

For an Enlargement of Human Rights

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‘What is dying today is not the idea of man but an insular idea of man, cut off from nature and his own nature; what must die is man’s self-idolatry admiring himself in the pretentious image of his own rationality.’
Edgar Morin

For Raimon Panikkar

Preamble

Given the excessive moralization of human rights and their universal ideologization, which has led to unfortunate consequences such as erasure of cultural differences and standardization, given the right, and even the duty, to intervene (the right of the strongest), and the craze for ‘democracy’ despite the will of peoples, the time has come to undertake an academic analysis of the founding texts in order to make them intelligible, in spite of the fact that human rights have become a bible. Even the revealed word of the Bible is scrutinized by exegetical analysis, historical criticism and hermeneutics, which have not stopped it surviving. It should be the same for human rights.

In order for them to be intelligible and evaluated with full awareness, human rights need to be situated in the place and time that produced them; otherwise they are just discourse without a subject, ideological and moralizing, overambitious in their promises because lacking any real effect, since individuals and peoples have not given them any specific expression or taken them to heart. Looking at the facts we see distortions have crept in between ideal and practice, as well as aberrations among opposing theories. Why is this?

In attempting to interrogate the concept of the universality of human rights, which is presented as undeniably valid for all humans, we realize that it is limited and invalid, its fault being that it is too utopian and unrealistic. It is not a question

of denying a generic human essence, or criticizing human rights from a moral standpoint, but of demonstrating that 'human rights' do not really have a universal basis.

They are part of history, and as such they vary with societies and develop differently through space, time and moment.¹ These ideas are not in the least unchangeable. And because human rights alter through history they cannot have transcultural foundations. Furthermore they are likely to be revised in accordance with the period. We have a plethora of examples of this. In adopting regional texts, non-European countries (Africa, Asia, America, the Caribbean islands and the Arab-Muslim world) have certainly adapted human rights to their way of looking at things. In France there has been a series of declarations since 1789. The values underlying human rights, such as liberty, equality, non-discrimination and tolerance, are relative and evolving. They assume a distinct form according to cultures and social context and are susceptible to alteration with societies and periods. For instance, does equality of rights imply identical treatment in every case? Can it be reconciled with special measures (affirmative action)? In other words, in this area there does not exist a universal societal code that would be endorsed and recognized everywhere. For this reason the wording of rights cannot but be determined by their context. Each civilization has its codes and trigger words that are affected by its *Weltanschauung*. But in the West these values have become abstract, elastic and insubstantial, freed from all super-ego.

Human rights depend on cultures² and collective imaginaries, national representations and social determinants, and rely to a considerable extent on how they are instrumentalized by states. So it is necessary to rethink the relationship between particular and universal, unique and overarching, civil and political. We also need to distinguish between human rights as a concept and human rights as a political strategy.

This piece of research describes and analyses the path followed by human rights and shows that the 1948 Universal Declaration is complemented by a series of subsequent texts which have widened its humanistic basis by integrating many contributions.

While we await a rewrite of the Universal Declaration of Human Rights let us first call for a wide international debate to bring together the different conceptions of human rights around common denominators.

In the beginning, a western intellectual construction

What is the theoretical foundation of the concept of 'human rights'?

First of all human rights are a western intellectual construction.³ As regards non-European cultures human rights have a problematic basis, deal with anthropocentrically oriented concepts and, from the standpoint of political strategy, display a praxis that is arguable according to cases, since they defend norms that have been transposed and imposed, promoted by a moralistic West setting itself up as the judge of the universe at the expense of local values, traditions and rules.⁴ And in attempting to appeal to human rights on the territory of universality and through the prism

of philosophy, anthropology, sociology and history, we see that they are limited. In order to explain this, here are a few methodological observations. How can we validate and legitimate human rights in their nature and objective basis? Is the notion of 'human rights' truly universal, and thus indisputable, or is it the underlying product of a particular history? Are its ideas so self-evident and valid for all times and places? Are its postulates as universal as they appear? And is there international agreement on this universality? What criticisms can we make of the Declaration of Human Rights? In short, what is its epistemological status? Here we are helping to give human rights the status of a scientific discipline by situating them in their conceptual framework, which defines the area of validity.

Who is the human in human rights?

We should say clearly that there are very many ways of conceiving the universe, the cosmos, the world, the human self, and a variety of approaches to values, origins and ends, organization of power and authority, democracy, law, social order and organizing the political domain. The human person, generic and empirical, is perceived, defined and protected differently according to civilizations. The problem of existence and final destiny is also posed in a different way. Action-existence? Meditation-existence? Eternity and/or transience? Human or transcendent goal?

So the question we have to ask is: who are the humans in human rights? Do they find their justification in themselves or in transcendence? And are they the only object and subject of rights or are they part of a larger whole? From a rational western viewpoint, individuals are the children of themselves and, compared with the group, they are the only ones who can claim rights. That said, the statement remains limited to a geographical and cultural sphere, and cannot on its own validate and legitimate the universal authority of the proclamation of human rights. Furthermore, the individual as an autonomous integral entity has not always existed. It is an invention of modernity (18th century).

In the area of principles and values human beings are seen in the West as a substantial, unsubordinated category, existing in themselves from an onto-metaphysical point of view. Alap and Taw, they are immediately detached from the cosmos, the universe, torn away from divinity, separated from nature and other living species. They might have been born *ex nihilo* and live *in terra nullius*. From purely human sources (reason freed from tradition and experience, personal will, intangible autonomy that has become synonymous with independence) they have a certain number of rights because of the simple fact that they are humans blessed with understanding. Thus they are atemporal non-contingent subjects and as such possess a universal validity prior to social organization, detached from culture and separated from the world. In short, a primacy is accorded to reason but without facts and with an exclusively humanistic ideal. Furthermore, they are secularized beings in the strong sense of the word, claiming to be free of social constraints and taboos. They are a first cause and find their source in themselves. So we can say that this individualistic intellectual construction is elevated into a supreme value, becoming the very source of values. To summarize, we have sovereign humans barricaded inside their fortress

of individual and natural rights, which are inalienable, unalterable and sacred. Is this not a kind of imperialism of the subject making human thought absolute?

As regards the origin and foundation of the power that supports and protects human rights, it is conceived as a rational and purely human institution. This clearly takes us back to associationist contractualism, which says society arose from a contract, an adding together, as it were, of individual, perfectly free wills and a juxtaposition of independent elements. Thus it comes about that society is reduced to an assemblage of individuals treated practically like gods, with the individual standing as the origin of the societal fact and the ultimate goal of political association. In this way the social bond has no transcendental dimension. So we should not express surprise at the feeble presence of duties in the Declaration (article 29) and the erasure of any supra-human authority.

But from an 'eastern' viewpoint (a generic word indicating everything that is not western) individuals are not denied, but seen above all within the context of a social group (family, ethnic group, nation, religion . . .) that is intimately bound together by social duties, ethical norms and taboos that they avoid breaking. Those individuals live in a society that is subordinated and hierarchized, beneficiaries of both rights and obligations within the community and automatically associated with divinity. These are people who are in a chrono-topical relationship and rise above their human condition. Thus we can say they are a second cause. Granted, human beings exist here but in an overarching relationship where links between state and society, civil and religious, social and legislative, visible and invisible, inner and outer world, temporal and eternal, are interdependent. Furthermore, unlike the modern state and its sense of centrality, power here is diffuse, dispersed among several authorities (political, family, economic, social, religious, communal), all of which are actors contributing to internal regulation and taking part in the process of decision-making. Here the state is not the sole source of norms and rules, and, backed up by statutory pluralism, power is exercised in the community⁵ (as in Africa and the Middle East).

From this viewpoint social life is so organized that it is well organized in the sense that it always reaches a consensus: it tends towards order and harmony. Each society and its sub-groups, as they reproduce themselves, bring forth behaviours, practices and judgements of compatibility and incompatibility, which generate traditions and impose usages, norms of conduct and necessary sanctions that make up normal social order.

Thus 'human rights' are inseparable from social life, since each culture originates beneficial and harmful values.

Are there universal human rights? The philosophical critique, a hidden debate

Human rights are relative and interdependent because human beings are both unique and dependent. Demonstrating our dependence the biologist Joël de Rosnay writes: 'We have retained within us the milieu we came from. Our bodies tell the story of our origins.'⁶ Law does not arise from chance. It is a codified, norm-bound condensation of the social reality from which it emerged, and expresses a social and

political power relationship. But the rights set out in the UN Universal Declaration of Human Rights adopted on 10 December 1948 are a product of western law for the international community. It is a *jus cogens* that basically reflects European traditions and practices and expresses the state of their evolution and a stage in their progress. However, the West thinks what is good for itself is naturally good for humanity and to bring this about could even Europeanize the planet⁷ by assimilating it.

This debate on universality and the values contained in the Universal Declaration of Human Rights (UDHR) continues to be a topical one and to fuel discussions, particularly since 1998, its 50th anniversary.⁸ It must be confessed that human rights are in vogue. The ideology underlying and legitimating them, as well as their field of application and limits, are current issues in international political debate. Though they were at first untouchable, nowadays there is no shortage of voices raised against 'human rights-ism', as if they detected something disturbing in this discourse. Are human rights a sacrosanct temple or do they follow the evolution of societies?

In this connection it is illuminating to note that a number of prominent French intellectuals (e.g. Emmanuel Mounier, Jacques Maritain, Pierre Teilhard de Chardin and Georges Gurvitch) articulated criticisms of this or that ideological aspect, such as the excessive individualism that characterizes them, the absence of the community, duties and the spirit of responsibility, and the low level of enthusiasm for social and economic rights. Even during the resistance in France (1940–5) some eminent voices spoke up in favour of rewriting the 1789 Declaration.⁹

Furthermore UNESCO initiated a debate, since forgotten, on this question 57 years ago, before the adoption of the UN Declaration. Indeed it carried out a large-scale study in 1947 in the form of a questionnaire that was sent to world celebrities selected from all fields of knowledge; the most illustrious among them were Mahatma Gandhi, Harold Joseph Laski, Jacques Maritain, Quincy Wright, F. S. C. Northrop, Chung-Shu Lo, Georges Freidmann, Humayun Kabir, Shrikrishna Venkatesh Puntambekar, Ralph Waldo Gerard, William Albert Noyes Jr, Adolphus Peter Elkin, Aldous Huxley, John Lewis, Arnold J. Lien, Don Salvador de Madariaga, René Maheu, H. G. Wells, John Sommerville, Boris Tchechko, Benedetto Croce, Leonard J. Barnes and Pierre Teilhard de Chardin. It asked them about the universal validity of the declaration of human rights being prepared by the UNO, and the philosophical basis for such an assertion in the light of the different doctrinal and cultural conceptions. Seventy replies were received.¹⁰

If we analyse the process of drawing up the UDHR in 1946–8 by the UN Human Rights Commission, that will shed new light and enable us better to answer the question as to the validity of its universality.¹¹

France: the debate on the revision of the 1789 Declaration

In 1940 the personalist philosopher Emmanuel Mounier launched a critical reflection and a huge debate in his journal *Esprit* on the content of the 1789 French Declaration of the Rights of Man and Citizen.¹² He suggested rewriting it and in December 1944 published an article entitled 'Faut-il refaire la Déclaration des droits?' followed by

'Projet d'une Déclaration des droits des personnes et des collectivités'. The first text was distributed in 1941 and discussed in Lyon by a commission composed of Jean Lacroix, Henri Marrou, Jean Wahl, Joseph Hours, André Philip, Father Desqueyrat and Lucien Fraisse. Emmanuel Mounier criticized the 1789 French Declaration for two basic faults, excessive rationalism and excessive individualism. After a wide debate, during which many suggestions were contributed, especially by Léo Hamon, François Russo, Georges Scelle, René Capitant and Jean-Jacques Chevallier, Mounier amended his original text and published it in its final version in May 1945.

Lauding the person and the community

Mounier's text comprises 43 articles and a preamble and is divided into three subsections. The notion of the person (and not the individual) comes first, followed by the community and then the state. Mounier thinks persons and societies have a number of rights which do not derive either from the individual or from the state, having a dual root: the good of persons, their life and normal development within the natural communities where they are situated; families, nations, geographic or linguistic groups, work communities, groupings according to affinity or belief. The goal of every society is to deploy the best means to raise each member 'to free choice, responsible action and consensual community'. As for the function of the state, it is 'to actively assist both the independence of persons and the life of communities; the former against the ever-threatening tyranny of groups; the latter against the anarchy of individuals that is constantly re-emerging.' And in order to better protect individuals and communities from the possible despotism of the state Mounier proposes a body 'independent of states', with the power to 'judge abuses of state power and the sovereign status to resolve conflicts they cause', a body that would even define 'state crimes'. The first section lists the protected civil, political, social, economic and cultural rights of persons. For the individual as king Mounier substituted the notion of the person deeply rooted in a community. As regards the rights of communities, Mounier starts from the viewpoint that there are natural communities (family, nation, economic and work communities, the international community) that arise outside the state and cannot be subject to it or identified with it. The first of these communities is the family (article 28). As far as the nation is concerned Mounier rushes to its defence and distinguishes it from the state. It has 'an absolute right to independence of its culture, language, spiritual life, but not to unconditional political sovereignty'. Furthermore Mounier provides us with a flexible definition of the nation that recognizes within it regions and cultural communities. 'It must protect,' he says, 'as far as its cohesiveness allows, the regional, ethnic, linguistic or religious communities that are part of it' (article 29).

Communities, nations, peoples and international society

With regard to international society he lays down a distinction between community and society and argues in favour of an international society that is structured but

composed of peoples. In this respect article 37 stipulates that there is a natural international community formed of peoples and nations whose legal tradition is a society of states. This grouping 'implies inter-racial community' and a freely organized federation would be their mode of association. As for the state's rights, the state is defined as 'a power responsible for the common political good, external defence of a nation or group of nations, coordination of individual and collective activities on its geographical territory' (article 38). And the power of the state is limited by the spontaneous powers of the natural societies mentioned above (article 39).

In December 1948 the journal *Études* published an article by Robert Bosc on 'The United Nations in Paris' (the Palais de Chaillot meeting), in which the author expressed regret about the general public's indifference to the organization.¹³ It also published an important contribution from Georges Vedel on human rights in 1950.¹⁴ In 1944, dissatisfied with the existing declarations, Georges Gurvitch, the French sociologist of Russian origin, published his *Déclaration des droits* in which he stressed the social rights that complement civil and political rights. He wrote:

Rounding off the declaration of political rights with a declaration of social rights means proclaiming the rights of producers, consumers and people, as individuals and groups, to an effective participation in all aspects of life, work, security, well-being, education, cultural creation, as well as all possible manifestations of legal autonomy, of democratic control by the very people affected, of self-government and judicial action.

At UNESCO: the survey on universality

Ideas revisited

This was what the 1947 UNESCO survey on human rights contained.

In his reply Gandhi emphasized duties instead:

I learnt from my mother, who was illiterate but very wise, that all the rights worth deserving and preserving are those granted by duty fulfilled. Thus even the right to life is not ours unless we fulfil the duty of a citizen of the world.

Instead of emphasizing the notion of the autonomy of the individual, Teilhard de Chardin preferred to speak of individuation and the uniqueness of the person: 'I do not say autonomy, but the incommunicable uniqueness (something quite different) of the being we possess.' And instead of the concept of equality he talks about difference and complementarity:

The human races are not equal but different and complementary like children from the same family. It is complexity that gives rise to differences (and liberties too). The more unions complicate the environment the fewer valid categories or manageable criteria for selection and differentiation one can introduce: there is no herd or mass or classes but people who are increasingly unique, irreplaceable, indefinable.

At the same time Teilhard de Chardin stressed the universality and globalized

nature of the planet: 'Whether we like it or not, humanity is collectivizing and totalizing under the influence of physical and spiritual forces on a planetary scale.' Then in 1942 Jacques Maritain published his contribution on 'Les droits de l'homme et la loi naturelle'. He made the following acerbic criticism of the individualism implicit in human rights: 'We have ended up . . . treating the individual like a god and turning all the rights that were recognized to be his into the absolute and unlimited rights of a god.' In this regard the Vatican daily paper *L'Osservatore Romano* wrote in critical vein, on the eve of the UN's adoption of the Declaration of Human Rights on 31 October 1948:

As in 1789 it is human beings who are making the law: they are not following the Christian idea, they do not accept what is outside themselves. They are issuing a decree. They are decreeing what they can change if they wish; and sooner or later they will do so because, in so decreeing, they are intrinsically mistaken.

Nature, culture and environment

For his part the Unitarian¹⁵ Quincy Wright (1890–1970) sent UNESCO a critical text. He at once placed the individual within a group and saw human nature as the product of a particular culture:

Whoever says 'human rights' says identical rights for all human beings. However it is generally acknowledged that, to a considerable extent, human nature is the product of the particular culture within which the individual has developed.

He concluded by insisting on the relativity of rights and the gradual nature of their application:

Human rights must be set out taking account of their relativity, and the application of each right must evolve independently and gradually as the world community becomes organized and develops solidarity.

Rethinking universality

The neurophysiologist Ralph W. Gerard (1900–74), president 1951–2 of the American Physiological Society, provided the viewpoint of biology. He wrote:

Any doctrine that sees in mankind only the individual or unit in the group is necessarily false. The duality of the person as both an individual and an element in society is unavoidable.

And as life evolves human rights and duties cannot be absolute, but are always relative to the context. He wrote that values are to a large extent a function of culture. Consequently he proposed that they should be revised from time to time:

Any declaration of rights will become imperfect at a particular moment and can only lose value. It should always include clauses providing for its revision and compulsory rewriting at appropriate intervals.

The philosopher F. S. C. Northrop, a Yale University professor, called for a richer interpretation of the concept of universality:

A declaration of rights for all countries cannot be based solely on traditional ideological values and statements of one or the other of them. In order to match the aspirations and ideals of all peoples round the world it must be supported by at least one of the institutions and social doctrines accepted by each one of them.

Which implies a frank, loyal and humble discussion on universality and cultural specificities:

The existence of these different values and ideals must be seen and acknowledged with frankness and sincerity. Indeed the essential basis for this new declaration of rights should be the right for all peoples to a world that is socially organized so that at least some of their values and some ideals can be expressed in it. A genuine declaration of rights should guarantee the existence of a world that is accessible to many ideologies and not just one. In short the basis for a declaration of rights must be conceived by virtue not only of political freedom but also of the plurality of cultural values.

A declaration of rights should therefore:

. . . guarantee the existence of a world in which the plurality of distinct values is both accepted and organized so that peoples and nations may and should rise above their ideologies when these are contradictory to the extent that they threaten world peace.

William Albert Noyes Jr (1898–1980), an American chemist, expanded on science and human rights. He defended the idea of a moral code and human rights that were essential to the happiness of mankind. The future of the whole world, he wrote, requires animosities and hatreds to die away. Social and psychological studies will not be enough to assuage them. A good diet and a suitable environment are indispensable if human beings are to divert their personal sensitivity away from immediate problems. And the author concluded:

The politician's first aim must be to avoid war at all costs, and the scholar's first aim must be to free all classes in society in all nations from economic concerns.

The contribution of Confucianism: the notion of mutual obligations

The Chinese philosopher, the Confucianist Chung-Shu Lo, defended the idea that human rights appeared very early in China, and the people's right to revolt against a tyrannical ruler was recognized early on. In this context he quoted the *Book of History*, an ancient Chinese classic. Then he expanded on the Confucian conception

of human rights. The moral foundation of social and political relations in China is that all should fulfil their duties towards others rather than claiming their rights. The notion of mutual obligations is an essential teaching of Confucianism. He writes:

Rather than demanding rights, Chinese morality preaches an attitude of understanding of one's fellows; we all must acknowledge that others have the same desires and therefore the same rights as us. Performing mutual obligations also means refraining from infringing the individual rights of others.

He sets out what he considers are the fundamental rights of human beings, the principles from which flow all human rights in the modern world: the right to life, the right to free expression, the right to enjoy life. A declaration of human rights valid for the whole world should, according to the Chinese philosopher, be brief but clear, general but concise, intangible but flexible, so that it can bear varying interpretations according to the needs of peoples in different circumstances.

Islam, other civilizations and democracy

The English poet, journalist and novelist Aldous Huxley (1894–1963) emphasizes the economic rights of the poorest, condemns abuse of power and raises problems of an ethical nature for scientists.

The Bengali Muslim poet, philosopher and politician Humayun Kabir (1906–69) states that the first and most important consideration in the field of human rights is that those rights should be universal, the same for all people in one country and covering all cultures. He writes:

There are many civilizations in the world but there has never been a single world civilization . . . In the past civilization and culture were quite often the concern of a fraction or class of the population.

This is why a charter of human rights should be based on the recognition of equality of all humans everywhere in the world. In this regard he underscores one point, namely that the western conception of human rights contains 'a fundamental failing'. He writes: 'Whatever those rights may be in theory, they are very often recognized in practice as belonging only to Europeans, and sometimes only certain Europeans.' Comparing western and Muslim democracy, he foregrounds the latter:

In fact the western conception of democracy is in many respects declining in both theory and practice by comparison with Islam's notion, which from the start abolished distinctions of race and colour to a degree that was hitherto unknown and has been unknown since.

Consequently it is:

. . . in relation to this unavoidable tendency to uniformity that we need to examine the different conceptions of human rights existing today.

India: spirituality and complexity of human nature

The Indian thinker S. V. Puntambekar, a professor at the University of Nagpur, responds with a strongly spiritual impetus, as if he was criticizing the text being prepared for lack of soul:

There is in humans a purer spiritual presence that makes them unable to be satisfied with earthly goals. The ordinary human condition is not their final essence. There is in them a more profound self, whether we call it soul or spirit. All beings conceal a light, an inspiration that no power can extinguish, which makes them benevolent and tolerant and which is the true person . . . It is peculiar to humans to seek the true, the good and the beautiful in life, to esteem them at their true value and to tend towards them constantly.

He also notes that 'there exists an unforeseeable element in human will, an infinite complexity in human nature'. Showing great open-mindedness, Puntambekar calls for tolerance:

We have the duty to respect humanity and personality, to tolerate our differences and modes of social conduct, both inner and outer, that are alien to us; and finally to unite together so as to help one another in calamities and great enterprises.

At the same time he casts a critical eye on both his Indian compatriots and the world:

There are no human beings left in the world: nothing but people subservient to prejudices of religion and race, caste or group . . . Today the world is in the grip of madness; it is hurtling towards destruction and despotism, it aspires to conquer everything, to dominate everything and to pillage and despoil everything.

But, he adds, will we give up 'being humans' above all and forever? No. So we have to free ourselves from the constraints that make slaves of us, from prejudices and egoisms, and aspire to freedom and moral and intellectual progress. Human freedoms or social guarantees (against violence, against want, against exploitation, against dishonour and against death and sickness) demand as a quid pro quo individual virtues or rules of life – tolerance, compassion or altruistic feelings, knowledge, freedom of thought and conscience, and freedom from fear, dissatisfaction or despair. Thus for the Indian philosopher freedoms and virtues go together for:

. . . thinking solely about freedoms while neglecting the virtues that are their corollaries would lead to an imbalance in life and a stagnation or even deterioration of the personality as well as chaos and social conflicts.

Critique of the western individualist legacy

The British Labour politician and economist Harold Joseph Laski (1893–1950) produced a critical text; he saw the grand declarations of the past as a legacy of western

civilization, closely linked to a bourgeois Protestant tradition and universal in their form. Laski wanted to avoid an individualistic declaration of rights and stressed the meaning of the words. In the light of these considerations, he said that any attempt by the UN to elaborate a Declaration of Human Rights based on individualistic ideas would inevitably be doomed to fail. Furthermore:

. . . such a declaration would have little authority in political societies which, in higher numbers and to a greater degree, feel the need to organize their social and economic life. It is even legitimate to go further and state that such a declaration, based on principles of individualism, would be seen as a threat by the defenders of historical principles that are currently hotly disputed, as regards a new conception of life. The effect would be to disperse and not to unify the first attempts to attain a common goal through common institutions and principles of conduct, attempts which a declaration of this type ought to encourage.

He added that our era 'cannot allow itself a new failure which would have incalculable consequences'. And he closed by throwing out this warning against excessive idealism:

We do not have the right to awaken hope in humanity if we are not able to create the conditions without which that hope cannot be realized. By once more mocking what the man in the street sees as the essence of his dignity as a human being, statesmen would be unleashing a disaster which our civilization would have little hope of surviving.

The ideas of indigenous peoples

The Australian Adolphus Peter Elkin (1891–1979), professor of anthropology at Sydney University, wrote about human rights in primitive society and began by criticizing colonial policies:

Keeping a people permanently in a state of apprenticeship or tutelage in order to have a source of cheap labour, and justifying this forced labour as a necessary initiation into civilization and the exercise of civic rights, is a convenient position, especially if the following aspect of the issue is ignored: the fact that those 'minors' will never obtain the status of citizens and it is not planned that they will ever do so.

If we look at their own civilization and mode of social organization, he says, those indigenous peoples are 'neither stupid, nor inferior, nor childlike'.

But that is not all. The so-called 'civilized' powers and peoples, Elkin writes, spread disturbance and confusion among indigenous populations: they turned upside down their way of life, which was adapted to their environment, and changed that environment. Then he lists indigenous people's rights; they are human beings in the same sense as civilized people and have the right to their own form of civilization and personality, and to an upbringing appropriate to their cultural environment, as well as benefiting from the progress achieved by the modern world. They have a right to use the community's land, for 'left to themselves individuals

cannot develop their personality in a balanced way'. Other rights follow: the right to economic development and to dispose freely of their labour, women's right to safety with regard to sexual relations, the right to justice, the basic collective right to organize themselves politically, the individual and collective right to freedom of belief and religious practice, and the right to physical, intellectual and moral health. And the author concludes:

The issue of human rights is the question of relations between individuals and their fellows within a given community, and the question of that community's relations with other communities.

He adds:

Individuals are above all social persons and their rights are inseparable from their social situation and the part they play in the society they belong to and that society's external relations. Outside society individuals would have no rights.

However, the form and content of collective and individual rights vary according to the situation and conditions in which a community is placed through its history and according, in particular, to the nature of its relations with other peoples. Consequently human rights need to be revised from time to time, in both form and content, otherwise they might become abstract and general and lose all meaning for human relations. Furthermore, all human rights are relative too, since they originate in and are conditioned by the needs of community life, which shapes and feeds personal life.

Variability of rights

Criticizing the theory of natural inalienable rights, the Italian historian, philosopher and politician Benedetto Croce (1866–1952) remarked that rights vary and are limited to the rights of the person in history. In other words he does not see them as eternal rights but just historical facts reflecting the needs of this or that period and attempting to satisfy them. At the same time the author was not against adopting a universal declaration. But, Croce said, before doing so, an official debate must be launched, which was public and international, on the principles on which human dignity and civilization are of necessity based. Once the debate had taken place it would be possible to formulate a declaration of certain historic and contemporary rights and needs in a brief or extended form.¹⁶

The Universal Declaration of Human Rights: an unfinished task

After two years of fierce debates and clashes inside the UN Human Rights Commission, the question being asked was how to ensure an international universal basis for human rights.

Numerous contributions: René Cassin, Eleanor Roosevelt and others . . .

Posterity has remembered only two of the UDHR's originators, the Frenchman René Cassin and the American Eleanor Roosevelt. And in fact the French and the Americans competed with each other as instigators of the declaration. But things were far more complex than that. The history of the declaration shows us that other figures, from countries as different from one another as China, India, Lebanon, the Philippines, Canada and Chile, were active players in bringing it into the world. Some even went so far as to say they were the authors of this or that clause in the text. The American view was that the declaration was largely Eleanor Roosevelt's work, the French thought it was René Cassin's, the Canadians John P. Humphrey's. In addition several governments and NGOs had submitted extremely illuminating draft texts on the topic.

How did the declaration come into being?

The UN Charter adopted on 26 June 1945 was at first supposed to include norms on human rights but in the end the suggestion was not taken up. Nevertheless human rights are mentioned in it. The task of preparing for an international convention on this subject was assigned to the Human Rights Commission, which was created by a resolution of the Economic and Social Council (ECOSOC) in February 1946. It comprised 18 members appointed by ECOSOC for three years and representing UN member states. An eight-member drafting committee was set up within the Commission to draft a preliminary text. Its members represented Australia, Chile, China, USA, France, Lebanon, UK and USSR. The committee asked René Cassin to draft an initial outline declaration.

The Commission held its first meeting in April 1946, under the chairmanship of Eleanor Roosevelt, who had been elected to preside. She was very active on this project and at the same time chaired the drafting committee, which included Charles Malik from Lebanon, Peng Chun-Chang from China, John P. Humphrey from Canada and René Cassin from France. The initiators of the declaration were members of both bodies. René Cassin was vice-president of the Commission, as was Peng Chun-Chang. The diplomat Hernán Santa Cruz represented Chile and Professor Carlos Rómulo, ambassador plenipotentiary, represented the Philippines. The Commission's rapporteur, Charles Malik, played a major part in writing the declaration's final draft. A defender of natural law, he is thought to have had a decisive hand in the wording of article 18 relating to freedom of religion. The American documents say of him: 'Malik's colleagues acknowledge his powerful influence, to which some of the declaration's most forthright provisions are due.'

Philosophical and cultural divergences

However, the debates on the content of the declaration were marked by fundamental philosophical, ideological and political divergences. Peng Chun-Chang, a Chinese politician, diplomat and Confucian philosopher, detected an approach to human rights that was too western. As a defender of Asian values, he said: 'This declaration should incorporate the ideas of Confucius as well as those of Thomas Aquinas.' He

constantly reminded his colleagues that a universal declaration should include philosophical systems, especially the Chinese, other than the West's. In debates he appealed to Confucius and was a prominent Asian voice on the Commission.

It should be said that in the aftermath of the Second World War western and non-western cultural, philosophical and legal perceptions were in conflict. And on the subject of the declaration's universality and validity, the executive committee of the American Anthropological Association had addressed a statement to the Human Rights Commission in October 1947 which stressed 'respect for the cultures of different human groups' and remarked on the difficulty in adopting a text of international scope when respect for individuals as individuals and members of a social group was taken into consideration. In addition the anthropologists wondered whether a declaration written from a western perspective was applicable to all human beings. Claude Lévi-Strauss, whose ideas are widely known, also took up a critical stance on the concept of humanity and grand declarations on human rights.

Hansa Mehta, a member of the Indian constituent assembly, who was very sensitive to women's rights, was India's representative. As for John P. Humphrey, he was an international jurist and a professor at McGill University, Montreal. This defender of human rights had been asked in 1946 to organize the Human Rights Division in the UN secretariat, a post he occupied for 20 years. As the author of several books he was responsible for writing the first draft of the declaration, comprising 48 articles which were to a considerable extent inspired by documents from the NGO the American Law Institute. He tried without success to introduce ethnic minorities into the declaration. Sharp disagreements between the member states have also been noted over the sources and basis for human rights (preamble and article 1), as well as personal conflicts. John P. Humphrey writes: 'The 30 articles of the declaration were debated one by one, in the greatest detail, and most meetings were captivating, dramatic even.' These contrasts had some effect on the rights of women and ethnic minorities, religious freedom (article 18), property rights, the place of individual rights, the role of economic and social rights, right of protest, the notion of duty, the role of the state. Feminists criticized the text for not saying anything explicit on women. The right of the individual to petition the UN and the rights of minorities were rejected. Vladimir Koretsky, USSR representative, criticized the political philosophy, liberal individualism, underlying the project.

Furthermore, the ideological differences between the two blocs only emphasized the divide and affected human rights. The soviets criticized the draft text's cult of individualism, which they said led to economic exploitation and priority being given to civil and political rights at the expense of economic and social rights. In addition there was a debate as to whether the text should involve legal obligations or should be a simple declaration of moral principles. This was a thorny point, as it affected the national sovereignty of states and involved interference in their domestic affairs. In the end preference was hastily given to a text with a moral and political tone rather than a declaration with mechanisms that would have to wait a long while to be applied.

A final result, universality

At last in 1948 a diplomatic compromise was found. After the drafting work by the Commission and the committee, approval by ECOSOC and endorsement by the General Assembly's 3rd commission, the text was definitively adopted in the form of a declaration on 10 December 1948 by the General Assembly, taking into consideration several contributions. Out of 58 UN member states, 48 voted for, seven abstained (USSR, Belarus, Ukraine, Czechoslovakia, Saudi Arabia, South Africa, Yugoslavia), and two were absent. But no state voted against.

Nevertheless the ideas that won the day are associated with a western philosophical problematic, natural law in the modern sense and the predominance of individualistic liberalism. The western aspect of the declaration was corrected 18 years later by two international pacts signed on 16 December 1966, which introduced the rights of peoples, minorities and women, the cultural heritage of humanity, the notion of duty and the conditions enabling everyone to enjoy human rights in their indivisibility. Thus for the first time the declaration's universality was fuelled and enriched by the contribution of other peoples.

Afterwards there was a series of significant dates. Indeed the pacts and the action programme from the world conferences in Vienna (June 1993) and Durban (September 2001), declarations, conventions and recommendations from UNESCO (in particular the Universal Declaration on Cultural Diversity adopted on 2 November 2001) and the International Labour Office (ILO), as well as charters adopted at a regional level (Europe, Africa, Asia, Pacific, Latin America, Caribbean, Arab and Muslim world) have rewritten in their own way and supplemented the 1948 Declaration of Human Rights.

So we can conclude that human rights do not stop with the 1948 declaration, which has to a large extent been superseded. Because of subsequent developments the body of human rights is now a collective enterprise whose universality has simply been kept alive as many additions have been made, constantly fed by contributions from those who lack a voice: women, minorities and indigenous communities.

And so, drinking from all these springs, human rights should rightly be seen today in their totality and not just as the 1948 declaration, which is no longer the ultimate reference.

Towards a rewrite of the Declaration of Human Rights

With a view to enriching and adapting the 1948 Declaration of Human Rights, which is the basis for 'the common ideal to be attained by all peoples and all nations' (Preamble), and in the light of the debates referred to above, the many contributions and the new challenges threatening biodiversity and pluralism, I propose that a new Declaration of Human Rights should be written that takes account of the political philosophy of humanity's cultural diversity. Why should a rewrite be necessary when other texts exist? Because, in order to record its solidarity, humanity needs a common text, even if it is brief. Michel Serres writes in *Le Contrat naturel*: 'Do not ever

forget the place you set out from, but leave it, and go back to the universal. Love the bond that links your earth to the Earth and makes the familiar kin to the unknown.¹⁷

We are concerned here with a few principles that might guide the statement of human rights based on a more dynamic articulation of the Universality/Particularity pairing.

Proposals for updating

– All human beings are born free and equal in dignity and rights in the diversity of civilizations, the pluralism of cultures and the relativity of values. Universalism has to be acquired. This result would synthesize and transcend a plurality of cultural specificities and values.

Human beings have individual rights, collective and community rights, which are indivisible, interdependent and closely bound up together. None of these rights occupies a pre-eminent position in relation to the others. Civil and political rights cannot be dissociated from economic, social, cultural and environmental rights. The person is a whole, individual and community, composed of rights and duties.

All human beings are granted by Creation reason and consciousness, and should act towards one another in a spirit of fraternity.¹⁸

– The nature and origin of humans are identical over space, time and environment. The person is a situated being, engendered, contingent and historicized. Both identical and different, that is the dialectic of the human condition.

Abstract universalism, individualism and excessive reductive rationalism have wreaked havoc for humanity on countless occasions. The whole is composed of parts and identity is measured in relation to alterity. This implies an ecological change in civilization and a re-evaluation of the cultures of peoples and communities, which should all be invited to celebrate the universal.

– As the common heritage of humanity, all cultures are in and for themselves universal and all without exception contain positive values and fertile elements, the inclusive and the exclusive. No one is perfect. This principle should not tolerate any exception and is valid for all people and all cultures.

Humanity needs to particularize the universal and universalize the particular.

– This declaration puts an end to the notion of certain groups' 'sacred mission to civilize' other peoples. That implies a break with the regime of mandate, tutelage and non-autonomous territory. The interdependence of the world's peoples is based in equality and non-discrimination, in their sovereignty and international solidarity, with peace as the goal. Colonialism in all its forms and manifestations, including the right to intervene, is a denial of fundamental human rights.

All peoples have a right to sovereignty and self-determination without limit on their scope. Exercise of this right may assume different forms in accordance with the principle of independence in interdependence (internal and external self-determination).

Lack of preparedness in political, economic or social areas or in education should never be a pretext for delaying independence.¹⁹

– Every individual has a right to freedom of thought, conscience and religion; this right implies the freedom to have or adopt a religion or conviction of one's choice *respecting differences between cultures and maintenance of traditions*, as well as freedom to display one's religion or conviction individually or in common, whether in public or in private, by teaching, practice, worship and performing rituals.²⁰

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Notes

1. For an approach to human rights related to cultural diversity see the texts collected and presented by Henri Pallard and Stamatios Tzitzis (1997), *Droits fondamentaux et spécificités culturelles*, Paris: L'Harmattan.
2. See Lorenzo Scillitani (2003), 'Diversité des cultures et universalité des droits de l'homme entre philosophie et anthropologie', in *Enjeux et perspectives des droits de l'homme* (texts assembled and presented by Jérôme Ferrand and Hugues Petit), vol. III of *L'Odyssee des droits de l'homme*. Paris: L'Harmattan, pp. 173–82.
3. See the excellent article by Raimundo Panikkar, which was published in this very journal, 'Is the Idea of Human Rights a Western Concept?', *Diogenes*, no. 120, 1982, pp. 75–102.
4. See Joseph Yacoub (1998), *Réécrire la Déclaration universelle des droits de l'homme*, Paris: Desclée de Brouwer; (2000) *Au-delà des minorités. Une alternative à la prolifération des Etats*, Paris: Editions de l'Atelier, pp. 27–48; (2004) 'A l'épreuve des civilisations et des cultures. Repenser les droits de l'homme', in J. Ferrand and H. Petit, *Enjeux et perspectives des droits de l'homme*, Paris: L'Harmattan, pp. 183–200.
5. For an example of the working of an 'eastern' society it is illuminating to read the article by Romila Thapar (1966) about Hinduism and Buddhism: 'Tradition hindoue et tradition bouddhique', in *Revue internationale des sciences sociales*, Paris, quarterly journal published by UNESCO, 18(1): 34–44.
6. See Hubert Reeves, Joël de Rosnay, Yves Coppens and Dominique Simonnet (1996), *La plus belle histoire du monde. Les secrets de nos origines*, Paris: Seuil, France Loisirs, p. 117.
7. See Henri R. Pallard, 'L'universalisation des droits fondamentaux et l'occidentalisation de l'universalité', in *Enjeux et perspectives des droits de l'homme*, *op. cit.*, pp. 163–72.
8. See *Agir pour les droits de l'homme au XXIe siècle*, unpublished texts collected by Federico Mayor with Roger-Pol Droit, Paris: Editions UNESCO, 1998. See also *Lettres aux générations futures*, unpublished texts collected by Federico Mayor with Roger-Pol Droit, Paris: Editions UNESCO, Cultures de paix, 1999.
9. See Jean-Eric Callon (1998), *Les Projets constitutionnels de la Résistance*, Paris: Documentation Française; 'Les droits de l'homme dans les projets constitutionnels de la Résistance', in *Les Droits de l'homme et le suffrage universel*, texts assembled by Gérard Chianea and Jean-Luc Chabot, Paris: L'Harmattan, 2000, pp. 203–10.
10. To access these UNESCO contributions see the publication *L'Enseignement des droits de l'homme*, Paris: UNESCO, vol. IV, 1985, special issue.
11. See Albert Verdoodt (1964), *Naissance et signification de la Déclaration universelle des droits de l'homme*, Brussels: Larcier, preface by Rene Cassin; John P. Humphrey (1984), *Human Rights and the United Nations: A Great Adventure*, New York: Dobbs Ferry Transnational Publishers; Glen Johnson and Janusz Symonides (1991), *La Déclaration universelle des droits de l'homme 1948–1988*, Paris: UNESCO and L'Harmattan.
12. See the following articles in *Esprit*: 'Faut-il refaire la Déclaration de droits?' and 'Projet d'une Déclaration des droits des personnes et des collectivités': pp. 118–27, December 1944 ; 'Faut-il réviser la Déclaration?' and 'Projet modifié': pp. 581–90, March 1945; 'Faut-il réviser la Déclaration

- des droits?': p. 696–780, April 1945; 'Faut-il réviser la Déclaration des droits?': pp. 850–6, May 1945. See also Emmanuel Mounier (1963), *Oeuvres, recueils posthumes, correspondance*, vol. IV, Paris: Seuil, pp. 96–104.
13. See Robert Bosc, 'Les Nations unies à Paris', *Etudes*, décembre 1948, no. 259: pp. 321–41.
 14. See his article 'Les Déclarations des droits de l'homme (1789–1949)', June 1950, pp. 308–18, and July–August, pp. 66–82.
 15. The word dates from the 16th century during the Reformation and refers to those who rejected the doctrine of the Trinity (the concept of a god made up of three persons: the Father, the Son and the Spirit) and preferred to stress the oneness of God (Editor's note).
 16. The whole of this survey was published in English in 1949 with the title *Comments and Interpretations*, introduced by Jacques Maritain. It was republished in 1973 by UNESCO under the title *Human Rights: Comments and Interpretations*, Westpoint, CT: Greenwood Press.
 17. *Le Contrat naturel*, Paris: Flammarion, Champs, 1992, p. 84.
 18. This proposal repeats but amends (in italics) article 1 of the 1948 Declaration of Human Rights.
 19. The section in roman type repeats article 3 of the declaration on the granting of independence to colonial countries and peoples, adopted by the UN General Assembly on 14 December 1960.
 20. This proposal slightly amends (in italics) the first section of article 18 of the international pact relating to civil and political rights (1966), which itself somewhat altered article 18 of the Universal Declaration of Human Rights (1948) on freedom of religion and conviction stipulating that 'This right implies freedom to change one's religion or conviction'.