

DECONSTRUCTING HUMAN RIGHTS: A STANDPOINT FROM THE POSTMODERN UNDERSTANDING OF JUSTICE

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During the last third of the century a special preoccupation has arisen within the academic reflection as the consequence of the loss of trust on the modern explanations of the world. In such a situation, the question has led to the thematization of the problems emerged from the «new international order» by facing them in between the trends which have been shaping the actual condition.

From the sociology of human rights, this preoccupation could imply a questioning about the forms and consequences that human rights assume underneath this context, as well as the changes that this could provoke in the societies of the end of the millennium. On the one hand, the appearance of phenomena strictly related with the internationalisation of the free market economy has set forth new answers aimed to the projection of new scenes of order. Thus, the traditional categories of law, within which human rights have been moving, are put into question. Even if law has been ever considered in connection with society, it has been seen as a representation of the social practices, but, how to represent a representation?. Law is a practice in itself, and it cannot be detached from the social processes. In this context, the «juridification of society» (as a part of the colonisation of the *lebenswelt* described by Habermas) has to be reinterpreted in relation with the related process of «socialisation of justice». Both, enlighten a space where the boundaries among law and society are blurred, giving birth to the emergence of «third cultures» or overlapped spaces where trivialization and vulgarization of law take place.

In between this shifts, the discourse of human rights is also affected, mainly because it has been considered as a sacred value during modernity, even though that privileged position, as well as the

law as a whole, has permitted their instrumentalization. Thus, paradoxically, a strategy to reinterpret those rights implies to take out their «aura» in order to render them effective. How can it be possible?. As I will try to argue, the analysis leads to focus on process which are related with the interaction between the «local», the «regional» and the «global», and later with the definition of the post-modern as its condition of possibility, as the very scene of this interactions; thus to begin by questioning how global the so called global concern really is, or even better, as Mushkoji has pointed out, "*who acts on whose behalf in guaranteeing the survival, development and welfare of which human community?*"¹ is not only preferable; rather an excursus to the topics related with postmodernity and globalization is required. After all this is an attempt to build a theoretical framework where to locate the effective struggle for human rights.

I. Globalization or Westernization?

During the last decade, the discussion about globalization has represented a troubled terrain. Globalization is a very seductive word, and in a way, it could illustrate the anxiety for the becoming of a new era towards the consolidation of genuine interests in a world-wide scale. In fact, many attempts to theorise about globalization have tried to underpin the idea of a structural contingency, of a global complexity where economics, politics and culture play an intertwined role.

In my view, globalization is a process inevitable related with the development of capitalism. It has been at the same time consequence and ground of possibility of the expansion of the market and of

the conformation of a new economical order, with new political actors. Nevertheless, that other factors are affecting this process is undeniable. Even if it is difficult to subscribe to any idea about the existence of a «global culture», the holders of such possibility appeal to the presence of new trends which can be considered empirical demonstrations that a great expansion of the human matters in a transnational level is occurring, at least since the end of the cold war:

- Indeed, the arising of a global market economy with the conformation of commercial blocks based in geopolitical criteria, transnationalization of capitals, financial integration, high mobility of capitals and workers², and the appearance of global consumers³.
- The growing speeches about «transnational» problems as the environmental pollution, the ecological disaster⁴, the nuclear threat and the epidemic disease⁵, as well as problems of large-scale crime, as terrorism, arms and drug trafficking⁶,
- The intensified flows of people, commodities, money, ideas, information and images on a global level⁷.

Albeit such trends can be certainly indisputable, some questions remain unsolved: in what extent can it be possible to say that these trends are truly reflecting something like a global concern? Furthermore, how can these trends articulate a project, and if they, which is the orientation of such a global project?

When talking about globalization, scholars involved in theorising it seek to identify something like a process which tend to set the human matters in a transnational scale, in order to overcome any individual, communitarian, national or international interests in behalf of the conformation of a very «human condition»: a *long-term integration of humanity*⁸, a *secular ecumene*⁹, a *universal union*¹⁰ or the *crystallisation of the entire world as a single place*¹¹. At the same time most of the authors assume that globalization must be understood as a process of recognition of the diversity which nevertheless must lead to a peaceful integration of the world, able to resist the cultural colonialism. Nevertheless, departing from the confrontation of such discourses with the actual reality, globalization appears like a set of contradictions or even better as an "...*eclectic patchwork (...) a mixture of ethnic elements, streamlined and united by a veneer of modernism on a base of scientific and quantitative discourse and computerised technology*".¹²:

a) even though it could be considered one of the latest signs of modernity, it encloses pre-modern forms of colonialism based in spatial notions of power concentrated in supra-state sovereigns: global monopolies, transnational enterprises, and hegemonic countries;

b) different from any other stage in the history, the global condition develops itself in a world-wide network of communications, but the higher development of the mass media and the telematics, has not really meant the improvement of the human communication but, otherwise information has become a value in itself a very powerful tool which has permitted to know with growing degrees of certitude the behaviour of the markets all over the world, the situation of currencies as well as the speculation with commodities and rate of interests;

c) «cultural» patterns travel around the world broadcasting images of what is happening elsewhere almost at the same time that it is really occurring. A sense of «ubiquity» is possible by means of the satellites: cellular phones, faxes, e-mails and the new informatic highways. The informatic revolution has made possible not only to know the way of life in Japan or the native American traditions, furthermore the possibility to confront and share data to establish the diagnoses of a sick woman in china via internet¹³, or the possibility to work miles away of the work centre, at home or even in another continent just being in touch by means of a computer¹⁴ is completely possible nowadays, but at the same time it has provoked dehumanisation, desensibilization and even the generation and spread of selected patterns of behaviour, as sort of *televisionization* -let us say- of the everyday life¹⁵;

d) the progress of communications have made possible as well the mobility of growing quantities of immigrants, refugees, guest-workers, businessmen, intellectuals, tourists, diplomats, militaries, and the possibility to get elsewhere goods and commodities produced everywhere in the world in such a way that it is possible to find native places in the biggest cities as well as metropolitan centres in towns and villages, but behind the image of cosmopolitanism that this could seem to express, there is also a quite well designed strategy aimed to potentialize the marketing of the world landscape according with the necessities of the transnational consumers:

business, leisure and resort , adventures, «homelands»¹⁶, in fact, the western values are in this way received and disseminated according to the own costumes and values of the recipient peoples, the revival of ethnic myths, the wear of indigenous clothes, the diffusion of the native plates and tastes are always shaped into a western pattern.

- e) whereas there is a growing call for the respect of human rights and democracy, as well as for brotherhood and solidarity, interesting cultural phenomena like new forms of feudalism, regionalism, nationalism and fundamentalism has shown the brutality of the human destructive capacity. In fact the appearance of this particularisms call the attention to the desegregation of the universal ideal into new forms of cultural partitioning. In Europe, for instance, the search for integration, which has included as non in the world economy, policy and culture¹⁷ contrast with the shadows of intolerance and segregationist which have given the floor to internal and external processes of regional fragmentation: within Europe, the claim for unity is tinged with the unbearable presence of historical conflicts among the Europeans themselves: Bosnians, Basques, Irish, Chechenians; in regards to the outside, the movements against immigrants and refugees, the sparks of racialism (skin heads, bone heads), and the strengths of policies against immigration, not to talk about the obstacles to the integration of the eastern European countries. In the other side of the Atlantic Ocean beyond the project of north American integration, the contention of immigrants is one of the most important preoccupation for the United States, not to talk about the appearance of sects and right-minded paramilitary movements. In Asia the arising of fundamentalism in the middle east is provoking tensions as well, threatening again the weak peace in world. Fragmentation is also present in Sri Lanka, and other Asian nations.

In brief, all this contradictions can be summarised in a central paradox: any attempt to find a real globalized culture "*...must work with materials destined for the very projects which it seeks to supersede -the national identities which are ultimately to be eradicated.*"¹⁸ In spite of what Robertson wants, at this point, any reference to globalization seems to be done within an «intellectual play zone» which could locate "*...the residual social-theoretical interests, interpretive indulgence, or the*

display of world ideological preferences..."¹⁹. Thus, what seems to be clear is that the old practices of intolerance, the extreme use of techno-rationalities, and the appealing to an ecumenical *weltanschauung*, still being the mainstreams although in a new perspectival scene. In fact, those ideological weapons that historically have meant the slowly but effective westernization of the world give the sensation that the crusades have not finished yet; rather, that the crusaders of the post-industrial era have left the armours. Nowadays they use internet.

II. The Post-modern Attitude

The briefly analysis made above is aimed to problematize the actual condition. In fact it is aimed to underpin how complex the actual reality could appear. Rather than the phenomena described, what I want to stress is otherwise, that beyond those trends themselves what must be focused is the place where they emerge, because is there where they get their meanings. In other words, what I try to suggest is that those features cannot be understood as linear isolated phenomena, but as vectors within a given spatial-temporal matrix which renders them possible. Given the complexity that such a matrix implies, the narrowness of the modern categories emerge as an impossibility to render them understandable. In some extent this is what some authors have baptised as the «post-modern condition».

Either as a term or as a concept postmodernity has provoked every kind of reactions. Originally, the idea of postmodernity emerged in the realm of aesthetics in regards to "*...the emergence of ostensibly novel cultural forms*". Generally speaking its origins can be located in the fifty's and it has to do with a reaction to modernity and modernism which very soon reached also the realms of ethics and science. Paraphrasing Sousa Santos, it is possible to say that the main feature of this new search is *the desire to cross the borders, to mix the codes and to revive the adversarial sense of life* (which is present on arts, sciences and moral) *not by negating the world, but by affirming it and by diving deeply into reality*²⁰.

Not by chance the idea of post-modern has been challenged either from left and right intellectuals²¹. Since the fact that it has been related with the exhaustion of modernity, postmodernity is expected to be something as an overcome of the non fulfilled promises of modernity. Nevertheless, as far as I see, at the basis of any talk about it, rather than a solution to the modern aporias, there is a reference to

a peculiar *hic et nunc*, a place where linearity breaks in plurality and where plurality becomes the keyword to understand the disruption of the binary codes of modernity. In fact, postmodernity is the horizon where to realise about the limits of modernity. In this sense, maybe the most comprehensive conception about postmodernity appears in Michel Foucault, according to whom «postmodernity» does not mean, as it may suggest, some kind of new age that will occur after modernity, not even a latest stage of the modern paradigm; otherwise it must be understood as an attitude, that is as a mode of relating to contemporary reality; a voluntary choice made by certain people ... a way of thinking and feeling; a way, too, of acting and behaving that at one at the same time marks a relation of belonging and presents itself as a task²².

From this point of view postmodernity becomes a meta-narrative; it calls for a challenging position, but not from an ingenuity standpoint. Otherwise, it seeks to face reality by de-constructing its narratives.

Traditionally, the modern western thought demanded a linear way of thinking and problematizing things constructed upon dichotomies which expressed bipolar tensions: culture/nature, subject/object, society/individual, state/civil society, public/private, and so on. The absence of mediation among this poles expresses itself in a sort of pendular movements which come and go from one to another pole of the dichotomy giving the sensation of revolutionary shifts. As Santos points out, at the bottom of this dichotomies the image of such a pendular movement is drawn by the polar distinction between self-referential conceptual constructions and disorganised empirical contents, i.e. between formality and informality²³. In the linear history of modernity this imagery has shown the transfer from formal to informal by means of destructure. Actually, at least from the second half of the last century, history is witnessing a reaction against the formalist wave of the nineteenth century (statalisation, juridification, professionalization), towards the pole of informality in several fields of the human action (decentralisation, deinstitutionalisation, delegalisation, deprofessionalisation), which presents itself as a contesting movement against the narrowness and incapacity of the formality to face the challenges of a changing society. Informalism's defenders sought to find a way to escape from the formal discourses of modernity (from state, from law, from science) holding a banner of liberation; as Cohen said, it can be framed as reflex of the wishes of the sixties' generation: "*small is beautiful, human beings are not*

machines, experts don't know everything, bureaucracies are inhuman, institutions are bad and against nature, community is good and natural"²⁴. But nevertheless, as some scholars have stated, informality has meant not only to enlarge and to sharpen the webs of formality throughout informality, but, in fact to disorganise the spontaneous responses of those who never would recourse to formal institutions anyway:

Informal institutions control by disorganising grievance, trivialising grievances, frustrating collective responses. Their very creation proclaims the message that social problems can be resolved by fiddling with the control apparatus once more, that it is unnecessary to question basic structures²⁵.

As Sousa Santos explains, twenty years later, the results of such movements towards informality had finished by showing that:

Invece di una mediazione, di cui il progetto della modernità si è sempre mostrato carente, è venuta a manifestarsi una progressiva approssimazione fra i poli delle dicotomie, a tal punto che ciascun polo tende a trasformarsi nella copia del polo cui si oppone. In questa dimensione, le dicotomie che soggiacciono al progetto della modernità tendono a sciogliersi e i movimenti di oscillazione fra i suoi poli sono più apparenti che reali²⁶.

What can be followed from aforesaid is that both, the categories expressed by each pole and the dichotomies created among them, were reifications of the issues they are trying to refer, stories utilised to describe processes that, however, transcend them. Generally speaking such stories have been constructed upon some *topoi* which make of the stories pretended discourses of truth. The conclusion to which Sousa arrives, stresses the fact that these stories are actually relativized, that is that behind the constructions of the dichotomies there is a space where the material expressions of that categories appear overlapped one in another showing *other* spaces, or orders where «codes are mixed» in such a way than whether formal or informal become nonsense in themselves, spatial notions where they co-exist displaying intersections, or what has been called «third cultures». From this point of view, modernity is better understood as a set of discourses aimed to cover such spaces as a way to map reality from a rational bidimensional standpoint.

2.1. A post-modern map of Globality

Whereas the modern map was built throughout those linear binary codes, the post-modern attitude seeks otherwise to map reality by rendering visible the matrix which is subjacent to the modern narrative. To map from the post-modern implies to scale, to project and to symbolise²⁷ from an interdependent standpoint, i.e. to re-signify the meaning of reality by relativizing the modern discourses in order to render them nothing but stories. Scale is expected to show the different levels of reality (local, regional, global), projection must show the intersections among such levels (local globalisms, global localisms) and symbolisation should permit to restore the continuity between reality and its discourses by means of figurative and emotive signs (loyalty, co-operation, concertation) rather than the discontinuity which the divorce between the reality and its representation with conventional cognitive signs produce. In this way, reality is not confused with the discourses.

In this sense, maybe the most interesting attempts to map the «global mess» has been done by Arjun Aparadurai²⁸ who has tried to elaborate a map of the current era by describing it as a «complex, overlapping, disjunctive order» which is pointed out in between five dimensions: ethnoscaples, mediascaples, technoscaples, finanscaples and ideoscaples. In his words:

...the common suffix escape(...) indicate(s) first of all that these are not objectively given relations which look the same from every angle of vision, but rather that there are deeply perspectival constructs, inflected very much by the historical, linguistic and political situatedness of different sort of actors: nationstates, multinationals, diasporic communities, as well as subnational groupings and movements (whether religious, political or economic), and even intimate face to face groups, such as villages, neighbourhoods and families. Indeed, the individual actor is the last locus of this perspectival set of landscapes (...which...) are the building blocks of (...) «imagined worlds», that is, the multiple worlds which are constituted by the historically situated imaginations of persons and groups spread around the globe²⁹.

Briefly,

- «Ethnoscaples» refer to the moving groups and persons which appear to affect the politics of

and between nations to a hitherto unprecedented degree³⁰;

- «Technoscaples» are the global configuration, also ever fluid, of technology, and of the fact that technology (...) now moves at high speeds across various kinds of previously impervious boundaries³¹;
- «Finanscaples» mean the landscape where the disposition of global capital is now a more mysterious, rapid and difficult to follow than ever before³²;
- «Mediascaples» appeal to the distribution of electronic capabilities to produce and disseminate information (...) which provides large and complex repertoires of images, narratives and «ethnoscaples» to viewers throughout the world³³; and,
- «Ideoscaples» are concatenations of images(...) but directly political and frequently have to do with the ideologies of states and the counter-ideologies of movements explicitly oriented to capturing state power or a piece of it³⁴.

According to Aparadurai, this landscapes are completely intertwined, and the current facts occur *in* and *through* the growing disjunctures between all these scenarios. By taking in account this landscapes, another conceptualisation of reality can be attempted, because any phenomenon could be located in between them: the combination of scalar, projective and symbolisation dimensions permit to construct the phenomenon as unique and unrepeatable and at the same time as changing and relative. I will come back to this later. At this moment I just want to stress the possibility to deconstruct the absoluteness of the modern discourses by appealing to this model, and the opportunity to re-build the social practices, instead of creating them from above, by departing by taking in account this scenarios, since the fact that they render possible a new set of the possibilities to act in between the disjunctures of this landscapes. As Aparadurai points out:

The critical point is that both sides of the coin of global cultural process today are products of the infinitely varied mutual contest of sameness and difference on a stage characterised by radical disjunctures between different sorts of global flows and the uncertain landscapes created in and through these disjunctures³⁵.

3. absolute Postmodernity, Law and Human Rights: How to Represent the Representation

One of the main characteristics of the modern discourse regards with the fact that reality is seek to be deciphered through representations. In this sense, every attempt to construct a code to understand such a representation become a representation of the representation. Formally token every representation is nothing but a meta-language of the represented. But, certainly, as it was well conceived since the nineteenth century by Pearce, and later by Russell and Wittgenstein, this never ending recourse to representation leads inevitably to an apory where meta-languages are required to be constructed *ad infinitum*. In regarding to what here concerns, either law and human rights have been at the same time represented and considered as representation of reality. But, isn't in this sense, that any recourse to a broader comprehension of law or human rights -as in the case of the sociology of law and human rights- must face, as Resta³⁶ has expressed, the risk to become a representation of the representation? To this question there could be drawn two simple possibilities: yes, if the starting point departs from the need to theorise about law and reality; no, if law, and then human rights, are understood themselves as reality. Whether a post-modern understanding of law and human rights is possible, to understand them as the reality is possible too: paraphrasing Resta, law and human rights are what they are.

3.1. The post-modern and the law

Beside science and art, law has been, undoubtedly, one of the great stories of modernity. Certainly it was tough "...as the guardian of the boundaries between the state and the citizen and of the boundaries between individuals, both sets of boundaries being marked by legal rights"³⁷. Nevertheless, whether the categories of state, individual and citizen become relative from a post-modern perspective, the privileged role of law falls down in the vacuum. And this is not just an intellectual assumption. Furthermore, the distance between law and reality has been advertised at least since the time of the Legal Realism.

In the realm of modern law, the impossibility to sustain neither a pure theory of law nor a formalist legal practice slowly discovered a particular sociolegal context hidden by «the model of rules», where freedom, de-regulation, contractualization and conventionality appeared as a quotidian matter. In fact, such a context has shown -and also provoked- different attitudes towards law and norms, from scholars or from lay people either:

- a) the studies on the role of law in postcolonial societies showed in what extent lay people have had their private own understanding of law, as well as the way in which several levels and generations of norms live together in between mixed and overlapped codes. Aside to *official* law, the co-existence of other kind of norms which run from what has been called intuitive law to a sort of «hidden rules», lead to the relativization of the idea of a state monopoly of legality. Instead of that, the recognition of a multiplicity of different legal orders revealed the presence of phenomena of legal pluralism, legal plurality and interlegality. The picture offered in those postcolonial scenes was soon verified even in the so called *Rechtsstaat*, where positive law plays just a role in between other forms of governmentality schemes³⁸. Thus, community, local, regional, national and international rules, whether legitim or not (scale dimension) overlaps among themselves in between egocentric -based in consensus- and geocentric models -based in conflict- (projective dimension) symbolised sometimes as instrumental legality -discontinuous ritualised moments symbolised by conventional, cognitive signs-, and some other times as imagetic legality -restored continuity of the social-juridical reality, by means of figurative emotive signs- (symbolic dimension)³⁹.
- b) specially in the more advanced countries, this recognition has fostered the arising of new legal topics, new jurisdictional areas, and consequently, new conflict arenas. In fact this shows the increasing complexity of the legal realm⁴⁰. In fact, even positive law becomes more and more "...explicit liquid, ephemeral, ever negotiable and re-negotiable, disposable". Instead of what the absolute universal narrative of the modern legal discourse pretended of law, this «contextual legality» is created and finely tuned to the momentary interests of the parts involved in a given conflict and to the power relations among them. In a few words, this has lead to the recognition that there is a surplus of legal knowledge and, consequently, to the trivialization of law -that is to say, to the vulgarization of the legal discourse.

What is really interesting to note is that this doesn't denies the fact that, formally token, modern positivistic paradigm of law still governing social relations, but it stresses as a matter of fact that other forms of legality coexist within it, and that the more

terrain is gained by the recognition of alternative legalities, the more corroded become the symbolic stance of the modern one; desirably in this process, the first should increasingly force the later to descend into the materiality of the *hic et nunc* in order to provoke that the positivistic legal discourse doesn't remain static and ignored, but becomes really effective, even if this mean to be devaluated as a pure normative reference. In this sense to take the risk of the trivialization of law could signify the possibility of a new way to appeal for justice.

3.2. Deconstructing Human Rights

Within the described context human rights are inevitable concerned. Even if modest, in the early modern discourse they certainly wore a paramount investiture, but perspectivaly, and probably in a grater scale than the law, nowadays human rights are in the way to be constructed as the most important narrative of the latest stage of modernity. On the opposite of what a traditional theoretician could think, is this what must be avoided, since the fact that the sacralization of rights will imply, as one can learn from the history law, their stagnation. This assumption implies a very interesting challenge which should try to dissolve theory in practice, this is to say, to deconstruct human rights discourse in its very reality. In other words, it means a resignification of the notion of «rights» to render it central, not in the discourse (or not only in the discourse) as it has been pretended, but rather in «action».

In fact, different from law, probably one of the central features in regarding human rights is that, whatever they are, there is a pragmatcal recognition of their necessity. But this could be double-edged knife, because that privileged position has been the condition of possibility of their instrumentalization. At the same time however, that pragmatcal recognition appears as a disjuncture on the human rights discourse. By using Apardurai's⁴¹landscapes, human rights appear, in between of the actual condition, as a consustantial part of what he has called «ideoscapes» at the place of one of the highest values of the humankind. From there, the discourse is projected to the other landscapes with the shape of a human global concern. As well as the other modern narratives the spread of human rights discourse is supported upon certain dogmatic assumptions conceived as shared fundamental issues which rest on certain dichotomies related with fundamental values. Each one of this assumptions is considered as an

untouchable truth which however creates oriented attitudes. In order to analyse them, I will try to depart from identifying such topoi or common places with the ideals of the French Revolution since the fact than Fraternitè, Egalitè and Libertè still be considered as leading values in regarding to the struggles pro human rights. Then I will try to relate the topos to the dichotomies that they have created and with the rational principles which support them, as well as to draw the attitude from this topos derived:

a) *Fraternitè*. Fraternity enclose a call to find the unity on diversity. On the top of such topos the human becomes the core value. Here, humankind is conceived as an absolute issue in such a way that everything which is considered human becomes untouchable (human beings of course, but also art, knowledge, technology). But whereas unity and humanity are enabled as leading values, plurality and dishumanity are created as their opposite poles. Consequently the dichotomies between human vs. dishuman and unity vs. plurality arise. In front of the alternative, modernity privileged humanity and unity. On the one hand, modernity set all the human matters as a central part of all the discourses, but at the same time it also true that it reduced human beings to a white-western-male model. In such a perspective everything which is not conceived according to that model is risked to be considered as inhuman. Thus, some ancient practices as well as traditions of non western societies appears as inhuman at the first sight because they become unjustified from the western standpoint. In fact, the narrative on human rights frequently forgets that "*chaque culture a sa propre vision du sens qu'il convient de donner a l'existence du monde et de l'homme...*"⁴², and therefore that enable one and unique discourse on what the human rights must be becomes an imposition. Aside to this consideration, on the other hand, the call for unity appears in despite of the difference, and is supported by the idea that the late must surrender to the first. In this case the discourse seems to be aimed to reduce the cultural plurality in a formal discourse of unity.

Underneath both dichotomies the rational principle which is working is that of "certitude" which gives to the discourse the image of untouchable truths (nobody could openly accept to be against humanity, as well as almost everybody should agree in the idea that if plurality is permitted to be submitted in a

broader appeal to unity). In a way, by means of certitude, if humanity and unity can be moral and ethically supported then they are the right choice.

As a direct consequence this dichotomies have shaped an attitude that assumes the form of anthropocentrism. In this sense, human as a united group of wills and necessities is located at the top of all interest, no matter how far this interest could go even in regards with the destruction of what is not human (this is the case of environment, for instance).

- b) *Egalité*. Closely related to the discourse on humanity and unity but in another level, the call for equality has lead towards universalism and both equality and universalism have drown also another dichotomies: equality versus difference and universality versus particularity.

In regards to universalism/particularism modernity has set forth that the discourse about human rights must rest on a universal view and as we have seen, the efforts to render human rights universal has been a central issue since the post-war. But here again history has shown how universalism could enclose the seeds of colonialism. As Rouland says:

l'universalim et les droits humaines ont souvent servi de prétexte à l'application de la loi du plus fort. La colonisation s'est nottament basée sur la nécessité de mettre fin à des pratiques "inhumaines"⁴³.

As well as in the case of the search for a global culture, the call for universalism means by definition the annihilation of the particularism. But here again arises the fact that some particular ideals are as valid as some of the considered universal, and viceversa some universal ideal become non-sense in a particular context. At the same time, the idea of equality which is still considered as one of the pursuable goods of the human kind, crashes with the fact that society and human relations are constructed upon inequality: sexual, economical, political, and culturally token. Individuals are different among themselves and they express different necessities as well. Even the situations on the life of one individual are different according with the context, the age or the condition of that individual.

Nevertheless, within the modern discourse both universality and equality are considered as aims

that must be reached. In this sense they are understood as non fulfilled promises and that's why the rational principle behind them is "probability". Even if they are not truth, they are possible. Thus, the discourse is oriented towards universalism and equality of man, but as far as it still considering the western model the attitude here involved leads to ethnocentrism: western is universal and sameness is equal.

- c) *Libertè*. Libertè is a call for freedom. Originally it was conceived as freedom against the authority of the state, as a limit of the realm of state. Nevertheless, slowly this call for freedom becomes institutionalised by means of law, specially through the juridification of the everyday life. In this perspective the opposition between state and what has been called civil society has grown.

Modernity privileged state and institutions, and in this sense, a legitimate call for human rights should be made throughout those institutions: human rights courts and commissions, law, international instruments. Since this fact, human rights became institutionalised to the point that they are valid just if they are part of the positive law, and that they are defensible to the point that it is possible to do it by means of governmental institutions. The rational value involved, thus, is "trust" and it is related with the idea that institutions, better if democratic, represents the right way to do the things in behalf of the common welfare. In this sense, the attitude involved lead to a egocentric attitude which seeks to filtrate and reduce dissatisfaction through institutionalisation.

Topos	Dichotomies	Principles	Attitudes
Fraternitè	a) Humanity vs. Dishumanity b) Unity vs. Plurality	Certitude	Anthropocentrism
Egalitè	a) Universality vs. Particularity b) Equality vs. Inequality	Probability	Ethnocentrism
Libertè	Government vs. Governance	Trust	Egocentrism

At this point the analysis of this *topoi* leads to the conclusion that human rights in its modern form are a globalized western localism aimed to reduce plurality, difference and social organisation into a discourse of unity, equality and positivation.

But on the other hand such a lecture permits to think of human rights in a very different way. In this behalf, there is a necessity to reconsider the traditional value of the described *topoi* in order to resignify them. Thus, new *topoi* arise, not as a theory on human rights, but otherwise as guidelines to the action:

A) Human rights are not absolute

Human is not an absolute value because there is not a unique way to define what human must be. Otherwise, human must be defined in a situational way, i.e. by taking in account the specificity and contingency of the human being. There is no use to talk about human in abstract, rather is better to understand that human are women, child, aged people, as well as black, Indian or Asian. Furthermore is useful to set this contingency in between other situations because is not the same to be a Cuban black old woman in Nicaragua than a young Muslim in Germany. In this perspective, there is a need to recognise also that certain human beings have certain necessities in certain moments poor, damaged, prisoners, immigrants, refugees, ill, and so. This not mean to recognise diversity upon unity,

but to find that unity is defined by diversity and viceversa. The point where unity and diversity overlaps marks a contingency, i.e. the moment in which a orphan Cherokee boy is not *a* human but *the* human; absoluteness finds its place in relativeness and contingency.

On the other hand there is also a necessity to recognise that human is not at top of world. In fact many ancient peoples recognised that human beings are just a part of the world and that some equilibrium must be pursuit in order to survive. This enclose a responsibility to take care of nature and ecology and as far as it is possible, to restore the damages caused on the environment or at least to try not to cause more damages. This is the world we are living in but, this is also the world where animals and vegetables live, in the extent that they survive we will be able to survive to.

B) Human rights don't need to be universal

Since the fact that "...all the cultures tend to define as universal the values that they consider ultimate" there is a need to abandon the idea that human rights are a universal shared concern. As Sousa Santos says, human rights are universal only when viewed from a western standpoint. Otherwise, there is a need to recognise the validity of particular standpoints as far as they are valid in a certain community. This is not a call for particularism; on the opposite is a call to seek where universal and particular intersects. The world is multicultural and every culture has its own beliefs and values. Even within some western states there is not a unique culture but several peoples which live with quite different costumes and values among them. But it is also true than non culture is considered as a closed

system. Culture is open and from this perspective there are spaces of interculturality (or cross-culturally) where completeness is at least imagined. In this sense, cross cultural spaces define possibilities for contingency and consequently possibilities to achieve a broader conception of human rights.

On the other hand this implies the explicit recognition that men are not equal, and that because we are not equal we *must* be treated as if we do. The recognition of the existence of differences also permits to relatives the anxiety for universality. Homosexuals, for instance, are not universal – in the sense that heterosexuality or bisexuality also exist – but sexual preferences certainly are universal in the sense that everybody (animals included) have one. Prisoners are not universal but punishment is. Since this perspective the particularity of difference have also its universal face. Consequently, human rights must be reached at the moment and for the people who needs to be protected according with the *weltanschauung* of his/her community, better of course if such a vision combines when a world-wide spread value

C) Human rights are rather than their proclamation

Finally there is a need to recognise that the declaration of rights as well as the existence of institutions aimed to protect those rights must not to be confused with the rights themselves. Human rights are not the contained in the Universal Declaration or in the several instruments of the UN. At the most, that can be their representation. But human rights are what they truly are in the social reality. In this perspective rather to proclaim new generations of rights there is a need to embed a culture on human rights in society in such a way that those rights become social constructions which depart from below to above. This is not to say that national or

international instruments are not useful. They are of course. But they are nothing but instruments. In any case they can be considered as reference but not as an aim in themselves. Institutions are useful just as far as they can facilitate the struggles for rights. When institutions are not sufficient there is a need to seek

for another measures. But in any case which is important is to note that human rights must be constructed by each community.

By following Sousa Santos, through the brake-through of the modern discourse of law, the opportunity to set free the micro-rationalities contained in the boundaries of the current global mess could lead to reinvent them as totalities present in many parts, rather than parts of one totality. The way to do it, lies in the possibility to recognise plurality through the difference and to trivialise the positive law, throughout a micro-revolutionary legal activism able to organise the post-modern struggle for rights in the combination of state law with non-state forms of law and legal knowledge. As Sousa Santos writes:

Hoje começa a predominar um pensamento de emancipação concreta, um pensamento contextual que não recusa o caráter utópico dos direitos humanos mas exige que a sua utopia, por mais radical, se traduza num quotidiano diferente, no mapa de um novo modo de vida mais autêntico. Paralelamente, torna-se cada vez mais evidente que a luta contra a dominação, e a exploração só é eficaz enquanto luta contra a alienação (...) Esta emergência do contexto significa, antes de mais, a revalorização da sociologia dos direitos humanos. Não se desconhece que as declarações dos direitos humanos têm eficácia simbólica em si mesmas mas exige-se que essa eficácia não se obtenha à custa da ocultação da discrepância entre tais declarações e a vida prática dos cidadãos, exige-se em suma que os direitos sejam efetivamente aplicados.

This is a call to attend what society is able to get, and in what extent a sacralized idea of human rights can be an obstacle to that. Thus the hypothesis which arises here suggest a new approach oriented to the restore a new sense of justice, by means of social action.

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