

AGAINST HUMAN RIGHTS

CONTEMPORARY APPEALS to human rights within our liberal-capitalist societies generally rest upon three assumptions. First, that such appeals function in opposition to modes of fundamentalism that would naturalize or essentialize contingent, historically conditioned traits. Second, that the two most basic rights are freedom of choice, and the right to dedicate one's life to the pursuit of pleasure (rather than to sacrifice it for some higher ideological cause). And third, that an appeal to human rights may form the basis for a defence against the 'excess of power'.

Let us begin with fundamentalism. Here, the evil (to paraphrase Hegel) often dwells in the gaze that perceives it. Take the Balkans during the 1990s, the site of widespread human-rights violations. At what point did the Balkans—a geographical region of South-Eastern Europe—become 'Balkan', with all that designates for the European ideological imaginary today? The answer is: the mid-19th century, just as the Balkans were being fully exposed to the effects of European modernization. The gap between earlier Western European perceptions and the 'modern' image is striking. Already in the 16th century the French naturalist Pierre Belon could note that 'the Turks force no one to live like a Turk'. Small surprise, then, that so many Jews found asylum and religious freedom in Turkey and other Muslim countries after Ferdinand and Isabella had expelled them from Spain in 1492—with the result that, in a supreme twist of irony, Western travellers were disturbed by the public presence of Jews in big Turkish cities. Here, from a long series of examples, is a report from N. Bisani, an Italian who visited Istanbul in 1788:

A stranger, who has beheld the intolerance of London and Paris, must be much surprised to see a church here between a mosque and a synagogue, and a dervish by the side of a Capuchin friar. I know not how this government can have admitted into its bosom religions so opposite to its own. It

must be from degeneracy of Mahommedanism, that this happy contrast can be produced. What is still more astonishing is to find that this spirit of toleration is generally prevalent among the people; for here you see Turks, Jews, Catholics, Armenians, Greeks and Protestants conversing together on subjects of business or pleasure with as much harmony and goodwill as if they were of the same country and religion.¹

The very feature that the West today celebrates as the sign of its cultural superiority—the spirit and practice of multicultural tolerance—is thus dismissed as an effect of Islamic ‘degeneracy’. The strange fate of the Trappist monks of Etoile Marie is equally telling. Expelled from France by the Napoleonic regime, they settled in Germany, but were driven out in 1868. Since no other Christian state would take them, they asked the Sultan’s permission to buy land near Banja Luka, in the Serb part of today’s Bosnia, where they lived happily ever after—until they got caught in the Balkan conflicts between Christians.

Where, then, did the fundamentalist features—religious intolerance, ethnic violence, fixation upon historical trauma—which the West now associates with ‘the Balkan’, originate? Clearly, from the West itself. In a neat instance of Hegel’s ‘reflexive determination’, what Western Europeans observe and deplore in the Balkans is what they themselves introduced there; what they combat is their own historical legacy run amok. Let us not forget that the two great ethnic crimes imputed to the Turks in the 20th century—the Armenian genocide and the persecution of the Kurds—were not committed by traditionalist Muslim political forces, but by the military modernizers who sought to cut Turkey loose from its old-world ballast and turn it into a European nation-state. Mladen Dolar’s old quip, based on a detailed reading of Freud’s references to the region, that the European unconscious is structured like the Balkans, is thus literally true: in the guise of the Otherness of ‘Balkan’, Europe takes cognizance of the ‘stranger in itself’, of its own repressed.

But we might also examine the ways in which the ‘fundamentalist’ essentialization of contingent traits is itself a feature of liberal-capitalist democracy. It is fashionable to complain that private life is threatened or even disappearing, in face of the media’s ability to expose one’s most

¹ Quoted in Bozidar Jezernik, *Wild Europe: The Balkans in the Gaze of Western Travellers*, London 2004, p. 233.

intimate personal details to the public. True, on condition that we turn things around: what is effectively disappearing here is public life itself, the public sphere proper, 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. The ‘risk society’ commonplace—according to which the contemporary individual experiences himself as thoroughly ‘denaturalized’, regarding even his most ‘natural’ traits, from ethnic identity to sexual preference, as being chosen, historically contingent, learned—is thus profoundly deceiving. What we are witnessing today is the opposite process: an unprecedented re-naturalization. All big ‘public issues’ are now translated into attitudes towards the regulation of ‘natural’ or ‘personal’ idiosyncrasies.

This explains why, at a more general level, pseudo-naturalized ethno-religious conflicts are the form of struggle which best suits global capitalism. In the age of ‘post-politics’, when politics proper is progressively replaced by expert social administration, the sole remaining legitimate sources of conflict are cultural (religious) or natural (ethnic) tensions. And ‘evaluation’ is precisely the regulation of social promotion that fits with this re-naturalization. Perhaps the time has come to reassert, as the truth of evaluation, the perverted logic to which Marx refers ironically in his description of commodity fetishism, quoting Dogberry’s advice to Seacoal at the end of *Capital*’s Chapter 1: ‘To be a well-favoured man is the gift of fortune; but to write and read comes by nature.’ To be a computer expert or a successful manager is a gift of nature today, but lovely lips or eyes are a fact of culture.

Unfreedom of choice

As to freedom of choice: I have written elsewhere of the pseudo-choice offered to the adolescents of Amish communities who, after the strictest of upbringings, are invited at the age of seventeen to plunge themselves into every excess of contemporary capitalist culture—a whirl of fast cars, wild sex, drugs, drink and so forth.² After a couple of years, they are allowed to choose whether they want to return to the Amish way. Since they have been brought up in virtual ignorance of American society, the youngsters are quite unprepared to cope with such permissiveness, which in most cases generates a backlash of unbearable anxiety. The

² ‘The constitution is dead. Long live proper politics’, *Guardian*, 4 June 2005.

vast majority vote to return to the seclusion of their communities. This is a perfect case of the difficulties that invariably accompany 'freedom of choice': while Amish children are formally given a free choice, the conditions in which they must make it render the choice unfree.

The problem of pseudo-choice also demonstrates the limitations of the standard liberal attitude towards Muslim women who wear the veil: acceptable if it is their own free choice rather than imposed on them by husbands or family. However, the moment a woman dons the veil as the result of personal choice, its meaning changes completely: it is no longer a sign of belonging to the Muslim community, but an expression of idiosyncratic individuality. In other words, a choice is always a meta-choice, a choice of the modality of the choice itself: it is only the woman who does not choose to wear a veil that effectively chooses a choice. This is why, in our secular liberal democracies, people who maintain a substantial religious allegiance are in a subordinate position: their faith is 'tolerated' as their own personal choice, but the moment they present it publicly as what it is for them—a matter of substantial belonging—they stand accused of 'fundamentalism'. Plainly, the 'subject of free choice', in the 'tolerant', multicultural sense, can only emerge as the result of an extremely violent process of being uprooted from one's particular life-world.

The material force of the ideological notion of 'free choice' within capitalist democracy was well illustrated by the fate of the Clinton Administration's ultra-modest health reform programme. The medical lobby (twice as strong as the infamous defence lobby) succeeded in imposing on the public the idea that universal healthcare would somehow threaten freedom of choice in that domain. Against this conviction, all enumeration of 'hard facts' proved ineffective. We are here at the very nerve-centre of liberal ideology: freedom of choice, grounded in the notion of the 'psychological' subject, endowed with propensities which he or she strives to realize. And this especially holds today, in the era of a 'risk society' in which the ruling ideology endeavours to sell us the very insecurities caused by the dismantling of the welfare state as the opportunity for new freedoms. If labour flexibilization means you have to change jobs every year, why not see it as a liberation from the constraints of a permanent career, a chance to reinvent yourself and realize the hidden potential of your personality? If there is a shortfall on your standard health insurance and retirement plan, meaning you have to

opt for extra coverage, why not perceive it as an additional opportunity to choose: either a better lifestyle now or long-term security? Should this predicament cause you anxiety, the 'second modernity' ideologist will diagnose you as desiring to 'escape from freedom', of an immature sticking to old stable forms. Even better, when this is inscribed into the ideology of the subject as the 'psychological' individual, pregnant with natural abilities, you will automatically tend to interpret all these changes as the outcome of your personality, not as the result of being thrown around by market forces.

Politics of jouissance

What of the basic right to the pursuit of pleasure? Today's politics is ever more concerned with ways of soliciting or controlling *jouissance*. The opposition between the liberal-tolerant West and fundamentalist Islam is most often condensed as that between, on the one side, a woman's right to free sexuality, including the freedom to display or expose herself and to provoke or disturb men; and, on the other side, desperate male attempts to suppress or control this threat. (The Taliban forbade metal-tipped heels for women, as the tapping sounds coming from beneath an all-concealing burka might have an overpowering erotic appeal.)

Both sides, of course, mystify their position ideologically and morally. For the West, women's right to expose themselves provocatively to male desire is legitimized as their right to enjoy their bodies as they please. For Islam, the control of female sexuality is legitimized as the defence of women's dignity against their being reduced to objects of male exploitation. So when the French state prohibits Muslim girls from wearing the veil in school, one can claim that they are thus enabled to dispose of their bodies as they wish. But one can also argue that the true traumatic point for critics of Muslim 'fundamentalism' was that there were women who did not participate in the game of making their bodies available for sexual seduction, or for the social exchange and circulation involved in this. In one way or another, all the other issues—gay marriage and adoption, abortion, divorce—relate to this. What the two poles share is a strict disciplinary approach, differently directed: 'fundamentalists' regulate female self-presentation to forestall sexual provocation; pc feminist liberals impose a no-less-severe regulation of behaviour aimed at containing forms of harassment.

Liberal attitudes towards the other are characterized both by respect for otherness, openness to it, and an obsessive fear of harassment. In short, the other is welcomed insofar as its presence is not intrusive, insofar as it is not really the other. Tolerance thus coincides with its opposite. My duty to be tolerant towards the other effectively means that I should not get too close to him or her, not intrude into his space—in short, that I should respect his intolerance towards my over-proximity. This is increasingly emerging as the central human right of advanced capitalist society: the right not to be ‘harassed’, that is, to be kept at a safe distance from others. The same goes for the emergent logic of humanitarian or pacifist militarism. War is acceptable insofar as it seeks to bring about peace, or democracy, or the conditions for distributing humanitarian aid. And does the same not hold even more for democracy and human rights themselves? Human rights are ok if they are ‘rethought’ to include torture and a permanent emergency state. Democracy is ok if it is cleansed of its populist excesses and limited to those mature enough to practise it.

Caught in the vicious cycle of the imperative of *jouissance*, the temptation is to opt for what appears its ‘natural’ opposite, the violent renunciation of *jouissance*. This is perhaps the underlying motif of all so-called fundamentalisms—the endeavour to contain (what they perceive as) the excessive ‘narcissistic hedonism’ of contemporary secular culture with a call to reintroduce the spirit of sacrifice. A psychoanalytic perspective immediately enables us to see why such an endeavour goes wrong. The very gesture of casting away enjoyment—‘Enough of decadent self-indulgence! Renounce and purify!’—produces a surplus-enjoyment of its own. Do not all ‘totalitarian’ universes which demand of their subjects a violent (self-)sacrifice to the cause exude the bad smell of a fascination with a lethal-obscene *jouissance*? Conversely, a life oriented towards the pursuit of pleasure will entail the harsh discipline of a ‘healthy lifestyle’—jogging, dieting, mental relaxation—if it is to be enjoyed to the maximum. The superego injunction to enjoy oneself is immanently intertwined with the logic of sacrifice. The two form a vicious cycle, each extreme supporting the other. The choice is never simply between doing one’s duty or striving for pleasure and satisfaction. This elementary choice is always redoubled by a further one, between elevating one’s striving for pleasure into one’s supreme duty, and doing one’s duty not for duty’s sake but for the gratification it brings. In the first case, pleasures are my duty, and the ‘pathological’ striving for pleasure is located in the

formal space of duty. In the second case, duty is my pleasure, and doing my duty is located in the formal space of 'pathological' satisfactions.

Defence against power?

But if human rights as opposition to fundamentalism and as pursuit of happiness lead us into intractable contradictions, are they not after all a defence against the excess of power? Marx formulated the strange logic of power as 'in excess' by its very nature in his analyses of 1848. In *The Eighteenth Brumaire* and *The Class Struggles in France*, he 'complicated' in a properly dialectical way the logic of social representation (political agents representing economic classes and forces). In doing so, he went much further than the usual notion of these 'complications', according to which political representation never directly mirrors social structure—a single political agent can represent different social groups, for instance; or a class can renounce its direct representation and leave to another the job of securing the politico-judicial conditions of its rule, as the English capitalist class did by leaving to the aristocracy the exercise of political power. Marx's analyses pointed towards what Lacan would articulate, more than a century later, as the 'logic of the signifier'. Apropos the Party of Order, formed after the defeat of the June insurrection, Marx wrote that only after Louis-Napoleon's December 10 election victory allowed it to 'cast off' its coterie of bourgeois republicans

was the secret of its existence, the coalition of Orléanists and Legitimists into one party, disclosed. The bourgeois class fell apart into two big factions which alternately—the big landed proprietors under the restored monarchy and the finance aristocracy and the industrial bourgeoisie under the July Monarchy—had maintained a monopoly of power. Bourbon was the royal name for the predominant influence of the interests of the one faction, Orléans the royal name for the predominant influence of the interests of the other faction—the nameless realm of the republic was the only one in which both factions could maintain with equal power the common class interest without giving up their mutual rivalry.³

This, then, is the first complication. When we are dealing with two or more socio-economic groups, their common interest can only be represented in the guise of the negation of their shared premise: the common denominator of the two royalist factions is not royalism, but

³ Marx and Engels, *Selected Works*, vol. 1, Moscow 1969, p. 83.

republicanism. (Just as today, the only political agent that consistently represents the interests of capital as such, in its universality, above particular factions, is the ‘social liberal’ Third Way.) Then, in *The Eighteenth Brumaire*, Marx dissected the makeup of the Society of December 10, Louis-Napoleon’s private army of thugs:

Alongside decayed roués with dubious means of subsistence and of dubious origin, alongside ruined and adventurous offshoots of the bourgeoisie, were vagabonds, discharged soldiers, discharged jailbirds, escaped galley slaves, swindlers, mountebanks, *lazzaroni*, pickpockets, tricksters, gamblers, *maquereaux* [pimps], brothel-keepers, porters, literati, organ-grinders, rag-pickers, knife-grinders, tinkers, beggars—in short, the whole indefinite, disintegrated mass, thrown hither and thither, which the French call *la bohème*; from this kindred element Bonaparte formed the core of the Society of December 10 . . . This Bonaparte, who constitutes himself chief of the lumpen proletariat, who here alone rediscovers in mass form the interests which he personally pursues, who recognizes in this scum, offal, refuse of all classes the only class upon which he can base himself unconditionally, is the real Bonaparte, the Bonaparte *sans phrases*.⁴

The logic of the Party of Order is here brought to its radical conclusion. In the same way that the only common denominator of all royalist factions is republicanism, the only common denominator of all classes is the excremental excess, the refuse, the remainder, of all classes. That is to say, insofar as the leader perceives himself as standing above class interests, his immediate class base can only be the excremental remainder of all classes, the rejected [re]jected non-class of each class. And, as Marx develops in another passage, it is this support from the ‘social object’ which enables Bonaparte to shift his position as required, representing in turn each class against the others.

As the executive authority which has made itself independent, Bonaparte feels it to be his task to safeguard ‘bourgeois order’. But the strength of this bourgeois order lies in the middle class. He poses, therefore, as the representative of the middle class and issues decrees in this sense. Nevertheless, he is somebody solely because he has broken the power of that middle class, and keeps on breaking it daily. He poses, therefore, as the opponent of the political and literary power of the middle class.⁵

But there is more. In order for this system to function—that is, for the leader to stand above classes and not to act as a direct representative of

⁴ Marx and Engels, *Collected Works*, vol. XI, Moscow 1975, p. 149.

⁵ Marx and Engels, *Collected Works*, vol. XI, p. 194.

any one class—he also has to act as the representative of one particular class: of the class which, precisely, is not sufficiently constituted to act as a united agent demanding active representation. This class of people who cannot represent themselves and can thus only be represented is, of course, the class of small-holding peasants, who

form a vast mass, the members of which live in similar conditions but without entering into manifold relations with one another. Their mode of production isolates them from one another instead of bringing them into mutual intercourse . . . They are consequently incapable of enforcing their class interests in their own name, whether through a parliament or through a convention. They cannot represent themselves, they must be represented. Their representative must at the same time appear as their master, as an authority over them, as an unlimited governmental power that protects them against the other classes and sends them rain and sunshine from above. The political influence of the small-holding peasants, therefore, finds its final expression in the executive power subordinating society to itself.⁶

These three features together form the paradoxical structure of populist-Bonapartist representation: standing above all classes, shifting among them, involves a direct reliance on the object/remainder of all classes, plus the ultimate reference to the class of those who are unable to act as a collective agent demanding political representation. This paradox is grounded in the constitutive excess of representation over the represented. At the level of the law, the state power merely represents the interests of its subjects; it serves them, is responsible to them, and is itself subject to their control. However, at the level of the superego underside, the public message of responsibility is supplemented by the obscene message of the unconditional exercise of power: ‘Laws do not really bind me, I can do to you whatever I want, I can treat you as guilty if I decide to do so, I can destroy you on a whim’. This obscene excess is a necessary constituent of the notion of sovereignty. The asymmetry here is structural: the law can only sustain its authority if subjects hear in it the echo of the obscene, unconditional self-assertion of power.

This excess of power brings us to the ultimate argument against ‘big’ political interventions which aim at global transformation: the terrifying experiences of the 20th century, a series of catastrophes which precipitated disastrous violence on an unprecedented scale. There are three

⁶ Marx and Engels, *Collected Works*, vol. xi, pp. 187–8.

main theorizations of these catastrophes. First, the view epitomized by the name of Habermas: Enlightenment is in itself a positive, emancipatory process with no inherent ‘totalitarian’ potential; the catastrophes that have occurred merely indicate that it remains an unfinished project, and our task should be to bring this project to completion. Second, the view associated with Adorno and Horkheimer’s *Dialectic of Enlightenment* and, today, with Agamben. The ‘totalitarian’ bent of Enlightenment is inherent and definitive, the ‘administered world’ is its true consequence, and concentration camps and genocides are a kind of negative-teleological endpoint of the entire history of the West. Third, the view developed in the works of Etienne Balibar, among others: modernity opens up a field of new freedoms, but at the same time of new dangers, and there is no ultimate teleological guarantee of the outcome. The contest remains open and undecided.

The starting point of Balibar’s text on violence is the insufficiency of the standard Hegelian-Marxist notion of ‘converting’ violence into an instrument of historical Reason, a force which begets a new social formation.⁷ The ‘irrational’ brutality of violence is thus *aufgehoben*, ‘sublated’ in the strict Hegelian sense, reduced to a particular ‘stain’ that contributes to the overall harmony of historical progress. The 20th century confronted us with catastrophes—some directed against Marxist political forces, others generated by Marxist engagement itself—which cannot be ‘rationalized’ in this way. Their instrumentalization into the tools of the Cunning of Reason is not only ethically unacceptable but also theoretically wrong, ideological in the strongest sense of the term. In his close reading of Marx, Balibar nonetheless discerns an oscillation between this teleological ‘conversion-theory’ of violence, and a much more interesting notion of history as an open-ended process of antagonistic struggles, whose final ‘positive’ outcome is not guaranteed by any encompassing historical necessity.

Balibar argues that, for necessary structural reasons, Marxism is unable to think the excess of violence that cannot be integrated into the narrative of historical Progress. More specifically, it cannot provide an adequate theory of fascism and Stalinism and their ‘extreme’ outcomes, Shoah and Gulag. Our task is therefore twofold: to deploy a theory of historical violence as something which cannot be instrumentalized by any politi-

⁷ Etienne Balibar, ‘Gewalt’: entry for *Historisch-Kritisches Wörterbuch des Marxismus*, vol. 5, ed. Wolfgang Fritz Haug, Hamburg 2002.

cal agent, which threatens to engulf this agent itself in a self-destructive vicious cycle; and also to pose the question of how to turn the revolutionary process itself into a civilizing force. As a counter-example, take the process that led to the St Bartholomew's Day Massacre. Catherine de Medici's goal was limited and precise: hers was a Machiavellian plot to assassinate Admiral de Coligny—a powerful Protestant pushing for war with Spain in the Netherlands—and let the blame fall on the over-mighty Catholic family of de Guise. Thus Catherine sought to engineer the fall of both the houses that posed a menace to the unity of the French state. But the bid to play her enemies off against each other degenerated into an uncontrolled frenzy of blood. In her ruthless pragmatism, Catherine was blind to the passion with which men clung to their beliefs.

Hannah Arendt's insights are crucial here, emphasizing the distinction between political power and the mere exercise of violence. Organizations run by direct non-political authority—Army, Church, school—represent examples of violence (*Gewalt*), not of political power in the strict sense of the term.⁸ At this point, however, we need to recall the distinction between the public, symbolic law and its obscene supplement. The notion of the obscene double-supplement of power implies that there is no power without violence. Political space is never 'pure' but always involves some kind of reliance on pre-political violence. Of course, the relationship between political power and pre-political violence is one of mutual implication. Not only is violence the necessary supplement of power, but power itself is always-already at the root of every apparently 'non-political' relationship of violence. The accepted violence and direct relationship of subordination within the Army, Church, family and other 'non-political' social forms is in itself the reification of a certain ethico-political struggle. The task of critical analysis is to discern the hidden political process that sustains all these 'non' or 'pre'-political relationships. In human society, the political is the encompassing structuring principle, so that every neutralization of some partial content as 'non-political' is a political gesture *par excellence*.

Humanitarian purity

It is within this context that we can situate the most salient human rights issue: the rights of those who are starving or exposed to murderous

⁸ Hannah Arendt, *On Violence*, New York 1970.

violence. Rony Brauman, who co-ordinated aid to Sarajevo, has demonstrated how the very presentation of the crisis there as 'humanitarian', the very recasting of a political-military conflict into humanitarian terms, was sustained by an eminently political choice—basically, to take the Serb side in the conflict. The celebration of 'humanitarian intervention' in Yugoslavia took the place of a political discourse, Brauman argues, thus disqualifying in advance all conflicting debate.⁹

From this particular insight we may problematize, at a general level, the ostensibly depoliticized politics of human rights as the ideology of military interventionism serving specific economico-political ends. As Wendy Brown has suggested apropos Michael Ignatieff, such humanitarianism

presents itself as something of an anti-politics, a pure defence of the innocent and the powerless against power, a pure defence of the individual against immense and potentially cruel or despotic machineries of culture, state, war, ethnic conflict, tribalism, patriarchy, and other mobilizations or instantiations of collective power against individuals.¹⁰

However, the question is: what kind of politicization do those who intervene on behalf of human rights set in motion against the powers they oppose? Do they stand for a different formulation of justice, or do they stand in opposition to collective justice projects? For example, it is clear that the us-led overthrow of Saddam Hussein, legitimized in terms of ending the suffering of the Iraqi people, was not only motivated by hard-headed politico-economic interests but also relied on a determinate idea of the political and economic conditions under which 'freedom' was to be delivered to the Iraqi people: liberal-democratic capitalism, insertion into the global market economy, etc. The purely humanitarian, anti-political politics of merely preventing suffering thus amounts to an implicit prohibition on elaborating a positive collective project of socio-political transformation.

At an even more general level, we might problematize the opposition between the universal (pre-political) human rights possessed by every human being 'as such' and the specific political rights of a citizen, or member of a particular political community. In this sense, Balibar

⁹ Rony Brauman, 'From Philanthropy to Humanitarianism', *South Atlantic Quarterly*, vol. 103, no. 2–3, Spring–Summer 2004, pp. 398–9 and 416.

¹⁰ Wendy Brown, 'Human Rights as the Politics of Fatalism', *South Atlantic Quarterly*, vol. 103, no. 2–3, p. 453.

argues for the ‘reversal of the historical and theoretical relationship between “man” and “citizen”’ that proceeds by ‘explaining how man is made by citizenship and not citizenship by man.’¹¹ Balibar alludes here to Arendt’s insight on the condition of refugees:

The conception of human rights based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships except that they were still human.¹²

This line, of course, leads straight to Agamben’s notion of *homo sacer* as a human being reduced to ‘bare life’. In a properly Hegelian dialectics of universal and particular, it is precisely when a human being is deprived of the particular socio-political identity that accounts for his determinate citizenship that—in one and the same move—he ceases to be recognized or treated as human.¹³ Paradoxically, I am deprived of human rights at the very moment at which I am reduced to a human being ‘in general’, and thus become the ideal bearer of those ‘universal human rights’ which belong to me independently of my profession, sex, citizenship, religion, ethnic identity, etc.

What, then, happens to human rights when they are the rights of *homo sacer*, of those excluded from the political community; that is, when they are of no use, since they are the rights of those who, precisely, have no rights, and are treated as inhuman? Jacques Rancière proposes a salient dialectical reversal: ‘When they are of no use, one does the same as charitable persons do with their old clothes. One gives them to the poor. Those rights that appear to be useless in their place are sent abroad, along with medicine and clothes, to people deprived of medicine, clothes and rights.’ Nevertheless, they do not become void, for ‘political names and political places never become merely void’. Instead the void is filled by somebody or something else:

if those who suffer inhuman repression are unable to enact the human rights that are their last recourse, then somebody else has to inherit their rights in order to enact them in their place. This is what is called the ‘right to

¹¹ Etienne Balibar, ‘Is a Philosophy of Human Civic Rights Possible?’, *South Atlantic Quarterly*, vol. 103, no. 2–3, pp. 320–1.

¹² Hannah Arendt, *The Origins of Totalitarianism*, New York 1958, p. 297.

¹³ See Giorgio Agamben, *Homo sacer*, Stanford 1998.

humanitarian interference’—a right that some nations assume to the supposed benefit of victimized populations, and very often against the advice of the humanitarian organizations themselves. The ‘right to humanitarian interference’ might be described as a sort of ‘return to sender’: the disused rights that had been sent to the rightless are sent back to the senders.¹⁴

So, to put it in the Leninist way: what the ‘human rights of Third World suffering victims’ effectively means today, in the predominant discourse, is the right of Western powers themselves to intervene politically, economically, culturally and militarily in the Third World countries of their choice, in the name of defending human rights. The reference to Lacan’s formula of communication (in which the sender gets his own message back from the receiver-addressee in its inverted, i.e. true, form) is very much to the point here. In the reigning discourse of humanitarian interventionism, the developed West is effectively getting back from the victimized Third World its own message in its true form.

The moment human rights are thus depoliticized, the discourse dealing with them has to change: the pre-political opposition of Good and Evil must be mobilized anew. Today’s ‘new reign of ethics’, clearly invoked in, say, Ignatieff’s work, thus relies on a violent gesture of depoliticization, depriving the victimized other of any political subjectivization. And, as Rancière points out, liberal humanitarianism *à la* Ignatieff unexpectedly meets the ‘radical’ position of Foucault or Agamben with regard to this depoliticization: their notion of ‘biopolitics’ as the culmination of Western thought ends up getting caught in a kind of ‘ontological trap’, in which concentration camps appear as ontological destiny: ‘each of us would be in the situation of the refugee in a camp. Any difference grows faint between democracy and totalitarianism and any political practice proves to be already ensnared in the biopolitical trap’.¹⁵

We thus arrive at a standard ‘anti-essentialist’ position, a kind of political version of Foucault’s notion of sex as generated by the multitude of the practices of sexuality. ‘Man’, the bearer of human rights, is generated by a set of political practices which materialize citizenship; ‘human rights’ are, as such, a false ideological universality, which masks and legitimizes

¹⁴ Jacques Rancière, ‘Who is the Subject of the Rights of Man?’, *South Atlantic Quarterly*, vol. 103, no. 2–3, pp. 307–9.

¹⁵ Rancière, ‘Who is the Subject of the Rights of Man?’, p. 301.

a concrete politics of Western imperialism, military interventions and neo-colonialism. Is this, however, enough?

Universality's return

The Marxist symptomal reading can convincingly demonstrate the content that gives the notion of human rights its specific bourgeois ideological spin: universal human rights are effectively the right of white, male property-owners to exchange freely on the market, exploit workers and women, and exert political domination. This identification of the particular content that hegemonizes the universal form is, however, only half the story. Its crucial other half consists in asking a more difficult, supplementary question: that of the emergence of the form of universality itself. How—in what specific historical conditions—does abstract universality become a ‘fact of (social) life’? In what conditions do individuals experience themselves as subjects of universal human rights? Therein resides the point of Marx’s analysis of ‘commodity fetishism’: in a society in which commodity exchange predominates, individuals in their daily lives relate to themselves, and to the objects they encounter, as to contingent embodiments of abstract-universal notions. What I am, in terms of my concrete social or cultural background, is experienced as contingent, since what ultimately defines me is the ‘abstract’ universal capacity to think or to work. Likewise, any object that can satisfy my desire is experienced as contingent, since my desire is conceived as an ‘abstract’ formal capacity, indifferent to the multitude of particular objects that may, but never fully do, satisfy it.

Or take the example of ‘profession’: the modern notion of profession implies that I experience myself as an individual who is not directly ‘born into’ his social role. What I will become depends on the interplay between contingent social circumstances and my free choice. In this sense, today’s individual has a profession, as electrician, waiter or lecturer, while it is meaningless to claim that the medieval serf was a peasant by profession. In the specific social conditions of commodity exchange and the global market economy, ‘abstraction’ becomes a direct feature of actual social life, the way concrete individuals behave and relate to their fate and to their social surroundings. In this regard Marx shares Hegel’s insight, that universality becomes ‘for itself’ only when individuals no longer fully identify the kernel of their being with their particular social situation; only insofar as they experience themselves

as forever 'out of joint' with it. The concrete existence of universality is, therefore, the individual without a proper place in the social edifice. The mode of appearance of universality, its entering into actual existence, is thus an extremely violent act of disrupting the preceding organic poise.

It is not enough to make the well-worn Marxist point about the gap between the ideological appearance of the universal legal form and the particular interests that effectively sustain it. At this level the counter-argument (made, among others, by Lefort and Rancière), that the form is never 'mere' form but involves a dynamics of its own, which leaves traces in the materiality of social life, is fully valid. It was bourgeois 'formal freedom' that set in motion the very 'material' political demands and practices of feminism or trade unionism. Rancière's basic emphasis is on the radical ambiguity of the Marxist notion of the 'gap' between formal democracy—the Rights of Man, political freedoms—and the economic reality of exploitation and domination. This gap can be read in the standard 'symptomatic' way: formal democracy is a necessary but illusory expression of a concrete social reality of exploitation and class domination. But it can also be read in the more subversive sense of a tension in which the 'appearance' of *égalité* is not a 'mere appearance' but contains an efficacy of its own, which allows it to set in motion the rearticulation of actual socio-economic relations by way of their progressive 'politicization'. Why shouldn't women also be allowed to vote? Why shouldn't workplace conditions be a matter of public concern as well?

We might perhaps apply here the old Lévi-Straussian term of 'symbolic efficiency': the appearance of *égalité* is a symbolic fiction which, as such, possesses actual efficiency of its own; the properly cynical temptation of reducing it to a mere illusion that conceals a different actuality should be resisted. It is not enough merely to posit an authentic articulation of a life-world experience which is then reappropriated by those in power to serve their particular interests or to render their subjects docile cogs in the social machine. Much more interesting is the opposite process, in which something that was originally an ideological edifice imposed by colonizers is all of a sudden taken over by their subjects as a means to articulate their 'authentic' grievances. A classic case would be the Virgin of Guadalupe in newly colonized Mexico: with her appearance to a humble Indian, Christianity—which until then served as the imposed ideology of the Spanish colonizers—was appropriated by the indigenous population as a means to symbolize their terrible plight.

Rancière has proposed a very elegant solution to the antinomy between human rights, belonging to ‘man as such’, and the politicization of citizens. While human rights cannot be posited as an unhistorical ‘essentialist’ Beyond with regard to the contingent sphere of political struggles, as universal ‘natural rights of man’ exempted from history, neither should they be dismissed as a reified fetish, the product of concrete historical processes of the politicization of citizens. The gap between the universality of human rights and the political rights of citizens is thus not a gap between the universality of man and a specific political sphere. Rather, it ‘separates the whole of the community from itself’.¹⁶ Far from being pre-political, ‘universal human rights’ designate the precise space of politicization proper; what they amount to is the right to universality as such—the right of a political agent to assert its radical non-coincidence with itself (in its particular identity), to posit itself as the ‘supernumerary’, the one with no proper place in the social edifice; and thus as an agent of universality of the social itself. The paradox is therefore a very precise one, and symmetrical to the paradox of universal human rights as the rights of those reduced to inhumanity. At the very moment when we try to conceive the political rights of citizens without reference to a universal ‘meta-political’ human rights, we lose politics itself; that is to say, we reduce politics to a ‘post-political’ play of negotiation of particular interests.

¹⁶ Rancière, ‘Who is the Subject of the Rights of Man?’, p. 305.