HUMAN RIGHTS AND HUMAN NATURE

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Do human rights constitute a new world ethos (*Weltethik*)? And are these rights one of the few places where general agreement is possible, despite the various divisions which trouble the modern world? Many would say yes, but mainly in the Western World, notwithstanding the growing difference in the interpretation of their content. In other places, however, the question receives different answers and can be controversial. This occasion suggests a more careful examination of the problem, as we shall soon do. On the contrary it doesn't seem controversial that, beginning with the declarations of human rights in XVIII century and then in a particularly accelerated manner in our century, the process of their development occurred in three fundamental directions: 1) the growing affirmation of human rights (regarding the human person as such, and civil, political and social rights), and their reception in positive law; 2) their extension, in the sense that new rights relative to the most different areas of human life are introduced; 3) their internationalization – that is, their inclusion in the norms of international law. In spite of the various clouds which are gathering around the issue of human rights, the process just described establishes a positive direction in history, in which person's dignity has been better understood and the arbitrary pretences of power limited.

Once we lose shallow trust in necessary progress, a rational trust in possible progress remains, if only we don't continue saying that the world has always been like this and there's no way to change it.

But, at the same time we must ask: What is a right and, consequently, what are human rights? This is a fundamental question, because according to the teachings of logic, the larger the extension of a concept, the smaller the precision of its meaning, so that one ends up talking about human rights in very different and often fanciful ways. In determining the content of the term "human rights" one must identify its most important meaning, so that rights do not turn out to be complaints, appeals, protests, or groundless requests, but requirements founded on a justifiable and rational base.

The difference between a right and a simple subjective claim lies in the fact that the latter cannot exhibit an intrinsic and valid *erga omnes* justification, while the former exhibits a value of which a person cannot be deprived without harm and injustice, and in which something of human essence is expressed. In the strict sense "human rights" is something that is due to man as such and in virtue of his being human. Consequently others are obliged (morally obliged) not to deprive him of what is due to him. As is well-known, rights and obligations are concepts that almost always coincide, in the sense that A's right activates in everyone else the obligation to respect it (I said "almost always", because duties exist without corresponding rights, such as our duty not to cause animals to suffer needlessly, which in the strict sense aren't subjects of rights).

Human rights: two traditions

According to a paradigm still very much followed, the tradition of human rights dates back to the American Declaration of

Independence on July 4, 1776, and more explicitly, to the French Revolution and its Declaration of individual and civil rights (August 24, 1789). This tradition is so deeply rooted that it seems blasphemous to question it. Nevertheless one needs to run the risk of affirming that, focussing attention on the most basic rights of the person rather than on civil or political ones, the first declaration of human rights (in virtual form and in so far as it expresses moral rights not yet "positive"), is far older and can be found in the Ten Commandments. It isn't very surprising, since the Decalogue is not a tribal or ethnic table of values, but the basic code of human morality. And what are person's rights, if not a declaration of moral requirements – namely of things and attitudes – which must be given a person? Everyone should understand that in the Commandment "Thou Shalt Not Kill", expressed in the form of a negative imperative, the right to life of every person is affirmed[1]. In substance, the Decalogue, teaching man which actions to do or not to do, actions which are suitable or aren't suitable for man as such, is the bearer of needs and obligations which much later (and in virtue of the connection between duty and right) will find an explicit formulation in the most basic human rights. The speculative reflection linked to historical analysis seems in fact to bring to light in the history of human rights a dialectic according to which, beginning from essential ontological root inscribed in the human person, "thrusts" or requirements which are "translated" into this or that right, are freed or emerge progressively over the course of time. The dialectic between the ontological and historical character of human rights is one of the most noteable elements for an adequate philosophy of them, which avoids the two extreme of their complete "innatism" as well as of their total "cultural and historical" character.

1. This subject is developped further in my book *Oltre l'illuminismo. Il messaggio sociale cristiano*, Ed. Paoline, Rome 1992.

Their tradition therefore begun before 1776/1789. One can, in effect, consider important for the history of human rights the discussion that took place in Spain with its center in the University of Salamanca, beginning in about 1535. The discovery of America, its conquest and evangelization, offered the Christian thought of the 16th Century a completely new opportunity to reflect on the rights of the Indians. They tried then to respond to the acute problems that the conquest of the Indies represented for the Christian conscience: was it justified? And on the ground of what reasons and to what ends? Could the King of Spain or the Emperor provoke a war against the political unities existing there, as in the case of Mexico? Doubts that very much worried Charles V. In that area the teaching of Francisco de Vitoria shone. He was shaken by the serious news regarding the conquest of Peru by Pizarro and decided to thoroughly study the problems caused by the new situation. In his *Relectio de Indis* of 1539, the rights of Indians are affirmed–to whom some even intended to negate their belonging to the human race–in the sense of a basic equality between them and the Spanish, so that the Indians were the true masters of their goods and of their land, and they couldn't be deprived or dispossessed of them. This idea spread progressively from the School of Salamanca, started by de Vitoria, to the main Spanish and European universities[2].

This plexus of historical events, object of wide investigation in 1992 on the occasion of the Fifth Centennial of the discovery of

2. On the importance of de Vitoria and his positions on rights of Indians and the beginning of modern international law see the careful book by Robert ROYAL, *1492 and All That*, Ethcs and Public Company Center, Washington 1992, *passim* and especially: "To us human beings are human beings and have rights, and only wicked arrogance accounts for any questioning for their humanenness. But until recently no culturc in the world – particulary none outside the European sphere of influence – widely accepted that undertanding and put it into practice. Ironically, the much-maligned Spanish began the elaboration of these universal principles through theological reflection on indigenous peoples" (p. 72 s.).

America, introduces in a natural way a fact about which quite a few are aware–that is, that two traditions for man's rights exist, which surely display many points of contact, but which aren't identical either for that which regards the list and the hierarchy of rights, or for that which concerns their justification: the tradition begun in 1789, and the other, an older one, coming in different ways from the heart of Christianity and from the Mediterranean (Greek and Latin) culture. These origins stress the unique and privileged place of man in the universe, and consequently, at least in an implicit way, the idea of man's rights, a gain that seems extraneous to the Asiatic and African cultures.

Without indulging in excessive simplification one can call "rationalist" the first tradition, and "theist" the second one. Between the two, but closer to the second, we can put the American Declaration of Independence, which has "Enlightenment" echos and flavour, but which derives human rights from the hand of God. This reference, absent in the Declaration of 1789, is primary and important in that it renders unfounded the idea, which can be credited to a strictly anthropocentric perspective, according to which rights would be a claim or a pretence raised by man against God. In this attitude a type of competition between God and man is hidden, which finally leads to the two extreme positions of "God is everything, man is nothing", or "man is everything, God is Nothing". One can certainly support with valid reasons that the rationalist and theist mainstreams – especially in our century, and especially from the moment in which the Christian Churches became champions of human rights –, were mixed up in some degree (the Universal Declaration of 1948 is very important on this subject, because it expresses a less individualistic sound and is more imbued with the value of the person than that of 1789), but not to the point that it makes every difference disappear. On the contrary, conflicts seem to re-emerge today when the question on the justification of human rights springs up again with a new strength in relationship to new

challenges (think, for instance, about the problems raised by the technology of life). To avoid these difficulties, the culture of human rights has two paths before it, which are not mutually exclusive: to make them respected in practice through their growing affirmation by the positive law (although the most basic human rights are "prepositive", they can't have legal validity without sanction from the State or from the International Community); to justify them or ground them better in theory. Since conclusions cannot have a value greater than the premises, the theoretical strength or weakness of human rights will be equal to that of their basic premises.

The problem of justification

We will limit ourselves to the second aspect, i.e., to the theoretical-justificative moment where the situation doesn't appear to be so calm. To summarize briefly the diagnosis which seems valid, the rationalist tradition on the rights of man shows signals of serious crisis and tends to lead to a historicistic and rather frequently relativistic approach. According to Norberto Bobbio, who nevertheless appeals to a moderate rationalism without the extremes of the other positions, human rights are historically relative and therefore cannot enjoy an absolute basis: the real problem about human rights wouldn't be justify them, but to protect them[3]. Since their "strong" justification, understood as a full demonstration, is impossible, one has to be satisfied with probable arguments, of which the most decisive may be the consensus that can be established around rights. This point of view – interesting because it tries to protect some moral requirements such as not killing, not hurting the other, and the obligation to respect the covenant – isn't however able to avoid sliding towards

3. Cf. N. BOBBIO, *L'età dei diritti*, Einaudi, Turin 1990, pp. 10-16.

"weak" rights, i.e., which are not absolute but *prima facie* valid, and as such amenable to exceptions according to utility and/or the interests of society and its groups. One of the fundamental meanings of the adjective "absolute" is, in fact, equal to "without exception". Today great social challenges, such as drugs, overuse of sex, homosexuality, abortion, euthanasia, embryo-manipulation, genocide, etc., need as an answer absolute human rights, without which they are theoretically and practically insignificant. The contradictions of some currents of contemporary culture, which declare with equal strength woman's right to abortion, and animal's right to life, hand us important matters to think about. Such deep contradictions very much weaken the cause of human rights and make them appear only as mere conventional and/or utilitarian postulates.

Within an acceptable level of schematization, it is possible to reduce to three the characteristic positions concerning the foundation and existence of human rights:

— in the first case, the most radical one, one can't even speak about grounding of rights, because they don't exist for the simple reason that man, to whom they could be inherent, doesn't exist. In short, human rights don't exist because man doesn't exist. This is the structuralist and post-structuralist point of view, which in its anti-humanism coherently eliminates human rights after having eliminated their subject;

— in the second case one tries to ground rights not on essence or ontological nature invariant in man, but in an immanent way on the subject's conscience. Since essential nature doesn't vary, while the subjectivity of the conscience is submitted to fluctuation, man's rights assured in the subject's conscience, cannot reach an absolute base, but only a provisional and therefore superable and contradictable one, according to usefulness, interests, strength, etc. The contractualist, historicist, relativist and functionalist positions for which human rights take on a simple functional value, are expressions of this line. In all of these cases, in which

the ultimate foundation of rights is considered either impossible or useless, "weak" or partial justifications are deemed sufficient, in which the validity of rights is only *prima facie*. It implies that they are expressed by formulas such as "every man has the right not to be reduced to slavery" (or not to be tortured, etc.), if and only if such a right has been declared by the United Nations, or if it gets the consensus of the majority, etc.". In an immanentistic kind of attitude, agnosticism with respect to an ontological-theological absolute involves a certain amount of variability and not absoluteness towards moral rules which are not understood as coming from the supreme Lawgiver.

— In the third position human rights are based on human essence and therefore in the *natural law* written in the heart of man, and in the ultimate instance in God: so they turn out to be "strong", even though man doesn't know them all at once, and rather becomes conscious of them in the course of history. This is the way followed by the doctrines of natural law of different shades, towards which modern culture, often inclined to admit only a positive or legal base for human rights, continues in wide sectors to feed a type of *horror*. As far as human rights are rooted in natural law, they are universal to the same extent that natural law is universal, because they flow from it.

In this position human rights are the birthrights of all human beings. Universal and interdependent, they belong by nature to any new born, and do not depend on society or social conventions, because they come before the State. The philosophical ground for human rights and their universality lies in the classical position according to which human beings possess a nature different from that of animals, and specified by spiritual intellect and free will.

This approach, which we can define as essentialism, does not bring to ahistoricism, because human person is by its very essence a mix of nature and culture. The choice in favour of universal human rights is not in contradiction with the local and historical character of the development of the person, who always exists in

families, communities, localities. Anyway denial of the universal human rights value entails crisis of common good concept: common to whom? In radical antiuniversalistic postures the very idea of common good and of political society seems lost.

Criticisms to the universality of rights

On the way to world-wide realization of human rights, encouraged by the firm belief that universal values are at stake here, we meet obstacles, where only in an apparently paradoxical way, relativistic tendencies of Western thought join extra-Western criticisms.

With this second aspect I am intending to allude to a sinuous suspicion in the Third World towards man's rights, understood as a mere expression of "Westernism" and therefore suspect in principle: they would not only be born in the West, but also strictly limited to it, all the more so because 2/3 of humanity wouldn't have any concept of human rights nor a word to define them. Given that these peoples don't organize their social life on the basis of such rights, the attempt to impose their universal model is taken as cultural imperialism, intollerant of differences[4]. According to this position some currents speak therefore of a Western concept of rights, linked to a particular anthropology, cosmology and theology, typical only in specific contexts and tied to a peculiar idea of the individual as an "I" without relationships (this concept is, however, typical of the rationalistic paradigm, not of the theistic one). In Asiatic and African cultures on the contrary, there is a long tradition of emphasizing the ideas of duty, of integrating man

4. In 1993, few months before the United Nations World Conference on Human Rights in Vienna, thirty-four Asian and Arab countries issued in Bangkok a declaration stating that the notion of human rights is relativ to the cultural, religious and historical diversity of peoples; and that human rights should not be used by Western countries as an instrument of political pressure.

into society, of respect for authority (elements that constitute not malicious plants to uproot, but gains to preserve), much more than emphasizing rights.

Another important case concerns Islam, where perhaps the distrust towards man's rights as proposed from the West, is directed not as much against the idea of rights as against the "autonomous" assumption that they are not based in God. According to the Islamic religion, man shouldn't have true rights as such, but as believer, that is, able to recognize that he comes from God, is under His rule, and attests faith in the unique and supreme God. Maybe an idea of this kind is present in the "Universal Declaration of Man's rights in Islam", prepared more than 10 years ago, at least in the Arab version rather different from the English and French ones. It is easily understood which distance separates a culture of the rights due to man as such, from another in which it is somehow understood that they belong to the believer.

The *universal* value itself of man's rights is here at stake: in such debate relativistic Westernism and anti-Westernism seem to be allied (beyond some apparent oppositions) in a really anti-universalistic option. To the Afro-Asiatic criticisms according to which human rights are a Western invention, without value elsewhere, the rationality crisis on their grounding, nurtured by the mainstreams of Western thought, matches. This crisis is rooted in an enduring contradiction between the willingness to affirm human rights as universal and the impossibility of sustaining it rationally, due to a historicistic-relativistic approach. This last seems to be fed by some trends in human sciences and in general in cultural anthropology. Since the universality of human rights is based on the structure itself of man, and not on undue extensions of the ethno-centricity of the white man, the only way to keep the universality is to nourish a philosophy centered in the essence, and not an ethno-centric culture and philosophy. Man is able to raise himself to universal, because he is able to self-transcend himself

overcoming his own empirical conditions, to transcend the world understood as the togetherness of everything that is becoming, to pose questions on the whole. On the ground of the unity and universality of human essence, no one can be more or less a human being than someone else. Since essence does not admit degrees, it follows that no human being possesses more or less dignity than any other man. Assumptions like these can be refused from an empiricist and nominalist point of view, in which knowledge is reduced to sensations and the reality of essence is denied; only individuals exist in the world, and essences are mere inventions of the mind. If we are not able to show that in the Declarations of human rights, even though born in the West, there are universal instances valid for everyone, the criticism that sees in them an idea valid only in the West, remains intact[5].

Now, just that proof has become difficult, because in postmodern culture a kind of rebellion towards the requirement of universality and especially against universal moral principles is expressed, under the banner of a wide-spread refusal of ethical cognitivism and of the natural law. The situation could be summed up in the judgement by which the rationalist school, after having put aside the theism in grounding human rights, and having based

5. Is the 1948 Declaration an expression of Western tradition? Historically yes, but not essentially. Moreover Western tradition is self-correcting. According to A. M. Schlesinger "the crimes of the West have produced their own antidotes. They have provoked great movement to end slavery, to raise the status of women, to abolish torture, to combat racism, to defend freedom of inquiry and expression, to advance personal liberty and human rights. Whatever the particular crimes of Europe, that continent is also the source – the *unique* source – of those liberating ideas of individual liberty, political democracy, the rue of the law, human rights, and cultural freedom that constitute our most precious legacy and to which most of the world today aspires. These are *Europeam* ideas, not Asian, nor African, nor Middle Eastern ideas, except by adoption", *The Disuniting of America. Reflection on a Multicultural Society*, Whittle Communications, New York 1991, p. 76, quoted by Deal W. Hudson in his qualified essay, "Human Nature, Human Rights, and the Crisis Among Western Intellectuals", *Notes and Documents*, n. 38, pp. 31-53.

them on the principle of autonomy in the Kantian sense – no longer seems able to defend their rationality, while it is in trouble in asserting their universality.

The mere statement of essentialism is not enough, if the knowledge of an essence is understood in an ahistorical way. The grasping of an essence flows from abstraction, but after this mind can consider without restrictions individuals in their local communities, different traditions and cultures. It should not be forgotten that the knowledge of an essence is neither adequate nor exhaustive. No kind of knowledge is closed, but always in development. Essentialism should support at the same time universality of human rights and the local and cultural development of the person: essentialism is a guideline for freedom, not a path to uniformity, which could be produced by mass-media global village.

In today challenges to human rights coming from ethnocentrism, feminism and local culturalism, they place too much emphasis on difference due to culture and sex, and disregard identity flowing from human essence. This assumption, connected to nominalism and empiricism, leads to the deep individualism of the postmodern view, where a kind of social and historical construction of the self, dependent on factors such as gender, sex, race, wealth, family, local traditions, is affirmed[6]. If the doctrine that rights are cultural, historical and local, expands to the expenses of the idea of an universal human nature with universal inherent rights, then the very possibility of a cosmopolitical law, of a world-wide political ethics based on natural law and human rights, is destroyed, and perhaps the primary ground for international political progress is subtracted.

6. Sex can be considered as a principle of intraspecific difference in human nature. On the contrary radical feminism puts sex as specific or gender difference, based in bodily characters. But can the matter, which is principle of individuation, become principle of specification?

Human rights and Christianity

The idea that human rights can be understood as subjective pretenses, released from objective references to being and value, finds today an obstacle in Christianity. Christian thought, sustaining the value of reason against dissolving criticism made against it, gives to tradition of rationality and of human rights legitimacy and support. And the Church, according to a dialectic which could deserve careful attention, continues to guarantee the survival of valid cultural heritage of modern times.

After the lasting criticism raised by the Catholic Church against human rights as expressed in 1789 (Cf. for example, Pope Pio VI's letter to the Cardinal of the Rochefoucauld and the Apostolic letter *Quod aliquantum* of 10 March 1791)[7], and after the more recent recuperation and transfiguration of their value in the ecclesiastical ambit, a new phase seems to stand out in which the Christian tradition on rights will keep a certain difference with respect to the Enlightenment tradition. One can point out this aspect comparing the lists of rights proposed in 1776, in 1789, or in the Declaration of 1948 (which although remains a milestone in the progress of humanity towards a cosmopolitical law) with the list proposed, for example, in the Encyclical *Centesimus Annus*, which results: right to life, right to live in a united family and in a moral environment; right to develop one's own intelligence and one's own freedom in researching and knowing the truth; right to work; right to have a family, and to accept and educate sons. In a

7. "C'est dans cette vue qu'on établit, comme un droit de l'homme en société, cette liberté absolue, qui non seulement assure le droit de n'etre pas inquiété pour ses opinions religieuses, mais qui accorde encore cette licence de penser, de dire, d'écrire et même de faire imprimer impunément en matière de religion, tout ce que peut suggérer l'imagination la plus déréglée; droit monstrueux qui parait cependant à l'Assemblée résulter de l'égalité et de la liberté naturelles à tous les hommes... droit chimérique... contraire aux droits du Créateur supreme à qui nous devons l'existence et tout ce que nous possedons".

certain sense religious freedom is the origin and synthesis of these rights[8].

Well, the order in which human rights are listed in the Encyclical *Centesimus Annus* reminds us of the basic inclinations and precepts of the *lex naturalis* as expressed by St. Thomas Aquinas in his treatise *De lege* of the *Summa Theologiae*. For these inclinations are: persistence in being; union of man and woman and the consequent generation and education of their children; social character of man; knowledge of truth, especially about the Absolute; then specific rights tidily correspond to them: the right to live; to have a family, to procreate and educate children; to live en society and have a useful job; to develop one's own intelligence in the search for truth, especially about God. The religious freedom, which concerns the attitude of the person towards the Absolute, can be considered the synthesis of every other right.

Keeping itself in strict contact with the doctrine of natural law as participation of the eternal law in man, the Christian tradition on human rights tends both to emphasize its own originality, so that it isn't reducible to only the Western and civil traditions –, and also to assert in a persuasive way the universality of the most basic human rights. Finally the coordination or integration between the large multiplicity of rights affirmed by recent Charters could turn out to be a true enigma, if the idea that human rights are rooted at different levels in natural law and therefore don't turn out to be all at the same level, were not adopted. For example the right to freedom of the press doesn't have the same importance as the right to life has. It seems therefore advisable to distinguish between

8. Cf. n. 47. The list of rights proposed in *Pacem in terris* is wider than that in *Centesimus Annus*, since it includes political, economic and civil rights, while the latter encyclical proposes an essential picture of the person rights as such. A comparison with the fundamental rights of the Declarations of 1776, 1789 and 1948 is useful. In the first the central rights are: life, liberty and pursuit of happiness. In the second: liberty, property, personal safety, resistance to oppression. In the third: life, liberty, personal security. The Encyclical list of rights seems more complete.

rights that belong to man as such and civil rights, that don't have always and everywhere the same universality without restrictions of the first ones.