AGAINST GLOBALIZATION

The politics of universalism. Strategic uses of human rights discourses in early modernity

Karen-Margrethe Simonsen*
Department of Aesthetics and Communication, Aarhus University, Arhus C, Denmark

Abstract
This article investigates the political function of human rights in 16th-century Spain just after the conquest of America. It claims that the study of this period of early globalization is relevant for an understanding of the function of human rights discourses today, at the “end” of globalization. Historically speaking, human rights are closely connected with globalization, but at the same time, they raise the question about the foundation of globalization: is there a universal community or only economic and political power-relations? This article argues that the political use of human rights discourses is split down the middle: it serves both as a critique of power and as an extension of power, and the disclosure of this split helps us understand the inner politics of human rights. The article discusses the trial in Valladolid in 1550 when the rights of the barbarian Indians of America were put on trial. It focuses mainly on the arguments made by Bartolomé de las Casas and on the reasons why the King allowed las Casas’ fierce critique of the conquest to be published in a period of otherwise severe censorship. This article is inspired by Etienne Balibar’s idea of “politics of universalism,” “political autonomy,” and “equaliberty.”

Keywords: human rights; politics of universalism; national sovereignty; America; Bartolomé de las Casas; Etienne Balibar; power; imperialism

*Correspondence to: Karen-Margrethe Simonsen, Comparative Literature, Department of Aesthetics and Communication, Aarhus University, Langelandsgade 139, 8000 Arhus C, Denmark. Email: litkms@hum.au.dk

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“Is globalization promoting or undermining human rights prospects?” Micheline Ishay poses the question in her book on *The History of Human Rights*.¹ She concludes that globalization does both, blaming the undermining on the unequal economic development and explaining the increasing promotion by referring to the extended communication.² Ishay’s way of posing the question seems to think globalization as a complex reality and human rights as an ideal “prospect” that can or cannot be realized within this reality. Her question presupposes a dichotomy between real, factual globalization and ideal, cosmopolitan community. This dichotomy haunts discussions of human rights since human rights are never a fully established reality but seem to hover over us as a utopian hope yet to be fulfilled. Yet, one step in the direction of a critical reflection on the dichotomy is to ask how cosmopolitan ideals function in a concrete global and politicized world.

To focus on the politics of human rights may also help explain why human rights discourses turn up today at the very historical moment of the decline of political ideologies. Human rights are not ideology but they may serve the same utopian goals as political ideologies once served: that of envisioning and hopefully creating a better and more equal world. At the same time, human rights have a surprising function in historical and political culture, that of creating, legitimizing, branding, or even expanding different “local” communities: national, European, American, and so on.

Human rights discourses are thus a rewarding area of research when it comes to understanding the way local politics strategically relate to global and potentially universal communities. Human rights discourses are not only embedded within a globalized world, they are a central means of developing local–global dynamics. This can be seen at the very outset of European modernity, just as it can be seen today, when modern “universalists” or “cosmopolitanists” reshape European and global identity on the basis of human rights.³ The paradoxical situation is that the development of human rights is tightly interwoven with the processes of globalization,—they can hardly be understood outside of this context—, but the content of human rights is supposed to be beyond these historical processes because it is universal. What we need to understand the function of human rights is therefore what Etienne Balibar has called “a politics of universalism.”

A “politics of universalism” investigates the political mechanisms within universalism; it asks questions about the relations between subjectivity and power within specific contexts. In a radical reading of human rights, rights can only be true rights if the bearer of rights articulates them. No one can speak on behalf of somebody else. This is also what Balibar calls the “autonomy of politics,” and this is one of the reasons why universalism always has to redefine the relationship between the global and the local. “Politics of universalism” is not to be confused with “universalism of politics.” A politics of universalism is not about propagating the right politics or the right understanding of politics but about understanding the political function of universalism, or as Balibar describes it: “how politics defines itself when it refers to a de jure universality.”⁴

This article claims that the public use of human rights discourses is split down the middle: it serves both as a means of widening the cosmopolitan understanding and as propagating local interests, or to phrase it differently: both as a critique of power and as an extension of power, and the disclosure of this split helps us understand the inner politics of human rights. However, the ambition is also to understand what kind of institution or discourse or what kind of agency that makes it possible to activate transnational or cosmopolitan arguments. The focus of the article is on the use of human rights discourses in 16th-century Spain, just after the discovery of the new world. In this period, when Spain develops into an empire, and tries to come to terms with her new power within a global world, there is a very visible link between human rights discourses and politics, as well as an interesting mix of national, global, and universalistic arguments concerning human or natural rights.

THE POLITICS OF HUMAN RIGHTS AND THE DISCOVERY OF THE NEW WORLD

As already hinted, the interest of the period of the 16th- and 17th century in the context of globalization is that the relation between the eternal and the worldly is being reconceptualised under the impression of global forces. Spain is in particular
an interesting example, not only because of the legalistic culture of the country, but also because the discovery of the new world led to an explicit clash between universalistic, global and national logics. This is discernible in the debate on the humanity of the Indian and in the debates on the right of the Spanish crown to conquer and possess the new land. In Carl Schmitt’s words, the question about “who is free” became extremely closely related to the question about “who decides.” From the very beginning of renaissance modernity, the question of who counts as a human being with universal rights was thus connected with the discussion of master–slave relations.

The simultaneity of the development of human rights and the imperialistic suppression of the rights of the Indians and the blindness of European intellectuals to this duplicity has often been pointed out. Most recently and convincingly by Susan Buck-Morss, who argues that not only is this a historical truth but also that an awareness of the fact must lead to a remapping of our understanding of the history of humanism—a remapping that is of importance in relation to actual discussions about humanism: “Present realities demand such historical remapping as an alternative to the fantasies of clashing civilizations and exclusionary redemptions.”

An important step in such a remapping is, according to Buck-Morss, the turn to dialectics: “to turn the tables” and ask: what if the “slave” (in this case, Haiti) is not seen as “a victim of Europe but as an agent in Europe’s construction.” To make this move means not only to make a critique of the simultaneity of the development of European enlightenment and the development of slavery but also to pose the question of the relationship between humanism (the concept of natural freedom) and slavery (the restricted admission of equality). The question is how to understand this relationship. Is slavery only a sign of a certain regrettable but still historically admissible delay in the extension of freedom to all?—Or is there a more intricate link between freedom and slavery?

I will argue that the master–slave relation is not only an external relation between those who have rights and those who do not (yet) but also an internal relation between positions of power and powerlessness within human rights discourse. The political element is thus both outside and inside human rights. Etienne Balibar has coined the term “equaliberty” for designating what he believes to be the true political moment, which is marked both by freedom and equality. It cannot only be liberty since this does not guarantee access to the political scene. Therefore, he sees the Declaration of the Rights of Man and the Citizen (1789) as a decisive statement of politics. The declaration states the principle of autonomy, that is, the fact that no one can be made equal by an external force, since “politics is an unfolding of the self-determination of the people” or, Balibar says, referring to Kant, politics is “the people’s own responsibility.” However, in order for a group of people to have this responsibility, it has to be recognized as a subject who is the bearer of universal rights without being idealized as universal bearer of rights, or even worse: as a universal victim which would bestow a false pathos on the universal.

Just as in the case of Buck-Morss, dialecticism is the answer to the problem of the excluded and victimized people. However, the problem of understanding the function of human rights and politics is not only on the side of the dominated but also on the side of that who dominates. Balibar’s argument here rests on a displacement of Nietzsche’s argument that democratic politics expresses a “slave morality.” Balibar writes:

The most important thing here is not the counter-revolutionary stigmatization of a politics made by and for the masses, nor the correlative idealization of exceptional individuals, but the proposal of an analysis and a genealogy which lay bare the mechanics by which hegemony is constructed and consensus engineered. I shall take the liberty of advancing the following interpretation: domination by an established order does indeed rest, as Marx argued after Hegel, on the ideological universalization of its principles. But, contrary to what Marx believed, the ‘dominant ideas’ cannot be those of the ‘dominant class’. They have to be those of the ‘dominated’, the ideas which state their theoretical right to recognition and equal capacity. More precisely, the discourse of hegemonic domination has to be one in which it is possible to appeal against a de facto discrimination to a de jure equality – [...] .

There are four important points to be made here: first that Balibar’s understanding of human
rights undermines the self-evidence of “human rights for all”—universalism and in contrast opens up for a discussion of social power-relations between dominated and dominant within human rights discourses. The dominated can only in ambiguous ways become subjective bearers of the universal, and the dominant cannot universalize themselves without contradicting themselves. They are dependent on the dominated for their own position. Equality is thus not only a right or an ideal of the suppressed, but also and necessarily, a strategic ideal of the suppressors. Second, that the mechanics of politics and human rights are historically dynamic, meaning that positions can be changed and transformed. Third, that the idea of incorporating human rights within a general understanding of a “politics of universalism” avoids the eternal debate between universalism and historicism. Universalism cannot be reduced to history, but neither does it float in an ideal sphere by itself. Finally, and most important in my context, the insistence on the double character of “de facto discrimination” and “de jure equality” of hegemonic domination creates an interdependent relationship between “master” and “slave.”

The appeal of any hegemonic power to universalism, thus necessarily implies that it becomes purged with a “slave morality.” If this logic is established, all protests can, according to Balibar, “turn into legitimation since, against the injustice of the established order, protest appeals not to something heterogeneous to that order, but to identical principles.” Balibar relates his analysis to the period of Enlightenment but claim it to constitute a general principle, even in non-democratic societies.

Now, my question is how that relates to the early period of globalization and to the Spanish empire? In the 16th-century Spain, royal power was absolute and despotic: national sovereignty was established and strengthened from the conquest of Granada and through the following centuries. Spain became the Empire where the sun never sets; Spanish conquerors ruled and behaved in the new land as they wanted to. According to numerous reports the Spanish conquest was extremely violent, thousands of aborigines died or were deprived of their land and property, and turned into slaves. Yet at the same time, the Spanish Kings,—from Ferdinand and Isabella to Charles V and Phillip II—seemed to be extremely preoccupied both with the legal foundation of the conquest, with the justice of it, and with the wellbeing of the aborigines.

According to Lewis Hanke, who is still considered to have written one of the most important books on the issue, this royal preoccupation and “care for the aborigines” was not only a symptom of bad conscience or lip-service to mitigate critical voices about the violence of the conquest, but was an earnest interest in moral universalism in the midst of an extremely tense political climate. However, keeping Balibar’s dialectics of universalism in mind, one may ask how this “de jure universalism” was used politically in the face of the undeniable evidence of the “de facto” discrimination of the Indians during the conquest. Why should the king be interested in showing interest in human rights?

Let us have a look at one of the most interesting historical examples of a politically motivated trial about universalism.

**Politics of Human Rights in Practice: Universalism on Trial**

In 1550, Charles V set up an astounding “trial” in Valladolid. The aim of the trial was to establish whether the Spanish conquest and warfare in America was just or unjust. King Charles V (King Charles I in Spain) called for this “trial” after some years where doubt had been raised regarding the legitimacy of the Spanish conquest; and not least the legitimacy of the brutality of the Spanish conquest. Ever since the papal bull *Inter Caetera* from 1493, in which the Spanish born Pope Alexander VI “by the authority of the almighty God” had “given” all islands and mainlands west of The Azores and Cape Verde to the Spanish King, Spain had claimed that she entered upon the conquest “by divine justice.” Papal authority bestowed universalistic value on the conquest and the Spanish King took this so seriously that he ordered the words of the pope to be inscribed in the Requirement that by royal decree was to be carried across the ocean by the Spanish conquerors and read to the Indians before the conquest could take place.

Since the very beginning of the Spanish conquest, its legitimacy and its fairness had been debated and critiqued not only by other nations who questioned the Spanish right to all land west...
of the Azores, but also by ecclesiastics, soldiers, and jurists inside of Spain. However, it was not until 1532 that an important Spanish jurist questioned the authority of the papal bull. This was done by the Dominican monk and jurist Francisco de Vitoria, who is often said to be the founder of modern international law. In his De Indis De Jure Belli from 1532, Francisco de Vitoria claimed in a number of titles that “The Pope [was] not civil or temporal lord of the whole world, in the proper sense of civil lordship and power.” that “Even if the Supreme Pontiff had secular power over the world, he could not give that power to secular princes,” that the Pope had temporal power “but only so far as it [subserved] things spiritual” and finally that “The Pope [had] no temporal power over the Indian aborigines or over other unbelievers.”

In 1550, at the time of the trial of Valladolid, Francisco de Vitoria had died but there was another Dominican monk, namely Bartolomé de las Casas who defended the Indians. If Francisco de Vitoria is said to be the forerunner of international law, Bartolomé de las Casas is often said to be the forerunner of modern human rights. In the trial, two conflicting views on the conquest and the status of the Indians were presented before The Council of Valladolid and Prince Philip, the son of King Charles. Bartolomé de las Casas was up against the royal historian and renaissance humanist Juan Ginés de la Sepúlveda who had just recently translated Aristotle’s Politics into Spanish. Sepúlveda enjoyed huge prestige and was backed up by different parties of interest. He spoke for one whole day and argued mainly, referring to Aristotle’s idea of natural slaves, that the Indians “are barbaric, uninstructed in letters and the art of government, and completely ignorant, unreasoning, and totally incapable of learning anything but the mechanical arts; that they are sunk in vice, are cruel, and of such a character that, as nature teaches, they are to be governed by the will of others.” Bartolomé de las Casas in turn spoke for 5 days, reading his In Defense of the Indians that was intended to show how Sepúlveda was wrong both in law and in fact. Las Casas argued that native Americans were human beings, capable of reason and culture and that they lived according to a structured social order.

The text of In Defense of the Indians is an interesting hybrid of philosophical, theological, anthropological, and political arguments. In contrast with Vitoria and Sepúlveda, who never left Europe, Las Casas had made four extensive journeys in America; this and the fact that Las Casas was an exceptionally learned scholar contributed highly to the authority of the text. However, the controlling logic of the rhetoric in the text is political in the sense that it is oriented toward political action. Bartolomé de las Casas went through all the classical arguments about barbarism, but his interest was not philosophical—not even theological. His aim was to change the politics of the conquest. He did not, as Vitoria had done, question the papal bull but claimed that the Spaniards had corrupted and twisted the meaning of it. According to Las Casas, the papal bull was not meant to legitimize the “destruction of the Indies” but only to authorize the peaceful spreading of the Christian religion.

Bartolomé de las Casas insist on the universalism of Christian religion to criticize or correct temporal power. He initiates his speech by addressing the young Prince Philip, reminding him of his subordinance to the faith of Christ: “you strive for immortal glory, not just with the imperial power but especially with the generous spirit and the wisdom that has been implanted in you by Christ.” Two pages later, he brings in the universalism of natural law as an argument against the military campaigns of the conquest:

What good can come from these military campaigns […] how will that nation love us, how will they become our friends (which is necessary if they are to accept our religion) when children see themselves deprived of parents, wifes of husbands, and fathers of children and friends? When they see those they love wounded, imprisoned, plundered, and reduced from an immense number to a few? When they see their rulers stripped of their authority, cursed, and afflicted with a wretched slavery? All these things flow necessarily from war. Who is there who would want the gospel preached to himself in such a fashion? Does not this negative precept apply to all men in general: “See that you do not do to another, what you would not have done to you by another”? And the same for the affirmative command: “So always treat others as you would like them to treat you.”
This is something that every man knows, grasps, and understands by the natural light that has been imparted to our minds.22

The reference for this universal feeling is the Bible (Matthew 7:12), but the argument is that this is a natural law: common to all men, no matter what religion they belong to. For Bartolomé de las Casas, the force of Christianity is not based in the power of the church but in the power of the universal message. Las Casas supports the papal bulls but makes it clear that the Pope is or has to be an incarnation of the general universalism of Christianity. Thus, when he explains that Sepúlveda has misunderstood the papal bull because it does not legitimize war on the Indians, he goes on to ask “For how would he [the Pope] permit something that conflicts with Christ’s precepts and instruction and produces hatred of the name of Christ in the hearts of unbelievers and is utterly irreligious?”23 This sounds like a warning to anyone who would dare to make war in the name of Christ, even a warning to the Pope himself.

However, for Las Casas, the universalism of Christianity is not only a set of axiomatic rules or ethical commands. Universalism can only be understood in its incorporation into differentiated living reality. This point becomes clear when Las Casas moves on to a discussion of what universalism is in relation to the understanding of the barbarian. Whereas Aristotle and Sepúlveda speak of natural slavery as an eternal state of a specific other, namely the barbarian, las Casas develops a flexible and multi-layered understanding of the barbarian. Las Casas takes his point of departure in the four categories of barbarians, as defined by Aristotle in Politics (books 1 and 3) and Ethics (book 7), and by Thomas Aquinas and “other doctors in various places”.24

Let us look briefly at these arguments. Against the argument, that the barbarian is an “inhuman, wild, merciless” person, Bartolomé de las Casas argues that this kind of barbarianism is found in all cultures. Against the argument that barbarians are “people who do not have a written language that corresponds to the spoken one,” this is not, Las Casas says, an absolute definition but a relative one, and he quotes Paul: “If I am ignorant of what the sound means, I am a barbarian to the man who is speaking and he is a barbarian to me.”25

The third definition of barbarians is that they are people who have an evil character and live in barren regions and are stupid and strangers to reason. They are not governed by any law, do not cultivate friendships and do not have any organized community. These are barbarians in an absolute sense and according to Aristotle it is legitimate to try to subordinate them. Against this view, Las Casas argues that there can only be very few of these, since otherwise the creation of God must be considered bad, and Las Casas adds: “Who therefore, except one who is irreverent toward God and contemptuous of nature, has dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted, when, if they are evaluated by an accurate judgment, they completely outnumber all other men?” writes Las Casas.26 The sheer number of Indians makes it impossible for them to be barbarians. The person who had “dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted” was Juan Ginés de Sepúlveda who here is turned into a blasphemous person—an intolerable position for a man who considered himself a true Christian and who heavily leaned on the decree of the Pope Alexandre VI who had given the Indies to Spain.

Finally, Las Casas argues that even if the Indians are evil, or their community is ruled by tyrants, you have to acknowledge that they have well-administered kingdoms with own autonomy that you cannot break. Las Casas goes on to argue: “Do you think that the Romans, once they had subjugated the wild and barbaric peoples of Spain, could with secure right divide all of you among themselves, handing over so many head of both males and females as allotments to individuals”? Here Las Casas comes close to the arguments of Francisco de Vitoria who had argued in favor of political autonomy of the Indian kingdoms, even in the cases when they were tyrannies, thus paving the way for the foundation of national sovereignty within international law.

Las Casas thus develops his arguments with strategic shifts between universalist and relativist perspectives. When confronted with relativist views (for instance that the Indians are different from us), he makes use of the universal argument of common nature, and when confronted with the universalistic argument of natural slavery, he
opposes the relativistic view that the Indians have their own, independent culture.

This is also what we see in modern discussions on human rights. Boaventura Sousa-Santos for instance explains that the essence of human rights is that “We have the right to be equal whenever difference diminishes us; we have the right to be different whenever equality decharacterizes us.” Human rights are thus not just emerged in universal self-evidence, the very universalism itself will be negotiated in every new situation of application.

The persuasiveness of Las Casas’ text depends on the flexibility of argument, but how did the King react to it? It was already an exceptional situation that the King had allowed the trial to put a halt on all expeditions. No ships were sent to America while Sepúlveda and Las Casas were talking and the commission worked on their procedures. But to understand all the political dimensions of this discourse, it has to be placed in its historical context.

BARTOLOMÉ DE LAS CASAS: A HUMANIST OR A BATTERING RAM FOR IMPERIALISM?

The direct outcome of the trial was relatively poor. Both Sepúlveda and Las Casas declared themselves to be winners, but the “court” was not able to reach a common decision. It was even difficult for the king to get the 14 members of the commission to write their opinions. But it is generally assumed that Bartolomé de las Casas symbolically won the case in the long run. Even if the conquests did not stop, as Las Casas had wished, they became more pacific. The king forbade the use of the word “conquest.” Instead the word “pacification” should be used, and the Spaniards were requested to try to persuade the aborigines to surrender by peaceful means.

Another significant indication was that the works of Sepúlveda were censored by the Inquisition while those by Bartolomé de las Casas were allowed to be printed, even the book A Very Short Description of the Destruction of the Indies (Una brevísima relación de la destrucción de las Indias, 1552). Bartolomé de las Casas had already begun writing the book in 1542, before the trial in Valladolid. The book gave a gruesome and detailed account of the horrors of the Spanish conquest. It told how the Spanish conquerors tortured and killed aborigines for the sake of winning gold, without reason, or for the sheer fun of killing. It can be regarded as an early example of “sensational journalism” or “atrocity tale.”

Even if the Spanish conquest was very violent, the book is also exaggerating, but the sensational aspect was decisively underlined when it was re-published in 1598, containing horrific illustrations of torture scenes drawn by Theodore de Bry.

Theodore de Bry, Illustration for Brevisima relación de la destrucción de las Indias, 1598.

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Bartolomé de las Casas’ book was permitted publication in Spain and was not censored until more than 100 years later (in 1659). Abroad it was one of the most published and read books. Between 1578 and 1648, 21 Dutch, eight Italian, six French, four German, two English, and two Latin translations were published. All in all 43 translations appeared in 70 years. This book alone was enormously important in creating the Black Legend about the Spanish conquest, and it damaged the image of Spain abroad considerably. In an historical moment, when Spain was still the strongest imperial power in America, the idea that the Spanish conquest was cruel and inhuman was extremely valuable for the competing imperialistic
nations, especially the Netherlands but also for France and England. According to Consuelo de Varela, in the hands of the British, the Dutch and the French, this legendary book turned into a “political weapon of the first order” (“un arma política de primer orden”).

The question is thus: why did the Spanish king allow such a damaging book to be printed? What was the political motivation? Can there be any national political motivation for the exposure of national responsibility for atrocities and “infringements” of human rights? As mentioned before, Lewis Hanke argues that the King was preoccupied with the Christian foundation of the conquest. There was an earnest ethical concern at play.

A reverse motivation could be that the critique made by Bartolomé de las Casas’ of the violence of the conquest made it easier for the King to uphold political control over the conquerors. As Carl Schmitt has argued, political sovereignty is dependent on social order. Fifty years after the Conquest, the problem of the king was not only how to gain wealth through the exploitation of the newly conquered land but also how to control the conquerors themselves. The King was extremely aware that the conquest was in risk of developing into pure chaos, if the conquerors were not kept in order. In this way, paradoxically, Bartolomé de las Casas’ humanism served the King as yet a further tool in the imperialistic endeavors. Bartolomé de las Casas’ extreme unpopularity among the conquerors also point in this direction.

As Daniel Castro has explained it in his highly critical study, Las Casas’ critique of the violence and especially his wish to forbid the encomiendas: “meshed perfectly with the crown’s desire to limit the power of its subjects in the American kingdoms, thus Las Casas either advisedly or inadvertently once again ended up serving as the battering ram of an imperialist center.” In short, Bartolomé de las Casas’ continuous critique of the conquerors’ violence served as an excuse for the King to “remind” the encomenderos of the sovereignty of the king and the need to keep in order. This point of view is supported by the fact that Bartolomé de las Casas never made a critique of the conquest as such. He could not since he believed that it served the legitimate goal of christening the Indians. He just thought that the conquest should be enacted with peaceful means.

Though Las Casas was later to condemn all means of force and insist on the voluntariness of conversion, there was no doubt about his ambition of converting the aborigines to the Christian faith. This is where the Christian mission departs from its own universal aspirations and an inner contradiction between the universal and the political appears. In Balibar’s terms, this is an example of bad “politics of the universal” in the sense that it is about “propagating the right politics” or the right version of universalism, which is a logical self-contradiction.

In the historical situation, Las Casas’ universalism seemed to serve the king’s political goals, and therefore it is not a surprise that the King tolerated Las Casas’ fierce critique of Spanish brutality. Yet, there may also be a third reason for the King’s tolerance toward Las Casas’, and this reason takes us to the heart of the politics of human rights. According to this line of thought, the King’s apparent interest in the wellbeing of the Indians is really an interest in securing the foundation of sovereign power. Sovereignty is thus not seen (only) as a self-confirming, self-evident principle of power; in a paradoxical dialectic it is dependent on the subjects it represses. According to this line of thought, the King is preoccupied with the justice of the conquest because, ultimately, it is only the justice of the conquest that can logically legitimize the royal power and royal imperialism.

One could argue that the sovereignty of the King undermines this dialectics, since sovereignty is defined as the ability to rule as one pleases without asking anybody if it is legitimate or not; neither friends, nor enemies or subjects. In none of the historical discourses about human rights, discussed in this article, does any Indian interfere. The Indians do not speak for themselves. They are only represented. So the type of agency, conferred on the Indians here, is not direct agency and thus not political autonomy.

Yet, there is one way in which the Indians appear as if they had agency. This in the way that they are installed in the discourse as a possibly resisting subject. According to Balibar, even absolute power is dialectical, since it “presupposes a resistance” (17). And the renaissance and early baroque period in Spain, the period of the counterreformation, is dominated by a strong populism that presupposes the resistance that it
tries to annihilate. In this specific sense, the Indians are seen as a people with agency.

As I wrote earlier: the use of human rights discourses in this early period is split down the middle: it serves both as a critique of power and as an extension of power, be that royal or ecclesiastic. The interesting thing is that “critique” and “extension” of power are part of the one and same discourse or dialectic. This raises a fundamental doubt about the status of human rights and the status of any humanism launched in the name of subjected people. Keeping Balibar’s dialectics of universalism in mind, we must ask how the historical “de jure universalism” was used politically in the face of the undeniable evidence of the “de facto” discrimination of the Indians during the conquest, or how this bad politicization of human rights undermined the true politics of universalism.

UNIVERSALISM AND GLOBALIZATION TODAY

True politics of universalism demands autonomy of politics, as defined by Etienne Balibar. This means agency of the subjects involved in the political moment, and an avoidance of the victimization of the suppressed. One important step toward this is also a redefinition of power. In the essay “Toward a European ‘Antistrategic’ Policy”, Balibar writes that we have to transform “the way we understand the concept of politics in relation with the idea of ‘power’”:

What I suggest is that we need to explore a completely different path, where power does not predate action but is rather its result, in a sense that depends upon the goals that one wants to achieve. It is action, or agency that produces the degree and distribution of power, not the reverse.39

This conception of power does not aim at constituting a new, great power, but at constituting a “new type of power, one that nobody can appropriate. […] This type of power is essentially a new correlation among the existing forces”.40 The anti-strategic strategy of this new powerpolitics is meant to invite real interaction and collaboration that dissolves, or at least reinterprets the master–slave logic of power.

This vision of correlative, powerful action may be less utopian than it seems and in certain ways, it catches also the way that discussions about human rights and transnational legal culture proliferates itself through our global world. As Boaventura Sousa-Santos wrote already in 1995 about the transnationalization of the legal field:

Rather than being the product of an intellectual crusade by well-meaning jurists or philosophers, the transnationalization of the legal field is being promoted by practicing lawyers, state bureaucrats, and international institutions, as well as by popular movements and NGOs. Far from being a monolithic phenomenon, it is extremely diverse, combining uniformity with local differentiation, top-down impositions with bottom-up creation, formal declaration with interstitial emergence, boundary-maintaining orientation with boundary-transcending orientation.41

The international or rather global legal culture is thus a set of activities with a lot of different agents. The problem is that whereas peoples’ lives and a lot of legal activity are border-crossing by nature:

[the] legal protection of human beings seems to be much more territorialized than the legal protection of goods and services. […] In a world saturated with an ideology of rights, and undergoing a period of intense globalization, the challenges posed by this “black hole” heavily underscore the sociological and political need to analyse the movements of people across national borders.42

Since World War II, human rights courts and human rights discourses have tried to bridge the gulf between independent nation-states. The Universal Declaration of Human Rights from 1948 proclaims the universal declaration of human rights “as a common standard of achievement for all peoples and all nations.”43 And the International Military Tribunal of the Nuremberg trials put forward in its charter that crimes against humanity legitimate a supranational or transnational interference in national sovereignty.44

However, if Boaventura de Sousa-Santos is right in his analysis, our problem is not only that of nations who claim to have a sovereign right to suppress their own people, it is also our problem that the legal system and vocabulary cannot fathom border-crossing reality. In that sense, the
universalism of human rights will “always” come too late and there will always be a “black hole” to fill out. The solution, if there is one, is to turn the tables around, and start the discussion of human rights in living reality itself. As the historical example in this article shows, only flexible legal arguments that mix universal and relativist arguments may be able to catch up with the variability of reality. One first step in this direction is to stop treating human rights as if they were a valuable goal with imminent values in themselves. Human rights are only a means of achieving more justice, but if they are understood in a too rigid way with a stable vocabulary, as Balibar says: with too much pathos, they will not be able to work in living reality.

In recent uses of human rights discourses, it is obvious that human rights are seen not only as being related to individual rights, nor even to specific interests of class within a nation, but are used to support our sense of community in a global world. This is what Costas Douzinas has called the “Triumph of Human Rights” and he relates it directly to the post-ideological, postmodern global world that “unites left and right, the pulpit and the state, the minister and the rebel, the developing world and the liberals of Hampstead and Manhattan.”

However, this kind of triumph of human rights can only act at the most superficial rhetorical level. This is why I stated in the beginning that the question posed by Michelin Ishay: “Is globalization promoting or undermining human rights prospects?” should be turned around thus: “Are human rights promoting or undermining globalization,—meaning global community?” What kind of community is installed by a human rights regime? Since human rights discourses can be used equally well by the master and the slave—by sovereign power and suppressed people—human rights should always be analysed in their actual political setting. The question is always: who is speaking on behalf of whom, when we talk about human rights? What kind of subjectivity and what kind of liberation is at stake? Globalization holds the hope of universal community, and human rights seem to further such a community, but only if its politics is understood and acknowledged.

Seen from an historical and European point of view, there is no doubt that the first wave of globalization after the conquest of America promoted discussions on human rights and thus laid the ground for modern Europe. Hence, Europe did not become modern because she invented human rights, Europe invented or developed the human rights because a global experience forced her to reflect on humanity and she did so not only out of a moral imperative, but also out of necessity and through violent social and discursive battles. However, in this early period of modernity, it is also clear that human rights discourses are never neutral as such. It is not only a battle for and against human rights; it is a battle about the right understanding of human rights and especially their role within a community. Human rights are promoted from different power-positions and with different political intentions that reinterpret the most basic sense of human, cultural and political community.

Notes
1. Micheline R. Ishay, The History of Human Rights. From Ancient Times to the Globalization Era (Berkeley and Los Angeles: University of California Press, 2008, 2004), 13.
2. Ibid., 13.
3. Etienne Balibar (for instance in We The People of Europe (Princeton: Princeton University Press, 2004)); and Ulrich Beck and Edgar Grande (for instance in Cosmopolitan Europe (Malden: Polity Press, 2008)) can be mentioned as significant examples.
4. Etienne Balibar, Politics and the Other Scene (London: Verso, 2002). (First published as chapters in La crainte des masses, 1997) and Droit de cité, (1998).
5. Carl Schmitt, The Nomos of the Earth in the International Law of the Jus Publicum Europaeum, trans. G. L. Ulmen (New York: Telos Press Publishing, 2003), 15.
6. Susan Buck-Morss, Hegel, Haiti, and Universal History (Pittsburgh: University of Pittsburgh Press, 2009), 79.
7. Ibid., 80.
8. Balibar, Politics and the Other Scene, 3.
9. Ibid., 7.
10. Balibar argues that it must be so, seen from a logical point of view. “The proposition of equal liberty, as stated in revolutionary terms, has a remarkable logical form, which has, since the Greeks, been termed an eikhos or, in other words, a self-refutation of its negation. It states the fact that it is impossible to maintain to a logical conclusion, without absurdity, the idea of perfect civil liberty based on discrimination, privilege and inequalities of condition […] just as it is impossible to conceive
and institute equality between human beings based on despotism (even ‘enlightened’ despotism) or on a monopoly of power.” (Balibar, Politics and the Other Scene, 3).

11. Ibid., 7.

12. Lewis Hanke, The Spanish Struggle for Justice in the Conquest of America (Dallas: Southern Methodist University Press, 2002), According to Hanke, the discussions on the problems of America reveal “both the highly developed individualism of the Spaniards and a deliberate, imaginative, and courageous attempt by the crown and the Spanish people to shoulder the heavy burdens placed on Spain by her political and ecclesiastical dominion in America” (10). Hanke states later that even when the “[i]mpatient conquistadores champed at the bit while intricate discussions were held concerning the applicability to the Indians of the Aristotelian doctrine of slavery.” “The crown continued to listen to those idealists who had been responsible for the experiments [of making peaceful, farming settlements in America] and even for a time suspended conquest in America while its justice was being debated at Valladolid” (174).

13. In the first few years after the conquest, the line between the old and the new order was symbolically represented in the making of geographical and geopolitical demarcation lines between the old and the new world and the distribution of ownership according to these lines. This distribution of ownership was initialized by the Pope, Alexander VI, who in a papal bull Inter Caetera (from 1493) drew a geographical line from the North Pole to the South just west of Cape Verde. In the bull Inter Caetera, the Pope takes the position of a sovereign ruler, who by divine justice is able to decide upon the borders of the new geographical order, and decide who has the right to explore and conquer the new territories:

And, in order that you may enter upon so great an undertaking with greater readiness and heartiness endowed with the benefit of our apostolic favor, we, of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde.” http://www.catholic-forum.com/saints/pope0214a.htm (accessed March 25, 2012).

14. Hanke, The Spanish Struggle for Justice, 33.

15. Francisco de Vitoria, Section 3, Part 2, De Indis De Jure Belli, http://en.wikisource.org/wiki/De_Indis_De_Jure_Belli/Part_2 (accessed December 6, 2011).

16. See for example James Brown Scott, The Spanish Origin of International Law. Francisco de Vitoria and his Law of Nations (Oxford: Clarendon Press, 1934).

17. Bartolomé de la Vega, “Summary of Sepúlveda’s position”, in Bartolomé de las Casas, trans. C. M. Stafford Poole (DeKalb, IL: Northern Illinois University Press, 1992), 15.

18. Bartolomé de las Casas, In Defense of the Indians, 28.

19. Las Casas and Sepúlveda never actually met in the courtroom. They presented their pleas individually before the 14 members of the court. Las Casas’ speech was so long that the court afterwards commissioned one of the members to make a resume of his main points.

20. “Destruction of the Indies” is part of the title of his famous book Brevisima relación de la destrucción de las Indes that came out in 1552 but that he was writing already from 1542 and on. Regarding the misunderstanding of the papal bull, see Bartolomé de las Casas, In Defense of the Indians, 26.

21. Las Casas, In Defense of the Indians, 17.

22. Ibid., 27.

23. Ibid., 349.

24. Ibid., 28.

25. Ibid., 31.

26. Ibid., 35.

27. Boaventura de Sousa-Santos, Toward a New Commons Sense. Law, Science and Politics in the Paradigmatic Transition (New York: Routledge, 1995), 1059.

28. Lewis Hanke notes that as late as 1557, 6 years after the trial a note was sent to one of the members, Friar Melchor Cano, to ask him to immediately send his decision, Hanke, The Spanish Struggle for Justice, 129.

29. Hanke, The Spanish Struggle for Justice, 130–31.

30. Ibid., 129–30.

31. Giovanna Borradori, “Tiny Sparks of Contingency. On the Aesthetics of Human Rights”, in Philosophical Dimensions of Human Rights. Some Contemporary Views, ed. Claudio Corradetti (Springer Science Press, 2012), 157–72, 156, http://www.springer.com/philosophy/value+theory/book/978-94-007-2375-7 (accessed October 4, 2012).

32. The Spanish Inquisition had been founded in 1480 by the monarchs Fernando and Isabella as an instrument not only for religious but also political control. Thus it did not only focus on the danger of...
Arabic and Jewish influence, it also served as a general political means of control in a period when Spain was establishing itself as a sovereign nation and an empire.

33. Consuelo Varela, “Introducción Biográfica y crítica” (“Biographic introduction and criticism”), in Brevísima relación de la destrucción de las Indias (Very brief account of the destruction of the Indies) (Madrid: Ed. Castalia, 1999), 50.

34. Juan Friede and Benjamin Keen, Bartolomé de las Casas. Toward an Understanding of the Man and his Work (De Kalb, IL: Northern Illinois University Press, 1971), 10ff.

35. Carl Schmitt, The Nomos of the Earth in the International Law of the Jus Publicum Europaeum, trans. G. L. Ulmen (New York: Telos Press Publishing, 2003).

36. The system of encomiendas secured the right of Spanish farmers to use Indians as slaves.

37. Daniel Castro, Another Face of Empire, Bartolomé de las Casas. Indigenous Rights, and Ecclesiastical Imperialism (Durham: Duke University Press, 2007), 153.

38. In his early critique of the laws of Burgos, created in 1512 to mitigate the fierceness of the conquest, Bartolomé de las Casas criticizes for instance the law that said that Indians must live in villages close to the Spaniards in houses with 12 people in them and that to avoid that they move back, the Spanish burnt their villages. He criticizes the fact that a pregnant woman could be sent to the mines and he protests against the law that permits the Indian to make a loan of one gold peso every year, ridiculing it by saying that for this amount of money, one could only get a couple of combs and a mirror. But Las Casas does not protest against the laws that were to Christianize the aborigines. Law number 4 said that all Indians should be rehearsed in their knowledge of Christ every 14 days, law number 10 said that all Indians must have a Christian burial and law number 17 that all sons of caciques who were under the age of 13 should go for 4 years to the Franciscans to learn about God. Andreas Wesch, Kommentierte Edition und linguistische Untersuchung der Información de los Jerónimos, Santo Domingo 1517 (Commented edition and linguistic investigation of the reports from los Jerónimos) (Tübingen: Gunter Narr Verlag, 1993), 48-68.

39. Etienne Balibar, We, The People of Europe? Reflections on Transnational Citizenship (Princeton: Princeton University Press, 2004), 221.

40. Ibid., 225.

41. Boaventura de Sousa-Santos, Toward a New Common Sense, 252.

42. Ibid., 295.

43. See Universal Declaration of Human Rights, http://www.un.org/en/documents/udhr/ (accessed October 4, 2012).

44. Excerpt from Part II: “Jurisdiction and General Principles”, Nuremberg Trial Proceedings, Vol. 1, Charter of the International Military Tribunal, 1945, “(c)CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” http://avalon.law.yale.edu/imt/imtconst.asp#art6 (accessed October 4, 2012), See also Daniel Levy and Natan Sznaider, The Holocaust and Memory in the Global Age, trans. Assenka Oksiloff (Philadelphia, PA: Temple University Press, 2002, 93 and Beck, 2003), 34.

45. Costas Douzinas, The End of Human Rights, Critical Legal Thought at the Turn of the Century (Oxford: Hart Publishing), 1.

46. They were of course not human rights in the way we understand it today, but natural rights. However, for the sake of clarity I keep the term human rights all the way through. Mauricio Beuchot has argued that these early rights in Las Casas should be understood as proper human rights because they are rights for all human subjects and for all peoples. Mauricio Beuchot, Los fundamentos de los derechos humanos en Bartolomé de las Casas (Barcelona: Anthropos, 1994), 13.