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Rights' Global History. The Making and Unmaking of the History of the Rights of Man according to a Non-Eurocentric Perspective

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ABSTRACT

This paper expresses the effort to reinterpret the history of the rights of man, and of human rights thereafter then (starting from 1948), from a non-Eurocentric perspective. This is a very specific project that naturally is not meant to retrace the phases of the Western history of rights, but neither is the point to compare the Western conception with those of other legal traditions, such as the Islamic one. In short, the attempt is not to read the history of the rights of man as a progression involving the recognition of increasingly large spheres of freedom carved out of the sovereignty of Western states (as Georg Jellinek saw it), nor is it to read that history as a slow and belated delimitation of national sovereignty in international relations since the end of World War II. To introduce a non-European perspective is instead to analyze the role of the Western conception in leading to the ascendancy of the West over other civilizations and cultures on the ground of the anthropological representation of a non-Western otherness.

Keywords: man's rights, western civilisation, humanitarian intervention, muslim psychiatry, human rights, islamic concept of human rights, third world and human rights, psychical universality and cultural diversity

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1. A Western History of Rights

Let us consider first of all the history of man's rights according to a Eurocentric perspective.

We can specify the following periods:

- The concept of people's rights in the first half of the sixteenth century.
- The religious origin of the rights of man from the second half of sixteenth century to the first half of the seventeenth century.
- The process of *secularization* in the seventeenth century.
- The concept of the rights of man as grounded in natural law from the seventeenth century to the end of the eighteenth century, that is until the age of the American and French Revolutions.
- The concept of the rights of man as grounded in the law in the nineteenth century, that is during the age of the rule of law.
- And finally the age of constitutional democracy and the concept of fundamental rights as grounded in the constitutions from the twentieth century to now.
- We have to also consider the perspective of so-called international constitutionalism, that is, the concept of human rights as grounded in international covenants, declarations, and conventions.

It is very important to consider that we are only dealing with the *Western history of rights*, which is quite different from other conceptions of rights in different civilizations and cultures, and this consideration implies that we have to accept the perspective of *relativism* in considering the question of the rights of man. In fact the idea of the rights of man in the Western civilization is quite different from what it is for instance in the Islamic civilization.

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2. The Roots of Colonialism

But let us now analyze the discrimination that followed as a result of grounding the Western concept of the rights of man in the representation of a non-Western otherness.

The beginning of our reconstruction goes back to the first half of the sixteenth century, to the important school of Salamanca, and in particular to the ideas of Francisco de Vitoria, who had to answer to the questions posed by the discovery of the "New World."

At the basis of his concept of man there was the Stoic philosophy that all men have the same material and spiritual nature.

On this basis he could declare in his important work, *On the American Indians* (Vitoria 1991a), that the Indians, too, had rights as a people and in particular property rights to their lands.

Vitoria claimed that the Indians had natural rights as Christian peoples, including rights to property and lordship. By virtue of their natural rights to the so called *dominium*, "before the arrival of the Spaniards these barbarians possessed true dominion, both in public and private affairs" (Vitoria 1991a, 251).

Moreover, Vitoria said that: "they could not be robbed of their property, either as private citizens or as princes, on the ground that they were not true masters (*ueri domini*)" (*ibidem*).

But there was a problem: If they had the same material and spiritual nature as Christian peoples, why were their habits and customs so different?

The answer was that there is a difference, from an Aristotelian perspective, between the term *potentially* and the term *in the act*. So the Indians are *potentially* rational as Christian peoples, but *in the act* they have not yet reached the same level or degree of civilization as Christian peoples: "the potential (*potentia*) which is incapable of being realized in the act (*actus*) is in vain (*frustra*)" (*ibidem*, 250).

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On this basis it was permitted the Spaniards would be justified in governing them in order to let them advance towards the so-called civilization.

In these considerations we can see the beginning of the Western idea of colonization, because there is clearly the idea that there is only one way to civilization, the Western one. There is no idea of the possibility of roads to a civilization different from the Western one.

Further, at the foundation of the international community conceived as a *communitas orbis*, Francisco de Vitoria placed a *ius communicationis ac societatis*, along with all the branches of law which acted as corollaries – the *ius commercii*, the *ius migrandi*, and so on –
and which also served to legitimize the Spanish conquest. Indeed, if the Indios had prevented the Spanish from establishing across the land and in perpetuity a law the Spanish themselves accordingly proclaimed to be universal (such that no harm would follow from that establishment), the Spanish would have been justified in waging war against the Indios. This breach of a system of law that Western doctrine had proclaimed to be universal would serve as cause to launch a "just war" against the Indios.

As Onuma Yasuaki (1993) has pointed out, this doctrine was held up against "barbarians" and against the *perpetui hostes* of Christianity, namely, the Turks and the Jews.

This conception went so far as to deny freedom of religion to the *infidels*. In the *Relectio de jure belli*, in the first part of the fourth question, Vitoria discusses "what, and how much, may be done in the just war." Taking up the first doubt, he asks "whether it is enough for the just war that the prince should believe that his cause is just." Vitoria resolutely answers no, for if a prince's opinion that he is in the right is enough to make a war just, "it would otherwise follow that most wars would be just on both sides" (Vitoria 1991b, 306). So it would happen that "even the wars of Turks and Saracens against Christians would be justified, since these peoples believe that they are serving God by waging them" (*ibidem*).

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In this way, religion breaks into the scene in framing the relation between war and justice, for the problem is no longer how to redress a wrong but how to deal with a *different faith in God*.

Once more Vitoria's conception is put to the test, and in facing the complexity of the challenge at hand, he simply asserts the certainty of the truth of Christianity, by saying that the Turks and the Saracens *believe* they are obeying God, with the implication that their belief is erroneous.

Western reason and Christian doctrine set thus themselves out as a granitic monument that neither the reasons of the Indios nor the faith of the Muslims can chip away at.

3. Hugo Grotius: the Civilizing Mission

A century later, Grotius's doctrine asserted the *jus gentium* as the basis on which the East Indians' lands and resources could be expropriated. His approach reveals a deep ambiguity. For in *De iure predae* he claims that the peoples of the East Indies have rights that they can assert against the Portuguese. To claim that the infidels have no ownership of their goods is to commit heresy, Grotius argues, and to take what they own away from them is to commit thievery and plunder, no less than if the same was done to Christians (Grotius 1868, cap. XII, 209)[1]. In the great world community, the rights of peoples had to be guaranteed *regardless of any differences of faith*. That is an important *de jure* statement! We will have to ask whether that principle was also followed in practice.

Grotius added that Plutarch before him felt that the barbarians' civilization was only a cover for greed, or, stated otherwise, he thought that an undue desire for the property of others was disguised under the pretext of the need to bring civilization to barbaric areas (Grotius 1868, cap. XII, 209; see Plutarco 1958, 763). It is extraordinary to find in the classics of international law the same arguments that to this day "Western civilization"

[1] In the acknowledgment of the native populations' rights, R. Higgins (1992, 278), has read an anticipation of the self-determination's right of the peoples.

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deploys to extend its hegemony over other regions and civilizations on Earth!

In reality, this defense that Grotius mounts in support of the rights of the peoples of the East Indies was entirely instrumental to the purpose of preventing the Portuguese from achieving a commercial monopoly over those lands.

In fact, Grotius himself argued that their rights could be violated.

Indeed, in *De jure belli ac pacis* (1913), he provided arguments legitimizing the colonial expansion of the West. In Book III, chapter II.V, he stated that if in any foreign country a judgment was pronounced contrary to law, it would be legitimate to intervene so as to reinstate the breached law. Here Grotius was clearly appealing to a denied law (*jus denegatum*) in virtue of which it was legitimate for Europeans to intervene in the lands of Asia, America, or Africa so as to enforce the law of the European nations.[2] It is quite apparent that here he is setting a "just" Western law against the law of the native peoples.

Elsewhere Grotius sets out the principle of a right of humanitarian "intervention," but this only winds up legitimizing Western intervention in the internal affairs of non-European countries. This happens, according to Grotius' perspective, when foreign sovereigns are considered so brutish and outrageous in their conduct as to bring on an external intervention. Indeed, as Grotius argues, if subjects cannot legitimately take up arms even in extreme cases, it does not follow that others cannot take up arms on their behalf.[3] The obstacle that prevents subjects from resisting does not also hold back those who are not subjects. For this reason Grotius invokes Seneca, saying that it is permissible to start a war against those sovereigns who do not belong to our people but oppress their own people. He is referring in particular to a situation that is often the reason why innocent people need to

[2] Grotius (1913, 446), "[…] exteri autem jus habent cogenti […]": "foreigners have the right of compulsion." See. about it, Naoya (1993, 254).
[3] *Ibidem*, Lib. II, caput XXV, § VIII : "Non tamen inde sequetur non posse pro ipsis ab aliis arma sumi."

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be defended.[4] Some commentators have even seen in these remarks by Grotius the first statement of the principle of humanitarian intervention (Lauterpacht 1946, 46)[5]. Others, by contrast, have only seen in his thought no more than an attempt to legitimize European expansion and imperialism (Röling 1992)[6].

The same ambivalence also runs through Grotius's reflection on the relation between Christian and non-Christian peoples. Indeed, on the one hand, Grotius said that there are no grounds for imposing the Christian religion by force,[7] but on the other he thought it *was* legitimate to punish and wage war against those who "persecuted" Christians. Grotius does not inquire into the possible causes explaining why Christians might be persecuted. He merely confines himself to stating that there is nothing in Christian doctrine that can harm human society: indeed only good can come out of it.[8] Nor can the hostility be explained by pointing out that what is new can cause alarm, nor is there any justification for aggression against a group of honest men. In short, Grotius concludes, there is no question about the goodness of the Christian religion: it is reality itself that speaks [!], and foreigners are forced to recognize that fact.[9] The reasons that foreigner may have for their action are irrelevant. *The truth borne by the Western Christian*

[4] *Ibidem*, Lib. II, caput XXV, § VIII, 414: "quae saepe cum defensione innocentium conjuncta est." Onuma Yasuaki (1993, 108), points out that Grotius knew very well that an intervention for the defence of innocents could be based on selfish reasons, however he thought that the instrumentalisation of a right wasn't a reason enough to declare that it ceased to exist.

[5] Lauterpacht (1946, 46), highlights that the principle set out by Grotius, that is that "the exclusiveness of domestic jurisdiction stops where outrage upon humanity begins," is at the ground of the humanitarian intervention.

[6] Röling (1992, 297), who was a judge at the International Military Tribunal in Tokyo, states: "In short the enormous popularity of Grotius' doctrine becomes comprehensible when we recognize that […] in practice it did not restrict in any way the endeavour to subjugate the non-European peoples to European authority."

[7] In this respect Grotius 1913, Lib.II, Caput XX, § XLVIII, 345, mentions the Council of Toledo: "Praecipit Sancta Synodus nemini deinceps ad credendum vim inferre [The holy synod ordains that no one should be constrained to believe by force]."

[8] *Ibidem*: "nihil enim est in disciplina christiana […] quod humanae societati noceat, imo nihil quod non prosit."

[9] *Ibidem*: "Res ipsa loquitur, & extranei coguntur agnoscere." Cfr. Cavallar (2002, 152 and 154), who however denies that Grotius privileges the Europeans, because he thinks that Grotius worked for peace instead of being based on Eurocentric prejudices.

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civilization is manifest, and those who fail to recognize it will be compelled to do so by force!

This conception that Grotius expounds, recognizing freedom of commerce and freedom of the seas, while subordinating the law of non-Christian peoples to those principles, reflects the effort to project the nascent system of European states beyond European borders. It is therefore to that conception we must now turn.

4. Liberalism's "Heart of Darkness"

The age of revolutions of the late eighteenth century proclaimed the universal natural rights of man. But in reality those rights were reserved for the people of Europe.

This can be appreciated by looking at European colonial thought and its representation of non-European peoples.

Alexis de Tocqueville is celebrated as a liberal thinker who has analyzed and extolled the principles of American democracy. But if we look at what he wrote on Algeria we will see an entirely different picture.

In the first place, it is clearly through Western categories that Tocqueville interprets the Muslim world. In the second *Lettre sur l'Algérie,* of 1837, Tocqueville underscores the difference between the French people, "puissant et civilisé," and the peoples that to his eyes wee "à peu près barbares," (Tocqueville 1962a, 148) and who accordingly had to be progressively brought into the Western fold until the two races could be merged into a single people. All that needed to be done to this end, in his view, was to establish enduring relations with these peoples, and they would be induced to incorporate themselves (*s'incorporer*) into French civilization. This transformation would have been accomplished by imposing the Western conception of the administrative state on the colonies.

This view was developed in Tocqueville's subsequent writings (1962b), especially in *Travail sur l'Algérie* (of October 1841), where he can be seen

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to espouse a philosophy of history that likens the condition of the colonies to that of the "petite enfance des sociétés," (Tocqueville 1962b, 276) which is not yet ready for the great political institutions of France. Indeed, he argues that these institutions can be introduced only when the "barbarian" populations of Algeria will reach a higher level of development. What clearly comes through in Tocqueville's thought, therefore, is the unilinear conception of the development of society, not admitting of any alternative to the path followed by Western civilization.

This colonial conceit, predicated on a relation of superior to inferior, can also be seen at work in Tocqueville's analysis of the war the French army waged against the Arab tribes united under the leadership of Abd el-Kader. The clash between Western and "barbarian" civilizations of Islam informs the view that the *jus in bello* is subject to exceptions, to the point where, in Tocqueville's judgment, it was permissible to destroy harvests and pillage and lay waste to the country (*ibidem*, 228). These violations of the *jus in bello* were necessitated by the kind of warfare that was being waged in Algeria – not between states, but between a state and a people.

No less illuminating are Tocqueville's considerations on the institutional makeup that French colonies had to assume. Political power, "qui donne la première impulsion aux affaires," was to be held by the French. The secondary powers of government were to be exercised by the country's native inhabitants. Furthermore, French power in Algeria was to rest on the preexisting influences exercised by the country's religious or military authority (Tocqueville 1962c, 320).

Lastly, this institutional framework was to also provide Algeria with the security guarantees and individual freedoms in place in the metropolitan territories, but only for French people in the colony and not for the local population! (Tocqueville 1962b, 263-264). In short, the rights the French Revolution proclaimed as universal rights grounded in natural law were, on the contrary, recognized only for Western humanity, and they could also be

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extended to a non-European otherness, but only after an extensive "civilizing" process governed by the Europeans.

(Moreover at the beginning of the XX century the so-called "Muslim psychiatry," introduced in the French colonies by A. Porot, wanted to demonstrate "scientifically" – as Porot declared – that the Muslim mind and the the Muslim brain too was underdeveloped in comparison to the European one).

There emerges here the paradox and "heart of darkness" of the West, which has developed a great civilization of law and of rights that, despite its being proclaimed as universal, was only reserved for the Western world.

5. An "Inferior" Humanity

In the nineteenth century, a non-Eurocentric reading of international law enables us to uncover a negation of rights, or at least a markedly restrictive or reductive conception of them, in relation to peoples who could not be counted among the "civilized" nations. A non-Eurocentric approach will indeed make it possible to see how the rights of man get deformed when applied to a humanity regarded as inferior.

Thus the Italian international lawyer Pasquale Fiore on the one hand asserted the right of peoples that had not yet been civilized, but on the other set out an extremely constraining conception of such rights.

Indeed, he declared that the rights of savage populations (*populations sauvages*) were grounded in a "respect for personality" (Fiore 1909, 478). Accordingly, he recognized the international rights of man, defining them as "those rights that belong everyone as a man, rather than as a citizen of any given state. These are the rights of human personality according to international law" (Fiore 1898, 88). Fiore also recognized the international rights of peoples and nations: "Every people has the right to enact and modify its own political constitution and establish the government it shall deem best suited to protect the rights of fellow citizens, and it may request

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that the government established by the people themselves relate to other governments on the basis of international law" (*ibidem*, 89).

International law was "entrusted with studying the complex problem of colonial expansion," and so recognizing these rights meant establishing the legal principles "that must govern the way the colonizing civilized states are to relate to indigenous and barbarian races" (Fiore 1909, 479). In short, it fell to the science of international law to identify the principles that would serve as the basis on which to regulate relations between civilized peoples, on the one hand, and indigenous races, on the other, so as to protect the latter from despoilment, as happens with every arbitrary form of conquest. These considerations made it possible to clearly set out the purpose of international law, which was tasked not only with establishing the rights of states in their relations to one another, but also with "identifying and formulating the regal rules on which basis to regulate relations among all the beings [*êtres*] that are part of the international community, whether they be states, individuals, or groups" (*ibidem*, 479)[10].

But in reality the rules that were meant to regulate relations between the Western civilization and the savage peoples were geared toward asserting the superiority of the West.

Thus, for example, the property rights of noncivilized peoples were founded on the principle of settlement or occupation, and it was held that these rights could not be invoked against the principle of the European states' "sovereignty" (Westlake 1894, 129-133)[11]. So it was the principle of sovereignty that distinguished European international law and thus framed relations among Western states, legitimizing their dominion over the lands that came within the reach of territorial expansion. The "savage" people's settlement or occupation of land counted for nothing against the power that backed the sovereignty of the civilized states.

[10] In this regard, see Koskenniemi (2001, 128).
[11] About it, see *Ibidem*, 114.

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There were a couple of specific consequences that followed as a result of coming into contact with "other" peoples.

(1) On the one hand, the scope of international law, as an expression of the Western states' scientific consciousness, was limited to this system of states and was differentiated from other bases on which to regulate relations among peoples. So, for example, international law was said to belong to the Christian nations and could not be extended and applied to Muslim nations (Wheaton 2002, 45)[12].

(2) On the other hand, even though European international law – Christian and Aryan, and centered on the idea of the sovereignty of the state – proclaimed itself to be superior, it did nonetheless concede the need for a "humane" treatment of "noncivilized" peoples, and it did recognize natives as having the rights of man. These are the same universal rights which Francisco de Vitoria had invoked to legitimize the Spanish conquerors' domination and commercial expansion into the New World, and which Grotius had instrumentally resorted to in order to secure freedom of navigation for the Dutch in their struggle against Portuguese design to monopolize trade routes across the high seas – *now these same rights are being reduced to a magnanimous Western treatment of an "inferior" humanity*.

6. The Legitimation of Humanitarian Intervention

Over the course of the nineteenth century, this paradigm of international law took other directions as well. Indeed, international law also developed the

[12] Mentioning sources of the history of international law – Grotius, Bynkershoek, Montesquieu – Wheaton, an American diplomat in Europe, declared that, according to these scholars, there was no universal, unchanging law of nations "which all mankind in all ages and countries, ancient and modern, savage and civilized, have recognized in theory or in practice," see Wheaton (2002, 44). Wheaton (*ibidem*, 44-45) continued: The jus gentium "is only a particular law, applicable to a distinct set or family of nations, varying at different times with the change in religion,manners, government, and other institutions, among every class of nations. Hence the international law of the civilized, Christian nations of Europe and America is one thing; and that which governs the intercourse of the Mohammedan nations of the East with each other, and with Christians, is another and a very different thing."

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concept of human rights / "human law" understood as the rights / law of a "human society," and as the basis on which to legitimize "humanitarian intervention" in states considered to be "barbarian," like the Ottoman empire, or "savage," like the institutional arrangements in place on the African continent.

These aspects of the paradigm of international law can be illustrated by looking at the debate on international law in the second half of the nineteenth century, focusing in particular on the theses advanced by A. Pillet, professor of international law at the university of Grenoble.

It was Pillet's view that the peoples of the world are organized on three levels: on the first level we have the national societies, where we find the sphere of relations among individuals within the same territory; on the second level we have the international society, the sphere of relations among states; and on the third level we have the human society, the sphere of relations among humans above and beyond the political entities they belong to. Corresponding to each form of society, according to Pillet, was a distinctive form of law: national law, international law, and human law, respectively (Pillet 1894, 13)[13]. Human law – the form of law specific to human society – consisted of "a set of obligatory principles applying to humans solely by virtue of their being human" (*ibidem*).

The French lawyer Rougier felt that this was still too vague a definition of human law and thus sought to bring it into sharper focus. That he did by explaining that this was the highest form of law, for it answered "the deepest and most abiding needs inherent in human nature." As such, human law had to "necessarily seep into and inform national and international law," its purpose being to attend to the human rights (*les droits humains*) (Rougier 1910, 492) of the national and international society.

[13] In Pillet's own words (1894, 13): "We thus reach the third and final level in our progression. To the most general of the three forms of society must correspond the most general of all duties; to the human community, human law." (my translation). The French original: "Nous arrivons ainsi au troisième et dernier échelon de notre progression. A la plus générale des trois formes de société doit correspondre le plus général des tous les doits; à la communauté humaine, un droit humain."

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To appreciate as much, one just had to look at the path of human law as evidenced, on a national level, in the establishment of political freedoms and, on an international level, in the protection of prisoners of war, the abolition of the slave trade, the institution of international arbitration, and other like developments. And so it was that in the 19th century a consensus emerged on the foundation of human law: it lay in the principle of solidarity. Rougier looked in particular to Léon Duguit (1901), who in social or human solidarity saw the basic principle of law, and no positive enactment that failed to embody that principle could claim legitimacy as law. In short: "Human law is none other than the expression of human solidarity" (Rougier 1910, 493). In a passage approvingly quoted by Koskenniemi, however, E.H. Carr observes that "pleas for international solidarity and world union come from those dominant nations which may hope to exercise control over a unified world" (Carr 1981, 86, quoted in Koskenniemi 2004, 201).

But what content did this human law need to take in order to serve as the foundation of positive law? Because human solidarity was understood to protect all activities essential to the human being, human law had to encompass the right to life and liberty, as well as the right to legality, that is, the right to a legal system under which these rights of the human being are recognized and protected.

In the Western debate of the 19th century human law and the rights it comprised were found to encapsulate the essential aim recognized by all "civil states." And thus was sealed the idea framing the paradigm for humanitarian intervention: this intervention was made to rest on this Western conceit of a community of states committed to the principle of human solidarity, a principle that in human law found its legal embodiment. It was thus a specifically Western construct that provided the criterion on which to judge other states and peoples as rough or nonhuman. This much can be appreciated by looking a Rougier's conclusions:

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When acts contrary to human solidarity are [...] the work of a barbaric state [*État barbare*] or one that is semicivilized [*demi-civilisé*] [...], the civil powers are compelled to resort to a more vigorous mode of control through which to *prevent* evil before it comes to the point where it needs to be repressed or redressed. Plain intervention is thus replaced by a permanent right of intervention: a right to protection. That is the right the Western powers have claimed for themselves against the Porte [meaning the Ottoman Empire] (Rougier 1910, 497).

It was deemed legitimate for the European states to exercise their right to protection even more robustly by setting up a protectorate, or they could assert against the "more backward" tribes of Africa what came to be known as the "right to civilize" (*droit de la civilisation*) (Bluntschli 1895). But this was of course a way to dissemble the true nature of the Western powers' interest, which was to annex territories (Rougier 1910, 497).

In short, Western human law, base on the idea of solidarity, became the foundation for breaching the rights of peoples.

7. The Islamic Concept of Human Rights

After World War II, when the crisis of colonialism could already be sensed, the debates on the different concepts of human rights made it evident that we were facing a "clash of civilizations."

In 1947 during the debates on the draft of the (so-called) Universal Declaration of Human Rights, deep conflicts arose around the different understandings the Western and the Muslim tradition had of human rights, particularly as concerned the right to marry regardless of race, nationality, or religion and freedom of thought, conscience, and religion. So, for example, the representative of the government of Saudi Arabia declared, in regard to the right to freely marry, that

> the authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by the western

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> civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage had proved their wisdom down through the centuries. *It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all the countries of the world* (Third Committee, *Summary Records of Meetings* 1948, 370).

Article 16 of the draft (Article 18 of the Declaration) proclaims the freedom of thought, conscience, and religion, and here the representative of Saudi Arabia proposed to eliminate "the freedom to change his religion or belief," because this freedom was in contrast with Islam.

The amendment proposed by Saudi Arabia was rejected – a clear expression of a clash of civilizations.

The representative of Saudi Arabia also accused the colonial powers of imposing their point of view on the peoples under their government. He asked the French representative whether his government had consulted the Muslim peoples of North Africa and other French territories before accepting the text, or whether it intended to impose it on them arbitrarily. He also asked the other colonial Powers, notably the United Kingdom, Belgium, and the Netherlands, whether they were not concerned about denying the religious beliefs of their Muslim citizens by imposing that article on them.

On that occasion the conflict concerned the history of the controversial relations between the Western world – with its religious proselytism and colonial rule – and the Muslim world. Indeed, the Saudi representative declared that

> throughout history missionaries had often abused their rights by becoming the forerunners of a political intervention, and there were many instances where peoples had been drawn into murderous conflict by the missionaries' efforts to convert them.

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> So it was that bloody and unjustifiable crusades organized in the name of religion had had as their real economic and political purpose the acquisition of a place in the sun for the surplus populations of Europe. Religious wars between Catholics and Protestants had caused, in Europe, the death of millions of persons of both faiths which differed but little from each other (i*bidem*, 392). Once again he recalled the "clash of civilization," remembering how certain groups of people had claimed throughout history to be God's chosen people or to belong to a superior religion, merely because they were more powerful than their neighbours of a different faith (*ibidem*, 392).

The declaration of Western rights is here charged with having legitimized religious proselytism and colonial rule.

8. The Statement of American Anthropologists on Human Rights

But the criticism against the Western concept of rights was expressed not only by members of the Muslim world but also by important exponents of the Western world. Indeed, in 1947 the journal *American Anthropologist* published a "Statement on Human Rights" explicitly pointing out the ethnocentrism of the draft of the (so called) Universal Declaration of Human Rights.

The Statement proclaimed that the problem considered by the Commission on Human Rights of the UN had to be approached from two points of view: "The first [...] concerns the respect for the personality of the individual as such, and his rights to its fullest development. In a world order, however, respect for the cultures of differing human groups is equally important."

The Statement further acknowledged that the Declaration contained definitions of freedom and concepts of the nature of human rights that had

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been conceived in the tradition of Western Europe and America. But, as the statement also recognized,

> the consequences of this point of view have been disastrous for mankind. Doctrines of the "white man's burden" have been employed to implement economic exploitation and to deny the right to control their own affairs to millions of peoples over the world, where the expansion of Europe and America has not meant the literal extermination of whole populations [...] the history of the expansion of the Western world has been marked by the demoralization of human personality and disintegration of human rights among the peoples over whom hegemony has been established.

In its conclusion, the Statement said that the Declaration ought to contain another fundamental right: "Only when a statement of the right of men to live in terms of their own traditions is incorporated in the proposed Declaration, then can the next step of defining the rights and duties of human groups as regards each other be set upon firm foundation of the present-day scientific knowledge of Man" (Statement on Human Rights, *American Anthropologist*, n. 4, 1947, 543).

9. The Revolt against the West

Until World War II, the history of the rights of man had two faces: on the one hand, it marked a trend in which civil societies in Western countries increased their spheres of freedom vis-à-vis the sovereignty of Western states; on the other hand, that same process deprived non-Western peoples and individuals of their rights.

But starting from the 1950s, the history of human rights took on a different meaning with the so-called "revolt against the West."

In answer to the question whether the peoples of the Third World enacted this revolt invoking Western values or their own values, H. Bull said that

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they initially appropriated Western values, turning them against the West, in such a way that these values took on an authentically "universal" meaning, but they subsequently resorted to their own values.

Five phases can be identified in the revolt against the West.

First, there was the struggle for equal sovereignty. The inferior status of non-Western peoples was expressed by the extraterritorial jurisdiction of citizens of Western states within non-Western territories. This struggle was spearheaded by Japan, followed by Turkey, Egypt, and China (Bull 1989, 220).

Second, there was the anti-colonial revolution that began in the 1960s and 1970s with the struggles of Asian and African peoples.

Third, there was the struggle for racial equality – a struggle against the "privileged position of the white race" (*ibidem,* 221). In this regard it bears pointing out the Afro-Asian movement that was launched at Bandung in 1955 and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.

Fourth, there was the struggle for economic justice against all forms of economic exploitation. In December 1974, the UN General Assembly issued the resolution on the Charter of Economic Rights and Duties of the States, which proclaimed the rights and duties necessary to establish a New International Economic Order. Some articles of the Charter expressed the historical phase of decolonization. In Article 16.1 read: "It is the right and the duty of all States, individually and collectively, to eliminate colonialism, *apartheid*, racial discrimination, neo-colonialism [...]." Taking the same perspective, Article 16.2 reads: "No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force." (General Assembly, Twenty-ninth Session, Resolutions adopted by the General Assembly, 3281, XXIX, *Charter of Economic Rights and Duties of the States*, 12 December 1974).

The rights and duties of states had to be the basis on which to establish the New International Economic Order that had been proclaimed by the UN

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General Assembly in the Sixth Special Session of April 9 to May 2, 1974.[14] Among the principles of the New Economic Order was the fundamental acknowledgment of "the right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result" (General Assembly – Sixth Special Session, 9 April – 2 May 1974, Resolutions adopted on the Report of the ad hoc Committee of the Sixth Special Session, *Declaration on the Establishment of a New International Economic Order*).

In December 1986, the UN General Assembly issued the Declaration on the Right to Development,[15] which was conceived as a human right.

Lastly, there was a *fifth phase*, namely, the struggle for cultural liberation, which is the struggle of "non-Western peoples to throw off the intellectual or cultural ascendancy of the Western world so as to assert their own identity and autonomy in matters of the spirit" (Bull 1989, 222).

At the beginning this struggle, Third World peoples adopted Western values (as can be appreciated by their embracing the right of nations to self-determination, the right of human beings to equal treatment, and so on), but afterward they turned to non-Western values (witness the 1990 Islamic Charter of Human Rights), and indigenous cultures can interpreted as a clear revolt against the Western concept of human rights.

In defending their own economic interests, Third World countries asserted their own traditions and cultural identities, as has can be

[14] On this, see the volume written by M. Bedjaoui under the auspices of Unesco. M. Bedjaoui served as Algeria's ambassador to France, as member of the UN Law Commission and as Associate of the International Law Institute. The book of Bedjaoui (1979) highlights the emergence of a "multipolar world" where states should have "an international right to participate" in the process of elaboration and application of the rules governing their own relations. Bedjaoui also emphasises that the establishment of a new economic and juridical order is the goal of Third-World countries for the protection of their recently obtained independence and of their sovereignty. But actually Western countries have produced a new paradigm, which expresses a postcolonial attitude, to contain and resist Third-World countries' claims and requests.

[15] Art. 1 of this Declaration reads: "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

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appreciated, for example, in the ongoing struggles of South American Indians. In this way there clearly emerges, on the one hand, the need to take a relativistic approach in analyzing the postwar declarations of the rights of individual and peoples and, on the other hand, an awareness that the movements of Third World peoples "have overturned the old structure of international law and organization that once served to sanctify their subject status" (*ibidem*, 227).

10. Psychical Universality and Cultural Diversity

This ambivalence of international law and of human rights shows that the unsurmountable opposition between human rights and the economic policies of the Western powers can in fact be bent in favor of economic policies. This reveals the continuity between the ideology of colonialism, which has been justified as grounded in the "civilization" of peoples, and the human rights ideology which has been espoused by the neocolonial powers, and which can be used to justify they free-market economic policies. According to U. Baxi, the principles enshrined in the Universal Declaration of Human Rights now risk being replaced by a human rights paradigm aligned with the market and functional to commerce (Baxi 1998, 163)[16].

The necessarily relativistic approach to the history of human rights makes it inevitable to reflect on the possible alternatives that open up once we come to appreciate that there is not just one history of rights. Two alternatives suggest themselves. The first alternative is that of the clash between different civilizations and rights. From this perspective, we can only suppose that a single conception asserts itself above all others, either defeating or subordinating them. The second alternative is instead that of a

[16] This paradigm states the principle according to which the human rights can have a future only on the ground of the economic development. In this perspective it is declared that the free market only can offer the best hopes for the human emancipation. On the contrary the result is the legitimation of the imposition of an extraordinary human suffering on the part of the global capital: see Baxi (1998, 168).

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multi-civilizational history of rights built on a foundation enabling the different histories to coexist. But what is this foundation?

An answer can perhaps be provided by drawing on different sources. One place we can look to in building a common foundation for an international law of human rights is the philosophy of law. In a book published a few years ago, Ronald Dworkin argued that two principles should guide the future of democracy in a multicultural world:

(1) The first principle states that every human life has its own distinctive objective value in virtue of its potential, and it is important for it to realize that potential.

(2) The second principle states that every person is or should be responsible for fulfilling his or her life. This responsibility means that we must each *judge and freely choose the kind of life we want to live in order to achieve such fulfillment*.

These two principles are the necessary conditions for respecting the *dignity* of each human being (Dworkin 2006, 9-11). The first principle corresponds to the ideal of equality; the second, to the ideal of freedom. The first one can be understood as the condition for satisfying the second. For if we recognize every human life as valuable in itself, quite apart from any ideological or cultural filters we might have, then we won't be prompted to discriminate on the basis of rights, such as *citizenship*, that have been granted to some but denied to others.

Such denials of rights are quite serious, for they result in conditions of legal inferiority that inevitably translate into judgments of anthropological inferiority, on the reasoning that "so-and-so has no rights because he or she is not like us." The recognition of each human life as inherently valuable is instead the condition that makes it possible to freely choose the kind of life we want to live, which means that we might even choose a life that is culturally different from the lives of those who belong to the majority.

Recognizing each human life as inherently valuable, thus protecting the dignity of each human life, means that each individual must be treated with

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equal concern and respect. The protection of dignity so understood rules out a merely formal concept of equality (equality as "equal treatment," while leaving inequalities as they are) and instead calls for a concept of substantive equality, on which equality means "being treated as equals," having the same concern and respect for different human beings in different conditions.

Proceeding from the substantive concept of equality just introduced, this conception seeks to set the conditions that would make it possible to overcome all forms of racism, discrimination, and marginalization.

But the organization of Western knowledge tends to impose and apply its own criteria. As Foucault has pointed out, each discipline has its own "discourse," that is, a paradigm that sets out a precise conception of disease, health, normality, and pathology.

This mentality – a carryover from the colonial era – has not been completely overcome. And so certain manifestations that appear pathological to us when judged according to our own criteria will look entirely physiological in other cultures. Indeed, a physician will generally view the patient's body through a strictly biological lens, without considering the culture in which that patient has been brought up (Quaranta and Ricca, 2012). Indeed, biomedical reductionism prevents us from appreciating how relevant the meaning is which patients give to their own experience of the disease they are suffering from (*ibidem*, 25).

Disease conjures up a thick web of words and conceptions of reality and images of the body. This underscores the need for a critical reflection on the concept of culture, which, as has been pointed out by the more insightful contributions in cultural and medical anthropology, needs to be interpreted not in any "essentialistic" way but in a process-oriented way, that is, by taking a relational approach that ties patients to their significant others and to health professionals.

This complex biological and cultural reality is something that should be taken into account in training physicians, psychologists, psychiatrists, social

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workers, and administrators, so that they may finally appreciate the normality of diversity. As difficult as that goal may be to reach, it is not an impossible undertaking.

This desideratum also brings to light the paradox of multiculturalism, in that the *relativism* it entails – the equal legitimacy it ascribes to different cultural approaches and behaviors – is founded on a *universal principle*, which is that *each human life needs to be recognized as having equal worth*.

The idea of dignity as an *objective* value ascribable to each human being's life can be the necessary foundation, imposed by the struggles of the non-Western peoples, on which to proceed in tracing out culturally differentiated histories of rights.

We can thus look for a shared foundation on which to reconstruct an international law of human rights, and to this end we can turn to a discipline that is far removed from law, namely, ethnopsychoanalysis, which sets up a *complementary* relation between the postulate of *psychical universality* and the plurality of *cultural production*.[17]

The father of this complemental ethnopsychoanalysis is G. Devereux, who accordingly argues that complementary relation holds between an individual's understanding and that of society: "The concept of human psychism and that of culture," he says, "are inextricably bound up both methodologically and functionally" (Devereux 1953, 300).

This view rests on a couple of tenets: first, "the psychical unity of humanity, which has an exceeding capacity for variation" (Devereux 1955, 92), and, second, the ability of different cultures to shape a wide range of cultural behaviors.

[17] M.R. Moro (2005,128, my italics), an outstanding exponent of this perspective, declares: "From a theoretical point of view it exists a postulate without which the ethno-psychoanalysis could not have been realized, that is the postulate of the *psychic universality* or, in other words, the fundamental unity of the human psychism (Devereux, 1970). From this postulate it derives the necessity of acknowledging the *same ethical and scientific statute* of all human beings, of their cultural and psychic productions, of their ways of living and thinking, however different and divergent they can be […] the universal is a point of view towards which tends every knowledge regarding the human sciences without the certainty of ever having reached it."

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In short, both psychoanalysis and ethnology are branches of anthropology, which in turn has been defined by Kant as "the science of that which in man is properly human" (Devereux 1953, 303). So by recognizing the universality of the psyche and the inherent value of each human life, while embracing its plural cultural forms, imposed by the struggles of non-Western peoples, we can construct a foundation on which to enable society to appreciate how important it is for diversities to coexist, as well as to appreciate the wealth that can come out of such coexistence.

On these premises we can represent the history of human rights as a plurality of cultural histories, while giving shape to an international law of human rights grounded in a mutual recognition of different cultural traditions.

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