

ERNST VAN DEN HEMEL

INCLUDED BUT NOT BELONGING.

BADIOU AND RANCIÈRE ON HUMAN RIGHTS

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From the endorsements of the Declaration of Human Rights as the flagship of enlightenment ideals by *les nouveaux philosophes* to postmodern critiques of its universal aspirations, the idea of human rights is an important point of contention in French philosophy. This article will focus on a contribution to this debate by two of France's most influential and prominent philosophers of the present moment: Jacques Rancière and Alain Badiou. Even though both philosophers have been publishing for decades, it has been only over the last couple of years that their theories have become more and more widely read, leading to a quite impressive popularity outside of France. Both Rancière and Badiou offer in their political writings a form of political agency that emphasizes affirmation instead of postmodern critique. Their emphasis on an affirmative form of political agency has led to a novel re-reading of the notion of human rights. Although their notions of politics are starting to generate increasing attention and application, the effects of their notions of politics on the subject of human rights have, so far, not been investigated. A discussion of Badiou's and Rancière's positions on human rights, therefore, will show not only important characteristics of their contributions to the philosophical debate on human rights, but will also give a good characterization of their contributions to the current philosophical debate on political agency. Secondly, comparing Badiou's and Rancière's writings on human rights allows us not only to investigate the effects of the political affirma-

tion that both philosophers propose, but is also a good locus for describing the important differences between the two thinkers.

In order to contextualize their contributions, we will begin with a discussion of two major trends in contemporary philosophy with regards to human rights: the enlightenment-fundamentalism of the *nouveaux philosophes* and the critiques of Hannah Arendt and Giorgio Agamben of human rights as an invasion of political life into private life. The former endorse the notion of human rights as a universal ideal, while the latter two are highly critical of its value. We will then describe the critical arguments of Rancière and Badiou against these ways of thinking on human rights. The third part of this article is devoted to presenting the different way of thinking about political agency and human rights that Rancière and Badiou offer. They both construct a notion of political agency that criticizes enlightenment-fundamentalism, yet that creates grounds for affirmative and militant political action. Although Badiou's and Rancière's notions of political agency are similar in many ways, there are significant differences between the two philosophers with regards to the nature of this affirmative action. We will conclude with a reflection on how these different approaches to human rights shed important light on the possibilities and limitations of Badiou's and Rancière's writings.

Les Nouveaux Philosophes, Arendt / Agamben on human rights

In February 2008, a petition<sup>1</sup> was published in *le Monde* that called for a re-evaluation of the UN's practice regarding human rights. Among others, the *nouveaux philosophes* Pascal Bruckner and Alain Finkielkraut signed the petition, titled 'l'ONU contre les Droits de l'Homme', which argues that current practices by the United Nations are diametrically opposed to the ideal of human rights:

'Will 2008 be the year when the United Nations celebrates the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights and simultaneously destroys its own principles? There is, indeed, cause for great concern be-

cause the institution has lost its way in recent years, becoming a caricature of itself' (L'ONU Contre les Droits de l'Homme' 2008).

As an example of the waning of the protection of the universal rights by the council, the petition refers to remarks by Doudou Diène, who was then the United Nations' 'Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance'<sup>2</sup>, concerning recent critical remarks towards Islamic customs<sup>3</sup>. Diène is accused of stating that criticizing the wearing of burqas constitutes a racist attack and, in a larger scope, that criticisms of Islamic religious practices is part of a larger trend of Islamophobia. According to the petition, condemning criticism of religious practices as racist intolerance undermines the very spirit of human rights:

'Confusion of thought reaches new heights when any criticism of religion is denounced as racism. The UN is sanctioning a radical threat to freedom of thought. [...] They are undermining the foundations of a civility that Europe achieved, at great cost, following the wars of religion' (L'ONU Contre les Droits de l'Homme' 2008).

To counter this ongoing 'multicultural revolution', the petition argues for a return to the spirit of the Declaration of Human Rights. In short, unless the European democracies 'no longer abstain on or vote for resolutions contrary to *the universal ideal* of 1948', then 'religious obscurantism and its parade of political crimes will triumph – under the good auspices of the United Nations. And when words of hate turn into action, no one will be able to say, "We didn't know"' (ibid, emphasis added).

This petition is characteristic of the political *engagement* of *les nouveaux philosophes*, a group of prominent philosophers in the French political-philosophical debate<sup>4</sup>. Important themes in the varied writings of the *philosophes* are the ideas that the West suffers from too much self-criticism<sup>5</sup>, lack of backbone to stand up to its enemies<sup>6</sup>, and a pernicious fascination with left wing, particularly Marxist, theories<sup>7</sup>. Many of the *nouveaux philosophes* were part of the 1968 generation, but had a falling out with its theories at the end of the seventies. As a remedy against dogmatic leftist

ideologies, philosophers like Glucksmann, Finkelkraut, Henry-Lévi and Bruckner have argued for an anti-totalitarian political agency that bases itself on critical re-adaptations of enlightenment ideals like human rights.

On the other end of the spectrum, the 'universal ideal' of 1948 has been criticized for as long as it has existed. As early as 1951, Hannah Arendt described the human rights as a paradoxical project. She stated, in a chapter of *The Origins of Totalitarianism* called 'Perplexities of the Rights of Man', that the very need for human rights, in 1948, was created by the existence of the masses of refugees as the result of the Second World War. Human rights were created for the people who, after fleeing persecution, and thus becoming stateless, had nothing left but their humanity. Arendt emphasizes that directly after the construction of this ideal universal human right, the human for whom the rights were intended was immediately surrendered to the authority of countries. The idea of universal human rights was immediately linked to the power of the nation state; it is the nation state that determines who has the right to have rights and who doesn't. The risks of this situation are well known:

'It is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof.' (Arendt, 1973: 299)

The ideal of universal human rights, that being a member of humanity suffices to be protected by human rights, comes down to a situation in which the nation state determines who is part of humanity. And, faced with the masses of stateless refugees during and after the Second World War, the results were not positive:

'If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case.' (ibid. 300)

For Arendt it is part and parcel of the modern situation:

‘The trouble is that this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any “uncivilized” spot on earth, because whether we like it or not we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.’ (ibid. 297)

In short, for Arendt the figure of the Universal Declaration of Human Rights is, in spite of its good intentions, part of a movement of expansion: state power encroaches further into the zone of private life. This entails that instead of providing rights to the rightless, the Universal Declaration of Human Rights leads to the opposite result: the refugees are more and more submitted to total control of the police and other organs of power of the nation state. By completing the ‘organization of humanity’ we are succeeding in throwing back refugees ‘in the midst of civilization’, on nothing but ‘their natural givenness’ (ibid. 302), leaving them completely powerless to the power of the state.

Arendt, then argues for a critical review of the notion of human rights: their connection to national forms of power are to be critically reviewed if we want to get to the core of what it means to have human rights. For Arendt human rights are only valuable if we stop pretending that rights belong to man because of his mere birth. On the contrary, the Second World War and its aftermath show that who is part of humanity (and, subsequently, who has the right to have rights) is determined by the whims of the power of the nation state. Instead of focussing on the ideal of human rights, we should ask ourselves how we can counter the danger that a ‘global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages?’ (ibid. 302).

Arendt’s argument has been very influential. The contemporary philosopher Giorgio Agamben has perhaps most famously expanded upon her critique. In his *Homo Sacer* (1998), Agamben diagnoses our time as a time

in which the control of political power over bare life is the omnipresent paradigm. For Agamben the figure of human rights is a figure that signals the infringement of political life over biological life. In an original combination of the argumentation explained above by Arendt, with Foucault’s notion of *biopouvoir* and Carl Schmitt’s notion of *the state of exception*, Agamben states that the sphere of power that deprives life of its private function generates a condition of living for our times that is parallel to the rightless refugees in the concentration camps<sup>8</sup>. Whereas for Arendt, the critical discussion of human rights functioned predominantly as a political critique of the incapability of human rights to provide rights for stateless refugees, for Agamben the refugee now denotes an ‘ontological destiny’ for all citizens; in our contemporary situation man-as-citizen is completely taken up in an omni-present power-structure determined by the nation state. Whereas Arendt sees potential in a different adaptation of human rights, Agamben sees human rights as part and parcel of a totalizing infringement of the political sphere over ‘bare life’. In the chapter ‘Biopolitics and the Rights of Man’ in *Homo Sacer* (1998), Agamben states the following:

‘Arendt does no more than offer a few, essential hints concerning the link between the rights of man and the nation-state, and her suggestion has therefore not been followed up. In the period, after the Second World War, both the instrumental emphasis on the rights of man and the rapid growth of declarations and agreements on the part of international organizations have ultimately made any authentic understanding of the historical significance of the phenomenon almost impossible. Yet it is time to stop regarding declarations of rights as proclamations of eternal, meta-judicial values binding the legislator (in fact, without much success) to respect eternal ethical principles, and to begin to consider them according to their real historical function in the modern nation-state. Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state.’ (75)

According to Agamben the inscription of bare natural life in the legal-political order results in the inscription of even the most basic element of existence into the power structure of the nation state. The result of this is

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that if even our most basic grounding of existence is inscribed in power systems, our very life is politicized.

Agamben argues that the figure of the refugee, who, being excluded from humanity and completely included in the power of the nation state over bare life at the same time, is no longer an exception in our current paradigm. Instead, because the power situation determines our very structure of being, the refugee shows how our current paradigm is dominated by a hold over life, that actively strips the excluded of their rights to be human.

‘The concept of the refugee, (and the figure of life that this concept represents) must be resolutely separated from the concept of the rights of man [...]. The refugee must be considered for what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation state, from the birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights.’ (Agamben, 1998: 78)

The figure of the refugee functions for Agamben then as a site where the distance is shown between the bare life and the power of the state. The refugee shows the violence to bare life that is necessarily part of our political situation. By focussing on this violence, one needs to insist that our system, dominated by providing rights for its citizens, is in fact a praxis of biopolitics that is analogous to the praxis of concentration camps. Whereas Arendt seems to hint to the inclusion of the state-less refugees in a political community that would safeguard the ‘right to have rights’, Agamben’s critique of human rights goes farther. We are all refugees in a camp. Changing the current situation, because of the omni-present power situation, becomes highly problematic. The critical potential in the work of Agamben lies, then, in this realization, through the figure of the refugee, that all political programs and praxis, especially that of human rights, are part and parcel of the power situation.

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We should realize that current existence is dominated by politicized power. Agamben describes our current quagmire thus:

‘until a completely new politics – that is, a politics no longer founded on the exception of bare life – is at hand, every theory and every praxis will remain imprisoned and immobile, and the “beautiful day” of life will be given citizenship only either through blood and death or in the perfect senselessness to which the society of the spectacle condemns it.’ (Agamben, 1998: 13)

Agamben views ‘politics’, and the possibility of doing politics in a double manner here. On the one hand, when the private bare life is determined and seized by structures of power, ‘politicized life’ means that the individual is deprived of engaging in true emancipatory politics, instead functioning under the dominance of the politics of power. Politics, then, means either the (im)possibility of being an autonomous political agent, or the result of its impossibility, complicit to a totalizing dominating power. The question then becomes the ground of action for this ‘completely new politics’: where, if even down to the biological core of our humanity is defined by totalizing structures, are we to find inspiration for this new politics? The attempt to codify and institutionalize human rights should be seen as part of ‘imprisoned and immobile’ praxis that fails to reach the core of our totalitarian political situation which is characterized by the ontological determination of who has rights and who doesn’t. Agamben’s theory thus criticizes the potential of human rights, but at the same time problematizes the possibilities of change through institutions and / or ideology.

It is clear that this theory, that views the Universal Declaration of Human Rights as part of totalizing power, stands diametrically opposed to the idea supported by *les nouveaux philosophes*, and expressed by the previously discussed petition, that the Declaration of Human Rights is an attainable universal ideal. The writings of Arendt, by underlining the power of the nation state at work in human rights, and Agamben, by underlining human rights to be part of a power situation that totally dominates life, continue to offer a powerful critique to those who believe that the codifica-

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tion of equality and freedom is sufficient to keep evil in check. Although Agamben takes the critique of the impingement of political power upon bare life farther than Arendt, both thinkers critically question the power of the nation state over the rightless as expressed by the 1948 Declaration of Human Rights.

## Badiou and Rancière in Context

In the work of both Badiou and Rancière these two ways of thinking about human rights, enlightenment-fundamentalism (the *nouveaux philosophes*) and criticisms of the encompassing power of the nation state, or bio-power, are presented and criticized as 'two nihilisms'. Rancière and Badiou state that it is their goal to construct a notion of politics that is able to provide affirmative political agency without adhering to a fundamentalist belief in enlightenment ideals on the one side, and without seeing the current power situation as totally dominating on the other.

Rancière sees in Arendt's work the origin of a grim dualism that determines many contemporary views of human rights:

'Either the rights of the citizen are the rights of man – but the rights of man are the rights of the unpoliticized person; they are the rights of those who have no rights, which amounts to nothing – or the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen [...] This means that they are the rights of those who have rights, which amounts to a tautology.' (Rancière, 2004: 302)

Rancière maintains that Arendt abandons the project of human rights altogether, claiming that since it is inherently linked to the power of the nation state, it fails to provide rights for those that are excluded, or persecuted by the nation states. At the same time, Rancière equates Agamben's theory with a retreat of the possibility of emancipatory political action. Rancière characterizes Agamben's theory on human rights thus:

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'Any kind of claim to rights or any struggle enacting rights is thus trapped from the very outset in the mere polarity of bare life and state of exception. That polarity appears as a sort of 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.' (Rancière, 2004: 301)

Badiou, in a similar vein, describes Agamben in *Logique des Mondes* as a 'franciscan of ontology' who fetishizes the 'bare life, always sacrificed' that is always already 'enveloped by the gross tumult of power'. The result is that Agamben readily 'surrenders all knowledge of which we are capable' (Badiou 2006: 585, translation mine)<sup>9</sup>.

We can see then that Agamben's famous pronouncements that 'we are all refugees' and 'the concentration camp is the dominant paradigm', precludes for Rancière and Badiou the possibility of emancipatory political action. For both Rancière and Badiou political action does not start with a realization of the omnipotence of power, but it starts with an apparition, a *disruption* of power. It is on the basis of this disruption that Rancière and Badiou base their affirmative political agency.

At the same time they both distance themselves explicitly and fervently from the *nouveaux philosophes* who, by basing affirmative agency on enlightenment ideals, fail to make the difference between truth and contextual political structures. Badiou ironically describes the *nouveaux philosophes* stance on human rights as:

'A wholly conservative mode of argument, which, under the banner of "human rights", contrasts the excellence of Western democracy with the abominable totalitarianism of the East.' (Badiou 2005, 134)

Badiou accuses the *nouveaux philosophes* of upholding biased notions of Western superiority, that are in no way open to a radically new form of politics. The names that once were valid political procedures, 'liberty' 'democracy' 'equality', are seen as reiterations of an old biased ideology,

thus foreclosing what is most important in politics for both Rancière and Badiou, the affirmation of something that disrupts the situation.

In this manner these two ways of thinking about human rights are both deemed ‘political nihilisms’ by Rancière and Badiou. The *nouveaux philosophes* are judged so because they believe that one should relegate what happens in a situation to a pre-existing structure (the ‘universal ideal’), and thus deny that something can radically pierce the situation dominated by forms of power, whilst the analysis offered by Agamben is deemed a nihilism because it sees the power-structure as a totalizing power that succeeds in dominating all political thought.

Both Rancière and Badiou therefore aim at creating a new form of political agency. This stance on agency needs to present a theory of political agency that is able to ground agency on a firm footing that counters the power-structures at work, yet that at the same can accommodate something radically new in order to escape elevating this grounding of agency into a fundamentalism. Badiou and Rancière both formulate a theory that escapes these pitfalls by applying the conceptual tool of ‘belonging but not included’. This stance leads to a new re-reading of human rights, and a re-definition of doing politics.

## Rancière and Badiou: Radical Equality

Rancière points out that previous theories on human rights can be summed up in two phrases: the first, embraced by the *nouveaux philosophes*, has to end up with a selective notion of human rights: rights are there for those who are accounted for, for those who are capable of claiming rights: ‘rights for those who have rights’. The second phrase, embraced by Arendt and Agamben, is that human rights are paradoxically designed for those that have no rights and thus succeed only in reproducing the power of the nation state: ‘the rights for those that have no rights’. Rancière suggests a new way of thinking about those to whom human rights are applied:

There is indeed a third assumption, which I would put as follows: the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not. (Rancière 2004, 302).

Rancière argues for an emphasis on exactly those moments when appeals are made to human rights. It is when someone is fully entitled to human rights, but is deprived of them that a disruption of the situation can occur. The true political moment of human rights is when someone is theoretically included in the number of those who have the right to human rights, but do not belong to those who actually reap the benefits of it. In order to understand this, we have to take a closer look at Rancière’s notion of politics.

For Rancière, much like for Badiou, the organisation of normal situations is part of an ongoing process of structuring. This structuring determines the modes of perception and structures that which comes about. In Rancière’s terminology, this is called ‘*le partage du sensible*’, and can be defined as ‘the implicit law governing the sensible order that parcels out places and forms of participation in a common world [...] distribution of the sensible thus produces a system of self-evident facts of perception based on the limits and modalities of what is visible and audible as well as what can be said, thought, made, or done’ (Rancière 2006, 85).

In Rancière’s political thought, that which keeps the power-system whole, which provides a totalizing account of the population by assigning everyone a title and a role within the social edifice’ is called *la police* (Rancière 2006, 89). *La police*, or the police, is therefore not a negative force of repression, but that which structures the ‘*partage du sensible*’<sup>10</sup>. By offering a totalizing account of the situation, *la police* precludes the possibility of politics. Politics is defined in Rancière’s work as something that breaks the order of the *sensible* and *la police*: ‘politics comes solely through interruption, the initial twist that institutes politics as the deployment of a wrong or of a fundamental dispute’ (Rancière 1999: 13). Politics only comes about when the order of *la police* is broken by *dissensus*. In the instance of *dissensus*, the order that is structured is forced to admit that it is not capable of totalizing the situation (it is thus opposed to consensus). In this way, the political moment is a radical egalitarian moment. It shows

that regardless of your position in the situation, the situation is not capable of offering a totality. So, a political moment comes about when the logic of dissensus opposes the consensual structuring of the situation. Since the consensus refers here not only to people agreeing with each other, but to the distribution of what can be perceived, thought as well as done, moments of dissensus bring something radically, and ontologically, new to the situation.

Because this scene of dissensus occurs on the edge of what is thinkable, Rancière's conception of politics remains far from an institutionalization, or offering a codifiable form of improving our current paradigm. The moment of dissensus is something that was previously impossible to perceive, and thus the idea of prescribing this moment in a law or juridical practice is, in Rancière's work, an impossibility.

In the same way, Rancière is able to call the moment of dissensus 'democracy' without referring to institutionalized democratic practices: 'democracy' has in Rancière's thought nothing to do with parliamentary democracy, which he defines as the 'consensual self-regulation of the multitude'. Democracy is instead defined by Rancière as 'an act of political subjectivization that disturbs the police order by polemically calling into question the aesthetic coordinates of perception, thought and action.' (Rancière 2006: 84) It comes about only when 'those who have no title to power, the *demos*, intervene as the dividing force that disrupts the *ochlos*<sup>11</sup>, the people that call themselves one people.

For Rancière, these moments where this *demos* intervenes in the unitary *ochlos*, forces the situation that normally succeeds in presenting a totality to show itself to harbour a 'supernumerary' inside its ranks. This supernumerary is inside the situation, since it does present itself in plain sight, but it does not receive a place, it is 'the part of those who have no part' (Rancière 1999: 14). It is *included in* a situation, but it does not *belong to* the situation. As an example, Rancière gives the case of Olympe de Gouge, a female revolutionary who was sentenced to death in 1793, and who wrote, in 1791 'Déclaration des droits de la femme et de la citoyenne', one of the first pieces in which the omission of women from the Rights of Man was attacked:

'There was at least one point where "bare life" proved to be "political": there were women sentenced to death, as enemies of the revolution. If they could lose their "bare life" out of a public judgment based on political reasons, this meant that even their bare life – their life doomed to death – was political. If, under the guillotine, they were as equal, so to speak, "as men", they had the right to the whole of equality, including equal participation to political life.' (Rancière 2004: 304)

It is in moments like these that the totality of a situation is under attack. In a presumed universal declaration of rights of the citizen, women are part of the situation, they are included in it, but they don't belong to it. By contesting the totality in these events, it is shown that any totalizing gesture has its own exclusions, that are *only brought to light through events and subsequent acts of dissensus*. Politics, in short, are described by Rancière as: 'the action of supplementary subjects inscribed as surplus in relation to any counting of parts of a society' (Rancière 1996). A political moment is then a moment in which an *included* subject that does not *belong* acts on the current situation; Olympe de Gouge showed that women 'didn't have the rights that they had' and 'had the rights that they didn't':

They could demonstrate that they were deprived of the rights that they had, thanks to the Declaration of Rights. And they could demonstrate, through their public action, that they had the rights that the constitution denied to them, that they could enact those rights. So they could act as subjects of the Rights of Man in the precise sense that I have mentioned. They acted as subjects that did not have the rights that they had and had the rights that they had not. (Rancière 2004: 304)

As I will show now, Rancière's use of the notion of that which is included but doesn't belong bears many structural resemblances to Badiou's notion of the *event*.

In simple terms, the power of Badiou's theory lies within the following principle: within a given structuring of our situation (conceptualization of our world) an event can come into existence which was not previously possible in this conceptualization, and that cannot be defined or explained

within this conceptualization of the world without changing the entire conceptual structure. The event's existence shows the inherent impossibility of any world-view to encompass the infinite totality of existence. Stronger still, the construction of any world-view must inherently contain the possibility of such an event. All new world-views or philosophies that are constructed, immediately and automatically contain the structural event-possibility which will reveal their incompleteness.

It is significant here to note that mathematics supplies the argument for Badiou that something can appear within any apparent totalizing ordering, which should be placed inside the set, yet resists placing. This appearing has the form of an element: this element is, mathematically, *included* in the set, but does not *belong* to the set.<sup>12</sup>

The political event-possibility is intimately linked with the mathematical notions of 'included but not belonging'. What is *included*, philosophically, equals all that is possible in the world, whereas what *belongs* equals all that can be presented in a given worldview. An event therefore presents the gap between what is possible and what is actually presented in a given worldview. In his *Manifesto for Philosophy*, (1999) Badiou describes it thus: 'what was taking place, although thought within this system, was not therein thinkable. [...] nothing has better attested to the fact that an event is supernumerary, not only with respect to its site but also the language available to it, than this discord between the opacity of the intervention and the vain transparency of representations' (Badiou 1999: 85). Badiou's philosophical application of the set-theoretical phrase 'included but not belonging' leads to quite radical political conclusions.

In the moment of an appearance of an event, a person is faced with an ethical choice. One can either deny that that which happened is new and try to force that what happened back into existing parameters, or one can embrace the form under which this truth appears, and draw the consequences. Drawing the consequences means here starting to reconstruct the situation along the lines of the *event* and bringing about truth through the process of naming. This means trying to create a situation from the paradoxical viewpoint of the event. This, in its turn, entails deducing a first principle from which the state of the situation is to be re-

viewed. Fidelity to an event means to start structuring the situation from the new viewpoint.

For Badiou, the project of universal human rights is inherently incapable of accommodating truth. In fact, the very notion of human rights is part of an attempt of a dominant structure to be able to account for all elements of a set, a quasi-totality. The result of this attempt can only be repetition of the dominant ideology:

'The refrain of "human rights" is nothing other than the ideology of modern liberal capitalism: We won't massacre you, we won't torture you in caves, so keep quiet and worship the golden calf. As for those who don't want to worship it, or who don't believe in our superiority, there's always the American army and its European minions to make them be quiet.' (Badiou, 2001/2002)

From the mathematical foundation of his theory, Badiou argues that the only universality is that which escapes structuring and which becomes apparent through the apparition of an event. Truth resists placing, it's that which 'makes a hole in knowledge' (Badiou 1999: 80). The only universal that Badiou's theory allows is the appearance of an event, which forces us to recognize that every situation is not countable, but infinite. Human rights, with their fixed loci of universality, like freedom, or equality, equate universality with a finite, western ideology. Thus this universal in fact can only recreate the existing power-situation. The only universal human right that Badiou allows is that of adhering to the infinite:

'The latent violence, the presumptuous arrogance inherent in the currently prevalent conception of human rights derives from the fact that these are actually the rights of finitude [...]. By way of contrast, the eventual conception of universal singularities requires that human rights be thought of as the rights of the infinite.' (Badiou 2004: 4)

Since any attempt to codify the situation along the lines of a prefixed universality amounts to a repetition of what is already there, the project of universal human rights can only amount to a repetition of what is already counted, what is already perceived. What one should judge a situation by



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is not the prefixed codified universality, nor is it just the critique of pervasive power structures. Instead, through the apparition of an event, one should focus on that which is included but doesn't belong, and militantly claim its recognition. Also for Badiou, as we have seen with Rancière, the idea that the juridical sphere could provide means to accommodate truth is rather bleak. Since for Badiou the act of truly doing politics is limited to adhering militantly to an event, and since this event is by no means predictable, the practice of trying to determine the parameters for justice is impossible. It is in this sense that Badiou defines 'justice' as something that resists codification:

“[J]ustice” cannot be [...] a State programme. “Justice” is the qualification of an egalitarian moment of politics *in actu*. The trouble with most doctrines of justice is their will to define what it is, followed by attempts to realise it. But justice, which is the philosophical name for the egalitarian political maxim, cannot be defined. For equality is not an objective of action, it is its axiom. There is no politics bound to truth without the affirmation – an affirmation which can neither be proved nor guaranteed – of a universal capacity for political truth. Where truth is concerned, thought cannot adhere to the scholastic path of definitions.’ (Badiou, 2005: 99)

Juridical practice can only be seen as either irrelevant to truth, in the sense that a juridical prescription can only cater to the already-known, or as subordinate to truth, in the sense that a truth can give inspiration to a new law, as for example the Constitution. But in either case, there is no prediction possible about what form or effect the truth is going to create. Badiou's writings on human rights are therefore geared more towards answering the question that Agamben disclosed, 'what are the conditions of possibility for radically new politics?' than towards the improvement of the juridical sphere. The practice of laws and institutions like the Human Rights Council is, for Badiou, part and parcel of the sphere of belonging. And politics can be defined by exactly that which breaks open the sphere of belonging, by adhering to that which is included that doesn't belong.

One of the political examples in which this difference between inclusion and belonging is clearly expressed, is the incessant focus of Badiou on the

matter of the *sans-papiers*: the illegal immigrants in France that have jobs, that live in the country, yet are not allowed any rights. The mere presence of the *sans-papiers* inside the situation (the situation is here, for instance, all the Western-European countries that contain a growing number of illegal immigrants) presents the quasi-totality of the situation. Badiou argues that the *sans-papiers*, even though they are present, are not existent. Badiou does argue for radical equality, but not by referring to a Universal Declaration of Human Rights. Instead, the proclamation of the existence of *sans-papiers* calls for a restructuring of the situation that is basically indifferent to matters like human rights. The illegal workers should simply be counted as being inside the situation in France, a country with rights for workers, and therefore they should simply be granted full legal rights. At the basis of this agency lies not a juridical definition of ideals, like human rights, but a singular apparition of that which has no place. The occurrence of the *sans-papiers* calls for a first-principle from which the situation is to be restructured. It is the task of the subject to name this principle. It is through this first principle that one forces the situation to account for that which does not belong. This means that the status of illegal workers should lead towards a rethinking of the whole situation. That is to say, one shouldn't just struggle for acceptance of a particular group of workers, but one should expand the activism to anything inside the situation that prevents this equality from coming about. In slightly more formal terms, the presence of the *sans-papiers* functions as an evental site, demanding us to search for a truth that can incorporate the revealed impossibility.

Within the organization *l'Organisation Politique*<sup>13</sup> Badiou is involved in activism around the issue of the *sans-papiers*. Perhaps the slogan that is used most often by the *Organisation Politique* is 'everyone who is here is from here' (*tous les gens qui sont ici sont d'ici*). This slogan is the basis for their protests, like, for instance, the occupation of the Saint Bernard church in 1996, where illegal immigrants protested their 'clandestine' status. In this way, by making themselves visible and audible, the *sans-papiers* showed that 'they are not somehow alien or invisible, but simply *here* as ordinary workers under extraordinary pressure' (Hallward 2002: 5).

The use of the slogan signifies that what l' *Organisation Politique* is aiming at is not so much a right to be included (for instance, a right to be acknowledged according to the standards of human rights), but a change in situation that will take in account all the parts of a situation. In this way, the notion of the *sans-papiers* offers a first principle on the basis of which not just the group of workers involved needs to be included in the situation, but starting from the revealed inequality, the whole structure of nationality, immigration, tolerance, economy, social security needs to be revised.

So, even though for both Agamben and Badiou there exists a figure that is inside the situation, yet that does not enjoy the rights of belonging to the situation, the figure is inherently different. For Agamben the refugee signals the power of the political power over bare life, and thus generates, at best, a critical awareness of the grim situation. For Badiou, the figure of the *sans-papiers* should bring about a new situation, based on the name of a truth ('everyone who is here is from here'). Badiou's theory is thus more geared towards militant activism than towards a diagnosis of the power of biopolitics or permanence of the state of exception.

As stated earlier, there are many similarities in the basic political thought of Badiou and Rancière. They both conceive a notion of human rights that is inherently affirmative. This affirmative agency is for both thinkers not so much aimed at uncovering forms of power, and criticizing the pervasive power of a biopolitical system (Agamben). Nor is it aimed at upholding or reinterpreting a law that is deemed the universal ideal (the *nouveaux philosophes*). Rancière and Badiou claim to offer a theory that can offer a ground for action, and thus they claim to go beyond postmodern critiques of power-structures. For both thinkers if the notion 'human rights' is to mean anything, it is related to those rare instances that show themselves in situations of crisis on the basis of which action can be taken. It is in the apparition of the 'included but not belonging' that the true universal human right is located for both thinkers.

In his *Abrégé de Métapolitique* (1998) Badiou offers an easy explanation for these similarities between the two thinkers:

'To begin with I can say, along with a few others, that I recognize myself in important parts of Rancière's work. And all the more so since I have the literally justifiable feeling of having largely anticipated, along with a few others, these parts.' (Badiou, 2005: 116)

In fact, Rancière has acknowledged the influence of Badiou on his theory. However, the numerous similarities that I will discuss in the following section are, in my opinion, not just bad copies lifted from Badiou, but Rancière uses concepts coined by Badiou to constitute a different, less radical, theory. But before we start comparing, let's discuss Rancière's overlap with Badiou's theory.

Badiou has pointed out the similarities between their theories: 'as far as the notion of domination is concerned – or the counting of parts of a whole as substructure of the unequal – this I named not long ago, in my own jargon, "the state of the situation" and Rancière names "the police"', secondly: 'with regard to politics as occurrence or singularity, and never as structure or programme, Rancière ends up by saying that politics is a mode of subjectification. In this case I can only recall the theses which announce that politics is of the subjective order, and is thought in terms of its rare and sequential existence.', and thirdly: 'As far as the declaratory dimension of politics is concerned [...] our agreement is equally tenable.' (ibid. 116/117). Badiou concludes:

'Similarly, Rancière demonstrates in the wake of my *Ethics*, to which he refers amicably, that the mainspring of the effervescent promotion of human rights and humanitarian interventions is a political nihilism, and that its real aim is to have done with the very idea of an emancipatory politics. This shows the extent of the overlap.' (ibid. 118)

So, politics is for both Rancière and Badiou a coming into existence of that which is not possible in the situation. This apparition is singular and not systematic, and it creates its subjects, who become subjects by proclaiming the existence of the supernumerary. As we have seen, the project of the Universal Declaration of the rights of man is therefore inherently problematic. Its codified scope runs counter to Rancière's and Badiou's focus on the singular universal of politics, its universal scope runs counter to

the special status of universality as only appearing under the guise of an element that exists both inside and outside of a situation – inside qua inclusion but outside qua belonging – and finally, its insistence on Rights is a failure to reflect on the ‘policing’ institutions that are to enforce these rights, and its subsequent exclusionary practices. This rejection of the practice of human rights comes down to an attitude towards the praxis of law, and the potential of institutions that can be best summarized by indifference. Juridical affairs are part of a situation, the way that the situation is structured, and are basically unrelated to truth, and thus politics, until a truth procedure calls the illusionary ‘transparency of representations’ into question. The definitions of politics that Rancière and Badiou employ are based on radical disruption of the situation. This disruption is then the basis for affirmative change of the situation so that it can accommodate this disruption. This accommodation can change all possible aspects of a society, and the law, much like regulatory notions like government and democracy, come into play only in so far as they are connected to the truth unrolling itself in a situation. Juridical practice and consensus are subservient to truth.<sup>14</sup>

For both Badiou and Rancière the project of a Universal Declaration of the Rights of Man is then in fact a consensual non-political attempt to account for the totality of the situation. In Rancière’s words: this attempt is unable to question the *arche*, the preconceived logic and structuring that determines who is a part of the situation, who has the right to speak, and who is acknowledged as a political agent. In Badiou’s terminology, human rights are part of the false totality of a set. As such, the notion of human rights is unable to bring about something radically new, and is doomed to repeat the dominant ideology. Instead of the rights of finitude, Badiou proclaims the rights of infinitude, based on adhering to the supernumerary event that lies at the basis of all politics.

Although the similarities between the two philosophers are clear, it is important to note that the terminology above is already slightly different. Rancière emphasizes questions like ‘who is a political agent?’, while Badiou places emphasis on an impressive revolutionary truth. Their stances on human rights show not only similarities, but also important

differences, differences that determine what kind of political agency results from adhering to that which is included but that doesn’t belong.

## Revolution(s) or Moments of Dissensus?

Let’s retrace first of all the most important difference between the two thinkers. For Rancière, his version of the phrase ‘included but not belonging’ is well explained by his example of Olympe de Gouge, an instance in which the belonging to human rights in name but not in fact is proclaimed. Badiou’s examples are of a bigger, longer-lasting scale: the French Revolution, the Paris Commune, the Cultural Revolution, to name but a few. A major difference here is that whereas for Rancière, subjects take the stage, and thus demand their place, like Olympe de Gouge, for Badiou the figure of the subject is different. The apparition of the event literally calls the subject into being, the subject has the ethical obligation of acting faithfully to the event. Instead of rising up and claiming the rights of the *demos*, the subject for Badiou, radically starts following the logical conclusions of the *event*, which could very well entail the most radical restructuring imaginable.

Badiou’s use of mathematics here makes the difference between his rejection of human rights altogether and the re-interpretation of human rights suggested by Rancière. The form of truth that Badiou argues for, through mathematics, is first named, and then brought about to exist in the situation through a truth-procedure in which the situation is to be rewritten. It is for this reason that Badiou describes Rancière’s form of theory (he refuses to call it philosophy) as a ‘brief’ ‘flash of lightning’:

‘What he discovers is a discourse plotted and held in the aftermath of an event, a sort of social flash of lightning, a brief and local invention, both prior to and coextensive with domination and its burdens. This invention circulates horizontally rather than vertically, for it constitutes the surfacing of the latent force of the dominated, and amounts to a demonstration that this force, which in most cases is diverted from its true course, is what drives the machinations of the dominators.’ (Badiou 2005: 109)

Badiou launches a quite serious critique of Rancière's use of his concepts. Badiou indeed does seem to go farther than Rancière in allowing emancipatory and organized action in politics. Fidelity to an event in Badiou's philosophy is something that can be built on, extended beyond the place where the event occurs, whereas for Rancière, the moments of dissensus are singular revelatory moments, less endowed with expansionary force, and more with anarchic, disruptive power. For Badiou, events are rare, extremely rare even, but function as the organisational foundation for a militant who works towards the constitution of the truth in the situation. For Rancière, dissensus shows the imperfection of political representational systems: dissensus gives a practical problem for the situation: the situation then has to resolve the problem with the excluded. This generates the question whether this theory is actually as different from Agamben's remarks on the role of the refugee as Rancière claims. Due to space limitations, this question has to be answered in a different article.<sup>15</sup>

Although there is some truth in Badiou's criticism of Rancière, in the sense that it does offer more local and temporary points of rupture, Rancière's theory is, in my opinion, not limited to a 'demonstration of force'. It offers a different form of political agency. Rancière's theory is more focussed on moments of dissensus that need to be addressed, and less on a complete radical restructuring. The effect of this is that Rancière is more able to work with existing structures and situations, giving a more hands-on, though less radical, approach to practical matters. Rancière's theory oscillates between dissensus and consensus, making democracy a practice of negotiation. Badiou, on the other hand, aims at perpetuating revolutionary agency.

The notion of human rights clearly shows this divergence of the two thinkers. Rancière envisions a re-interpretation of the subject of human rights. This subject should not be the pre-fixed or pre-defined carrier of rights, instead the subject of human rights is the subject that is created in scenes of dissensus. And it is this subject, of the *demos* and not of the *ochlos*, which should be the bearer of human rights. For Rancière, the usefulness of human rights, even in its codified form as it is used now, lies then precisely in its problematic and failing nature. In its incapacity to denominate the subject of the rights of man lies the possibility of redefin-

ing what a subject is, and thus discovering what the true universal human right is; a radical egalitarian moment in which it becomes clear, for a short moment, that equality is something that is proclaimed through struggle, not through description in a right. The figure of human rights is the subject that belongs to the situation but that is not included in it, the subject that, by taking the stage, can voice its demand for equality, and thus become a political actor.

For Badiou, on the other hand, there is little patience or room for a re-definition of the notions of human rights and democracy. On the contrary, the whole concept of parliamentary democracy is to be rejected:

'That, in order to think the contemporary world in any fundamental way, it's necessary to take as your point of departure not the critique of capitalism but the critique of democracy [...] no one is ready to criticize democracy. This is a real taboo, a genuine consensual fetish. Everywhere in the world, democracy is the true subjective principle – the rallying point of liberal capitalism'. (Badiou 2003, 127)

The notion of democracy, in its common use, is used to denominate a totalizing structuring of the situation that is to be rejected. Similarly, the very notion of universal human rights can amount to nothing but the repetition of ideology of the State (the State signifies here both the state of the situation, that which determines the structuring, as well as the power of the nation state). The demand of politics is actively combating that which precludes the naming of the event. In one word, this means revolution.

Underlying the radical rejection of these terms is Badiou's mathematical version of belonging but not included. Badiou's use of the belonging / inclusion distinction, as we have seen, refers back to his use of set-theory, in which the appearance of the illegitimate event signals a complete restructuring of the quasi-total situation. The figure of the militant that bases him/herself on the appearance of the event departs on a mission that has as its goal the complete revision of the situation. In this revision, one must be prepared to let go of the principles which have up until then structured the situation. It is no surprise then that for Badiou the only

universal human right is the right to infinity, which entails a more radical and utopian longing for the continuation of the truth rather than the representation of finite structures. This right to infinity could disrupt political life on any level, there can be no predictions about what it is going to be, nor about what effects it will have. Rancière's theory is, because of its focus on moments of dissensus, more aimed at a lower level of change; inclusion of minorities, shaking up the situation temporarily. Badiou's theory is aimed at both explaining more profoundly the (mathematical) origin of radical dissensus as well as at giving guidance as to how to sustain it for a longer period than just its temporary apparition. For Badiou, real moments of dissensus are linked to a deeper truth, and these moments have the potential to change quite a lot more than the issue at hand.

Concluding, we can say that, whereas Rancière seems to offer a more pragmatic version of human rights, that is to say, the right to change, to dissensus, Badiou's version of the universal human right to the infinite can be said to be more profound, rare and more radical. Whereas Rancière's model might offer a more modest and applicable diagnosis for situations of conflict, Badiou's model aims at expanding that situation of dissensus to the rest of the situation. In Badiou's model the Universal Declaration of Human Rights is to be refused in the name of something bigger and better that will come by, leaving us waiting for the miracle to happen. One theory offers the possibility of radical change, the other offers a theory of moments of dissensus, leaving most of the situation intact. But neither of these theories believe in the fact that the Universal Declaration of Human Rights can actually guarantee equality. Those in search of a practical guide-line to reform the current practice of human rights will not find extensive remarks on how to improve jurisdiction. Instead the only universal human right that Badiou and Rancière envision is the right to intervene in the name of infinite universality, and they remain far from any institutionalization of universal human rights. Instead their theories are geared towards a critical evaluation of the underlying presuppositions of doing politics, and providing rights. This critical evaluation is done in preparation of 'truthful' politics, which entails for both Rancière and Badiou a radical break with notions of politics that are defined in terms such as citizenship, freedom of speech or a return to ideal enlightenment

values. This does not mean that their notions of 'politics' remain an empty ideal, both Rancière and Badiou conceive 'politics' as a constant possibility that coerces us to rethink the bastions of politically correct yet ineffective politics of which the Declaration of Human Rights is a prime example.

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<sup>1</sup> The petition was published in *Le Monde* on February 28<sup>th</sup> 2008, For the full text, both French and an English translation, see [http://www.licra.org/index.php?old\\_navigator=true&section=detail&start=0&id=3000](http://www.licra.org/index.php?old_navigator=true&section=detail&start=0&id=3000).

<sup>2</sup> Doudou Diène served as the Special Rapporteur from 2002 until 2008, he has been succeeded by Githu Muigai. The Special Rapporteur has been mandated by the United Nations Human Rights Council in 1993. The task of the Rapporteur is threefold: a) Transmits urgent appeals and communications to States on alleged violations regarding contemporary forms of racism, discrimination based on race, xenophobia and related intolerance to the State concerned, in order to induce the national authority to undertake the necessary investigations of all the incidents or individual cases reported. (See Individual Complaints). b) Undertakes fact-finding country visits. c) Submits annual reports on the activities foreseen by the mandate to the Commission on Human Rights and the General Assembly (source: <http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>).

<sup>3</sup> The references are taken from Diène's speech held for the United Nations in Geneva on September 14<sup>th</sup> 2007. In this speech Diène emphasized that 9/11 has been used to legitimize islamophobia. The full speech can be found here: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/137/29/PDF/G0713729.pdf?OpenElement>

<sup>4</sup> E.g. see Pascal Bruckner's article 'Boycot Durban II', in which Bruckner rephrases the petition's criticism of the United Nations Human Rights practice, and suggests that '[p]erhaps we should also think about dissolving the Human Rights Commission or only letting truly democratic countries in'. The article can be found at: <http://www.signandsight.com/features/1710.html>.

<sup>5</sup> For an early example, see Pascal Bruckner's *Les Sanglots de l'Homme Blanc (The Tears of the White Man)*, published in 1983, in which Bruckner accuses left wing political theories of fetishizing excessive self-criticism and an idealization of the Third World.

<sup>6</sup> A more recent example is the interview with Alain Finkielkraut published in the Israeli newspaper *Haaretz* in December 2005, at the height of the French suburb riots. In the interview Finkielkraut denounced apologetic explanations of the riots, and proposed to stop denying the real underlying problem: 'When an Arab torches a school, it's rebellion. When a white guy does it, it's fascism. [...] Evil is evil, no matter what color it is. And this evil, for the Jew that I am, is completely intolerable.' ('What Sort of Frenchmen Are They?' English translation at <http://www.icjs-online.org/index.php?eid=708&ICJS=2394&article=654>).

<sup>7</sup> From the publication of Bernard Henri-Lévy's *Barbarism with a Human Face* in 1977, criticism of marxism and of dogmatic leftist ideologies in France has been a characteristic of *les nouveaux philosophes*. For more information, see Michael Scott Christofferson, *French Intellectuals Against the Left* (2004).

<sup>8</sup> For an explication of these remarks, see 'The Camp as the "Nomos" of the Modern' in Giorgio Agamben (1998), *Homo Sacer*, Stanford, Stanford University Press.

<sup>9</sup> C'est qu'au devenir affirmatif des vérités, Agamben, ce franciscain de l'ontologie, préfère la délicate persistance quasi secrète de la vie, ce qui reste à qui n'a plus rien, cette 'vie nue' toujours sacrifiée, à la fois humble et essentielle, qui délivre tout ce dont, obnubilés par le grossier tumulte des pouvoirs, nous sommes capables en fait de sens. (Badiou, 2006: 585)

<sup>10</sup> We can see here that the concept of the *police* as used by Rancière differs greatly from the power of the police as described by Arendt. For Arendt, the police is the real power over bare life, for instance the guards in refugee-camps, whereas for Rancière the police generates, ontologically, what subjects can think and what forms and meaning their actions can take.

<sup>11</sup> For Rancière, the *ochlos*, a Greek term for the multitude, refers to a community obsessed with its own unification at the expense of excluding those who have no rights. For a concise dictionary that explains Rancière's terminology, see *The Politics of Aesthetics* (2004): 88.

<sup>12</sup> Badiou draws upon mathematics in general, and set-theory in particular, both to construct his philosophy, and to explain it. The concept of a 'set' is fundamental to set-theory and to mathematics. A set is any defined collection of objects: objects could be anything: numbers, letters, chairs, furniture, physical objects, ideas, etc... If given the set alpha is defined as 'letters of the alphabet', 'a', 'd' and 'q' would be *elements* (or *multi-ples*) of the set, and *belong to* alpha. 'Vowels' would be a subset of this set, as would 'consonants' as would 'a, c, b, q.' These are called *subsets* of alpha because each element of these sets *belongs to* alpha. A subset of a set alpha is said to be *included in* alpha, whereas the different elements *belong to* alpha. The *set of subsets* of alpha is the set of all the subsets of alpha: each element of this set is in fact a subset. Within this *set of subsets*, it is possible to construct an element beta of this set of subsets of alpha such that: all

elements of the subset beta belong to alpha (therefore, the subset beta is *included in* alpha), yet, the subset beta itself, as an element, *does not belong to* alpha. This is the construction that Badiou uses extensively as support and proof of his philosophy. 'The statement "if beta is included in alpha, then beta belongs to alpha" is false for all alpha' (Badiou 2005: 85). This beta-element/subset is the mathematical equivalent of the structural possibility of truth. The event is then the anomaly which points the subject to the possibility of truth and urges the subject to force this truth into existence.

<sup>13</sup> L'Organisation Politique (OP), is an unaffiliated French political movement, that intervenes only on particular issues, not on any systematic political identity. These interventions have as their only common denominator the emphasis on subjective equality. Examples of the issues that the OP engages itself with are the *sans-papiers*, equal access to health-care and education, and the political empowerment of workers. The OP operates independently from state-controlled organs. See [www.orgapoli.net](http://www.orgapoli.net).

<sup>14</sup> This does not necessarily mean that there is no resistance to current juridical practices in the work of Badiou and Rancière. It is my opinion that on the basis of the work of both Badiou and Rancière, one can also base political agency on a situation where truth is not (yet) there. The definition that truth is universal lends itself to a critical reading of those practices that are not universal. Although this may not amount to faithful politics, it would generate critical potential in an everyday situation, without relinquishing the truth-claims of the event or the scene of dissensus. But, unfortunately, there is no room to pursue this thought further here.

<sup>15</sup> Although Rancière, as we have seen, distances himself from the work of Agamben, it would be an interesting question to ask whether Rancière really departs from totalizing power-situations. Since the police determines who gets to speak, and the political agent is only a short disruption of this force, it might be the case that Rancière is in fact closer to Agamben than Rancière himself allows. Agamben also states that the refugee shows the claim of totality of the power-situation, giving temporary critical potential for activism. Unfortunately, since this article focuses on the writings of Rancière and Badiou on human rights, this strain of thought is going to have to be continued elsewhere.