

Forms of Resistance: Postcoloniality as Critique in/of the Time That Remains

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This paper is inspired by the abstract on the CLC webpage, entitled, “The Law of the Law in an Age of Empire,” in particular the following excerpt: “Does law uphold conceptual, normative certainties? What is the place of such law in formations that do not conform to such schemas of certainty? Does law have a common language? In other words, is legal formalism, autonomy of law, an invariable universal? Or is it a peculiarity of cultural religious formations of monotheisms? Can institutions of law based on such legacies (Abraham, Moses) render justice to cultural experiences and lives heterogeneous to monotheisms? How do normative certainties of law render justice to singularities of culture?”

The author then continues: “The postcolonial in an age of globalization unravels, in the sense of destruction and movement, what can no longer be called ‘the west’ and its universalization,” suggesting that this universal invariability and autonomy of law is a “productive failure.” If so, then the statement implies the productive success of postcoloniality in relation to universalizing law. In the alternative, “productive failure” could also refer to the unsuccessful attempt of postcoloniality to unravel the monolithic autonomy of law of “the west.” It is a productive failure precisely because it raises the question of the critical relationship between postcoloniality and universal law.

Thus, in thinking about what a postcolonial critique of global law, or the globality of the rule of law, would look like, one might see – in answer to the above question concerning their interrelationship – the appropriation, by formal law, of postcoloniality as a critique of law. Particularly within the works of Giorgio Agamben, one finds an incorporation, within an *ontological* critique of law (or more simply, the law’s ontogenesis), of the situs of postcoloniality as resistance, i.e., that which resists normative certainties, including – but how much, and to what extent? – the idea of law as a certain kind of formal, invariable universal posit. The CLC excerpt invites a reappraisal of postcoloniality that resists even this level of critical juridical appropriation. In short, if contemporary jurists and thinkers characterize “resistance” such that it includes – and, I submit, tames and attenuates – that which is the domain of the postcolonial, what role remains for the latter? And if a postcolonial critique cannot be disaggregated from the ontological critique, what consequences for global law and governance? What consequences for the postcolonial subject when her resistance itself has become part of the master narrative?

I read Agamben’s *The Time That Remains* as an instance of the fusion of (potentially heterogeneous) posits of resistance without, of course, his having named them as such. Agamben’s Pauline critique of law elides the time in the law of the postcolonial within the legal temporality of the subject. That is, juridical subjectivity is formed only by its resistance *as such* to the hegemony of law in its formal (material, written) guise. And yet the subject thus formed is, on the one hand, *contra* the universal but, in being named as the remnant, is always already the universal. Thus, if man as a posit is imagined only in relation to resistance, then the fruitful tension created between resistance and universality excludes, as such, any alternative (or relative) posit of the production of life. An example of this is found in the following passage from Agamben: “But if man is that which may be *infinitely* destroyed, this also means that something other than this destruction, and within this destruction, remains, and that man is this remnant.

You see why it makes no sense to speak of universalism with regard to Paul, at least when the universal is thought of as a principle above cuts and divisions, and the individual as the ultimate limit of each division. In this sense, there is neither beginning nor end in Paul, only Apelles' cut, the division of division, and then a remnant" (*Time*, 53, emphasis in original).

Paul, according to Agamben, incorporates the potential for resistance from within as a series of divisions, rather than as an overarching (and oppressive/monolithic) law. The remnant, however, is constituted by the Jew, the non-Jew, and the non-non-Jew; or rather, the remnant is only what is left after the Jew and the non-Jew have been infinitely divided, infinitely destroyed. The remnant is aporetic, produced gratuitously (by grace) in the absence of the Jew/non-Jew, the absence of "specificities of culture." The remnant is produced by grace, or within the exception (the two, according to Agamben, are the same thing within Paul). The question remains, however: in the infinity of destruction and division, in the infinite unraveling of the self/other dichotomy within the exception, is universality itself destroyed? If so, what is the lived consequence for the possibility of resistance to, say, globality as a politico-juridical form of (formal, institutional) oppression?

Thus, the questions I raise here are as follows: Within the context of the mere posit of resistance, who is the remnant within the time of the now? Does the remnant include the postcolonial *juridical* subject as the index of a cultural and political pluralism that theoretically critiques, reformulates, and resists monolithic and/or monotheistic conceptualizations of law? Is the postcolonial subject (as subaltern) excluded from the juridical idea of the remnant (the chosen, the elect) within the state of grace? Is the very existence of a remnant in the time of the now as itself a resistance to normative and hierarchical law antithetical, by definition, to the resistance of the subaltern? This would be the case, for instance, if postcoloniality as the name of resistance had always already been absorbed within the resistance of the remnant.

Whether or not the subaltern is included within the remnant, or whether the remnant is as such only that which is discursively represented as the postcolonial (whereby the remnant is either the new name or the new cooptation of the politico-juridical resistance of the subaltern, postcoloniality thereby representing the normative self's alterity), may indeed define the nature and the parameters of a postcolonial critique of messianism (time of the now). But I suggest that postcoloniality, to survive its appropriation and succeed as critique, must go beyond a prescriptive counter-resistance to resistance. On the contrary, a postcolonial juridical critique must undertake a kind of acceptance (Aimé Césaire), precisely through the deployment of the very tools that mark the subjugation of the subaltern (i.e., the master's tools: e.g., universality as antipodal; the self-other disaggregation, traditionally a hierarchical mode of oppression, redeployed to counter the appropriation of subaltern resistance; etc.). This acceptance or *parousia* (in the literal sense of being "next to; in this way, being is beside itself in the present," Agamben, *Time*, 70) may contribute to the unraveling of a universality that continues to elide the parity of juridical globality and oppression.

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