: as we will see below, it is its obverse, the retroactive illusion of a fatal loss of particular substance, an illusion which is spontaneously generated by the imposition of the abstract universal

frame.

But the problem is not just about a misconception of the nature and efficiency of language – it also regards the practical consequences that derive from it. Since any reversal of the metaphysics remains metaphysics, there is no coincidence in the fact that, as much as the post-colonialists would disagree, their approach to human rights shares an essential trait with the liberal approach of thinkers like Richard Rorty<sup>22</sup> or Michael Ignatieff<sup>23</sup>. In their anti-foundational approaches to human rights, both Rorty and Ignatieff argue that universal human rights are not to be based on a belief in a ‘metaphysical’ idea of human rationality, but on a pragmatic idea of sensibility to cruelty. Although they both try to hold on to crucial ingredients from the original project of human rights (the Enlightenment utopia for Rorty, its universalism for Ignatieff), the way to achieve these goals is, for Rorty and Ignatieff, by discarding the maximalist claims to human nature and universally shared rationality and by replacing them with ‘the most we can hope for’ – a minimalist account of resistance to cruelty. In both cases, this shift towards minimalism and sentimentalism is grounded on a pragmatic basis: as Rorty argues in his essay ‘Human rights, rationality and sentimentality’, ‘the best, and probably the only, argument for putting foundationalism behind us is [that] it would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education’. At first sight, the sentimental education seems to do the whole job: „Producing generations of nice, tolerant, well-off, secure, other-respecting students of this sort in all parts of the world is just what is needed – indeed *all* that is needed – to achieve an Enlightenment utopia’. At a more careful inspection, the shared sensibility to cruelty is not the only necessary ingredient, since it has a condition of possibility of its own: security. „Security and sympathy go together, for the same reasons that peace and economic productivity go together’. As it turns out, the sentimental education, as vital as it is, is only the moral superstructure that drags along the even more vital base, namely the shared peace and security of our shared mode of production.

From this perspective, Wendy Brown’s critique of Ignatieff’s account of human rights can easily be stretched to apply also to Richard Rorty’s. There are three major critiques that Wendy Brown formulates in her essay ‘«The most we can hope for»: Human rights and the Politics of Fatalism’. First, human rights discourse, as imagined by Ignatieff, ‘not only aspires to be beyond politics (notwithstanding his own insistence that it is a politics), but carries implicitly anti-political aspirations for its subjects — that is, casts subjects as yearning to be free of politics and, indeed, of all collective determinations of ends’<sup>24</sup>. Second, human rights ‘are not simply rules and defenses against power [as Ignatieff claims], but can themselves be tactics and vehicles of governance and domination’<sup>25</sup>. In the best case scenario, what they amount to is ‘a form of «empowerment» that fully equates empowerment with liberal individualism’<sup>26</sup>. And finally, third, human rights are not just an innocent defensive tool attached to a pre-existing subject, but they actually produce the subject to whom they are assigned. ‘In its very promise to protect the individual against suffering and

permit choice for individuals, human rights discourse produces a certain kind of subject in need of a certain kind of protection... the point is that there is no such thing as mere reduction of suffering or protection from abuse—the nature of the reduction or protection is itself productive of political subjects and political possibilities'<sup>27</sup>.

Now, to get back to our starting point, it appears that what the three postcolonialists share with Rorty's and Ignatieff's accounts of human rights is a similar moralistic suspension of the political, and a shared confidence in the direct readability and relevance of immediate pain and suffering. But this minimalist suspension of the political generates its own politics. Hence, it is not just that the fetishizing of pain and otherness is inefficient with regards to the 'discriminatory' way in which the West, according to Kapur, has been relating to its other – assimilation, toleration, rejection; on the contrary, this fetishizing acts as the very condition of possibility of this discriminatory approach to otherness. Once we accept that the other's pain is the untranslatable index of truth, there are only three options left: either we all join a spectacular global community of compassion and moral outrage, which, because of its unwillingness to sully itself in the dirty water of actual politics and universal principles, has to remain only a moral and noble supplement of the 'really existing realism'; or the West has to assume that it has to speak in the name of the other (humanitarian militarism); or, finally, the West will let its other speak while abandoning in shame any claim to understand it (fundamentalism). The three alternatives do not exclude each other; on the contrary, as the current state of affairs seems to prove, they are perfectly complementary.

That is why I am tempted to propose here a different approach, which has been articulated lately by theorists such as Jacques Rancière and Slavoj Žižek. For starters, let us say that their vision of human rights seems to offer a possible way out of each of the three deadlocks that we detected in the post-colonialist framework. First, while the post-colonialists' rejection of the Western abstraction of human rights gave place to a simple reversal of its presumed metaphysical assumptions, and the belief in the innocence of abstract representations was rejected simply to be reinvested in the direct readability of pain and suffering, Žižek and Rancière seem to start from a more dialectical point of view, which conceives of language as being neither passive and innocent, nor simply distorting, but as simultaneously the condition of possibility *and* impossibility of experience<sup>28</sup>. Secondly, while the post-colonialists argue that the global south is the excluded creditor who could invest a supplement of soul and resuscitate the Western project of human rights – an idea which is, in fact, preserving the very premise of the colonialist approach – Žižek's and Rancière approach offers an alternative that we could dub 'transgression through explicit immanence'<sup>29</sup>: the way to resist the deliberate politics of domination pursued under the banner of universal rights is not by trying to delineate an irreducible outside to this discourse, but by confronting from the inside this politics with its own proclaimed principles. And finally, the 'practical' aporia: as long as the West and the rest are conceived, as it happens in the post-colonialist discourse, as two enclosed, self-standing and self-sufficient entities (two substances), their relation

can indeed be only one of assimilation, tolerance, or rejection. The alternative offered by Žižek and Rancière consists here in passing from substance to subject: the reason why the West and its other can relate to each other otherwise than in the manner of swallowing one another, or nervously coexisting with the other, or violently annihilating one another is because these instances are not self-standing positive substances, but political subjects, hence split from the inside, and irremediably non-identical with themselves. From this perspective, as we will see below, human rights are precisely the symbolico-political device whose effect is an internal split inside each of these 'substances', and a shared non-identity with itself. Hence, their universality is not based on a positive identity, a presumed human nature shared by all human beings. Their universality is a negative space, which consists in the very non-identity with itself of the particular.

Let us now take a closer look at Žižek's and Rancière's proposals. Just like the post-colonialists discussed above, Žižek begins his reappraisal of the legacy of human rights with a ruthless critique. However, instead of criticizing the distorted abstraction that these rights represent, Žižek directs his attacks exactly in the opposite direction, namely against the 'morality' that recent approaches try to infuse in the abstract frame of these rights. This re-naturalization of the subject's particular condition leads to the consequence that the much praised 'enlightened' West begins to assume the traits of its presumed 'fundamentalist' Other. 'What is effectively disappearing here is public life itself, in which one operates as a symbolic agent who cannot be reduced to a private individual, to a bundle of personal attributes, desires, traumas and idiosyncrasies'<sup>30</sup>. The other target of Žižek's critique is the very conceptual core of the morals of human rights, the notion of free choice, with its underlying belief in the undisturbed spontaneity and authenticity of the subject's will. According to Žižek, in the consensual universe of naturalized particular beliefs, genuine free choice cannot be the simple and direct expression of the subject's will and substantial identity: 'a choice is always a meta-choice, a choice of the modality of the choice itself... The subject of free choice can only emerge as the result of an extremely violent process of being uprooted from one's particular life-world'<sup>31</sup>. It is only with this violent gesture by means of which the individual extracts himself from his immediate life context and disrupts the organic unity of the social body that genuine universality, that is 'universality for itself', is generated. Inasmuch as the abstract frame of human rights provides precisely such a space for the universality for itself, it designates 'the precise space of politicization proper... What they [human rights] amount to is the right to universality as such – the right of a political agent to assert its radical non-coincidence with itself, to posit itself as the 'supernumerary'... and thus as an agent of universality of the social itself'<sup>32</sup>.

Jacques Rancière's account of human rights has to be situated into his conceptual framework provided by the opposition between politics and police: while the police means, for Rancière, the imposition of a partition on the social body which assigns to each part its own 'natural' place, politics occur precisely when this natural partition is disturbed, when the



harmonious consensus of the social body is shattered by the non-coincidence of each part with itself and by the imposition of disagreement [différend] as community<sup>33</sup>. Human rights are an open site for both these possibilities: as an abstract inscription of formal equality, they provide the opening of an interval for political subjectivization; however, in their moralistic reappraisal which assigns to each part its right to assess its particularity and its own point of view, contemporary approaches to human rights seem to head in the opposite direction: 'supposed efforts to make inequality explicit have rigidified it. For one thing, the making explicit of sociocultural difference has tended to turn that difference into destiny'<sup>34</sup>. In his essay „Who is the subject of the rights of man?', Rancière tries to engage with a more sophisticated attempt to re-naturalize difference as irreducible: the tension between the formal universal bearer of human rights and his particular actual bearer, the non-coincidence between man and citizen, between bare life and political frame – a distinction which roughly corresponds to the one diagnosed by the postcolonialists, between an abstract frame of rights and the untranslatable suffering of the excluded. This opposition, while being rightly criticized by Hannah Arendt and, lately, Giorgio Agamben, runs nevertheless the risk of being hypostatized in their writings and turned into a new destiny<sup>35</sup>. However, for Rancière, this distinction between man and citizen, between the subject of the enunciated and the real referent of human rights, is not the whole story: „the very difference between man and citizen is not a sign of disjunction proving that the rights are either void or tautological. It is the opening of an interval for political subjectivization'<sup>36</sup>. Which means that, besides the two equally problematic alternatives delineated by Arendt and Agamben (human rights either as a tautology or as a void), there is a third possibility: 'the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not'<sup>37</sup>. But this radical non-coincidence with itself of the subject of human rights, which reveals the sphere of human rights as being a possible space of genuine political subjectivization, is not at all blocked by the abstract nature of rights, but, on the contrary, opened precisely by this formal inscription of equality and universality. 'The strength of those rights lies in the back-and-forth movement between the first inscription of the right and the dissensual stage on which it is put to test'<sup>38</sup>. It is this very abstract inscription of universal equality that discloses the political space in which each part can extract itself from its organic medium, affirm its non-coincidence with itself and claim a direct access to universality.

The first thing to be discerned regarding these two accounts is a curious one. In his *Ticklish Subject*, Slavoj Žižek noticed how the three major ex-pupils of Althusser (Badiou, Balibar, Rancière), in their respective theories of political subjectivization (the 'Event', the 'égalité', the 'mésentente'), basically inherit and revert in a positive way the structure of what Althusser criticized as 'ideological interpellation'<sup>39</sup>. According to Althusser's account of the ideological state apparatuses, the subject does not pre-exist to the ideological interpellation but is, in fact, the correlative, or, more exactly, the effect of the ideological interpellation. However, the interpellation of individuals as ideological subjects does not take place simply through the identification of the

latter with the ideological content<sup>40</sup>. The very failure of the ideological identification is the measure of its success. In Althusser's terms, this means that '*la fonction-sujet qui est l'effet propre du discours idéologique, requiert à son tour, produit ou induit un effet propre, qui est l'effet-inconscient, ou l'effet sujet-de-l'inconscient*'. Cette dernière fonction permet à la fonction sujet d'être assurée dans la méconnaissance<sup>41</sup>. In other terms, this splitting of the interpellated subject in ideological subject (which is, according to Althusser, present in person) and unconscious subject (which is present through the signifier's representation) means that the subject's resistance to the interpellation and his calling into question of the identity conferred on him by way of interpellation are necessary parts of the very interpellation. The subject's disidentification with the ideological interpellation and his claim that he is more than this constitute, in fact, the proper functioning of the ideological interpellation – which is why, from this perspective, the post-colonialist's claim that the Western interpellation misses the particularity of the global south is nothing but the necessary underside of the colonialist discourse, its 'effet-sujet'.

If we are to turn now to Žižek's and Rancière's accounts of human rights, we should notice how, in spite of his own critical remarks regarding the presence of traces of the Althusserian ideological interpellation in the post-Althusserian's theories of political subjectivization, Žižek is joining here the party of the post-Althusserians. In both his and Rancière's theories, human rights can be accounted as a benefic ideological interpellation, as a way – *the way* – to interpellate natural individuals into political subjects, to uproot individuals from their particular life context and throw them into the open space of proper politics. And, in the same way in which, for Althusser, the ideological interpellation doesn't carry with it any positive content, in the same way, in Žižek's and Rancière's accounts, human rights do not seem to imply any positive demand or entitlement: they are not just abstract, they are devoid of content, standing only as the pure enjoiner to universality. If this is how things stand, then it is imperative not to mistake Žižek's and Rancière's reappraisal of the universal principles of human rights for a sort of Habermasian belief in them as a privileged sphere of undisturbed communication. No, the human rights interpellation is profoundly disturbing, and this is precisely what is good about it. To put it in other terms: what is common in Žižek's and Rancière's accounts is that they both fully acknowledge the gaps that are present in the discourse on human rights between the subject of enunciation, subject of enunciated and real referent. But, instead of attempting to fill in the gaps and reduce these tensions, they recognize them as the site of the possible emancipatory potential that the human rights project carries within itself. It's not that the abstract frame of human rights is not to be accused of hypocrisy, of attempting to conceal a particular privileged bearer of these rights (the western male) under a presumed enunciated universality; it is rather that hypocrisy is, here, not only better than nothing, but even better than honesty. As the very split between a hidden intention and an open statement, between a particular referent and a universal subject of the enunciated, hypocrisy is not the last bastion of Western patriarchal values, but the first opening of the political universality. Hypocrisy thus falls victim to its

own cunning intention: its very split is the proof of the Kantian power of the 'publicity' requirement, its very resistance to universality testifies that universality is already instituted.

The technical name of this benefic hypocrisy is, of course, 'symbolic efficiency'. Thus, Žižek's and Rancière's reappraisal of human rights as symbolic efficiency reverts the classic Marxian critique of the formal and abstract nature of democracy and human rights: the abstract nature of these principles is not to be simply discarded as an illusory cover up of its dark side of exploitation and class domination; on the contrary, the formal appearance of abstract universality has already an efficacy of its own. The material effect of this abstract inscription is no less than the opening of the political space of subjectivization, or of the subjective space of politicization: it generates the non-identity between an element and itself, which is – much more than the naturalized cultural differences between various parts of the social body which can be always negotiated and rebalanced in a new organic unity – the proper political dimension. Hence, the constant emphasis in both Žižek and Rancière on subjectivization instead of subject, on dynamic non-coincidence instead of respect for identity. Sure, as the post-colonialists rightly point out, there is always a sort of symbolic deficiency, the abstract frame of human rights and, in general, of political representation is always alienating, distorting the substantial identity of the individual, not just for structural reasons, but also for deliberate ones. But by simply trying to replace or supplement this formal frame of human rights with presumably non-vitiated forms of direct access to pain and otherness, by attempting to fill in the negative space of politics with the positive identities of the victims, the three post-colonialists seem to fall prey to what Hegel would have called genuine abstract thinking – even more, the most spontaneous kind of abstract thinking: sense-certainty. So, instead of throwing away the formal inscription of universality with the dirty water of the actual politics of exclusion, perhaps we should hold on to the former as the only chance to fight the latter. As Lacan used to say, 'le symbolique sait recouvrir la dette qu'il engendre'.

- <sup>1</sup> Ratna Kapur, "Human Rights in the 21<sup>st</sup> century. Take a walk on the dark side", *Sidney Law Review*, vol. 28, 2006, p. 674.
- <sup>2</sup> *Ibid.*, p. 675.
- <sup>3</sup> *Ibid.*, p. 687 (my emphasis).
- <sup>4</sup> *Ibid.*, p. 686.
- <sup>5</sup> *Ibid.*, p. 685.
- <sup>6</sup> *Ibid.*, p. 686.
- <sup>7</sup> *Ibid.*, p. 675.
- <sup>8</sup> *Ibid.*, p. 687.
- <sup>9</sup> Upendra Baxi, *The Future of Human Rights*, Oxford University Press, New Delhi, 2002, p. 29.
- <sup>10</sup> Cf. *The Future of Human Rights*, p. 79.
- <sup>11</sup> *The Future of Human Rights*, p. 90.
- <sup>12</sup> Upendra Baxi, *Human Rights in a Posthuman World*, Oxford University Press, New Delhi, 2007, chapter one.
- <sup>13</sup> Gayatri Spivak, "Righting Wrongs", *South Atlantic Quarterly*, spring/summer 2004, p. 546.
- <sup>14</sup> *Ibid.*, p. 548.
- <sup>15</sup> *Ibid.*, p. 563.
- <sup>16</sup> *Ibid.*, pp. 523-524.
- <sup>17</sup> *Ibid.*, p. 534.
- <sup>18</sup> *Ibid.*, p. 559.
- <sup>19</sup> *Ibid.*, p. 564.
- <sup>20</sup> Cf. Richard T. Ford, "Beyond «Difference»: A Reluctant Critique of Legal Identity Politics", in Wendy Brown, Janet Halley (ed.), *Left Legalism/ Left Critique*, Duke University Press, Durham & London, 2002.
- <sup>21</sup> Slavoj Žižek, *On Belief*, Routledge, London & New York, 2001, pp. 67-68.
- <sup>22</sup> Richard Rorty, "Human Rights, Rationality, and Sentimentality", in *On Human Rights: The 1993 Oxford Amnesty Lectures*, ed. Susan Hurley and Stephen Shute, Basic Books, New York, 1993.
- <sup>23</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton University Press, 2001.
- <sup>24</sup> Wendy Brown, "«The most we can hope for»: Human rights and the Politics of Fatalism", in *South Atlantic Quarterly*, Spring/Summer 2004, p. 456.
- <sup>25</sup> *Ibid.*, p. 459.
- <sup>26</sup> *Ibid.*, p. 455.
- <sup>27</sup> *Ibid.*, pp. 459-460.
- <sup>28</sup> The critique that Costas Douzinas addresses in *The End of Human Rights* to what he calls 'Lacanian' accounts of human rights is, for what concerns Žižek and Rancière here, perfectly accurate: they do seem to identify, in a very Lacanian manner, Law (or, in our case, human rights) with Language. However, this point is perhaps to be viewed not as an accusation mark, as the weakest point in their argumentation, but as their decisive wager: by conceiving the triad subjectivization-politicization-universality in such a tight manner, and by defining human rights as the essential operator of this triad, they do seem to equate the interpellation of human rights with a sort of symbolic castration. Thus being the case, the alternative is only, as Lacan used to say, *le père ou pire*.
- <sup>29</sup> To borrow the expression coined by Robert Pfaller, in "Negation and its Reliabilities: An Empty Subject for Ideology?", in Slavoj Žižek (ed.), *Cogito and the Unconscious*, Duke University Press, Durham & London, 1998.
- <sup>30</sup> Slavoj Žižek, "Against Human Rights", *New Left Review*, july-august 2005, p. 117.
- <sup>31</sup> *Ibid.*, p. 118.
- <sup>32</sup> *Ibid.*, p. 131.
- <sup>33</sup> Cf. Jacques Rancière, *La mésentente. Politique et philosophie*, Galilée, Paris, 1995, pp. 52-53.
- <sup>34</sup> Jacques Rancière, *On the Shores of the Political*, Verso, London-New York, 2007, p. 54.
- <sup>35</sup> To tell the truth, Rancière's critique of Agamben all along his essay (in fact, Agamben seems to be his main target here) is a little bit odd. Far from being Agamben's last word, the opposition between *zoe* and *bios*, between bare life and political life, is rather his constant object of critique. Witness the numerous grey zones of non-distinction and indifference that Agamben uncovers all along his texts, and witness his concept of 'form-of-life' which is meant precisely to subvert the clear cut opposition between *zoe* and *bios* (cf. Giorgio Agamben, *Mezzi senza fine*, Bollati Boringhieri, Torino, 1996).
- <sup>36</sup> Jacques Rancière, "Who is the Subject of the Rights of Man?", in *South Atlantic Quarterly*, spring/summer 2004, p. 304.
- <sup>37</sup> *Ibid.*, p. 302.
- <sup>38</sup> *Ibid.*, p. 305.
- <sup>39</sup> Cf. Slavoj Žižek, *The Ticklish Subject. The absent centre of political ontology*, Verso, London & New York, 1999, p. 234 sqq. For Althusser's theory of ideological interpellation, see "Idéologie et appareils idéologiques d'état", in *Positions (1964-1975)*, Editions Sociales, Paris, 1976 and "Trois notes sur la théorie du discours", in *Écrits sur la psychanalyse. Freud et Lacan*, Stock/Imec, Paris, 1993.
- <sup>40</sup> In fact, there is no positive ideological content, since, for Althusser, the ideological interpellation acts in the manner of the police man shouting 'hey, you, down there!' – it asks the individual to identify himself while providing at the same time his identity cards.

<sup>41</sup> Louis Althusser, “Trois notes sur la théorie du discours”, in *Ecrits sur la psychanalyse. Freud et Lacan*, Stock/Imec, Paris, 1993, p. 136.