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Unpacking the “Human” in “Human Rights”: Bare Life in the Age of Endless War

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In its 60th anniversary, the Universal Declaration of Human Rights continued to be trampled upon, perhaps more universally than ever.¹ Few documents combine at once such prestige and such irrelevance. Few are so widely recognized while being almost universally disrespected. As the Declaration turned sixty in 2008, not only had torture been legalized in the presumably exemplary American democracy but also it was revealed that the highest government officials gathered to decide which techniques would be used upon which prisoner. That torture had never been alien to what we call democracy is known since way before Bush Jr. and the War on Terror. But the oldest and most powerful democracy in the world becoming the planet’s leading force in the promotion, orchestration, and discursive/juridical justification of torture certainly qualified as a new picture. The unique combination of events that characterized the Bush administration depended on the consolidation of the notion of “War on Terror,” that most abusive appropriation of the concept of war. The revelation that the highest officials of the Bush administration were directly involved in the preparation and sanctioning of torture makes for a change in the status of the discussion on human rights, as we are no longer in the terrain of unavowed violations. Torture had now become state policy and was openly accepted as a legitimate act of sovereignty. These acts were perpetrated within and beyond U.S. borders, but their grounding depended on the existence of a location situated in neither of those spaces, not within U.S. borders but not beyond them either. I am speaking, of course, of Guantánamo, chosen by

the Bush administration to be a sort of homeland of bare life, that life unworthy of being lived, that human being “who *may be killed and yet not sacrificed*” (Agamben 28).

On September 20, 1996, the Pentagon released seven manuals prepared by the U.S. military and used between 1987 and 1991 for intelligence training courses in Latin America and at the U.S. Army School of the Americas (SOA).² These documents constitute a key chapter in the history of the institutionalization of torture, one that highlights again how the United States have been a promoter of cruel forms of punishment beyond its borders for several decades. Even those schooled in that scholarship, however, would have to agree that the particular combination of elements we saw in the eight years of the Bush administration—crowned by the truly horrific surveillance apparatus of the Rumsfeld/Cheney axis, which repeatedly humiliated Collin Powell and other moderate Army figures—brought the thing to an altogether unprecedented form. The discursive justification of torture has been explicit U.S. foreign policy at least since KUBARK, the Counterintelligence Interrogation written by the CIA in 1963. Whereas this history includes manuals utilized to train the Nicaraguan Contras in the 1980s and leads right up to the documents on “enhanced techniques of interrogation” of the Bush era, it is also true that torture had never quite acquired that spotlight position of a subject to be reasonably and rationally debated on TV shows—the morality and legitimacy of its application on others, on “terrorists,” being a *tacit assumption*.

Whereas in previous years, the discourse on torture, at the least the academic one, was often framed in relation to a domain of thought seen as unrepresentable and unspeakable, the contemporary fact is that torture became, during the Bush years, part of the domain of the sayable at the kitchen table. We can no longer speak of torture as some allegory of unspeakability. It has been, rather, the topic of the month to be commented on over dessert. This picture forced human rights activists and scholars of violence to grapple with a new reality.

Latin America has never been one arena among others in the development of the technology of pain. Under Bush, we witnessed the culmination of a model that systematically used Latin America

as a laboratory of cruelty and a location for the production of bare life. The epitome of Latin America’s emblematic position in the manufacturing of techniques of torture is this most uncanny of all places, Guantánamo. Situated inside and outside the U.S., simultaneously inside and outside Latin America, within and outside Cuba, within and outside humanity itself, Guantánamo was—let us expect that Congress will approve soon President Obama’s request for funds that would allow the prison to be closed—a reminder that the situation of human rights in Latin America has been one of a constant redefinition of the limits of the human, in a context where the state of exception has become permanent. Some nations (the U.S., Israel) get to decide where those limits are, who gets to be protected by human rights or who gets to establish where humanity itself begins and ends. Human rights as such today cannot be thought without coming to terms with the legacy of this paralegal territory situated beyond and within the U.S. borders, on and off national limits. We are just beginning to understand the extent of the destruction left behind by a U.S. administration that for the first led the world in the global undermining of the Declaration of Human Rights. Any gathering on human rights and Latin America must, then, exercise the vocation to be a genealogy of the United Nations declaration itself, along with the very history of its selective implementations and violations.

I hope it has not gone unnoticed that I have chosen the conjunction *and*, rather than the preposition *in*, to link the two terms that gathered us at the University of Minnesota, “human rights” and “Latin America and Iberia” My choice for that slight but meaningful displacement on the particle that organizes the terms of the colloquium stemmed from my weariness of discourses on “human rights in Latin America” (or elsewhere, say, in the Islamic World) that all too easily replicate a colonial division of intellectual labor proper to Area Studies. That division of labor has traditionally assigned to First World academics the task of holding in check how Third World countries are doing in the area of respect for human rights.³ Whereas it is all well and good to monitor human rights abuses everywhere, this division of labor surreptitiously assumes a location of speech, a locus of

enunciation⁴ found in a set of First World discourses on human rights that end up getting a free pass, so to speak. Their categories remain unchecked while they proceed with the evaluative and judgmental work. As valuable as the First World-based, primarily English-language sociology and historiography of human rights abuses in the world has been, it must be noted that much of it has also been guilty of an all-too-easy ethnocentric blindness: the inability to draw the full conclusions from the fact that human rights abuses in the Third World are linked with a global surveillance order controlled by the richest countries, particularly the United States. Entities such as Human Rights Watch, Amnesty International, and the United Nations Commission for Human Rights have indeed preserved some of their independence and continue to denounce situations such as those of Guantánamo or Iraq, but an intense siege was imposed on these multinational organisms during the “War on Terror,” in a context of military and political superiority of an extremist U.S. regime.

This context has ended up affecting the language in which the struggle against abuses and violations of human rights is reported as well. Meanwhile, in Latin America, Arab-speaking nations, and other parts of the so-called Third World, we have witnessed pointed challenges to the presumptive position of dominance of liberal-democratic, North Atlantic discourse on human rights. Some of the most intriguing of those challenges have asked interesting questions related to the very clash between competing definitions of the human. Let us take a look at some of these competing definitions of the human.

The Human Rights Report issued by Human Rights Watch in 2005 stated: “Because the Iraq War was not mainly about saving the Iraq people from manslaughter, and because no such slaughter was then ongoing or imminent, Human Rights Watch at the time took no position for or against the war” (15). Now, this is a pretty interesting, revealing, and strange sentence indeed. From the fact that none of the excuses presented for the invasion of Iraq were valid, Human Rights Watch concluded that it could not take a position for or against the war, *as if the invasion itself were not a brutal violation of the human rights of Iraqis*. To be sure, the report notes that although Saddam Hussein was a ruthless dictator, the

invasion of Iraq did not meet the standards of humanitarian intervention: “the question is whether the conditions were present that would justify humanitarian intervention—conditions that look at more than the level of repression” (16). The report concludes that those conditions were not present and that therefore the Bush administration’s primary justifications for the invasion (along with the non-existent weapons of mass destruction) were not sufficient to warrant a humanitarian intervention. The humanitarian excuse for the invasion of Iraq was feeble and short-lived, but the report still said: “And while at the time it was launched it was reasonable to believe that the Iraq people would be better off, it was not designed or carried out with the needs of Iraqis foremost in mind” (33).

How in the world could it have been reasonable to believe that the Iraq people would be better off after an illegal invasion, couched in lies, by the most powerful military in the world, led by an extremist administration already responsible for torture and concentration camps even before the invasion? The entire report is filled with that language in which the presumptive subject of enunciation is a first-world imaginary voter making a choice in a plebiscite over the future of others who are reduced to the condition of objects, never subjects. *For whom*, we might ask, was it reasonable, upon the launching of the war, “to believe that the Iraqi people would be better off”? One would imagine—all the more if one has ever lived in a country that has suffered an invasion—that no matter how brutal the previous regime was, except of a genocide, which was certainly not going on, the Iraqi people would certainly be worse off with the launching of a war of occupation. *For no one*, we might say, was it reasonable to believe the Iraq people would be better off, except for those being truly duped by the war propaganda manufactured by the White House and the media in 2003. Only for subjects who position themselves in the point of view of the colonial invasion can the question ever arise of whether or not Iraqis would be better off in its aftermath. I could go on pointing out that the report’s correct recognition of the origin of a set of human rights violations is presented in a language complicit with the values used to justify the War in the first place. Let me limit myself to saying that throughout the report, Iraqis are

thought of objects, never subjects of humanity. Human rights in that particular document appear as that which we may or may not succeed in defending for others. It remains something to which the other him/herself does not have access as a subject. It is a report thoroughly written from the point of view of the invader.

In *Precarious Life*, Judith Butler relates that in 2002, an Arab Christian group in San Francisco submitted an obituary to the *San Francisco Chronicle*. It was a simple, factual account of the deaths of a number of Palestinians, assassinated by Israeli occupation forces. The Bay Area paper rejected the obituary, pointing out that they needed proof of death. After the Arab group submitted proof of death, taken from the Israeli paper *Ha'aretz*, the *San Francisco Chronicle* renewed their censorship with the argument that the piece was not "in an obituary format." The group was invited to resubmit it as a memorial. They wrote it up in the format of a memorial but it was still refused, this time with the argument that some readers of the paper might be offended. The memorial read as follows:

In loving memory of Kamla Abu Sa'id, 42, and her daughter, Amna Abu-Sa'id, 13, both Palestinians from the El Bureij refugee camps. Kamla and her daughter were killed May 26, 2002 by Israeli troops, while working on a farm in the Gaza Strip. In loving memory of Ahmed Abu Seer, 7, a Palestinian child, he was killed in his home with bullets. Ahmed died of fatal shrapnel wounds to his heart and lung. Ahmed was a second-grader at Al-Sidaak elementary school in Nablus, he will be missed by all who knew him. In loving memory of Fatime Ibrahim Zakarna, 30, and her two children, Bassem, 4, and Suhair, 3 all Palestinian. Mother and children were killed May 6, 2002 by Israeli soldiers while picking grape leaves in a field in the Kabatiya village. They leave behind Mohammed Yussef Zukarneh, husband and father and Yasmine, daughter and age 6 (Butler 154).

Faced with the *San Francisco Chronicle's* refusal to publish either the obituary or the memorial, we could ask, with Judith Butler: Under what conditions does the grieving of lives become publicly

offensive? What deaths are worthy to be mourned? When an obituary is refused, is it not humanity itself that is being obliterated? As the quotation attests, the memorial was purely factual. It does not pass any judgments on the act. It uses a rigorously neutral language, stating who the children were and where they were when they got killed. Yet their deaths could not be reported, for Palestinians today have been reduced to the condition of *homo sacer*. They have not only come to occupy the location of life that is expendable and disposable, but also the life that has no sacrificial value, the life that cannot, should not be mourned. The *San Francisco Chronicle*'s refusal to publish this obituary reminded me of General Tommy Franks' statement following the invasion of Iraq: *we don't do body counts*, by which he meant, of course, Iraqi bodies. Those are not counted.

A piece written by Piya Chatterjee and Sunaina Maira, entitled *An Open Letter to All Feminists: Support Palestinian, Arab, and Muslim Women* raises some interesting questions regarding negotiations on the limits of the human. Directed to Western feminists, their letter highlights the fact that North Atlantic feminists have strongly supported struggles against honor killings and forced marriage in the Arab world, but most of them have said virtually nothing about the violence suffered by Arab women as a result of Western occupations: “we are disturbed that some U.S. feminists [. . .] are participating in a selective discourse of universal women's rights that ignores U.S. war crimes and abuses of human rights.” According to the two authors, statements by U.S. feminists on Muslim or Arab women have systematically focused on them only as victims of their own culture, rather than of imperial or colonial violence perpetrated from outside. Note that Chatterjee and Maira never, for a single moment, suggest that feminists should stop denouncing female mutilation or honor killings. This is not the point at all. We are not faced here with the tired debate of universalism versus particularism, the defense of universal human rights versus the defense of local cultural traditions. The question is *who speaks from a position presumed to be universal*.

More attention by U.S. feminists to the work being done by Third World women would have led them to the conclusion that

the opposition between universalism versus local traditions—the dichotomy itself, in its totality, i.e. both terms—is one that only makes sense from an imperial standpoint. As Chatterjee and Maira point out to conclude their essay: “It is appalling that in these catastrophic times, many U.S. liberal feminists are focused only on misogynistic practices associated with particular local cultures, as if these exist in capsules, far from the arena of imperial occupation.” In using the expression “selective discourse of universal human rights” to refer to North Atlantic Feminism, Chatterjee and Maira bring up an apparent paradox there, as universality would seem to preclude selectivity. The universal, one would think, is not selective. Yet experience and scholarship have repeatedly shown us that no universal emerges without a selective process, a constitutive exclusion. One of these supplements to humanity, throughout the Bush administration, was the figure of the unlawful combatants, the bare lives of Guantánamo.

It would not be an exaggeration to say that the 1903 Lease of Land for Coaling and Naval Stations, signed by the United States and Cuba, is one of the most humiliating documents ever imposed upon a sovereign nation.⁵ Article I establishes that the lease will be effective for the time required for the purposes of coaling and naval stations. The agreement also determines that the lease can only be interrupted by mutual consent—in other words, according to the 1903 treaty, the U.S. can continue to occupy the area for as long as it wants to. It established a rent of \$4,000 U.S. dollars a year to be paid to the Cuban government, a sum far inferior to what all of us pay for our rents or mortgages. Since 1959, Cuba has not cashed those checks. Since 2001, 775 detainees were taken to Guantánamo. This number is only a fraction of the thousands of human beings packed into containers after being captured in Afghanistan or Pakistan—most estimates say that for every container with 300 or 400 men, an average of 50 survived. After the invasion of Afghanistan, the U.S. dropped leaflets all over the country offering rewards from \$50 to \$5,000 for al-Qaeda and high-level Taliban officials. As one would imagine, members of the U.S.-backed Northern Alliance, villagers, and warlords started turning over their enemies or simply anyone they did not like. Estimates by human rights attorneys suggest that the vast majority

of those incarcerated in Guantánamo were not guilty of terrorism or even of any crime at all. The Bush administration created a paralegal category, that of unlawful combatants, to deny these prisoners the right to an attorney, to a trial, to habeas corpus, to the protections of the Geneva conventions, and even the right to know what the accusations were. The designation of *unlawful combatants* not only excludes the detainees of Guantánamo from the rights associated with all prisoners, including prisoners of war. They are also excluded from the guidelines of the Convention Against Torture, which applies not only to prisoners of war, but to all human beings. By excluding them from that convention, the U.S. is excluding them from humanity itself.

Originally, the Habeas Corpus Act was promulgated when British officials were sending prisoners to offshore locations. Habeas Corpus—that simple request for bringing the prisoner into court to justify the lawfulness of his/her incarceration—was designed to prevent the establishment of these penal colonies overseas, precisely the practice revived by the Bush administration. It has been a hallmark of Anglo-American law dating back to the 17th century. In the undermining of Habeas Corpus the Bush administration returned us to a pre-modern state of affairs, one that even 18th-century thinkers would recognize as barbaric. Since the Magna Carta of 1215, it has been established that every single human being is entitled to some sort of judicial procedure before he or she can be thrown in jail. In one stroke, the Bush administration eliminated that simple juridical habit and took us back, in that regard, to the early 13th century.

If anything, the past few years teach us that the thinkers engaged in the critique and investigation of the rhetoric on the *human*, on the mapping out of the limits of that notion—and therefore the grounding and the possibility of a discourse on human rights—had a point when they argued that humanism had always been complicit in the very order that it wanted to replace and overcome. Philosophers as far distant from each other as Jacques Derrida, Jacques Rancière, Giorgio Agamben, and Judith Butler have insisted on the need to unpack the “human” in “human rights.” I never understood the hostility of some human rights academics and activists to that research. Many viewed those

philosophical endeavors with suspicion, as they fretted that any deconstruction or even plain historicization (equated, for them, with “relativization”) of terms such as “human rights” would undermine the political effort against atrocities in the world. To that, several thinkers have responded that the fretting is unfounded. Studying the ground upon which a certain concept emerged and promoting research and reflection on it do not necessarily—in fact did not ever—imply that the political effort to be carried out with the other hand was less valid or important.

When the borders defining the human are established, an abject supplement is always expelled. We lived for the past few years with a clear manifestation of that abjection in the form of non-judicial subjects such as those of Guantánamo. In “The Ends of Man,” a paper delivered in New York in 1968, and later published in *Marges de la philosophie* (1972), Jacques Derrida noted:

After the war, under the name of Christian or atheist existentialism, and in conjunction with a fundamentally Christian personalism, the thought that dominated France presented itself essentially as humanist. . . . Although the theme of history is quite present in the discourse of the period, there is little practice of the history of concepts. For example, the history of the concept of man is never examined. Everything occurs as if the sign “man” had no origin, no historical, cultural or linguistic limit (115–6).

In the forty years that have elapsed since that article, this history has been considerably examined, in part as a very consequence of the argument put forth by Derrida. We now know considerably more about the invention and constitution of that philosopheme, “man,” or that other one, “the human.” From Page DuBois’s work on Ancient Greece (*Truth and Torture* [1991]) we have learned much about the legalized practice of torturing slaves, a crucial mechanism that endowed their testimonies with truth value. The body of the slave was not only legally subject to torture. It was a body thought to be necessarily truthful when tortured. DuBois shows how torture was, then, a mechanism that provided stability for the dichotomy between slave and free man. Furthermore, it was

key in the establishment of the very concept of truth (*aletheia*), manufactured in Greek philosophy as jurisprudence was equating truthfulness with slave’s confessions yielded under torture.

These examples illustrate that the constant shifts on its borders is the very mechanism through which universality operates. Labor on human rights today, then, must always include attention to those areas not covered by the adjective “human”: from those captured in Guantánamo and deprived not only of all rights but also of a true legal existence as well to gay and lesbian people whose most basic rights—for example, that of walking down the street holding hands without getting beat up—are constantly not thought of as human rights. As the examples of the Greek slave and the bodies of Guantánamo have shown, every universal constitutes itself by the abjection of a supplement that makes it possible. No discourse on human rights would be possible without the sustained and permanent deconstruction of the philosopheme “the human” or of “humanity” as such. One must proceed with that conceptual labor even as one continues to act politically to oppose human rights violations wherever they occur. These two goals are not contradictory but complementary.

Notes

1. The Universal Declaration of Human Rights is available online: www.un.org/Overview/rights.html.
2. The School of the Americas was established in 1946 in the Panama Canal Zone, a year before the National Security Act created the Central Intelligence Agency (CIA). The “School” was moved to Fort Benning, Georgia in 1984 as part of the agreement between the U.S. and Panama, which ceded sovereignty over the Panama Canal Zone to Panama effective in 1999. From its inception to 1997, some 60,000 individuals, mainly military but also some police officers from 23 nations in Central and South America as well as some Caribbean Islands, have passed through its training programs. See: www.thirdworldtraveler.com/SOA/SOA_TortureManuals.html.
3. For a more sustained engagement with that highly asymmetrical division of intellectual labor, see Avelar.
4. I am indebted to my mentor and friend Walter Mignolo (5–21) for this particular use of the notion of “locus of enunciation,” inherited from French structuralism.
5. The Lease of Land for Coaling and Naval Stations available online: <http://www.onguantanamo.info/leaseoflands.pdf>.

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