

INTER culture



toward a mutual fecundation of cultures

vers une fécondation mutuelle des cultures

INTER culture

Répondants/respondents:

Droits de l'homme, concept occidental ? II
Human rights, a Western concept ? II

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LA REVUE INTERCULTURE

A l'heure où 'mondes' et 'peuples du monde' se rencontrent, et où il n'appartient à aucune civilisation, religion ou personne d'établir, à elle seule, la nature et les voies de la croissance humaine, nous croyons que nous sommes appelés, de plus en plus, à chercher ensemble la voie de l'expérience humaine totale, dans une sorte de fécondation mutuelle et de symbiose créatrice.

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- à promouvoir un dialogue et une recherche moins dialectiques que dialogales;
- à informer sur les cultures et religions du monde, mais à partir du témoignage vécu de ceux qui y croient et qui en vivent;
- à promouvoir une recherche et une rencontre qui se fasse dans la pleine réciprocité interculturelle et interreligieuse;
- à explorer les questions-frontières que pose aujourd'hui la rencontre interculturelle;
- à faire des percées dans le domaine encore peu exploré de la vie interculturelle et interreligieuse de notre société pluraliste;
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Avoiding a "liberal" caricature!

By Gregory Baum

My contribution to the discussion initiated by Raimundo Panikkar will be modest. I am greatly puzzled by the presupposition that the human rights tradition is the unchallenged expression of Western culture. The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in 1948, shortly after World War II, when the nations were still shocked by the massive crimes against humanity, including genocide, committed by the Nazis. The Declaration must be understood as an expression of international solidarity in the face of unparalleled Nazi brutality. Still, the cultural tradition of the West is the bearer of an ongoing debate regarding human rights that deserves to be acknowledged. In particular, libe-

ral political philosophy finds itself challenged by other currents of ideas.

There existed first of all the conservative political tradition that looked upon civil liberties as an innovation giving public expression to modern individualism and to liberal political philosophy in general. In the Catholic tradition, for instance, primacy was accorded to the common good. It was the task of government to protect and promote this common good of society, even if this meant putting limits on personal freedoms. The private good of individuals was subordinated to the common good of society. In Catholic social thought (until Va-

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ficant Council II) liberalism was regarded as a political philosophy that reflected a false understanding of the human person. The richness and depth of the individual do not reside in his or her personal freedom to enter upon a quest for private happiness; creativity and ecstasy, on the contrary, became available when people transcend the limits of their private existence by identifying with a religious or a cultural tradition, with a community, with a common good. While liberalism appeared attractive to modern Europeans and Americans, the Catholics of Europe who were identified with an older cultural tradition, regarded the liberal philosophy as a political weapon that undermined people's collective loyalties and sought to detach them from their home, their community, their culture and their religion. Catholics tended to look upon liberalism as promoting an unhappy egalitarianism: people were made equal because having divested themselves of their religious and cultural inheritance, they now simply defined themselves in terms of their orientation toward personal satisfaction.

To Catholics of the old school the liberal discourse of "rights" appeared strange and even threatening. In the Catholic tradition people were recognized as political beings: they were members of society. Society depended on their contribution to the common good as much as they depended upon the cooperation of society. In this context Catholics spoke of personal duties and responsibilities, not of personal rights. Rights belonged to the authorities who defended and enhanced the common good. It is well remembered that the papacy repeatedly condemned the promotion of civil liberties, including the freedom of religion. It was only at Vatican Council II that, after a heated debate on the council floor, the Church changed its official teaching and recognized civil liberties as a moral requirement.

Since the Catholic Church in the 19th and the first half of the 20th century was largely iden-

tified with the conservative sector of European society, then on the defensive, and in the Twenties and Thirties even blessed certain fascist movements, traditional Catholic teaching became an ideology legitimating the repression exercised by the political regimes of the right. This was ironic: for these governments were certainly not the promoters of the common good, but instruments of domination used by an elite to protect their position of power and privilege. Catholics in democratic countries, particularly in the USA, began to dissent from the Church's official teaching and defended civil liberties as in keeping with Catholic values. The movement they created was successful in influencing the Church as a whole. At the Vatican Council theological authors who were under ecclesiastical censure during the Fifties were invited to collaborate in the writing of the conciliar declaration on religious liberty.

Still, the issues raised by the traditional Catholic objections to civil liberties have not disappeared. The liberal legal tradition protects individuals in society; but it does not protect communities, or peoples, or ethnic minorities. In Canada, for instance, the majority of Quebecers, whether they be federalists or separatists, affirm their collective right to self-determination. The Quebec bishops, prior to the Referendum, confirmed this collective right from the Catholic perspective. Since English Canadians are on the whole deeply committed to liberal political philosophy, so much so that they equate it simply with common sense and do not recognize it as one philosophy among others, they are puzzled by collective rights such as the right to self-determination. The recognition which liberals extend to French Canada is the legal guarantee that all French-speaking citizens, in whatever Canadian province they may reside, may address themselves to governmental offices in their own language. For most Quebecers, be they federalists or separatists, the rights include the protection of their culture, their language, their collective iden-

tity, and in this sense their common good. When a Quebec government legislates that the children of newcomers to the province must take their schooling in French, the English tend to regard this as a violation of their civil rights. Quebecers argue against this that a collectivity has the right to define its own future, a right that overrides purely personal rights of individuals. The issues raised by the conservative critique of human rights also come up in connection with the right to self-determination of the Native peoples and the possible right of ethnic minorities to protect their cultural identity. These groups tend to regard modern individualism and egalitarian legislation as instruments that undermine their collective identity, promote assimilation, cause the loss of cultural and religious roots.

Secondly, the liberal political philosophy of human rights has been challenged by socialist thinkers and by Karl Marx in particular. Raimundo Panikkar mentions that for Marx, human rights were simply "Klassenrechte," the rights of the owning class. The original democratic revolution brought liberty, equality and fraternity only to the citizens who owned property: the propertyless and women were excluded. What Panikkar does not mention, however, is that the socialists formulated their own list of socio-economic human rights, such as the right to food, the right to work, the right to shelter, and the right to share in society's wealth. Since these rights were denied by the liberal political philosophy, Marx made scathing attacks on the proclamation of human rights. Liberalism was for him the ideology of the rising bourgeoisie. Because political liberties were largely irrelevant to the great masses of impoverished workers, Marx treated liberalism as a new religion: "heaven" was the highly praised set of political liberties while the "earth" remained a valley of tears, defined by hunger, drudgery, and brutality, -- conditions that were in no way removed by political freedoms.

Because liberalism and Marxism became full-fledged ideologies, they tragically defined themselves against one another. Liberals did not open themselves to the protection of socio-economic rights, and Marxists did not seriously engage themselves to integrate political freedoms in the socialist vision of society. Today the capitalist world prides itself of its democratic rights, while Eastern Europe proclaims socialist principles that protect people's socio-economic rights. The Universal Declaration of Human Rights of 1948 tried to unite the two human rights traditions: at least toward the end (art. 22, 23), it included socio-economic rights without, however, giving them appropriate space. The principal perspective remained that of the capitalist democracies. Still, the human rights debate within the Western culture remains of great importance.

Curiously enough, the Catholic tradition, originally hostile to civil liberties, has a much greater affinity with the socio-economic human rights. Catholics have always recognized people's right to eat. The stealing of food by the hungry was never regarded as a sin. It was not, strictly speaking, stealing at all. While the Catholic Church defended the right to private property, it joined this to the right to common use. Private property had a social dimension. The use of property was not wholly in the hands of the owner; it was subordinated to the common good. In the feudal order, the owner of land had the responsibility of caring for the land and feeding the people living and working on this land.

This Catholic perspective has by no means disappeared in the modern age. After World War II, the Archbishop of Cologne, Cardinal Frings, preached a sermon to people who were hungry and had no coal to heat their homes: he reminded them that in case of dire need, taking what you need was not stealing. During those years, Germans coined a new verb: "to frings"

meaning to swipe necessities. The right to eat has been acknowledged on a more serious level among Catholic bishops. In their 1974 Labour Day Statement on world hunger, entitled "Sharing Daily Bread," the Canadian bishops argue that the free market is not a well-suited instrument to distribute food to the hungry. The market distributes food only to people with the ability to pay, the bishops say, while food has been created by God for everyone.

In the most formal way, this old Catholic tradition has been retrieved by Pope John Paul II in his *Laborem exercens* (n. 14): "Christian tradition has always understood the right to private ownership within the broader context of the right common to all to use the goods of the whole of creation. The right to private property is subordinated to the right to common use, to the fact that goods are meant for everyone."

In the same encyclical, John Paul II firmly defends other socio-economic human rights, the right to work and, more especially, the right of workers to participate in the ownership of what they produce and in the decisions affecting the work process and the use of capital and profit.

The debate on human rights in the Western tradition clearly reveals that various human rights are in conflict. We do not face a single coherent tradition, but several traditions, each important, each deserving attention, making de-

mands that cannot easily be reconciled. Political thinkers and moral philosophers in the West have asked themselves if it is possible to specify priorities among human rights, priorities that would enable people and more especially legislators to resolve the clash between conflicting rights in concrete situations.

This is not the place to examine this important literature. Let me simply give an example, taken from David Hollenbach's *CLAIMS IN CONFLICT* (Paulist Press, New York, N.Y. 1979). According to this Catholic thinker, the recommended strategic moral priorities in settling the dispute over rights are: 1) The needs of the poor take priority over the wants of the rich, 2) The freedom of the dominated takes priority over the liberty of the powerful, and 3) the participation of the marginalized groups takes priority over the preservation of an order which excludes them" (p. 205). This set of priorities has been endorsed by the Canadian bishops in their 1983 New Year's Day Statement, "Ethical Reflection on the Economic Crisis."

These few remarks should make it clear that it is a caricature of the Western culture to identify it purely and simply with the liberal political tradition. A distorted understanding of one's own cultural and religious history is not helpful for dialogue with other cultural and religious traditions. In fact, a more profound understanding of our own collective history tends to make us more open and more sensitive to the values, symbols and ideas present in other traditions.

RESUME

Gregory Baum affirme que c'est une caricature que d'identifier la culture juridique occidentale à la tradition libérale. Il insiste à la fois sur la tradition catholique du bien commun et sur celle du socialisme d'un Marx par exemple. Il n'existe pas une seule tradition occidentale cohérente, dit-il.

Are Human Rights Universal?

By Howard R. Berman

Writing as an activist involved in the process of conceptualizing and implementing the recognition and protection of the human rights of indigenous peoples, I am somewhat reluctant to find holes in the edifice of the universal application of human rights standards. Nevertheless, Raimundo Panikkar has raised profound and troubling questions concerning the conceptual bases of the human rights system that have lurked beneath the surface of the human rights discourse and demand attention. They demand attention because human rights are all too often poorly observed in many parts of the world, because the emergence of non-Western peoples into the international community has brought with

it the assertion of new rights that arise from cultural and experiential sources quite distinct from the Western tradition, and because the ultimate universality of human rights in the broadest sense is essential if people and peoples are to be able to live with dignity, protected from the excesses of power.

Undeniably, the current system for the protection of human rights, with its emphasis on civil and political rights, is Western in concept and origin. It both reflects and institutionalizes a view of human society in which the primary focus of concern is the relationship between the

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individual and the State - a focus which is alien to many of the traditional societies of the world. The less developed concepts of economic, social, and cultural rights are also Western in origin. They are the product of the European Socialist tradition, itself rooted in a view of the world shaped by the realities of an industrial society. Moreover, the existing human rights standards were created within the United Nations at a time when that organization was dominated by the Western powers to an extent almost inconceivable in the pluralistic world of the present.

Of equal importance, these standards represent a consensus among States as to the existence of certain inherent rights of individuals within their jurisdictions that these States agreed to recognize, protect, and promote. In this sense, the contemporary human rights system must be viewed as a set of legal norms which obligates States through either consensus agreement or treaty (1), rather than as a comprehensive philosophy or cosmology which elucidates human dignity. As such, it represents the most inclusive recognition of rights that could be attained within the political, ideological, and cultural constraints of the State system in the particular historical era in which they were conceived.

Panikkar has made an important contribution by insisting that these efforts to legalize political conduct must be analyzed in terms of the actual cultural, social, and intellectual traditions of a diverse world as well as the historical and political context. Indeed, he has made an impressive argument for his view that the mere assertion of universality for an intellectual system such as human rights is itself a Western notion. It is not difficult to understand that even the terminology of "human" and "rights" as they have been used are culture bound "along the lines of the historical trends of the Western world during the last three centuries." Nevertheless, in view of the drastic consequences to

human lives of the entire human rights debate, I believe that the question of the universality of human rights is useful to explore if only to probe the depth of the problem.

In part, this usefulness is based on the fact that there are important vested interests on both sides of the question as the question has been debated in the halls of the United Nations. For many who espouse the universality of human rights, the system is conceptually complete. All that remains is the need to "flesh out" the rights and to create ever more effective methods to ensure their implementation. By "fleshing out" I mean the process by which these rights are applied to new classes of individuals or additional areas of social relations as the social conscience evolves. These advocates tend to view the assertion of "new" rights from non-Western sources as threats to the conceptual coherence of "human rights" and as diversions from the very real human misery that is exacerbated by the failure to respect and protect existing rights recognized by the State system.

The countervailing view has been that in less economically and industrially developed States, human rights in the Western sense are ultimately meaningful only if the population can be freed from the debilitating conditions of starvation, malnutrition, disease, and ignorance. These advocates rightly point out that conditions in the Third World can be largely attributed to the legacy of colonial domination that was highly beneficial to the West and to the continuing disparity in the economic and technological capacities between the industrial and "underdeveloped" States. In this view, a new generation of collective rights must be recognized that includes a right to development and claims to international solidarity manifested in a "New International Economic Order."

Although there is a great deal of truth in both lobes of this very partial dialogue, it must

be remembered that this is primarily a debate among States, not among peoples. Consequently, these principles have frequently been manipulated for political purposes. The Western position has often been advanced to confine human rights conceptually within the international *status quo*, thus preserving the current economic and political order. The position brought forward by many Third World States has been used all too often as a rationale by governments for their failure to accord basic rights to people under their jurisdiction. The result has been that the human rights question has been severely politicized in international discussions as political blocs of States advance these views in an effort to capture the moral high ground for their own practice.

For these reasons, one must address the universality issue with some delicacy. So long as human rights definitions are encompassed within the conceptual and political framework of the State system, whichever of these polarized choices one makes is likely to have unfortunate consequences for people. It is also obvious, however, that even with the acceptance of both of these views in some form, we are left with a constricted system that has not been enriched by the humane traditions of the diverse cultures of the world. In an important sense, both of the views of human rights briefly outlined above are Western and statist. The position of the less "developed" States presupposes industrialization and integration into the international market economy, albeit at a higher standard of living, which is again defined largely in Western terms.

Panikkar reminds us that the human rights concepts of States, although somewhat more polycentric in the present than in the past, do not encompass the human rights concepts of peoples, of societies, and of cultures in all of their diversity. They do not express the needs, aspirations, or worldviews of human collectivities without recognized international legal personality. To say that human rights are Western, therefore,

does not presuppose that other societies lack humane concepts and practices, or even homologous concepts and practices. Neither does it necessarily presuppose, however, that because they are Western in origin, human rights protections are limited in their application to Western societies. Human rights concepts have arisen in relation to the exercise of political power. I would suggest that in the process of refocusing human rights to reflect the perspectives of peoples, societies, and cultures, one must take into account the realities of power in the world. Similarly, political power is an important element in any analysis of the limits of the universality of human rights.

Irrespective of its origins, in order for the current human rights system to be regarded as universal, at least three difficult issues must be resolved:

- is the system sufficiently comprehensive to include the full spectrum of rights that must be protected to insure respect for human dignity in diverse human societies and cultures;
- are the currently recognized human rights valid in all States and in all human societies; do they have cross-cultural application;
- do the recognized human rights conflict with cultural values or practices which are themselves essential to the human dignity of any non-Western peoples?

1. Are human rights sufficiently comprehensive?

Unfortunately, the answer is clearly no. For example, the current human rights system with its emphasis on the individual within society, completely omits any notion of the rights of groups, or peoples, or nations which find themselves en-

meshed within the boundaries of a State by virtue of historical circumstance. In only rare cases, is this relationship established by consent, with terms created by voluntary agreement. It is almost always the case that the relationship is imposed and dominated by the State, which then denies any continuing political identity or self-control to the servient group.

The omission of group rights from the human rights system was intentional and was not entirely due to a conceptual or cultural blindness on the issue. In the early days of the United Nations, the representatives of State members consciously turned away from the rudimentary system of group protection of the League of Nations, in favor of a "universal" system under which all individuals would be assured civil and political rights within the State, with equality before the law guaranteed. One of the underlying assumptions (and indeed, aspirations) of the system was that the universality of individual rights would facilitate the assimilation of coherent groups into the national societies. In that era, the "problem" of the tenacity of group or national identity was viewed as primarily a European phenomenon, but the practice of omitting group rights from the conceptualization of human rights was readily accepted by the emergent post-colonial States whose own boundaries were the result of haphazard colonial aggregation by the colonizing power, rather than the self-determination of distinct peoples. The resulting human rights system ratified and buttressed the political construct of the territorial State at the same time that it declared the human rights conduct of States a matter of international concern.

In terms of my own experience with human rights advocacy, I have found that the failure of the system to accord recognition and protection to group rights, combined with the Western emphasis on the integration of individuals, has proven a disaster for indigenous peoples. Until very recently, indigenous peoples as such have remained invisible in the world community,

with the consequence that whole peoples have disappeared or been marginalized. Even in theory, the system has only benefited indigenous individuals who, by either choice or circumstance, have entered the national society. In reality, integration has most often meant assimilation into the lowest levels of the dominant social and economic system, exploitation, and cultural destruction. With the exception of the prohibition against physical genocide, the human rights system has not touched the fundamental issue of the right of indigenous peoples to retain and transmit to future generations the integrity of their societies, cultures, and ways of life. In particular, there are no recognized substantive rights that preserve the relationship of the peoples to their communal lands and to the natural environment, a relationship that is essential to their existence.

In addition to the absence of an appreciation of and conceptual basis for group rights, I would attribute this failure to two primary factors. The first is the view that the system is sufficiently comprehensive as presently constituted. There is a considerable inertia to the current system in favor of a focus on the rights of the individual. The most significant suggestions at the international level for reformulation are economic and relate to a right to development. Any other approaches are stubbornly resisted.

The other factor is a sometimes implicit, sometimes overt notion that indigenous societies are primitive in a pejorative sense and must be progressively integrated into the "modern world". This culturally based racialism, which does not recognize either the validity or value of indigenous cultures, is rooted in the curious persistence of the nineteenth century philosophy of Social Darwinism that historically served as an ideological justification for colonialism. Unfortunately, in its contemporary form, it pervades the human rights discourse on this question.

Belief in cultural superiority makes it diffi-

cult to enhance awareness, even among well-meaning people, that an entirely new system of recognition of rights needs to be actualized that arises out of the indigenous societies themselves and foresees their continuation. Nothing less will ensure their survival. Indigenous societies are a seamless web in which changes in any one of the "institutions" of social and cultural life transforms the whole. In this situation, real human rights can only occur when the society is self-determined. Any forced or induced integration, whether in the name of human rights or development, is an attack on the integrity of the people and calls into question their ability to maintain their distinct existence. If a distinct and ancient people can only acquire rights by ceasing to be what they are as a people, by assimilating into the national society as a mere aggregate of individuals with particular cultural characteristics, any reasonable notion of human rights as a universal value is twisted beyond recognition.

The idea of cultural superiority is not exclusively Western. It needs to be overcome wherever it exists if indigenous peoples are to survive and thrive on a global basis. For this reason, I must take issue with Panikkar's acceptance of the possibility of a hierarchy of cultures. It is a concept too easily manipulated to the detriment not only of indigenous peoples, but of any land-based traditional societies that wish to maintain their ways of life in the face of national "development" or integration strategies.

I have focused on the glaring omission of indigenous and group rights from the human rights system as an illustration of one important facet of the lack of comprehensiveness of the current regime. If universality is taken to mean complete, it must be regarded as a pernicious concept that stands as an impediment to the further development of human rights standards.

2. Are human rights valid in all circumstances?

Again the answer is clearly no. Panikkar has amply explained the irrelevance of many aspects of individualism to the traditional societies of the world. Unless we are prepared to view these cultures as inferior insofar as they depart from the imperatives of an idealized Western value-system, it is plain that a claim for the universality of human rights awaits the inclusion of many non-Western visions of a humane society into the human rights system.

If the question is whether human rights are valid in all States, however, I think that one is forced to a different conclusion. The current human rights system is a product not only of the Western social and intellectual traditions, but also of the revulsion against the very real excesses of State power that resulted in the deaths of tens of millions of people in Europe alone. We literally live in a century that is bathed in blood. Human rights concepts represent a three hundred year effort to render political power, organized into a system of nation-states, accountable for its treatment of human beings. In a sense, human rights constitute a domestication of State power by societies long familiar with the institution.

The State in the Third World does not arise from traditional indigenous institutions in either form or substance. Rather, it is a legacy of colonial administration and Western influence, governed by Western educated elites. In many cases, the consolidation of the State qua "nation" is effectuated by a military establishment which in terms of technology, communications, and physical presence, remains the primary "national" institution. Moreover, the legal systems of these States are generally modeled after Western law codes and often include elements of colonial (pre-independence) law and administrative practice. In some instances, aspects of traditional law are incorporated in some measure, but always subservient to national law and policy.

In the West, the internal behavior of States is somewhat held in check by the concepts of human rights. These rights did not emerge, fully developed, after World War II; they slowly grew out of the struggles of peoples grappling with the problem of the repressive State over centuries. Most pre-colonial, non-Western peoples also had "checks and balances" that humanized political authority within their own indigenous institutions, whether through a spiritual or ethical order or through systems of reciprocal obligation. These restraints were largely shattered, along with the traditional economies, by colonialism. After de-colonization, the form of the Western nation-state was implanted in the Third World as a replacement for traditional institutions either because these institutions no longer existed or because they were viewed as "backward" by European-oriented local elites. Like an animal abstracted from its natural and balanced environment and transplanted to another ecosystem without natural defenses to it, the State system was extended to the Third World. Panikkar is correct to say that institutions are not easily transplanted from one culture to another. Nevertheless, history teaches that they can be imposed.

It is true that in most areas of the world, outside of the industrial and urban centers, most people experience life in a localized context. Relationships are direct, personal, often familial, and generally ancient in origin, at least beyond the memory of the living. Under these circumstances, national political authority is often imposed above the web of local centers of life and only fitfully and occasionally penetrates to affect the daily activities and relationships of the people. In such cases, the human rights system has little role to play vis a vis State action(2). However, when the State does act, it must be held accountable to internationally recognized standards of conduct. The international human rights system often provides an important restraint against the excesses of political power.

Neither the Western State nor the Western-based system of human rights are inevitable or eternal. If traditional societies and cultures are not ultimately destroyed by an homogenized global monoculture, organized political societies in the Third World will presumably grow to reflect non-Western social values and cultures. At present, however, that is not yet the case. The efforts of some Third World leaders to wrap themselves in the mantle of traditional leadership modes while wielding the apparatus of State power without traditional systems of restraint and accountability, are rather unconvincing. In fact, one of the most disturbing recent trends in the human rights debate is the tendency of some political leaders to claim that they themselves represent the human rights of the entire collectivity of the States' population, thereby identifying human rights with the well-being of the State.

So long as the current state system remains with us, the presently recognized system of human rights is universally valid with respect to State conduct. We live in a world in which the global reach of the institutions of the State and of the world market economy have established some continuity of human experiences across frontiers and cultures, at least at the level of political power. I offer this conclusion with some caution, however. It is possible that the universal acceptance of the human rights system will facilitate the development of a monoculture by serving to legitimize the institutions that the system was designed to control. Perhaps an even greater danger is that an uncritical acceptance of the social values that underly the present body of human rights will stifle the development of other visions of human rights arising from other cultures.

3. Do Human Rights Conflict with the Values of Non-Western Peoples?

There are definite instances in which some of the currently recognized human rights are in

conflict with cultural values or practices which are considered by non-Western peoples to be essential to their human dignity. For example, the current formulations of the "right of development" frequently threaten the ability of land-based peoples or societies to retain their ways of life. Resource extraction, infrastructure construction and hydroelectric development are extremely intrusive and destructive to traditional cultures. They lead to centralized economies which further disestablish and impoverish landed communities.

Development, as it has been articulated by Third World States, is fully assimilated into another Western dominated and defined institution: the world market economy. At present, the new States and their populations remain disadvantaged resource colonies and sources of cheap labor for the industrial West. The State and the ruling elites are often "brokers" of this relationship, which is implemented by either State action or, more frequently, by trans-national corporations. Bluntly put, the State often stands in the same relationship to the land-based traditional societies within its jurisdiction as the former colonial power did in its time.

The "right to develop" continues rather than challenges this relationship. In substance, it proposes a change in the relationship between the Third World and the Western industrial countries. Internally, however, it poses a right which, in practice, often conflicts with the economic, social and cultural rights of landed peoples, as they conceive them. Development is too often imposed on traditional societies without their consent in a manner and with a result that is structurally indistinguishable from the earlier era. The result has been dispossession, uncontrolled urbanization, increased dependency, and disintegrating cultures.

In terms of civil and political rights, it is

important to note that any legal system, including human rights law, can be a powerful assimilation technique. Indeed, the human rights system was intended, in part, to facilitate integration. The record is replete with instances in which Western-oriented legal standards in areas such as criminal conduct, land tenure rules, marriage, inheritance, dispute resolution, etc. have disadvantaged traditional societies. In those few instances in which questions of the violations of the human rights of indigenous peoples have come before international forums, however, there has been a demonstrated sensitivity, within the limits of contemporary consciousness, to the fact that the individualist thrust of human rights standards is not entirely appropriate. It is to be hoped that States as well will not mechanically apply these standards against traditional societies in the promotion of human rights within their borders. If human rights concepts are cynically or ignorantly employed as a salient to break down traditional communities or peoples, they will function as merely another aspect of colonialism.

Finally, the hallmark of the human rights system is the guarantee to individuals of equality before the law. However, formal equality is an empty gesture if the substance of the laws is not sufficient to safeguard essential rights and needs which are sometimes exercised only in a group or communal context. It is actually dangerous, if application of the laws will result in the impossibility of exercising important cultural practices or in their prohibition. It is perhaps most dangerous when formal equality is used as a justification by States for their failure to recognize specific rights that must adhere to particular groups within the overall national society if they are to survive.

Conclusion

In one sense, the question of the universality of human rights is easily answered. Each of

the worlds' cultures and traditions possesses a vision and often a practice of a benevolent social order. These visions and practices need to be nurtured in their home ground and respected at the international level if "human rights" are to be regarded as universal. The concept must grow to reflect the diversity as well as the wisdom of all human cultures.

For the present system, universality remains an inspirational goal rather than an immediate reality. Despite the hegemony of individualism and lack of comprehensiveness, however, human rights form an important and necessary affirmation of human dignity in the face of State power.

The strength as well as the weakness of the current system is that human rights and the State are locked in an inseparable embrace. For this reason, I have confined my comments to setting forth some prominent aspects of the political context within which a cultural or cross-cultural discussion of human rights takes place.

As a point of departure from the constricted system of the present, I certainly endorse Panikkar's conclusions. But I think that we also need to look beyond conceptual formulations to ask who is making the decisions. In my view, we need a new vision of human rights that empowers peoples to have control of their own lives.

NOTES

(1) It should be stressed that under this system, the interpretation and implementation of human rights are both the responsibility and the power of States. There has never been a universal consensus among States as to the precise meaning of their obligations under these standards.

(2) It is important not to romanticize either non-Western or Western societies when discussing human rights. Such practices as slavery, religious and racial persecution, genocide, bride-burning, and many others have been justifiably denounced by the international community, irrespective of the cultural context in which they occur. The prohibition against these practices is not limited to State conduct.

RESUME

Howard Berman se penche sur l'universalité des droits de l'homme. Le système actuel dit-il est loin d'être compréhensif; il néglige les droits des groupes, des nations v.g. celui des Nations Amérindiennes. Il n'inclut pas non plus les autres visions culturelles. Reste qu'il est important pour se défendre contre les Nations-Etats modernes. Mais le danger c'est par là même de légitimer l'Etat que le système cherche à contrôler, et même d'étouffer les autres visions culturelles. Il souligne que les droits humains entrent parfois en conflit avec les valeurs des peuples non-occidentaux, v.g. le droit au développement et la relation des amérindiens à la terre.

Commentaires - Comments

Some Questions!

By Masaji Chiba

Having been engaged in the pursuit of a similar question (cf. my article "Cultural Universality and Particularity of Jurisprudence," in *Essays on Third World Perspectives in Jurisprudence*, ed. by L. Marasinghe & W.E. Conklin, in print), I read this article with great appreciation and adopted it as stimulating material for my seminar at the Graduate School of Tokyo Metropolitan University.

The author's discussions are right in four points. First, his problem-posing is reasonable though might be opposed by Western-minded scholars. Because his question casts a fact-based doubt on the concept of human

rights, the authenticity of which has rarely been doubted for its presupposed crucial ideological importance to the modern system of law prevailing in fact over the whole world. Second, his criticism of the concept is so sharp as to disclose its essential features and his advocacy of *svadharma* in contrast is persuading of its quite different features. Third, his methodology is correct in intending not to offer another alternative to the Western concept but to search out its homeomorphic equivalent. Finally, his conclusion is supportable in appealing, on the assumption of the partial truth and falsity of the concept, to find an intermediary space between the concepts in different cultures, Western and non-Western.

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Still, some questions arise in the plain he hewed before us. First, his advocacy of svadharma as a functional equivalent to the Western concept of human rights may hold true to the people of Indian culture and be approved by some other peoples such as Chinese and Japanese who have cherished similar concepts. But more cultures must have other concepts different from both human rights and svadharma. What they are in reality is required to be clearly identified on the factual base. Then, in comparison with the features of the equivalents in other cultures, the features of svadharma should be further clarified especially in its negative side that might disturb the positive function which may be supported and promoted by the concept of human rights. Furthermore, when such many different equivalents are found in their both positive and negative sides, or rather I would say, in order to find them systematically, a theoretical requirement is known lying before us to prepare a frame of reference enough to locate all the

equivalents in a consistent conceptual scheme. This means to build up a general theory of legal rights and postulates to let each particular variation fill the right place in the whole system. And lastly, the fact is needed to be accurately observed that the Western concept of human rights, however critical of its partiality one may be, is receivedly declared in the constitutions of contemporary non-Western countries. In fact, the concept is working to permeate through different cultures as well as to encounter with oppositions from native cultures: the interactional process of received law and indigenous law should be carefully examined. In sum, the discussions of Professor Raimundo Panikkar demonstrated both features and limitations of philosophical and/or cultural point of view, thus leaving the further questions to be pursued by social scientific methods. I would accept his discussions as an expectation and encouragement from philosophy to social science.

RESUME

Masaji Chiba se dit d'accord avec Panikkar mais croit qu'on devrait faire une étude systématique et factuelle des différents équivalents homéomorphes à partir d'une théorie générale scientifique provenant des sciences sociales.

Some Complementary Remarks

By Denis Goulet

The author answers his own question in the affirmative, while hastening to add that the world should not renounce declaring or enforcing Human Rights. Panikkar warns further that the promotion of Human Rights worldwide entails three serious dangers:

- it may pave the way for the invasion of the modern technoculture which severely damages cultures;
- it can block the freedom cultural traditions need to formulate their own "homeomorphic" views corresponding to or opposing Human Rights; and
- it may rule out the mutual fecundation

which must take place through dialogue in the hope of giving birth to new myths which are more genuinely universal (or universalizable) and which could humanize civilization.

Two central ideas underlie Raimundo Panikkar's view of reality. The first is that pluralism -- of culture, meaning systems, symbols, language, societal structures, and behaviors -- is constitutive of reality. Hence trans-cultural approaches to diversity are inherently reductionist; only dialogical dialogue in the cross-cultural mode may lead to understanding across boundaries of universes of meaning and life. His second basic notion states that myth is the source of that true power which brings unity and

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integrity to cultures. He diagnoses the present situation as one in which most cultural communities in the world live with "broken" myths victimized by the encroaching Western myths of progress, development, revolution, scientific rationality, and technological mastery. Because the myths are broken, the synthesis of societal values which they supported is also shattered. Worse still, most cultural communities have lost the power to protect their own myths. Panikkar strongly implies that although Western myths may have proven more militarily or technologically powerful than those of other cultures -- as colonialists and traders were in past centuries -- these myths are radically inferior to those of the victimized societies at the ontological level.

Although Panikkar's analysis is fundamentally correct, I fear it could mislead readers because of two marginal weaknesses. First, he sins by omission in failing to note that Western myths are themselves increasingly questioned and challenged in the West, in the very bowels of the technostructures. Consequently, the legitimacy and strength which these myths enjoy, even at home, is less than absolute. Moreover, when these myths are exported to other societal shores, they are simultaneously embraced and resisted. Within many non-Western societies, elites as well as significant numbers of aspiring non-elites have embraced the Western myths. In most cases the embrace has not been total or unconditional: even "Westernized" Africans, Asians, and Arabs usually struggle to maintain some core elements of their "traditions" of meaning, behavior, norms, and interpretations. This is the "prismatic effect" of which political scientist Fred Riggs speaks. "Modern" values enter these societies as white light enters a prism and is refracted into diverse colors. So too with "modernity," "development," scientific "rationality," and the technical approach to problem solving: these are "refracted" in the prism of traditional value systems and altered in the process.

Panikkar often speaks as though non-Western cultures could still be found in the "pure" state. On the contrary, these cultures have undergone Western influences for several centuries and many Western values have long ago been "assimilated" by them, not, of course, by the entire population, but by considerable numbers of urban upper and middle classes. The assimilation is doubtless not a happy one; it usually induces a kind of schizophrenia which makes people live as two irreconcilable and fragmented selves. Not surprisingly, therefore, do many African, Asian, and Arab "assimilés" themselves radically question the merits of their Westernization. The cross-cultural dialogue which Panikkar advocates is already taking place within the breasts of millions of people who are now the bearers or vectors of several cultures. An increasing number of people give partial allegiances to several distinct cultures or cultural universes. This syncretism is likewise reflected in many institutions, structures, and behaviors observable in numerous cultural communities.

If it is true that cultures are already hybridized, important nuances must be brought to Panikkar's assertion that "There can be no serious talk about cultural pluralism without a genuine socio-economic-political pluralism." No doubt culture does lose its vitality -- and becomes a residual Mausoleum phenomenon -- when stripped of its social, economic, and political structures. Yet pluralism at the level of economic institutions or political arrangements may be something to be newly created rather than something pre-existent to be preserved. In other words, "modern" social, economic, and political forms have already displaced or "corrupted" traditional counterparts far more profoundly and pervasively than Western ideas of freedom or personal rights have displaced traditional homeomorphic equivalents. It is easier for Hindu religion to survive with relative integrity, even in the face of aggressive secularism, than for India not to educate its children through the institution known as a school, or to administer

its policy otherwise than through bureaucracies. Similarly, it is difficult to imagine tribal communitarian forms of government perduring with relative integrity except with very small groups who enjoy relative isolation from mainstream "contaminating" influences of the omnipresent modern state. Issues of scale and degree of immunity from outside influences are decisive here. Of course, in the event of a nuclear catastrophe "modernity's" forms might be totally destroyed and human societies might then have opportunities to create or recreate tribal politics. I am not implying here that such an evolution would constitute a "regression" in political terms. My point is that the social, economic, and political pluralism Panikkar desires (because, as he correctly notes, it is essential to cultural pluralism) will probably be much more of a new creation than a preservation or reconstitution of original traditional forms.

This essay has the great merit of setting new ground rules for debating "universality." Panikkar's methodological insistence on "diatopical hermeneutics" around "homeomorphic equivalents" is a valuable instrument for avoiding either reductionist ethnocentrism when analyzing diverse values, or the kind of relativism which limits discourse to superficial levels of analysis. Thanks to his carefully balanced methodological injunctions, his unyielding defense of the specificity of cultural values does not lead him to abdicate the quest for universality. As he writes, "there is a legitimate and inbuilt claim to universality in any affirmation of truth. The problem is that we tend to identify the limits of our own vision with the human horizon." His exegesis of the sins committed by taking the part for the whole (*pars pro toto*) or supposing that we can grasp the whole through the part (*totum in parte*) is most illuminating. Yet never does Panikkar abandon the conviction that there exists a universal human nature. He insists, nonetheless, that universal human nature finds unique value expressions in each major culture. Universal affirmations of truth can only come at the end of a disciplined dialogue, not prior to it.

And strict rules must be observed if dialogue is to be legitimate. The "claim to universality" is thus rigorously conditioned: there is no easy automatic passage from the universalizable to the universal. Indeed, what emerges as a universal symbol or image after the dialogue of mutuality will be something new, not merely a functionally equivalent reiteration of an earlier symbol which pretended to be universal or, for that matter, universalizable.

The metaphor of knots (individuals) and nets (persons) is most instructive, doubly so because its author acknowledges the need for mutual enrichment from those cultural traditions that have emphasized knots to the detriments of nets, and vice versa. Here we see a delightful and hopeful paradox arise; namely, Panikkar, the champion of the irreducibility of cultural values, is precisely most universal when he defends that specificity. He transcends dichotomous polarities between absolute and relative and between communicable and incommunicable by intuiting plurality as ontologically and normatively constitutive and by crafting a cognitive methodology which treats it as such.

Panikkar convincingly shows that Human Rights are a Western concept which has not yet begun to validate its claim to universality. Its initial claim was falsely grounded. His vision opens up promising new vistas of pluricultural understanding. Indeed Human Rights enjoy some limited *de facto* universality of application precisely because the technostructure in which they are embedded and which they vector (at least implicitly and indirectly) has itself touched the epidermis, if not the vital organs, of all existing cultural communities. Those rights are not ontologically or normatively universal, however, because they have not yet dialogued with Dharma and svadharma on the latter's own terms. Panikkar asserts that such dialogue can ensue, and possibly yield a new symbol -- having, this time, a valid claim on universality -- only if the Western technostructure's steam-

rolling operations are reversed, stopped, or, at the very least, sharply decelerated. Otherwise, no alternative socio-politico-economic structures will survive or escape corruption. And unless they do survive and escape corruption, there can be no genuine cultural pluralism.

There are, moreover, no defensible cultural rights without shattering the monopoly of legitimacy arrogated to itself by the technostructure's rationality model.

Panikkar poses a difficulty for political philosophers when he discusses the objections voiced by Marxists against the liberal conception of human rights; namely, that society "has rights which the individual may not violate." But is it not the case that all societies held together by sacred myths, themselves defended by taboos, likewise consider that societies have rights to which individuals are subordinate? It seems to me, moreover, that one large Christian stream of political philosophy and practice likewise views society as something qualitatively more than the sum of its quantitative individual parts. I refer to Aquinas' vision of the person and the common good. The social polity is not merely an adventitious creation of persons binding themselves to reciprocal duties and rights via a contract. Society has claims upon persons just as they

have upon the society. There exists a body politic (to use Maritain's phrase) whose claims on persons are not automatically vested in any government. In other words, I think that the absolutization of personal rights in Western political tradition is not as total as Panikkar makes it sound. That it is not should facilitate imaginative dialogue of a diatopical homeomorphic sort.

Panikkar insists that rights cannot be individualized. As he puts it, "The dignity of the human person may equally be violated by your language, or by your desecrating a place I consider holy." Sad to say, desecration has usually occurred when "development" or "progress" has come to the Third World. Under the banners of efficiency, profit, or power, the "holy place" of peoples' meaning systems has been violated. How to restore the damaged pieties is the difficult challenge. I believe Panikkar has correctly diagnosed what ails the Western technostructure: it has no holy place where myths may reside inviolate and, thanks to their inviolability, confer order, unity, and respect for diversity in the very heart of diversity.

RESUME

Selon Denis Goulet, Panikkar a omis de dire que les mythes occidentaux sont remis en question par les occidentaux eux-mêmes. Goulet trouve que Panikkar parle souvent comme si les cultures non-occidentales étaient à l'état pur alors qu'elles sont hybrides. Le pluralisme ne serait donc pas un pré-existant à préserver mais quelque chose à créer. Goulet souligne l'importance de la méthodologie et des suggestions de Panikkar et offre quelques autres notes qui se veulent complémentaires.

Commentaires - Comments

Le "diable" et Les droits de l'homme

Par Etienne Le Roy

En répondant à la question de Diogène: "La notion de l'homme est-elle un concept occidental" (I), R. Panikkar se doutait bien qu'il allait jeter dans la mare des idées reçues un pavé qui allait provoquer bien des éclaboussures... et bien des réactions en retour.

A l'inverse du plus grand nombre, ses arguments ne me choquent pas. Bien plus, et venant de lui, je les trouve incomplets: Après avoir lu et relu sa contribution, d'une extrême limpidité, j'en suis venu à reconnaître (I), derrière la qualité de l'analyse, un "piège" (II) contre lequel ne nous prémunit pas le raisonnement de R. Panikkar, ce "diable d'homme".

Or, le piège est dangereux en ce qu'il nous fait oublier les implications discursives, idéologiques et politiques de la mondialisation en cours de la conception occidentale des Droits de l'homme.

Pourtant, mes questions demeureront sans réponse et ce texte sans conclusion, parce que la question qui nous divise, R. Panikkar et moi-même, n'est pas assez mûre pour fournir de certitude, voire même d'espérance.

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On se promène autour de la pensée de R. Panikkar comme un astronaute devant la lune: si le chemin pour venir de la Terre a été bien long et bien périlleux, le vrai but est d'alunir et on ne sait pas exactement ce que l'on va découvrir. La manoeuvre d'approche peut se révéler dangereuse et le cœur cogne à la surprise attendue, à l'espoir en train de se concrétiser. Mais ne poussons pas l'analogie trop loin alors que l'approche de l'auteur nous invite à une autre analogie: à "une sorte d'analogie fonctionnelle existentielle" à travers le concept d'homéomorphie (2).

C'est, en effet, la méthode de recherche de R. Panikkar qui retient de prime abord l'attention en proposant une "héméneutique diatopique" et, plus particulièrement, en privilégiant l'étude de "l'équivalent homéomorphe" dans l'approche interculturelle de la question des droits de l'homme. Pourtant, je ne vais pas ici illustrer à nouveau l'intérêt du concept et de la méthode. Après R. Vachon (3), j'ai essayé de me faufiler (4) dans cette méthodologie et, même si je ne l'occupe pas totalement, même si je la déforme ou la maltraite, elle me permet de donner un nom à ce que je cherchais à pratiquer sans le savoir, telle la prose du monsieur Jourdain de Molière.

Plus précisément, pour décrire des rapports entre les systèmes juridiques de la coutume, de la sharia ou du Droit écrit en Afrique noire, j'ai cherché à construire des concepts et des modèles permettant de répondre à une exigence de la méthode de Panikkar: "déterminer comment, du topos d'une culture donnée, comprendre les idées forgées par une autre" (op. cit., p.5).

Ayant même expérimenté la démarche pour

ce qui concerne un "équivalent" des droits de l'homme, à savoir l'étude du mode communautaire de protection des droits des Africains face aux pouvoirs précoloniaux (5), je me sentais qualifié initialement pour donner un accord de principe à ce commentaire. Mais c'était avant d'approcher directement l'auteur: outre de l'humour derrière l'apparence du gourou, il y avait tant de poids et de bon sens dans l'homme que son discours se démultipliait et se compliquait. Ainsi, mon interprétation première de l'article devenait obsolète et, avec elle, mon projet de commentaire où j'avais l'intention, sans concurrencer le philosophe, d'apporter de l'eau au moulin de la "critique transculturelle" (pp. 12 à 15 de l'article).

On peut, en effet, grâce à une meilleure connaissance des cultures d'Afrique noire, témoigner d'une richesse de données qu'il aurait été possible de mettre en parallèle avec la tradition indienne dont l'auteur nous parle avec talent (pp. 18-21). Dans les sociétés d'Afrique noire, nous sommes en face de réalités atypiques, au moins vis-à-vis du corpus réuni par R. Panikkar. Dans la société wolof du Sénégal, on ne saurait identifier avec précision les équivalents d'individu ou de personne de la tradition occidentale car l'accent est mis sur la pluralité des composants humains restitués dans la structure de la personnalité:

"Le jiko (personnalité) est ainsi constitué par l'être humain (nit) dans son aspect corporel qui, lui-même, comprend le corps (yaram) et le souffle (ruu). Le rab (esprit) est la zone invisible, toujours actualisable de la personne... Mais le jiko resterait incomplet sans référence... à la force vitale (fit)... Le fit, associé au nom d'honneur (sant) et hérité patriliné-

airement, impose des devoirs et des sanctions éventuelles. La combinaison des valeurs morales du gor (fidélité) et du diam (de la fierté, de l'honneur) s'exprime à travers le warugar (ce qu'impose le sens du devoir)" (Le Roy 1981, p.4 et 5).

De nombreux commentaires possibles, ne retenons ici que le parallélisme tracé entre cette conception plurale de la personnalité (au plan de l'entité anthropique) et de l'organisation plurale des systèmes de domination en des pouvoirs multiples, spécialisés et interdépendants, interdisant (en principe) la concentration de pouvoirs en un pouvoir politique supérieur et extérieur aux autres: dans ce type de société, on avait imaginé qu'il y eut un pouvoir spécialisé dans l'administration des hommes sans qu'il prit la forme de Léviathan de Hobbes(6).

Non point une société contre l'Etat (selon le titre provocateur du livre de Pierre Clastres (7)) mais, une société où la spécialisation des pouvoirs et leur complémentarité structurelle interdisait qu'un pouvoir dominât réellement tous les autres, au moins jusqu'à ce que l'intervention coloniale occidentale ne vienne ruiner cet "équilibre".

On pourrait, à ce propos, et singulièrement à travers la notion de fit (concentration des énergies cosmiques et humaines dans la personnalité), découvrir un "équivalent homéomorphe" du dharma indien et "savoir ce que nous cherchons quand nous nous embarquons dans notre quête des Droits de l'homme" (op. cit., p. 18) dans le contexte de sociétés sahéliennes d'Afrique occidentale..

Mais, il y a là un piège "diabolique" où nous entraîne R. Panikkar, à travers l'extrême séduction de sa pensée, en laissant croire qu'il y

a une alternative philosophique possible à l'universalisation à terme du discours occidental sur les Droits de l'Homme.

En effet, en répondant à la question de l'intitulé de son article "Les Droits de l'homme sont-ils d'origine occidentale?", R. Panikkar constate que "les Droits de l'homme sont universels si on les contemple de la position où est établie la culture occidentale moderne et ne sont pas universels si le regard qu'on jette sur eux vient du dehors" (op. cit., p. 16). Du point de vue des arguments avancés et des modalités du raisonnement, il n'y a rien à redire dès lors que le postulat initial tient: "la formulation actuelle des Droits de l'homme est le fruit d'un dialogue très partiel au sein des cultures qui existent dans le monde" (op. cit., p. 4), ce qui suppose que les cultures peuvent continuer à dialoguer et que du dialogue "philosophique" sortira le bonheur de l'humanité. Mais si le pluralisme culturel a, dans le passé, apporté des réponses alternatives à la conception occidentale fondée sur les Droits de l'homme, l'inter-culturalisme peut-il dans le présent et surtout dans l'avenir donner des ames non violentes à la lutte contre le "procès d'occidentalisation"? Et la philosophie de R. Panikkar suffira-t-elle à enrayer un tel processus?

II - Le piège "diabolique" des Droits de l'homme et les moyens de s'en défendre

J'envisage ici, en fait et en extrapolant l'approche de R. Panikkar, trois types de problèmes différents:

- Que vaut notre culturalisme face à l'efficacité du discours juridique sur les Droits de l'homme?
- Quel est l'enjeu de l'universalisation d'un tel discours?
- Quelle position face à l'avenir devons-nous adopter?

a) Culturalisme et discours juridique

Pour les non-juristes, je crois devoir citer ici, assez largement, la restitution critique du discours qui fonde la conception des Droits de l'homme, au moins dans la perspective française. L'analyse est faite par un spécialiste de la science administrative et de ses fondements idéologiques:

"Le Droit est aussi un discours imprégné des valeurs fondamentales qui assurent la cohésion du groupe social et transcrivent les déterminations élémentaires qui sont au cœur de l'ordre social: dans la norme juridique se profile une certaine conception de la "normalité", pétrie des relations sociales dominantes. Or, le Droit est le vecteur privilégié de diffusion et d'inculcation de ces valeurs et de ces normes, dans la mesure où la conjugaison de la systématisme et de la force prescriptive confèrent à son discours une singulière puissance persuasive, en le parant du privilège de l'incontestabilité; les représentations qu'il véhicule bénéficient en effet par projection tout à la fois de l'aura de "rationalité" qui nimbe l'ordre juridique tout entier et de

"l'autorité" qui s'attache à ses énoncés: la force obligatoire n'est pas limitée au dispositif instrumental, elle s'étend aux valeurs qui en sont le soubassement. Parallèlement à son contenu explicite, le texte juridique impose par voie d'autorité un ensemble de croyances, dont la certitude ne saurait être mise en doute: il suffit qu'elles soient enchassées dans la loi pour devenir incontestables et sacrées" (8).

Le discours des Droits de l'homme véhicule donc et impose les valeurs sociales occidentales sans que ce processus puisse être récusé puisqu'il est sacralisé. Or, le processus de sacralisation du pouvoir et du Droit sur le modèle de l'Occident, étant déjà largement entamé en Afrique noire, ainsi que le colloque "Sacralité, Pouvoir et Droit en Afrique" le démontrait abondamment en 1980 (9), pouvons-nous maintenir la fiction d'un contre-discours culturaliste privé des effets de "projection" (dans l'Autre lacanien) que le discours juridique permet, et qui ouvre la voie à tous les "enfermements", réels ou symboliques, dans les goulags ou derrière les murs du Pouvoir? Et dans la mesure où le processus de "phagocytage" est seulement entamé dans les sous continents asiatiques où la démographie introduit le poids du nombre et ralentit les effets du changement, la conjonction des modèles économiques de développement, des transferts de connaissances juridiques (10) et de cultures politiques n'implique-t-elle pas à terme (et sauf accident thermo-nucléaire) l'universalisation du "procès d'occidentalisation" dont parle Abdou Touré pour la Côte d'Ivoire (11)?

Cette question restera sans réponse, par simple ignorance, mais suggère la possibilité réelle que "le concept des Droits de l'homme, à partir du contexte de la culture et de l'histoire au sein duquel il a pris naissance, (devienne) une notion

valable à l'échelle du globe (Panikkar, op. cit, p. 5), par la médiation des discours juridiques produits par les Etats et les organismes internationaux(12).

Que valent nos bons sentiments face à l'enjeu de l'universalisation de tels discours?

b) L'enjeu du discours des droits de l'homme?

R. Panikkar a des mots très justes pour résumer le danger qui nous guette:

"Les exemples que nous prodigue le passé, notamment le passé de l'Occident, sont trop innombrables et trop frappants pour que nous ne soyons pas avertis du danger de répéter ce qui a été fait au nom du Dieu unique, de la Religion unique et de la Technologie unique" (op. cit, p. 105).

Mais, il ne va pas assez loin dans l'inventaire et dans l'analyse. Ce ne sont pas seulement Dieu, l'Etat ou la Science qui s'organisent selon ce principe "unitaire" mais aussi le Droit (du Code), l'espace (du territoire national), le temps (créateur du devenir), le marché généralisé de la force du travail et des produits et la représentation occidentale de la Personne(13). Remarquons à ce propos qu'à l'inverse de ce que dit R. Panikkar (p. 4), c'est d'abord la restitution historique de la construction de la notion de personne qui permet de saisir le sens d'un modèle qui est moins unique ou unitaire qu'unitariste, en réduisant (par la force ou la violence si nécessaire) la pluralité des formes d'organisation du social à l'unité imposée du modèle matriciel.

A l'identité du moule permettant de façonner les divers domaines de la sociabilité selon

un même modèle, s'ajoute le caractère totalitariste (et occasionnellement totalitaire) du modèle unitaire. Ne souffrant ni exceptions ni déformations, l'unitarisme totalitaire pousse les civilisations du monde dans une impasse tragique: n'ayant plus de bases différentielles pour dialoguer (après avoir éliminé l'Autre au profit d'un Soi exclusif), il ne resterait plus à ces sociétés soit qu'une forme d'autisme orgueilleux soit que la guerre fratricide, commandée au nom de "Sa majesté des mouches", selon le titre évocateur de l'ouvrage de W. Golding.

L'enjeu de l'universalisation des Droits de l'homme est ainsi, en assurant la diffusion de ce modèle unitariste, d'accepter la banalisation de la "peste brune" et de "tout le désespoir du monde": de faire le lit du diable et de tous nos démons (14).

c) Quelle position devons-nous alors adopter?

Je ne voudrais pas ici faire de procès d'intention à R. Panikkar et je ne le connais pas assez pour démêler, au-delà de la sagesse qu'il professe, les positions sociales et politiques qu'il a pu assumer. Je ne doute pas qu'elles aient été à la hauteur des exigences éthiques qui traversent son oeuvre. Pourtant, sa philosophie nous démobilise parce que "la vision cosmo-théandrique de la réalité dans laquelle le divin, l'humain et le cosmique sont intégrés en un tout, lequel est plus ou moins harmonieux selon que nous exerçons plus ou moins complètement nos véritables droits humains" (op. cit. p. 23) relève de la spéculation ou de la méditation, et non de l'action.

Parce que nous n'en avons pas terminé avec les camps de concentration ou les goulags et parce que le phénomène de la dépendance et de la "servitude volontaire" (pour reprendre La Boétie) est d'abord le fruit de notre imaginaire et de nos

représentations de l'Autre, du Pouvoir et du Droit, nous avons besoin d'une philosophie de l'action politique fondée sur une approche interculturelle et dynamique de la société mondiale.

Raimundo Panikkar, une telle approche de la problématique de l'an 2000 peut-elle satisfaire tous les partenaires de ce que le poète et homme politique, L. Senghor, appelait la geste du "donner et du recevoir"?

Notes et références

1) Raimundo Panikkar: "la notion des Droits de l'homme est-elle un concept occidental?" Dio-gène 1982. No. 120, pp.87.

2) Op. Cit, p.98. Voir également des développements très clairs dans R. Panikkar "La philosophie comme style de vie" in La rencontre des traditions selon les différentes cultures. No. Spécial. Revue Monchanin, oct. déc. 1978 Vol. XI, No. 4, cahier 61, pp.3-8.

3) En particulier: R. Vachon "L'étude du pluralisme juridique, une approche diatopique et dialogale". Communication au XIe congrès international des sciences ethnologiques et anthropologiques. Québec. Août 1983. 10 p.

4) E. Le Roy: "Juristique et anthropologie: un pari sur l'avenir. Journal of legal pluralism and unofficial law. No. Spécial. Anthropologie juridique francophone. A paraître 1984.

5) E. Le Roy: "Communautés d'Afrique noire et protection des Droits de l'individu face au pouvoir: Problématique, modalités et actualité." Rapport de synthèse à la société Jean Bodin pour l'histoire des institutions sur le thème "l'individu face au pouvoir". Paris, octobre 1981, A paraître.

6) T. Hobbes. Le Léviathan (1650) Trad. fse. R. Anthony, Paris Girard 1921.

7) P. Clastres. La société contre l'Etat. Paris. Editions de Minuit, collection critique 1974.

8) J. Chevalier: "L'ordre juridique". Le Droit en Procès. Paris CURAPP et PUF 1983, pp. 29.

9) 4e colloque du centre d'études juridiques comparatives de l'Université de Paris I, organisé par le Laboratoire d'Anthropologie juridique de Paris en janvier 1980. Les actes de ce colloque paraîtront, avec retard, en 1984.

10) Voir les arguments réunis dans l'étude de l'UNESCO à laquelle nous participions. UNESCO. Domination ou partage, développement endogène et transfert des connaissances. Paris. UNESCO. Col. Actuel V. 1980. 292 p.

11) A. Touré: La civilisation quotidienne en Côte d'Ivoire: Procès d'occidentalisation. Paris. Karthala. Col. Les Afriques 1981.

12) Parmi les manifestations récentes de cette tendance à universaliser l'idéologie par la médiation du discours juridique, je relève le document final de la conférence de Madrid sur la sécurité et la coopération européenne (CSCÉ) adopté le 8 septembre 1983:

Les Etats signataires " se déclarent résolus à développer leurs lois et règlements dans le domaine des droits civils, politiques, économiques, sociaux, culturels et autres droits de l'homme et des libertés fondamentales: ils soulignent également leur détermination d'assurer l'exercice effectif de ces droits et libertés". (Extraits cités dans Le Monde (Paris) 8 sept. 1983, p. 7.

13) Voir en particulier, les fondements chrétiens du passage de la notion de "persona" - masque à celle de personne in M. Mauss" une catégorie de l'esprit humain: la notion de personne, celle de moi". Republié dans Sociologie et anthropologie. Paris PUF col. Bibliothèque de sociologie contemporaine. 2e édition 1960, pp. 331-362.

14) Je pense ici particulièrement au "daimon" grec et à la tradition homérique du destin contraire, de l'infortune et du malheur (Odyssée. 5. 396, 11, 16, etc.)

SUMMARY

Etienne Le Roy admires Panikkar's methodology and ideas and briefly speaks about the African (Wolof-Senegal) mind in such matters. But could Panikkar's position be a devil's trap? When one is aware of the universalization of the Western notion steamrolling across the planet, what is the value of a cross-cultural discourse which seems to be non-action oriented? He calls for a philosophy of political action based on a cross-cultural and dynamic approach to the global society.

The pre-existence of human rights

Its subversion by the Western State

By John Mohawk

Is the concept of human rights a product of the modern world, a product essentially of our time, or have the ideas which promote this concept existed for considerably longer than the life of this century? This is an important question because it helps us to define the parameters of human rights and, more importantly, it helps us to debate the origins of the ideas which we ascribe to "human rights" within an historic context. If we are able to better understand the origin of the ideas, perhaps we will be better able to grasp the motivations behind the ideologies which claim the territory and better able to give some definitions to

"human" rights based on enlightened criteria.

What are human rights? Avoiding for a moment the legal definitions which qualify and quantify the concept, exactly what is meant by the term? I would suggest that the concept has existed in some form or other in many cultures and that culture has had a significant impact on the definitions given the idea, although I would concede that the term, as used in international law and politics, is quite modern.

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To those who would argue that the concept of human rights never existed in non-western cultures I would point out that, semantics aside, we need to investigate first why the concept has arisen in the Twentieth Century with such force without conceding that it never existed previously. Human rights concepts exist because there is a need for these ideas. There is a need for these ideas because something, a force in human relations, exists which is contradictory to "human rights" and we now have at least words to describe those "rights" which humans should enjoy inherently.

The concept of "human rights" as we now conceive it never existed until after the appearance in human societies of the nation state. With the rise of the nation state we have a force in human events which has the will and the means to enact powers which can and have subverted the human spirit and which can and have assailed human dignity and the right of peoples to an existence. It is the existence of the ideology and the reality of the powers of the state which has given birth in modern times to the necessity of the concept of human rights.

The ideology of the powers of the state are not modern. References to ancient tyrants abound in the historical record, as do references to resistance, rebellion and general civil unrest. The idea of the absolute power of the sovereign over the land, labor and lives of "subjects" is at least as old, and is probably significantly more ancient, than is the period of recorded history. Because tyranny is so ancient, it is a practical certainty that people have struggled over the issues we now ascribe to the category of "human rights" during all this time although the term may or may not have existed in their languages.

The issues we now define as human rights are as ancient as are the abuses of power which

became not only possible but prevalent with the rise of the state. The concepts of human rights exist in contradiction to the unbridled and undisciplined will of the sovereign and will evolve relative to the technological ability of the state to extend that power over its people and other peoples. Concepts of human rights are evolving and changing in the Twentieth Century not because modernism is giving birth to a new humanism but because the contemporary state has technological powers which threaten the dignity and the right to exist of individuals and groups in ways never seen before.

In the past we have thought of human rights in terms of the rights of people to free speech, free thought and the right of dissent. Those rights were to be protected against arbitrary or politically motivated actions such as search and seizure, censorship, political imprisonment, assassination, torture and other forms of discrimination. Today we are confronted by the power and the ideology of the state in ways which were predicted in George Orwell's gloomy futuristic novel Nineteen Eighty-Four. In that novel the state exercised absolute control over human thought through incessant propaganda on the video screen, through control over all information, history, even through the elimination of languages other than the state language and the subversion of English to a state language. The purpose was to eliminate language as a form of communication which could express thought which contradicted state policy by eliminating words, by reducing the number of words in the language, and by giving contradictory definitions to those words. Thus the world of that 1984 was to define words to benefit the needs of the state. Words such as "invasion" would be translated through the electronic media to mean "rescue", the world would be made "safe from nuclear war" through the proliferation of nuclear missiles, the world is made safe for "democracy" through the installation and support of dictatorships in the client states.

The morality of the state is changing, however. Because of the success of these new ways of controlling mass psychology, the old forms of state terror are no longer acceptable. We no longer are willing to accept the torture chambers of the Shah because there are better and more "civilized" ways of population control. The objectives haven't changed, only the methods are new.

The modern state is not exactly the same entity as the ancient state, but some of the methods are quite ancient. Consider for a moment the concept of subversion of language. Centuries ago the European kingdoms consolidated their power over the rural areas. In the process of the conquest of locality the English language was similarly changed. The word "heathen" derives from a word meaning dweller of the heather. "Peasant" originally meant "peaceful person", and the word "witch" derives from a term meaning "wise person." Double-speak has been in existence for a long time. In the same vein, the idea of suppression of languages which are not the state language has been in existence for a similarly long period of time.

Those of us who have been socialized by the culture which is the god-child of the state are often mystified by the process which subverts our own thoughts. All history is presented to us as the history of the state. We have been conditioned to assume that all else is irrelevant, that other cultures never had an intellectual life, that they could not have developed concepts of humanity which are different, or possibly more enlightened than the official versions taught us in the textbooks blessed by the minions of the state ideology. Thus it is urged upon us that the modern state is the distillation of all human intelligence and that we live in a "golden age" of humanism when in fact the ideas we so smugly claim as the West's own are almost universally derived from other peoples.

The idea that the concept "humans have rights against the state (and against the ideology of the state)" is derived from modern Western culture, is one example of how subverted our sense of ourselves as beings within an historical context and process has become. The concept of democracy entered the European consciousness following the European invasion of the Americas because it was widely practiced by the American Indians and was introduced to European intellectuals from that source. It was not a rebirth of a Greek political ideology which, in any case, was not democratic. The concepts of freedom of speech, freedom of religion, and the right to cultural integrity existed in the Americas and are even embodied in the surviving documents of the political thought of the American Indians, most notably in the Great Law of the Iroquois. Those ideas have been adopted to the extent, and only to the extent, that they have in some way served the interests of the modern state. They have also been coopted by modern state historical revisionists who now assert that all humanist concepts are the products of the West, and more specifically the Western state, and who argue this point in order to focus attention to Western history as a model precisely because the West's intellectual tradition is limited in language and institutions to a reality which serves the state's needs.

The control of thought is not limited to the arguments which deny intellectual, moral or social status to peoples and ideologies of other cultures. Populist history is similarly denied in the annals of the ideologists of the state. All (I almost said almost all) improvements in the material, social and spiritual conditions of the masses have derived from mass movements which are practically invisible in the official histories, as has the history of the cooption of the results of those movements by the state.

Thus far, in the twentieth century, the concept of human rights as officially recognized and

debated has been limited to areas which serve the state's needs. Human rights are expressed as those rights of the individual against the abusive powers of the state in terms which look suspiciously similar to civil rights. In the 1980s that definition will be challenged to include the concept of the rights of groups against the powers of the state. Does an identifiable group have rights? Does a community of people in Canada who possess a distinct religion have a right to practice that religion? Do they have a right to possess territory, to speak a unique language, to a system of social organization which is peculiarly their own? Do they have these rights against the powers of the state which claims the right of eminent domain, which claims the right to control all aspects of public education, which claims the right to decide on appropriate forms of political organization? These kinds of questions are faced by Canada's native peoples today.

Do localities have the right to a continued existence? Do the peoples who live in the Laurentians have a right against acid rain pollution? Do the people who live in Niagara Falls have a right against toxic waste contamination? Do the people of Southern Ontario have a right against contamination of the ground water they use for drinking and bathing? Does the state have the right (as opposed to the power) to assign to a private corporation the legal right to pollute the air and water of its citizens? Do people have the right to live in the community where they were born and raised, or does the state have the right, because of the needs of the national economy or the tax base or other considerations, to allow the land and water to become poisoned to the extent that people are forced to move away? These kinds of questions will be faced by all the peoples of the industrial nations in the decades ahead. The definition of "human rights" is in an early stage of development, and the possibilities for expansion are practically unlimited.

The question of whether the concept of "human rights" has existed in other times and in other cultures would be moot except for the fact that the intellectual, moral and legal ethics of the West are only faintly acquainted with the issues and that other cultures and times have developed a sophistication in this area which is needed in these changing times. We are living in a dangerous age in which ignorance, ethnocentrism and intransigence will not serve our needs. Since 1945 the world has seen a technological explosion which has brought what many see as prosperity but which has also brought into existence a nuclear and chemical world which poses dangers on a level never before experienced by mankind. In less than four decades modern industry has produced the most deadly substances ever seen on earth in quantities great enough to destroy the human population of the earth many times over. Our sophistication in terms of how we relate to the reality of dioxin, plutonium, the family of PBBs, and many other chemicals will determine the quality of our future lives. Our ability to rehumanize society, to define and protect our human roots, our place in geography as well as our place in the economy will also determine the quality of our future lives. All of these questions are related to the emerging need to redefine our right to be human, in an emerging world in which those needs are contested by the reality of ever expanding state power.

RESUME

Johny Mohawk affirme que la notion des droits de l'homme est une idée prémoderne que l'on retrouve dans plusieurs cultures et que l'Etat Moderne Occidental s'approprie en la dénaturant, la travestissant et en en faisant même la subversion. Ce dernier fait de même avec le langage et la démocratie etc.

Réponse - Response

A Dialogue on Human Rights

By R. Panikkar

Any extremist position precludes a fruitful dialogue. To truly communicate we must be open, and openness entails risk. We may have to give up the cherished idea that we have the monopoly on some aspect of reality, and give way to the other person. This 'stretching' of the self is painful but crucial to real growth, and is a sign of maturity. True dialogue goes against the grain of merely academic argumentation or even discussion, with its ethos of defense and counter-defense. The malaise this latter attitude has caused in the modern west should be evident to anyone who is capable of even a cursory glance at our current predicament. We are challenged today to go deeper than conflictive rhetoric or one-upmanship; what is demanded is a true reciprocity which can only be based upon a healthy pluralism.

I am encouraged and honored that my paper received such a positive response of which the six papers published here are a proof and a sample. In such difficult and emotion-laden topics such as this one, nothing is more helpful than the will to dialogue. But I shall neither write another paper now, nor append an epilogue to my study. I would merely like to react to the responses in a three-fold way: 1) by underscoring the importance of the issue, 2) by dispelling - hopefully - some equivocations, and 3) by further pursuing the problem.

1) The Importance of the Issue

There is a remarkable consensus regarding not only the importance of the issue, but also the pro-

per way of presenting it. There seems to be a healthy approach to and a positive evaluation of the concept of Human Rights, though we must not, as Gregory Baum timely reminds us, absolutize it. There is something pre-existent to its present name and form, as Johnny Mohawk forcefully argues. Human Rights indeed constitute a positive achievement; it represents a real gain in human civilization. A pattern of consensus seems to emerge: the issue is central and crucial; it cannot be avoided; it needs to be deepened and broadened. It is one of the most fruitful avenues for human cooperation (1). There is no need for me now to expand on all this. Yet I will add that the cross-cultural approach to this issue is still rare. (2)

I may also add a personal note of gratitude and admiration for the quality and richness of each response. We have begun to draw near to that authentic dialogue about which I have spoken earlier. I am now in the awkward position of allotting more time to a few criticisms than to the wealth of constructive critique that I have found in the different contributions.

2) Some Equivocations

a) Every text stems from a context, without which it is easily misunderstood. Sometimes the misunderstanding is caused by the author's inability to convey what he/she wants to say; or, more often, the text may not have succeeded in situating itself within a horizon common to that of the reader. Sometimes it is the reader's own context that prevents a real understanding of the primary meaning of a text. It may be that I have been unclear when remarking that Human Rights has a western, rather modern and even predominantly protestant-anglo-saxon origin. But I certainly do not identify Human Rights with the western spirit, or affirm that it is "the unchallenged expression of Western culture." (Baum) This would certainly amount to "a caricature of Western culture." (Baum) I don't

believe I have drawn the above caricature, and if so I do apologize. But I may very well be at fault for Denis Goulet also says "that the absolutization of the Western political tradition is not as total as Panikkar makes it sound." I cannot agree more. What one takes for granted is often neglected. (3)

b) Howard Berman takes issue with my "acceptance of the possibility of a hierarchy of cultures." I fully agree that the idea of such a hierarchy has been "too easily manipulated to the detriment not only of indigenous peoples, but of any land-based traditional society." True enough! Far be it from me to defend the superiority of the white cultures, or of any one culture for that matter. I have written that "one side alone (cannot) lay down the criteria necessary for establishing such a hierarchy." But there is no doubt, it seems to me, that societies and cultures are neither equal nor equally complete. I do not subscribe to a kind of egalitarianism which would adopt an exclusively quantitative view of reality. And I certainly would never defend any type of gnostic elitism. I believe in the hierarchical structure of reality in which each component is unique, and thus different, and performs a non-interchangeable role. Each thing has its part to play in the greater unfolding of reality, whose beauty lies precisely in its variety. To reduce everything to a lowest common denominator is to obscure this inexhaustible richness, and also to lose touch with the unique challenge of pluralism. When composing a bouquet one does not limit oneself to one single color, or even one single flower. And besides this, cultural differences are plain: north americans, for instance, are of superior size when compared with most indians; the nagas are, *qua* people, musically more gifted than the panjabis; a society which needs apartheid, concentration camps or a severe penal system in order to subsist is less well equipped than another which is able to dispense with such coercive methods of control; a literate society has a different set of values than an illiterate one, and so on. I am not assuming some absolute meta-scale of all value-scales; but within an accepted my-

this universe we may find some consensus as to the hierarchical structure of reality. We should be able to say, given the above horizon of understanding, that the Stalins and Hitlers of all times are aberrations. But, I repeat, this is mainly a semantic issue, and in content it is not at variance with what Berman so forcefully defends. He incidentally coincides with Johnny Mohawk in defending "group rights" - and rightly so - also in spite of the possible abuses.

c) Masaji Chiba remarks that svadharma is a "functional equivalent to the Western concept of Human Rights," but is certainly not universal. Indeed. I have even expressed my reservations on whether it is an homeomorphic equivalent at all. My main concern was not to develop a full theory of Human Rights, but only to answer the immediate question of the title of my paper.

d) I am also lead to clarify this same idea of homeomorphic equivalents in regard to Etienne Le Roy's remark that he does not find any convincing equivalent to Human Rights among the Wolof of Senegal. This is why I have said time and again that homeomorphic equivalents are not word to word correspondences. They are complex analogies of the third degree. I am not affirming that a symbol in one culture has to have an equivalent in another culture. It is not the symbol itself, but its function that is equivalent. And to be 'equivalent' does not mean to be the 'same'. The homeomorphic equivalent can be a set of symbols which performs an equivalent - and not the same or even similar - role to that of one symbol in another cultural system. It may well be that the Wolof do not need 'Human Rights' as such because they take care of human dignity, provide for the fulfilment of the human being and guarantee that it is not trampled upon, through a set of different institutions stemming from different anthropological, cosmological and theological assumptions.(4)

e) Goulet rightly remarks that the very process of finding homeomorphic equivalents is a creative enterprise; this means that they are not "reiterations of an earlier symbol" but something "much more of a new creation than a preservation or reconstitution of virginal traditional forms." This is well said, and should remind us that cultures are living entities and that our task is not one of being mere interpreters of past cultures but of being co-creators of a new symbiosis and midwives in the cross-cultural fertilization. We are not doing archaeology, that is, unearthing forgotten values, or playing the moralist by defending neglected cultures. We are participating in a creative and painful, but at the same time joyful and fulfilling human vocation.

So far I am not in any disagreement with the respondents.

3) Further Awareness

a) I consider pluralism to be something much deeper than political strategy. I go as far as to defend the pluralistic nature of truth itself. For this reason I would not subscribe to the remark that my effort "means to build up a general theory of legal rights and postulates to let each particular variation fill the right place in the whole system." (Masaji) Perhaps Goulet answers for me when he speaks of a "delightful and hopeful paradoxon," namely that "Panikkar, the champion of the irreducibility of cultural values, is precisely most universal when he defends that specificity." But this specificity is not intellectually specific; it belongs to the realm of myth.

I defend pluralism not as an all-inclusive system or a supersystem, but as something of the order of myth. No one person, or even culture or religion, can embrace the universal range of human experience and offer a universal framework in which all diversities find their place.

What is called for here is mutuality and reciprocity that is fruit of the radical relativity and interdependence of everything that is. Solidarity comes from 'solid' or 'complete', and is related to the etymo of 'salvation', i.e. 'wholeness' - about which no one has the overview or ability to control.

b) It remains now for me to comment on Le Roy's so-said "diabolical trap". I am in utmost sympathy with Etienne's remarks. I am the one who speaks of the Trojan Horse when we collaborate with western technology and utilize its categories. I am stressing the fact that cultures are organic units and that they cannot be dismembered without great suffering. I fully agree that being only benevolent, adaptable or collaborationist is a highly risky stance, and that action is required. Certainly the concepts of Rights, Laws and Administration belong to the same set of values I categorize as having been universalized to the detriment of other cultures.

But I have one single remark to offer.

The trap is indeed diabolical: it lies on the right and on the left, above and below. We do not avoid it by merely thinking; and if we choose action above all else, we are its victims. To merely put our trust in God, Nature or Society alone is to fall, perceptively or imperceptively, into the trap; but if we rely only on ourselves, or even on one single group, we are already in the trap. We are challenged to go beyond provincialism and the ghetto mentality, as well as a vague and hastily concocted universalism. Is there a middle way, a harmony between action and contemplation, angelism and mere activism, autonomy and heteronomy, a concord between the Sacred and the Secular? What begins to emerge here is the need for an ontonomic vision of reality.

I am not going to develop this idea now, thankful as I am for Le Roy's perceptive insight that only a non-dualistic and wholistic attitude may serve to guide us safely between the Scylla of violence and the Charybdis of compromise - for both options ultimately lead to defeat.

I may only react to this utmost important question by spelling out three almost political 'moments' of a single remark.

i) What is the alternative? The process of the occidentalization of the world is already far advanced, especially in Le Roy's own field of study, namely that of the juridical and political structures of societies. It is a fact that today we are conditioned by the idea of the nation-state and have practically only one officially recognized legal system with merely accidental variations. Le Roy feels or fears that I "don't go far enough". The alternative then seems to be only violence, for we cannot otherwise turn back the clock of history.

It is precisely my refusal of violence - without now trying to define this concept - that leads me to the second moment of my remark.

ii) Certainly, the collaboration that I am propounding in the form of dialogue could be itself a pitfall, and we could all fall into the trap of being co-opted and neutralized. But the refusal to dialogue leads to war, and in war the weakest will lose. Playing with words, what remains is only the non-violent guerilla, 'small wars', passive resistences, non-cooperation movements, or most importantly, the inner and outer emancipation from the clutches of the System. Here thought and action meet. Le Roy is right. I would despise myself if everything I stood for were mere theory without praxis. We need, he rightly points out, a "philosophy of political action based on a cross-cultural approach".

This leads me to the third moment of this remark.

iii) Without an underlying spiritual force, without a symbiosis of action and contemplation, without a dynamic synthesis, or rather perichoresis, between theoria and praxis, we go no -

where and fall into the trap. Here we cannot merely be academics, nor simply intellectuals, just as we cannot solely be either full-time activists or pure revolutionaries. The two go together in a non-dualistic - advaitic - harmony. The trap is real, dear Etienne, but if we join hands we may overcome it.

NOTES

1) Cf. the enlightening examples of this (eight case studies - with multi-voice responses) in R.A. and A.F. Evans (editors), Human Rights. A dialogue Between the First and Third Worlds, Maryknoll, New York (Orbis) and Guildford, Surrey (Lutterworth), 1983. The whole book is a pathetic witnessing to the progressive awareness of christians regarding institutionalized injustice and that "the system - not housing (as in one particular case) - was (is) the real problem." (154)

2) A recent issue of Daedalus, the Journal of the American Academy of Arts and Sciences, Volume 112, Nr. 4 (Fall 1983) is entirely dedicated to the theme of Human Rights, and although the situations of Africa, Latin America, China and Marxism are studied, the specific thematic of the universality of the concept is hardly directly investigated, except in the last, more philosophical article by D. Henrich and D.S. Pacini, and in some passing theological considerations by D. Tracy. On the whole, besides the excellent value of the contributions, the entire approach is still exclusively western, even when incidentally raising the question of universality.

It is precisely within the horizon of cross-cultural studies that I wish to situate my own reflections on Human Rights.

3) Already in September 1948 I delivered a paper in the "Conversaciones Catolicas Internacionales, San Sebastian, Spain (well-known in the Europe of that time), on "libertad de pensamiento," and later I published a much discussed article in Arbor, Madrid (February 1951), "El cristianismo no es un humanismo" (both were to appear later in my book Humanismo y Cruz, Madrid (Rialp, 1963). In both these papers I defend the traditional catholic position along the lines described by G. Baum. We certainly know that the west is not monolithic. I am only saying that since the dominant culture of the west has turned 'scientific' it has become predominantly nominalistic.

4) The Australian government has trampled upon the 'rights' of the aborigines in the name of the 'Human Rights' of the majority which insists upon technological mining and other forms of exploitation of the land. Cf. Evans, Human Rights, op. cit. (97-123).

Chronique

PLAIDOYER ET PROPOSITIONS CONCRETES EN FAVEUR DES DROITS AUTOCHTONES EN TANT QUE SPECIFIQUEMENT AUTOCHTONES (présenté au Congrès de la Fédération Internationale des Droits de l'Homme, tenu à Montréal, Québec du 21 au 23 mai 1982)

* Par Le Centre Interculturel Monchanin

Le texte qui suit comprend un bref plaidoyer et des propositions concrètes (1) invitant tous ceux et celles qui luttent pour les droits autochtones, à la reconnaissance et au respect de cet univers juridico-politique autochtone traditionnel contemporain, qui, de par sa nature spécifique, n'a rien à voir avec la notion des droits de l'Homme et qui peut être soit en consonance, soit en opposition avec ces droits.

Par autochtones, nous entendons ici d'abord les autochtones des deux Amériques, ceux qu'on nomme communément les Indiens et les Inuit. Mais aussi les autres peuples indigènes à travers le monde.

Plaidoyer

Avant de faire une critique radicale de la notion des Droits de l'Homme telle qu'on la re-

trouve dans la Déclaration Universelle des Droits de l'Homme, dans nos Chartes et Conventions actuelles, nous tenons à affirmer dès l'abord que nous croyons dans ces Droits et que nous luttons nous aussi pour qu'ils soient mieux précisés et qu'ils ne restent pas lettre morte à travers le monde. C'est pour nous une responsabilité sacrée que de lutter pour ces Droits en général et pour ceux des autochtones en particulier.

Mais nous sommes tout aussi convaincus que cette notion est un concept occidental, qu'il n'est au mieux qu'une fenêtre à travers laquelle une culture particulière voit un ordre social plus humain, de sorte que la lutte pour les Droits de l'Homme n'a pas à être le pivot d'un ordre social juste. Cette notion des Droits de l'Homme, aussi légitimement universelle qu'elle soit et doive être dans ses intentions, est basée sur des présupposés qui ne sont pas nécessairement partagés par toutes les cultures et qui n'ont probablement pas à l'être pour que ces dernières soient

elles-mêmes humaines et contribuent aussi effectivement à l'ordre social.

Ce n'est pas le moment, dira-t-on, de soumettre les Droits de l'Homme à la critique, au moment où ils sont si lâchement bafoués par les "puissants", un peu partout à travers le monde. Mais pourquoi pas, s'il s'agit d'une critique constructive qui les rende plus aptes à rejoindre la réalité qu'ils visent?

Notre critique est celle-ci (nous avouons qu'il s'agit là d'une opération délicate à faire!): c'est qu'il existe DE FACTO au coeur même de la lutte pour les Droits de l'Homme, une sorte d'impérialisme ou colonialisme nouveau, souvent inconscient, qui consiste à ne plus voir la question sociale qu'en termes homocentriques de Droits de l'Homme, passant ainsi complètement à côté de visions aussi valables et importantes, qui n'ont absolument rien à voir, dans leur nature spécifique, avec les Droits de l'Homme. Nous pensons en particulier, entre autres, à la vision plus cosmocentrique autochtone et à son univers juridico-politique original qui n'a rien à voir avec les notions homocentriques de droits, de titres, de revendication, etc.

Il existe, présentement, dans les milieux les plus conscientisés aux droits autochtones, une inconscience, une ignorance et une indifférence quasi totale à l'égard du côté traditionnel contemporain de la vision sociale autochtone et de son univers juridico-politique propre. C'est comme si l'on considérait ce côté comme mort, mourant, condamné à mourir et devant être remplacé par des notions dites universelles de droits, de titres, de propriété, de souveraineté, de démocratie, de peuple, de nation, de pouvoir, de maîtrise de soi, d'autonomie, etc.

Nous croyons que le temps est venu d'y remédier; de sortir de ce monoculturalisme juridi-

que homocentrique qui est en train de devenir au nom des droits de l'homme un cheval de Troie, un fossoyeur de l'univers juridique autochtone traditionnel tel qu'il existe aujourd'hui, et d'entrer dans un pluralisme juridico-politique qui prenne aussi sérieusement en question et valorise autant cet univers cosmocentrique de la vision juridico-politique autochtone que celui plus homocentrique des Droits de l'Homme.

Cela nous paraît une précondition indispensable au respect de la réalité autochtone et d'un vrai ordre social. Un ordre qui ne soit ni exclusivement occidental ou homocentrique, ni exclusivement autochtone ou cosmocentrique, mais qui soit enrichi et équilibré par les deux, comme deux dimensions constitutives d'une seule réalité et paix sociale.

C'est dans ce but que nous proposons ce qui suit:

Propositions concrètes

1) Que les associations et groupes de Droits de l'Homme qui s'intéressent aux Droits Autochtones, et que la Fédération Internationale des Droits de l'Homme, reconnaissent formellement qu'il existe aujourd'hui un univers juridico-politique autochtone traditionnel, radicalement différent dans ses présupposés de l'univers juridique dit "civilisé" des Droits de l'Homme, dont l'importance et la qualité ne sont pas moindres que celles de ce dernier, et qu'ils se mettent à l'étudier sérieusement en formant des groupes d'étude dans ce but.

2) Que ces associations qui se trouvent sur territoire autochtone, fassent avant de la demander aux gouvernements et aux Nations-Unies, une démarche, en tant qu'associations, pour être reconnues elles-mêmes par les Nations-Autoch-

tones en tant que telles, en leur demandant formellement la permission de vivre sur leurs territoires, et à quelles conditions, en modifiant en conséquence, à la lumière de la réponse autochtone, ce qu'il y a à modifier dans leur comportement. Qu'elles invitent tous les organismes non-gouvernementaux qui se situent sur territoire autochtone à faire de même.

3) Que toutes procèdent ensuite à une reformulation du Droit International et des Droits de l'Homme, conjointement avec les Nations Autochtones en tant que telles, sur la base des univers juridico-politiques respectifs des partenaires en dialogue. Ensuite, qu'elles proposent d'abord à la Nation-Etat et ensuite aux Nations-Unies de faire de même par le biais de la Commission des Droits de l'Homme des Nations-Unies.

4) Que dans la défense des droits autochtones, elles cessent, par respect pour l'univers juridique autochtone, de ne se référer qu'aux pièces justificatrices de titres (découverte, occupation, conquête), qu'aux Proclamations Royales, qu'aux Décisions Parlementaires, qu'aux Constitutions Humaines et même qu'aux Traités Humains, et qu'elles aient le courage de se baser prioritairement sur l'argument autochtone premier, moins homocentrique que cosmocentrique, à savoir que leur dignité comme ce que certains peuples appellent leurs droits, ne viennent d'aucun homme ou gouvernement mais de ce qu'ils nomment l'Ordre de la Nature et le Grand Esprit. Et de le faire, même si cela va à l'encontre d'une longue tradition juridique homocentrique! Il existe, en effet, à côté de cette dernière, une encore plus longue tradition juridique cosmocentrique, aussi valable et importante, qu'il serait profondément injuste d'ignorer plus longtemps.

NOTES

(1) On trouvera un exposé plus élaboré de notre position dans R. Vachon, "Univers juridique autochtone traditionnel contemporain et Droits Autochtones", dans INTERCULTURE, avril-sept. 1982, nos. 2-3, Cahiers 75-76 (Ces deux cahiers portent entièrement sur l'univers juridique autochtone traditionnel aujourd'hui.)

5) Qu'elles mettent tout en oeuvre pour que la Cour Internationale de Justice transforme l'article 38 de ses Statuts et admette comme source de droit international des principes juridiques reconnus par les nations autres que dites "civilisées" et qu'elle accepte d'entendre et de juger les atteintes faites aux univers juridiques de ces peuples et à leurs droits non seulement en tant que droits mais en tant que spécifiquement autochtones.

6) Qu'elles prennent tous les moyens pour que la déclaration de principes des Nations Autochtones (Genève 1977) soit reconnue comme source de droit international.

7) Qu'enfin des démarches soient faites pour que les déclarations, chartes, constitutions (nationales et internationales) des Droits de l'Homme, soient complétées par une déclaration du Droit des Autochtones à leur univers juridico-politique propre en tant que Nations Autochtones. Ce qui présuppose que les Nations Autochtones soient reconnues comme Nations, non pas uniquement dans le sens que donnent à ce mot les nations dites "civilisées", mais aussi et d'abord dans le sens de leur univers juridico-politique propre, même si, pour commencer, on ne peut le faire qu'en passant par le vocabulaire de celui des dits "civilisés".

Chronicle

TOWARDS THE RECOGNITION OF INDIGENOUS RIGHTS, AS SPECIFICALLY INDIGENOUS;
A PLEA AND CONCRETE PROPOSALS (presented to The International Federation of Human Rights'
Conference, held in Montreal, Quebec, from May 21st to 23rd 1982)

* By The Monchanin Cross-Cultural Center

The following text includes a plea and concrete proposals (1), inviting all those who struggle for Indigenous Rights, to recognize and to respect that contemporary traditional Indigenous juridico-political world, which, in its specific nature, has nothing to do with the notion of Human Rights and which can be either in consonance or in opposition to these rights.

By Indigenous or Native, we understand primarily the Indigenous peoples of both Americas; those that are called Native Indians and Inuit. But also the other indigenous peoples throughout the world.

Plea

Before we make a radical criticism of the notion of Human Rights as it is found in the Universal Declaration of Human Rights, in our actual charters and Conventions, we would like to stress at the very outset, that we believe in these rights and that we also are struggling so that they will be better defined and better implemented throughout the world. It is for us a sacred duty to fight for these rights in general and for those of the Indigenous peoples in particular.

But it is equally our conviction that this notion is a western concept, that at best it is but one window through which one particular culture sees a more human social order. Hence, the struggle for Human Rights need not be the pivot of a just social order. This notion of Human Rights, no matter how legitimately universal it is and should be in its intention, is based on assumptions that are not necessarily those of all cultures and probably need not be so in order that the latter be also human and contribute effectively to social order.

Some will object: at a moment when Human Rights are so blatantly ignored by the "powerful", all over the world, this is no time to submit the notion of Human Rights to a radical criticism! But why not, if the criticism is a constructive one which helps them reach the reality that they stand for?

Here is our critique (we admit that it really is a delicate operation to perform!): there is, DE FACTO, at the very heart of the struggle for Human Rights, a kind of new imperialism or colonialism, oftentimes unconscious of itself, which consists in viewing the social question exclusively in the homocentric terms of Human Rights, thus completely by-passing other just as equally valid

and important visions, which have absolutely nothing to do, in their specific nature, with the Rights of Man. We are thinking specifically, among others, of the more cosmocentric Indigenous vision and of its original juridico-political world, which have nothing to do with the homocentric notions of rights, titles, claims, etc.

There is presently, among those groups that are the most conscientized to the question of Native Rights, an almost total lack of awareness, ignorance and indifference regarding the actual traditional dimensions of the Indigenous social vision and of its unique juridico-political world. It is almost as if it were dead, dying or condemned to die and to be replaced by so called universal notions of rights, titles, property, sovereignty, democracy, people, nation, power, self-mastery, autonomy, etc.

We believe that the time has come to remedy this state of affairs; first, to step out of this homocentric legal monoculturalism which, in the name of Human Rights, is becoming a Trojan horse, an instrument for burying the very traditional but ever living Indigenous legal treasure that it should be uncovering, and second to enter into a juridico-political pluralism which will value as seriously the cosmocentric world of the Indigenous juridico-political vision as that of the more homocentric one of Human Rights.

This seems to us a necessary precondition, if we are to respect the Indigenous reality and a true social order. An order which is neither exclusively Western or homocentric, nor exclusively Indigenous or cosmocentric, but which is enriched and balanced by both, as two constitutive dimensions of one reality and social peace.

It is with this aim that we propose the following:

Concrete proposals

1) That the Human Rights' associations and groups involved with Native rights, and that the International Federation of Human Rights, formally recognize the existence today of a traditional Indigenous juridico-political world, which is radically different in its assumptions from the so-called 'civilized' legal world of Human Rights, whose importance and quality is no less than the latter, and that they start researching it seriously by forming study groups to do so.

2) That these associations who are on Native territory, take the necessary steps, as associations, and before they demand it of their governments and of the United Nations, to be recognized by the Native Nations as such, by formally asking them permission to live on their land, and under what conditions; by consequently modifying, in the light of the Native response, what should be modified in their behaviour. That they invite all non-government organizations who are on Native territory, to do the same.

3) That all proceed to a reformulation of International Law and of Human Rights, jointly with the Native Nations as such, and on the basis of the respective juridico-political worlds of partners in dialogue. That they then propose, first to their domestic government and afterwards to the United-Nations to do the same, through the United Nations Human Rights' Commission.

4) That in fighting for Native rights, they cease, out of respect for the Indigenous legal world, to refer exclusively to titles (discovery, occupancy, conquest), to Royal Proclamations, to Parliamentary decisions, to Man-made Constitutions and even to Man-made Treaties in order to justify their rights, and that they have the courage to base themselves primarily on the first Native argument, which is more cosmocentric than homocentric, namely that their dignity as

what certain peoples call their rights, come from no man or government but from the Natural Order and from the Great Spirit. And to do so, even if this goes counter to a long homocentric legal tradition! For their exists, side by side with the latter, a still longer cosmocentric legal tradition, which is as valid and important, and which it would be deeply unjust to ignore any longer.

5) That they do all they can so that the International Court of Justice change Article 38 of its Statutes and admit as international law also legal principles that are recognized by Nations that are other than the so-called 'civilized' ones, and that it accept to hear and judge violations of their legal world and of their rights, not only as rights but as specifically Native.

6) That they take all means so that the Indigenous Declaration of Principles (Geneva 1977) be recognized as source of international law.

7) Finally, that the Human Rights Declarations, charters, constitutions (national and international), be complemented by a Declaration of Native Peoples' right as Native Nations, to their own juridico-political world. Which presupposes that the Native Nations be recognized as Nations, not only in the sense given to this word by so-called 'civilized' nations, but also and primarily in the sense of the former's own juridico-political world, even if, to start with, one can only do so by using the language of the so-called 'civilized'.

NOTES

(1) A more elaborate description can be found in R. Vachon: "The Contemporary Traditional Indigenous Legal World and Native Rights" in INTERCULTURE, April-Sept. 1982, nos.2-3, Issues 75-76 (These two issues focus on the Traditional Indigenous Legal World today).

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