

RECOGNITION AND THE RIGHT TO DIFFERENCE: *CRITICAL THEORY, DIVERSITY AND THE HUMAN RIGHTS CULTURE*¹

Eduardo Carlos Bianca Bittar

Attorney at law, earned his degree in Law at the University of São Paulo (USP - 1996). He carried out his post-graduate and doctoral work at Fapesp, in association with the Université de Lyon (Lyon-II; Lyon-III) and the Université de Paris (Sorbonne-II; Sorbonne-IV), having obtained his Doctorate Degree in Philosophy and General Theory of Law from the School of Law (USP - 1999). The Post-Doctoral studies at the University of São Paulo is intitled Semitocis of law (USP - 2003). Became an Associate Professor at the School of Law – USP (2003). Eduardo Bittar was appointed Scientific Director of the Brazilian Association of Law Education – ABEDI (2006-2008). He held the position of President of the National Association for Human Rights – Research and Post-graduate Degree (ANDHEP) in the biennium 2009-2010, and the position of Executive Secretary (2007-2009). Senior Researcher at the Center of Studies of Violence USP (NEV-USP), 2006-2010. He was active as a Full Member of the UNESCO Commission “Education for Peace, Human Rights, Democracy and Tolerance,” at the Institute for Advanced Studies at USP (IEA-USP), 2007-2010. Accepted the invitation to become a Member of the Legal Area Committee – CAPES (2010). Consulted as an Expert Scientific Advisor for the Fundamental Rights and Justice Review (PUC-RS). Is an Associate Professor at the Department of Philosophy and General Theory of Law at the School of Law (USP, São Paulo, Brazil). Is member of the National Association for Human Rights – Research and Post-graduate Degree (ANDHEP) and 2o. Vice-President of ABRAFI (IVR/ Brazil). Was N-2 level Researcher at Council for National Research in the period 2010-2012 (CNPq, Brasília, Brazil), and works focused on the area of Philosophy and General Theory of Law, developing his actual research work on “Democracy, Social Justice and Emancipation.”

Abstract: This article intends to analyze the several historical experiences forming the culture of the actual stage of human rights culture. How Brazilian Law is absorbing this transformation is a focused analysis of this research.

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I. THE RUPTURE OF MAY 68

Recent transformations in contemporary society gave way to redefinitions of the meaning of several historical experiences in the fields of culture, behavior, politics and law. The debates that include in recent history the reflexive receptions of the effects of May 68 in philosophy and legal theory, highlight the importance of the public sphere for the construction of new social identities, because the struggle for rights is a historical struggle. In the legal dogmatic domain, however, and even in the history of law, the impact of May 68 is rarely identified as the epicenter of a process of juridical significance. Nevertheless, the boldness of the student movements and their capacity of mobilizing public attention to relevant problems in that context can be seen as a rupture of considerable importance to transformations in contemporary societies; despite what really happened in May 68, the importance is centered on what it has symbolically left for future generations. The economic “fracture” occurred in the end of 2008 finally consolidates, as will be argued in this paper, the so-called *crisis of modernity*.

The *Dialectics of Enlightenment* is a mark in this sense, considering the fact that it had identified since the 1940s the “discontents of civilization” underlying modern archetypes. It is not only from light that modernity is fed upon, but also from a dialectics of lights and shadows. The *Frankfurter Schüle* captures and describes since its first generation not only the barbarity of war and genocide, but it is also capable of highlighting the condition of the sociological forms and the values of post-war society which influenced the student protest revolts in several episodes through 1968, in many countries, especially in France and Germany².

Since then, the philosophical and sociological contemporary debates over the idea of “post-modernity” began, and one of the great theoretical inheritances of this period will be exactly the impossibility, in social sciences, to ignore the meaning of this expression. In this sense, even the present theories of law and legal systems of western democracies are indebted to May 68, and that is why one cannot think the categories of justice outside this historical framework of comprehension.

May of 68 can be considered a historical moment of breakdown of several behavior patterns: struggle against family authority; claims for change in the regulations of universities; amplification of the claim to a radicalization of political liberty; minority rights; redefinition of the political role of aesthetics and redefinition of morals towards ethical

2 On this topic, see Martin Jay, *A imaginação dialética: história da Escola de Frankfurt e do Instituto de Pesquisas Sociais [Imaginative dialectics: history of the Frankfurt School and the Institute for Social Research]* (Rio de Janeiro, Contraponto, 2008), p. 10.

pluralism; struggles for redemocratization and for the recognition of difference; and an increase of the libertarian struggle for an organized civil society. In several of their meanings, these changes redounded in very concrete accomplishments in the domains of culture and social relations. It is also undeniable that the present text of the democratic Brazilian Federal Constitution of 1988 owes a great deal to these struggles. The “Citizen Constitution”, which also incorporates the legacy of the human dignity of the person from the Universal Declaration of Human Rights of 1948, represents in our context the institutional guarantee for more extended liberties, and, thus, reflects the achievements of the twenty years that preceded its promulgation.

In this context, the consideration of the recognition of difference and the peculiarity of minorities (African-American, women, handicapped persons, the “landless”...) becomes more relevant than the generic presupposition of equality (among people, citizens). It is recent thus, the perception that the notion of equality casts a shadow over the possibility of the recognition of the singularity or the particularity of each and every individual. In the broader context of the reformulation of the *kritische Theorie*, inherited from the studies of Horkheimer and Adorno, Marcuse and Habermas, it is in the works of Axel Honneth - through the category of recognition (*Anerkennung*), in a revisitation of the young Hegel – that a broad basis for the justification of the *right to difference* can be found³.

II. THE RIGHT TO DIFFERENCE

The right to difference is, in the interior of the culture of law, an amplification of the affirmation of forms of struggle for recognition. An elastic extension of the concept of law that allows it encompass the idea of a right to difference, consolidates the ambition of differentiation inside modern societies, which tend to produce homogenization and standardization. It is in a reactive form, thus, that the struggle for difference is inscribed dialectically on the side of the identity of an interrupted struggle for equality.

The right to difference is therefore distinct from the right to equality. It is clear that legal equality doesn’t guarantee the possibility of achieving complete recognition in social life. It is also acknowledged that this version of equality is proven false by the liberal presupposition that justice as legal equality is sufficient to promote equilibrium in intersubjective relations. Honneth’s studies justify the presumption that, beyond the recognition of legal equality, the notion of dignity also encompasses the recognition of difference. When studying the problem

3 On this theme, see Axel Honneth, *Disrespect: the normative foundations of critical theory* (Cambridge, Polity, 2008).

of the origin of the idea of dignity, Honneth precisely identifies that "...a not inconsiderable part of the honor principles, organized according to the social layer, that have guaranteed until then the individual in terms of the social esteem migrates to the reformed juridical relation, on which it reaches universal validity with the concept of human dignity; in the modern catalogs of fundamental rights, it is guaranteed to all men, in equal measure, a legal protection of their social reputation..."⁴

If the semantic and internal contours of the term dignity absorb the idea of honor, originated from the pre-modern tradition, honor is related with distinction, and not with what is common; with that which is rare and proper of the singular: "...a person can only feel valuable when she knows herself recognized in realizations which she precisely does not share in a non-distinct manner with all the others"⁵. That is why the struggle for dignity presently finds the quality to become concrete in the dynamics of the demands for recognition and particularity, exactly for inscribing itself in a framework of a struggle for differentiation in face of a modernity that produces the homogeneous.

It is precisely this profile of resistance that has motivated the actions of social movements, especially in the last three decades, bringing new colors to this debate in the sense that they claim as main focus the rupture of equality in law as a form and standard of social treatment. When formulating integration policies that consider the principle of *difference*, they are also inscribing the logics of inequality as an important normative standard for the construction of justice, in the sense that "...equality and inequality are constructive values of justice. What is *unique* cannot be compared or classified, and, obviously, unique identities can be equal or unequal to each other"⁶.

Therefore, the contemporary discourse about justice has eagerly strived over the treatment of differences. Based on Honneth's studies, it is Habermas who affirms in *Between Facts and Norms*: "The concrete conditions of recognition, sealed by a legitimate legal order, result always from a 'struggle for recognition'; and this struggle is motivated by the suffering and by the indignation against a concrete despire. A. Honneth shows that it is necessary to articulate experiences that result from attacks towards human dignity to confer credibility to the aspects under which, in their respective contexts, that which is equal has to be

4 Axel Honneth, *Luta por reconhecimento: a gramática moral dos conflitos sociais* [*Struggle for Recognition: the moral grammatics of social conflicts*] (São Paulo, Editora 34, 2003), p. 204. Free translation from the Brazilian version.

5 Axel Honneth, *Luta por reconhecimento: a gramática moral dos conflitos sociais* [*Struggle for Recognition: the moral grammatics of social conflicts*] (São Paulo, Editora 34, 2003), p. 204. Free translation from the Brazilian version.

6 Agnes Heller, Ferenc Fehér, *A condição política pós-moderna* [*The post-modern political condition*] (Rio de Janeiro, Civilização Brasileira, 1998), p. 174.

treated in an equal form and that which is different has to be treated in a different form”⁷.

This perspective makes a great difference in discussions over human rights, especially because one can now notice how natural law’s abstract universalism has been opening ground for a more concrete and historical view of human rights, that is, a new philosophical anthropology over which it can ground its basis. This has become visible in 2008 in Brazil, with the celebrations of the 60 years of the Universal Declaration of Human Rights (1948). The right to difference has this particular tone: the idea that it is possible to consider ourselves *equal in difference*; this was the slogan adopted by the Federal Government’s Special Secretary of Human Rights (SEDH, now Human Rights Secretary, SDH), in Brazil.

It is clear, thus, that this idea has influenced the understanding and practice of human rights beyond the threshold that leads to relativism. It became difficult to be *indifferent to the right to difference*, which protects the human condition in its multiple expressions. It is the only way to recognize how human beings live and suffer concretely, and represents a new possibility of implementing human rights policies in a more precise orientation.

The right to difference is based on the idea that all are different among each other; and, properly, *this* is being human in its singularity. In order for ‘human nature’ to be conceptualized, however, one must respect singularities. It becomes hence necessary for one to acknowledge the *complexity of diversity*⁸, which is the most concrete characteristic of ‘human nature’. This gives way for the recognition of the Indian, the African-American, homosexual woman, children, craftsmen, intellectuals, bankers, handicaps, Spiritualists, Catholics, Protestants... because we all have ‘something in common’.

We refer to the equal possibility for everyone to be responsible for respecting the other, and therefore, to be considered member of the community of those who exercise their rights, in the concrete measure of their own conditions. It is imperative, therefore, that contemporary societies create conditions to promote and allow the equal access to

7 Jürgen Habermas, *Direito e democracia* [Between Facts and Norms] (Rio de Janeiro, Tempo Brasileiro, 2003), ps. 168-169. Free translation from the Brazilian version.

8 Not for another reason, the most recent human rights norms already register and enshrine this logic as a form of concretization of human rights, having as example what can be read in the Preamble of the *United Nations Declaration on Indigenous People* (2007): “*Affirming* that the indigenous people are equal to all other peoples and recognizing at the same time the *right of all peoples* to be different, to consider themselves deferent and to be respected as such”, and “*Affirming as well* that all the peoples contribute to the *diversity* and the wealth of civilizations and cultures, which constitute common patrimony of humanity” (highlights not from the original. Free translation from the Portuguese version).

recognition, having this access as the converging principle of an organized community of citizens.

III. THE AESTHETIC PERCEPTION OF DIFFERENCE

The best form of respect towards the human condition is the recognized guarantee of the place of the other's *difference*. There is no *otherness* without diversity (ethnic diversity, cultural, ideological, aesthetic...) ⁹, and this is a conclusion that invites us to endow a decentered worldview, the only way to apprehend effectively an intersubjective exchange. This dissolution the self-centered view is one of the effects of the approximation process between the categories of just and beauty.

And here, particularly, aesthetic theories have special contributions to make, because aesthetic practices have overflows of significations. If well observed, art comes do be an invitation to an "*otherization*"; a "look around", a sensation of other faces, other forms, other interpretations, other visions, other logics. Art has therefore much to tell about human beings, those who have already passed and those who are still among us. It has something about a dissonance of taste, tendencies, wills... There are tendencies, schools, movements, styles, cultures, methods, forms, logics [all of them always "in plural"], when it comes to art. The Brazilian samba of Adoniran Barbosa is as much art as the Portuguese fado, and as much as the illuminist sonatas for clavier and strings.

There is not one universal form of art and neither unified global art, only the one produced by impositions of the cultural industry as an anti-democratic form of standardization of taste. That is why art says something; what it says, will not silence: it says that we are profoundly different from the other, and says, also, in a thundering tone, that there is a lot of beauty inside the differences. Reading beauty in the difference of the other's art is to open one's self to the contribution that each one is capable of bringing in the projection of forms to beauty, and, therefore, to existence.

Certainly, aesthetics, as a form of expression that says something about ourselves, allows us to a form of self-contemplation. Its role is to take us *to* ourselves, so we can know each other, our internal

⁹ Diversity here is not only the diversity of the peoples, but the diversity of what takes place in the same social group, in a society or culture: "Indeed, the problem of diversity is not raised only by cultures which have reciprocal relations; it also exists in the midst of every society, in all groups which constitute it: casts, classes, professional or confessional domains etc. develop certain differences to which each group attributes an immense importance" (Claude Lévi-Strauss, *Antropologia estrutural dois* [*Structural Anthropology II*], (Rio de Janeiro, Tempo Brasileiro, 1993), p. 332. Free translation from Brazilian version.

emotions, behavior patterns, personality traces, virtues and vices, skills and competencies, genius and revolt, romanticism or idealism. The profusion of tendencies, styles and tastes obliges us to recognize that there is no aesthetical pattern or an obligatory pattern to measure the beautiful/hideous (the hideous can be beautiful and the beautiful can be hideous).

If this is so, the aesthetic consciousness brings us the consciousness of *diversity*. According to Pablo Picasso, it is possible to say that: “art is the lie that allows us to know the truth”. In the philosophical domain, what it makes us know is that we are not equal. Moreover, one must emphasize this point: we cannot be equalized, not even by the *social planification*, and neither by the *capitalist standardization*. Otherwise, we take the risk to lose ourselves from ourselves; *from* our self-identity, sentiments, talents and absolutely singular perspectives that are proper of the individual and our historical human condition.

These significations have to be interpreted and reconstructed, especially when, through the approach of a critical aesthetic theory, one seeks to reveal the proximities between the term *taste* and the term *just*, at least in the Portuguese and English languages. One of these significations apprehended from aesthetic practices is that *dissent* is an element of social life. Dissent is manifested in several ways as a will for differentiation - the taste of different things, different wills or normative judgments. It is hence a form of apprehending social and human dissonances.

Dissent is an unavoidable element of social life and should be absorbed by political practices. Otherwise, the valuable transformations occurred in the recent and historical struggles of May 68 in Paris and Frankfurt might be neglected¹⁰. This historical event and its social results have restored the possibility of another reading of Friedrich Nietzsche, to whom: “It is in the possession that the difference between men is more strongly revealed. And this difference manifests itself in the diversity of their value judgments, in the fact that they are different and do not have the same opinion about certain values”¹¹.

In this sense, this is what aesthetics allows us to notice: the *difference* of the other, even though we would only like picture the *equality*; the equality that makes us common for being human, for example¹². Democratic, free and open is the world where dances, cults,

10 See Eduardo C. B. Bittar, *O direito na pós-modernidade e reflexões frankfurtianas* [Law in post-modernity and frankfurtian reflections] (Rio de Janeiro, Forense Universitária, 2009), p. 10.

11 Friedrich Nietzsche, *Além do bem e do mal* [Beyond Good and Evil] (São Paulo, WVC, 2001), p. 129. Free translation from version in Portuguese.

12 Claude Lévi-Strauss, *Antropologia estrutural dois* [Structural Anthropology II] (Rio de Janeiro, Tempo Brasileiro, 1993), p. 331. Free translation from Brazilian version.

traditions, spiritual ecstasies, common knowledge, science, cultural forms and popular folklores all have their place. This is a world where the love for the *non-similar* is also possible; an exchange that enlaces the otherness by the striking power of aesthetics and the communication promoted by the symbolic language of art.

It is Adorno who affirms that “Love is the capacity of noticing the similar on the *non-similar*” (highlight not from the original)¹³. The love related to various styles or cultural initiatives, several anthropological identities and forms of manifestation of humanity is a love towards human condition itself. This love can be pictured in the human eye.

In the center of this problem are the questions of how the human *look* constitutes itself in order to see the other, and how this act of “looking” can consider the other not as strange or foreigner - as alienated from the practices of myself -, but as an autonomous self formed in the midst of peculiar and unique practices that are as valid as one’s own. The question of the *look* towards the other and the interpretation of the other’s culture intermesh and reach the debate over ethnocentrism and its expressions. According to Richard Rowland, ethnocentrism “...the tendency to consider the culture of one’s own people as the measure of all things – is a temptation that must be avoided”¹⁴.

These problems justify the idea of *estrangement*: language, clothes, practices, wisdoms, creeds, identities, tastes, eating habits, moral standards etc. From the perspective of psychological-social behavior, differences frighten, because their misunderstandings generate fear and exclusion. However, as asserts Rowland, “One must not consider inferior that which is only different”¹⁵.

The refusal of ethnocentrism is a civilizational effort, considering that the “primary drive” also leads us towards the non-acceptance of the other. This shows the actuality of Claude Lévi-Strauss’ classical study, *Race et histoire* in orienting the “anthropological look” towards the preservation of difference and the respect towards the identity of the other. The refusal of ethnocentrism is part of a campaign to characterize human dignity as a common value among peoples and their differences.

A society that is socialized with these preoccupations cultivates the necessary spirit for the exercise of a democratic pluralism that surpasses the totalitarian homogeneity of the modern order, to which is valid the deadly equation of Auschwitz: the conversion of the inconvertible – from Jew to non-Jew, that is, from Jew to ashes and dust. This democratic effort, in an Adornian reading, is an effort for

13 Theodor Adorno, *Minima moralia* (Lisboa, Edições 70, 2001), p. 196. Free translation from Brazilian version.

14 Richard Rowland, *Antropologia, história e diferença* [Anthropology, history and difference] (Porto, Afrontamento, 1997), p. 07. Free translation from Brazilian version.

15 *Id. Ibid.*, p. 08.

the no-return; or the libidinous effort for the refusal of a regression to something that could produce another Auschwitz. This effort is justified against the dissemination of an unilateral seed and the taste for a singular doctrine, which can only lead to the affirmation of the political forms of profound disrespect towards diversity.

IV. LOVE AND RECOGNITION

Because of its natural complexity, approaching human dignity demands several precautions. Considering it as the principle that “meta-formats” and adjusts the Rule of Law with a group of affirmative demands over the human condition, one might say, along with Erich Fromm, that a human rights centered culture is one that signs positively towards an “erotization” of the world¹⁶, to a “biofilia” (sympathy towards life) and to tolerance, denying the modern paths of biopolitics and the extermination of the other as a form of achieving the same emancipatory projects¹⁷.

The critical revisionism of modernity implicates the consciousness of the necessity of a place for love in the interlude of social relations. Still with Fromm, this suggests a reflection over the care for oneself as an ethical practice, and the care for the other as an expression of active responsibility. Love, indeed, as the first form of belonging to the world, refers to this form of contact, at first established in the motherly embrace, provider of the first hour of existence. It is exactly in a psychoanalytic orientation based on Freud, Mead and Winnicott that Axel Honneth affirms: “For Hegel, love represents the first step of reciprocal recognition, because in its concretization the subjects confirm themselves mutually in the concrete nature of the needs, recognizing themselves hence as needy beings; in the reciprocal experience of loving dedication, both subjects know each other united in the fact that they are, in the needy state, dependent on the respective other.”¹⁸ The perception of total dependency is what marks the first contact with the world.

Aside from the need, however, love presupposes a second movement to be concretized as recognition, which is, beyond the proximity, a form of distinction. “Once this experience has to be mutual in relation to love, recognition means here the double process

16 Francisco Doria, *Marcuse* (Rio de Janeiro, Paz e Terra, 1983), p. 202. Free translation from the Brazilian version.

17 Erich Fromm, *A arte de amar* [The art of love] (São Paulo, Martins Fontes, 2006), p. 98. Free translation from Brazilian version.

18 Axel Honneth, *Luta por reconhecimento: a gramática moral dos conflitos sociais* [*Struggle for Recognition: the moral grammatics of social conflicts*], (São Paulo, Editora 34, 2003), p. 160. Free translation from the Brazilian version.

of a simultaneous liberation and an emotional connection with the other person; not a cognitive respect, but an affirmation of autonomy, accompanied or even supported by dedication, is what aims one that speaks of recognition as a constitutive element of love”¹⁹. The care of the one who loves is the care for the one that is close when he or she is needed to be close; from one who does not interfere when it is necessary not to.

The ethics of care is based on the strategy of love, and for that, it must be apprehended as a basis for the development of a human right culture. This does not mean - and this warning is present in Honneth’s works - that is possible for one to extend love for all, because it is developed in a small group of human bonds. This also does not mean that the culture of law must orientate and base itself by the difficult logics of love, considering when it occurs or not. Nowadays, in order to sustain the justification of the development of a human rights culture on the basis of an ethics of care means to extend the tactics and strategies of love’s actions to the field of public policies and forms of distribution of rights.

Love promotes life, and this character is proper of the biofilic logics, for “...aside from the element of action, the active character of love becomes evident in the fact that it always implies certain basic elements, common to all forms of love. They are *care, responsibility, respect and knowledge*...”²⁰. In this sense, love and law also reveal an inseparable kinship.

If there are no human rights without respect, respect means the capacity of loving and letting the loved one develop integrally, and not to dominate, castrate, manipulate; an ethics of care exhales respect, because it cultivates the power of affection as a way of “looking with attention” (*respiecere*)²¹. That is why the education and the methodology of (and for) human rights must prepare for a life with diversity, on the basis of dialogue and respect, turned to the otherness, as a form of social solidarity that rests on tolerance.

In fact, in this sense, “biofilia” as an orientation for education on human rights, supports the accumulation and the production of social and reflexive efforts in practical and theoretical perspectives, in the sense of proliferating the conditions for the cultivation and pro-active development of concrete dimensions of human dignity.

The active character of a politics of love involves necessarily

19 Axel Honneth, *Luta por reconhecimento: a gramática moral dos conflitos sociais* [*Struggle for Recognition: the moral grammatics of social conflicts*] (São Paulo, Editora 34, 2003), p. 178. Free translation from the Brazilian version.

20 Erich Fromm, *A arte de amar* [The art of love] (São Paulo, Martins Fontes, 2006), p. 33. Free translation from the Brazilian version.

21 *Id. Ibid.*, p. 35.

a pro-active attitude towards the world, which, among other things, pronounces itself over barbarity, repels injustice and inequality, promotes a culture of non-violence and becomes intolerant towards human suffering. Therefore, a human rights culture must involve tactics of erotic energy gathering which pulse in favor of biofilia and the politics of love; that which is conjunctive and not disruptive²².

The care towards the human condition expresses the need for us to cultivate an open spirit, supporting the principle of life (*eros*) and being attentive towards the respect for the multiplicity of faces and tastes, talents and hearts, body forms and styles, thoughts and skills, abilities and limitations, looks and perspectives, vices and virtues, attractions and visions, empathies and antipathies, tendencies, worldviews and wills. In this sense, as states Nietzsche, in *Beyond Good and Evil*: “Living is wanting to be different from Nature, to form value judgments, to prefer, to be unjust, limited, or simply to be different!”²³.

Where a tolerant spirit, comprehension and dialogue are not present, imposition, castration, limitation, restriction and determination reign. The results of this process can only be hate, competition, rebellion, elimination, oppression and totalitarianism. Love and affection distinguish themselves from these oppressive forms of expression of the spirit exactly because they enable the existence of the other as other. Love for the same is simply a narcissistic love; that is, it is not love, but self-contemplation. The acceptance of diversity follows the path towards the construction of a loving spirit as a practice of finding comfort with the other as *different*. Otherwise, love for the other as “the same” is simply selfishness disguised as love.

Thus, true love doesn’t mean either the heavy judgment or the severe critique; not even the maintenance of tradition *for* tradition, or the acid and excluding look towards the otherness. These are all germinal elements responsible for provoking suffering²⁴. Love is the only language capable of making heterosexual parents deal with homosexual daughters and sons, as well as for a mother to keep loving her incarcerated son who confessed his crime.

Not for another reason, the philosophical thought of Axel Honneth considers the categories of love, law and solidarity as the three fundamental bases for the construction of the recognition of the other, and, therefore, the three pillars that constitute the necessary

22 Erich Fromm, *A arte de amar* [The art of love] (São Paulo, Martins Fontes, 2006), p. 38. Free translation from the Brazilian version.

23 Friedrich Nietzsche, *Além do bem e do mal* [Beyond Good and Evil] (São Paulo, WVC, 2001), p. 27. Free translation from Brazilian version.

24 See Axel Honneth, *Sofrimento de indeterminação: uma reatualização da filosofia do direito de Hegel* [Suffering from indetermination: a reactualization of Hegel’s Philosophy of Law] (São Paulo, Esfera Pública, 2007), p. 37.

intersubjectivity which enables social bonds. Without them, suffering appears as the matrix of social struggles and injustices.

This reflections points to the faith in the heritage of the Enlightenment, and in this sense we can conclude the same than Stephen Eric Bronner, in *Abolishing the ghetto: anti-semitism, racism, and the other (Reclaiming the Enlightenment*, 2004): “That is still the case: recognizing the dignity of the other is the line in the sand marking the great divide of political life”²⁵.

CONCLUSION

This investigation aimed at a movement towards the affirmation and philosophical justification of human diversity. In dialogue with references from anthropology, it also reiterates the commitment of the political construction of an non-authoritarian *look*, fundamental value for the construction of the democratic spirit. The notion of dignity was approached as being capable of encompassing in its core the ideas of equality and difference, as well as the ideas that a culture of human rights oriented by an ethics of pluralism and diversity shall cultivate: democratic openness, acceptance of the otherness, multiple forms of expression, inclusion of minorities, protection of the diversity of social language games, ethical-anthropological porosity, social and cultural sensibility.

From this analysis, it is possible to affirm that a human rights culture based on diversity depends on a *look* towards other human beings that can detach itself from the category of universality and reach the recognition of humanity as it presents itself materially and historically: as individuality. In this sense, the impacts of the post-modern thought call for a culture of diversity and pluralism that has human dignity as justification and legitimation of a human rights culture, where diversities can structure themselves in founding practices of democratic, pluralist, dialogical, open and tolerant forms of shared life.

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