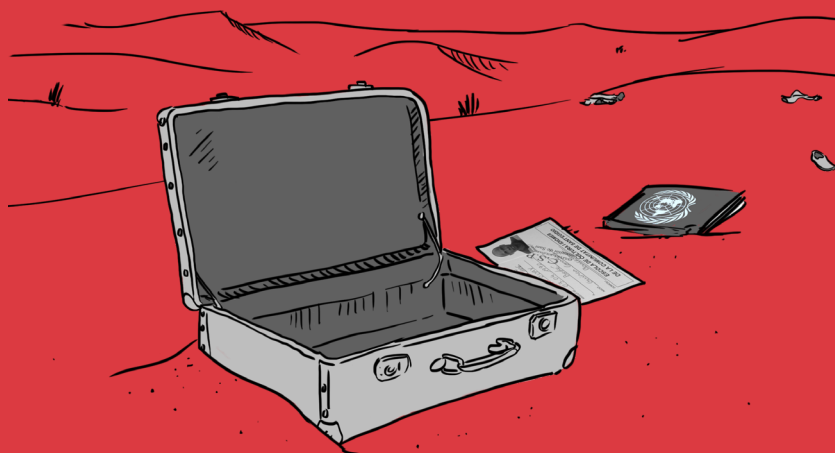




The Passion, Death and Resurrection of Human Rights

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Josetxo Ordóñez

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This Booklet has been the fruit of the reflection from the internal seminar of the Social Area of Cristianisme i Justícia held at the end of the academic year 2016-2017 under the title of *Crisis of Values, of Democracy and of Human Rights in Neoliberal Europe: Analysis and Proposals for a Global Agenda*. We dedicated it especially to the memory of our dear friend and professor Vicent Martínez Guzmán, who coordinated it and who was one of its principal promoters. He is sorely missed.

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INTRODUCTION

In order to formulate a different approach to the question of human rights, you are invited to begin at the end. Traditionally, one would begin by following the historical trajectory, looking for the precursor texts in classical antiquity or in fragments of the sacred writings of the various religious traditions. You would arrive at the 18th Century, at the American and French revolutions with their declarations about the rights of man and of the citizen. One would then pass through liberalism until arriving at the international codification of human rights in the second half of the 20th Century, under the auspices of the United Nations Organization. This would be a "scholarly" presentation of the question.

Nevertheless, beginning at the end means focusing attention on the present state of human rights, the here and now. And there are many interpretations given to those rights in the here and now. The first ones are those of people who are suffering from poverty, inequality, exclusion, the lack of attention and social neglect. There are not a few situations which we live through where you can say, and not without reason, "This is not right," or "Human rights are only a piece of wet paper," etc. I myself cannot help but to think about lived examples of migrant situations that are strongly compelling: borders, walls, razor wire, shipwrecks, drownings, internment camps, deportations.

These and other such compelling situations will be referred to here *as the passion of human rights*. Through the passion of those that are suffering you begin to read the passion of human rights. And in the passion, you can already foresee a distant echo of Nietzsche that states "human rights are dead." In this sense, this work of reflection does not want only to be a shout that calls out to heaven. The part dedicated to the resurrection of human rights is a proposal for the articulation of new, and not so new, human rights. The rights of those who have real suffering in the world of today. It is a humble proposal, one among many possible ones, for rethinking human rights in these times of passion and death.

To begin, allow me to recount for you a parable, a very small story, but which has value as a symbol and a lesson. I hope that it helps you to prepare to receive the rest.

The Parable of the Man who Crossed the Desert

Mamadou Bah was born in the Spring in a suburb of Conakry, a night with a full moon. His mother had married a man who was twenty years older than she, but she loved him with tenderness and devotion. And so, Mamadou experienced immediately the poverty, the single daily meal and the caring family relationships inside the four walls of the apartment that they shared with the cousins who had come from Labe, a city in the north. He was the oldest of three siblings and his sense of responsibility drove him to study in dark schools with damp walls in order to create a future for himself. One morning, a teacher of mathematics, with a prominent paunch, repeated to him some words of Voltaire, “Men are born free and equal, but from that moment on, they cease to be so.” This scholarly oracle changed forever his adolescent perception of life. Although, like the rest of the young men his age, the promise of exchanging daily hunger for a salary in the open pit bauxite mines lit up his ambition, in the Ecole Professionnelle de Geologie et des Mines he discovered that eighty-five students per year was a number that was too disproportionate for the prospect of his working in the miniscule French aluminum industry in Guinea. But the greater and more hurtful disillusionment came to him from the family of Kesso, a young *malinke* girl he met in a park in the center of the city. Since Mamadou, a pure-blooded *peul*, had dared to sully the honor of a *malinke*, although it was with her consent, Kesso’s brothers swore an oath and they waited on the outskirts of the suburb to kill him treacherously, in an alley made muddy by the dampness of urine. So, it was on a cold and foggy morning that Mamadou decided to follow in the footsteps of his *peul* ancestors, the largest tribe of nomads in the world, and he rode a ramshackle truck headed for Bamako and Europe.

Mamadou was a man of few words but a wide smile. For that reason, he did not speak very much about the fourteen months that he needed to cross the Algerian Sahara or the nine months of anxiety in Morocco. When some curious person asked him about the two long years in this African desert, Mamadou shrugged his shoulders and smiled with sad eyes that were still struck by memories. And thus, he avoided the question.

One night in June he was able to cross the sea in a small boat with some 45 of his brothers, landing on a beach near Almería (Spain). His first three nights in Europe were spent in the stifling atmosphere of a jail cell at a police station. The authorities decided not to expel him right away based on a strange and arbitrary administrative convenience of not wanting always to comply with the law. It was much easier for the police to put him on a bus and send him blindly to Barcelona. There, wandering the streets, he met some Samaritan angels named Maria, Anna, Ignasi or Miguel. Without saying anything, they and many others showed Mam-

adou what he had been looking for ever since he left Conakry. It was something like what the elders called rights, or also places in which one could feel safe and comforted. He asked for asylum, he lived in a community of families which was open and happy even though always chaotic. He worked for hours in a printing shop, he learned to cook *a la catalana* and to speak with a certain fluency in his new languages.

A year after the desert and the small boat, Mamadou thought that his life was worthwhile.

* * * * *

At bottom, the parable tells the story of a man who travels for a long time across a desert searching for something that cannot be expressed in words; it is something that is demonstrated, recognized, built up, defended. It is one's rights. Mamadou intuitively feels that human rights should be in some place, or, expressed differently, are some place, but that for him were not in the country of his birth. He leaves his country to find them, to arrive there where they exist in some form. But his road is not a solitary one, nor there, where he finds something like the so-called rights, have they arrived by themselves or perfect, like a magic trick. There are many people who are accomplices in making the attainment of a more dignified life for Mamadou a reality. The attainment by Mamadou is also a collective and political task, and for that reason it is also slow, gradual, and often laborious.

This individual but collective journey, this leaving a place without rights and going towards another with rights, is the subject of this work. It is about a journey in progress to that eutopian¹ country, "safe and comforting". It is about a journey toward the place of the possible resurrection of human rights. The journey continues with more explanations.

1 "Eutopian" a not "utopian", since the expression chosen on this occasion means a "good place", which is that of human rights. On the other hand, "utopian" means simply "no place".

1 THE PASSION OF HUMAN RIGHTS

Surely, the Mamadou of the parable asked himself, "Where are rights found?" The place where rights are found is a symbolic place, a space which, according to Pepe Laguna, is "every social construct that recognizes, welcomes and makes possible individual and collective identities."² Before that, Hannah Arendt had described a sort of map of human rights when she stated that the fundamental deprivation of these rights is manifested first and foremost "in the deprivation of a place in the world in which persons become significant to opinions and effective in their actions."³ Thus, to deny in any way that place in the world which recognizes opinions and identities and allows actions is the same as depriving one of human rights.

In summary, human rights are understood as a fundamental place of recognition, a recognition that is synonymous with social appreciation. In turn, this is understood in two ways; on one hand as recognition of identity (you are, you all are), and on the other as political and juridical recognition (you are here, you all are here among us).

For example, in the historical analysis of the workers' movement during the 19th and 20th centuries, we can identify elements of this double recognition. In large part, the labor movement struggled to obtain recognition of its integral values, or, at least, the part recognizable by the traditions and the ways of life which were appropriate within the capitalist set of values.

In the passion of human rights, there is also combined the opposite of recognition which is disdain, and which, according to the philosopher Axel Honneth, is expressed in three ways. The first is physical or moral maltreatment or humiliation. The second is the deprivation of rights and social exclusion. The

2 LAGUNA, Pepe (2019), *Seeking Sanctuary: The Political Construction Of Habitable Places*. Barcelona: Cristianisme i Justícia, Booklet 174.

3 ARENDT, Hannah (2004), *Los orígenes del totalitarismo*. Madrid: Taurus, p. 247.

third is the degradation of the social value of the forms of self-actualization. In other words, the three forms of recognition are love, law and solidarity. And they are the conditions which allow relationships where human beings can find their dignity or their integrity guaranteed.

In the parable of the journey of Mamadou Bah, the place in which his rights are built up is a habitable space, for him and for all those who have crossed his path at some point. It is the place where the recognition of his dignity is found, where Mamadou and the others find social appreciation.

The parable of the man who crossed the desert is a symbol woven from remnants of lives of so many Mamadous that cross deserts without rights and with too much suffering. The parable is a simple example of the contemporary passion of human rights.

1.1 Ways of talking about human suffering

It is not possible to say anything understandable about human rights without talking about the suffering of human beings. Human suffering seems as if it should be the starting point from which human rights are believable. It is expressed in this way at the beginning of the poem by Blas de Otero:

I want to find, I am searching for the cause of suffering,
the cause on its own of the suffering that is sometimes
steeped in blood, in tears, and in dried
many other things. The cause of the causes of the
horrible things that happen to us men.

Suffering is a true pandemic. The etymological significance of the Greek expression “pandemia” means “the totality of the people”. All of the people in a community. Therefore, a pandemic affects or can affect any person. And that is what happens with suffering. The passion of human rights is so vast that suffering has many names.

And as the “reasons that a man might have to hate another ... are infinite”,⁴ so also the ways of identifying human suffering have been multiplied enormously. And that only is when one considers the time since the juridical proclamation of human rights. In making the diagnosis of the passion of human rights, how we denominate human sufferings can be strangely evocative and suggestive.

In making this diagnosis, we have the influence of many authors who recount the loss even of the “right to have rights”,⁵ who reduce human life to “bare life,”⁶ without recognizing its existence as part of a human being, but as one who

4 BORGES, Jorge Luis (2011), “La forma de la espada” in *Cuentos completos*, Barcelona: Penguin Random House, pp. 171-176.

5 ARENDT, Hannah (2004), *Op. cit.*

6 AGAMBEN, Giorgio (2006), *Homo sacer: El poder soberano y la nuda vida*, Valencia: Pre-Textos.

is not now the owner, proprietor or even the tenant of one's own life. They describe human life as a conjunction of "wasted souls",⁷ or part of the "throw-away culture and the economy that kills".⁸ The discussion of human rights cannot be indifferent to "depersonalization" and "those who live precariously",⁹ indifferent to those for whom "it is not worth crying",¹⁰ human beings and whole countries who are "exiled from the economic system",¹¹ converted into "blacks"¹² despite whatever color their skin, capable of "thinking less of themselves because of their lack of recognition and justice".¹³

Human rights find themselves trapped in the hypocrisy of the European Union, which, together with the United States and the new populist movements of the extreme right, promote more than ever the securitization of the world. It continues to seek the imposition of a neoliberal rationalism based on individualistic competitiveness and entrepreneurship. Neoliberal rationalism has converted the reason behind human rights into an "indolent reason",¹⁴ that makes some people inhuman while it makes others superhuman,¹⁵ that reproduces a policy of death, a power that has the "capacity to decide who can live and who ought to die."¹⁶

Paulo Freire spoke about "the viable unedited" that could well be the starting point for a response to all of these affirmations.

1.2 Unedited and viable responses

The term "unedited" refers to that which, being in potency is still unknown in act, has not yet become real in all of its potentiality. We look for the answers from our own epistemological viewpoint. That is, from our own point of cogni-

7 BAUMAN, Zygmunt (2006), *Vidas desperdiciadas. La modernidad y sus parias*. Barcelona: Editorial Pardós.

8 POPE FRANCIS, *Encyclical letter "Fratelli tutti"*, 2020.

9 STANDING, Guy (2013), *El precariado: Una nueva clase social*. Barcelona: Pasado y Presente.

10 BUTLER, Judith (2006), *Vida precaria. El poder del duelo y la violencia*. Barcelona: Editorial Pardós.

11 SASSEN, Saskia (2015), *Expulsiones: Brutalidad y complejidad en la economía global*. Madrid: Katz Editores.

12 The black, the racialized person, seems to be the product of capitalism like man as merchandise and man as money for exchange. MBEMBE, Achille (2016), *Crítica de la razón negra. Ensayo sobre el racismo contemporáneo*. Barcelona: Futuro Anterior Ediciones.

13 FRASER, Nancy and HONNETH, Axel (2019). *¿Redistribución o reconocimiento?*, Madrid: Ediciones Morata.

14 DE SOUSA SANTOS, Bonaventura (2003), *Crítica de la razón indolente: Contra el desperdicio de la experiencia. Para un nuevo sentido común: la ciencia, el derecho y la política en la transición paradigmática*. Bilbao: Deslee de Brouwer.

15 GONZALEZ FAUS, Jose Ignacio (2017), *Inhuman and subhuman*, Barcelona: Cristianisme i Justicia, Booklet 164.

16 MBEMBE, Achille (2016), *Op. cit.*

tion. And it has already been said that the particular point of cognition which is proposed here is that of the lives of the suffering in this world.

So then, what is not edited is that our situation affirms the plurality of epistemologies of things that are known. There are things known in the geographical South and in the socio-economic South, knowledge that is counter-hegemonic, things known by women, things known by the poor, and things known by integral ecologists.

What is not edited is that we might understand the formulation of human rights as ways of “straightening up the twisted shaft of humanity”,¹⁷ that might reconcile the various ways of exercising freedom and foment the construction of ways to deliberate, take decisions and make peace from the different ways of knowing, culture and belief systems.

Out of those ways of knowing, one would have to consider the analyses that explain human rights as instruments of colonization. And it is precisely these ways of knowing from the South, counter-hegemonic, those of women,¹⁸ those of the poor¹⁹ and of integral ecology²⁰ that have broken out into the possible resurrection of human rights.

As may be guessed, this task is considerable and we cannot deal now with all of it. In order to begin to enter into this material, it is interesting to face the question that is covered next.

1.3 Human rights and justice

Is there a relationship between human rights and justice? This question serves to help us think about the end goal of human rights. Surely, many people will be in agreement that some type of relationship should exist between justice and human rights.

Aristotle planted a prior question. What relationship is there between law (considered by itself) and justice? He comes to the point of demonstrating to us that the objective of law is justice, that law “speaks” what is just, what is just right between excess and a lack of something, the just mean between two things. For Aristotle, the wisdom that brings about this relationship is politics, whose primordial tool for taking action is precisely law. So for now, it is possible to remember that law and justice are tied together in a relationship of service and

17 The expression of Immanuel Kant is “Aus so krummen Holze”, which is later taken up by Isaiah Berlin in *The Crooked Timber*.

18 Herrera Sánchez, Sonia (2014), *Trapped in limbo. Women, migration and sexual violence*, Barcelona: Cristianisme i Justícia, Booklet 154.

19 CRISTIANISME I JUSTÍCIA (2014), *La causa de los pobres, causa de Dios*, Barcelona: Cristianisme i Justícia, Cuaderno 194.

20 CARRERA, Joan (2019), *Vivir con menos para vivir mejor*, Barcelona: Cristianisme i Justícia, Cuaderno 214.

end goal. The modern existence of human rights is evidently implicated with an ideal of justice which it serves.

Centuries later, Immanuel Kant offers a new dimension to this relationship between law and justice. Kant adds in the way in which law and justice are tied together. He places law in the area of free action. He writes that an action conforms to law (*recht*) when it allows for the freedom of each person to coexist with the freedom of everyone according to a universal law. Therefore, to do something in conformity with law requires our freedom. With this simple affirmation, he leaves the door open for us to approach the modern idea of human rights as freedoms or a right to freedom of ideology, of conscience, or expression and of religion.

It is no secret to state that one cannot understand contemporary law and, with that, the system of human rights without taking into account Aristotle and Kant. In one way or another, the reflections about justice that are found throughout today's juridical culture can be reduced to variations on the same theme, either that of the Greek philosopher or that of the Prussian philosopher. One of these variations is that of the American John Rawls. In his theory of justice, Rawls states that before choosing the principles that should govern society, one should first imagine that society from the point of view of someone who does not know his place within it, someone who has no idea of what is his place of birth or status and who does not know with what capabilities or opportunities he will be gifted by life. Then, according to Rawls, he should choose a world in which social and economic inequalities are disposed in such a way that the greater benefits are for those who are less favored. The best source of law is ignorance, or, as he says, to make a decision in a veil of ignorance. This ignorance metes out sufficient personal neutrality so that the juridical norms produce a positive discrimination toward the most unfavored.

Another variation is that of Amartya Sen, a philosopher and economist from India. Sen's starting point is not justice, but rather the contrary, *injustice*. He believes that the ideal of justice is too unattainable, abstract, because it produces a terrible subjectivism and numerous theories that slow down the attainment of justice. Sen thinks that it is a mistake to concentrate our efforts on defining, characterizing, conceptualizing and trying to apply a supposed justice because it is something unreal. In our social reality we do not know actualized justice, perfect, once and for all time. On the other hand, in practice we do have experience of injustice. Or, more precisely, of the multiple, infinite injustices that assault us day after day on the street. In addition, faced with proof of an injustice, it is much simpler to obtain a consensus among many people. And what we also have experience of are the multiple examples of justice, in which a concrete injustice is turned into concrete justice in the form of rights which are established, recognized, guaranteed and exercised. And that which moves us to action against injustice is not that we know that the world is not completely just. What truly pushes us is that:

There are clearly remediable injustices around us that we would like to suppress. The Parisians would not have assaulted the Bastille, Gandhi would not have defied the Empire on which the sun never set and Martin Luther King would not have fought white supremacy without being aware that manifest injustices could be overcome. They did not try to achieve a perfectly just world (even if there had been a consensus about what that world would look like), but rather they wanted to eliminate notorious injustices, each according to their own capacity to do so.²¹

Faced with a concrete injustice, it is simpler for everyone who sees it to arrive at an agreement and to proclaim “This is not right!” Buried in that colloquial expression is a profound truth: injustice is the place of “no law”, synonymous with *being without rights*. With reason, the confused multiplication of injustices leads us to state that human rights have been left defenseless, as if there were no human rights.

Paradoxically, against the daily injustices there is room to affirm, create and defend concrete rights. That is, human rights. That is to say, taking conclusions from the thinking of Sen, the opposite of injustice is not justice, but rather law.

1.4 Redistribution and recognition

When someone coming from the area of political theory has begun to think about social justice in the last 20 years, it has brought to the table interesting debates that can also be of use to us today. The protagonists of one of those great debates are the philosophers Nancy Fraser and Judith Butler. Fraser proposes to analyze two forms of *injustice* or *offenses*, as she also calls them. For her, there exists on the one hand economic injustice, and on the other, cultural injustice. One cannot be reduced to the other, but neither are they independent of one another. As a matter of fact, both can exist together in the same situation.

There has been an attempt to correct economic injustice by means of redistribution and cultural injustice by recognition. As has been already said, there are communities that suffer both kinds of injustice. In the analysis of Fraser, these are communities based on sex and those based on race. These communities call for redistribution as well as recognition. For her part, Judith Butler participates actively and critically in the debate, adding that cultural injustice is explained in criticism of the system of economic production and human reproduction. Therefore, not only do they require recognition, but also redistribution.

The inequality in the distribution of basic resources, public services like universal health care, or of a fair part of other resources today is related to the lack of recognition. This refers to not being aware of recognition for the very condition of a full spokesperson in social interactions and instead seeing the impeding of an equal participation in the conditions of a social life. When the lack of partic-

21 SEN, Amartya (2010), *La idea de la justicia*. Madrid: Taurus, Chap. 1.

ipation is institutionalized through cultural patterns or juridical norms, cultural injustice becomes real, material and economic.

But this has not always been considered in that way. Inequality of distribution historically has included independently the lack of recognition. On the other hand, redistribution has been understood as the overcoming of inequality, and so therefore as the solution to the differences between individuals and collectives, the differences among classes to use Marxist terminology. On the other side, recognition has been understood as the guarantee of group distinctions, the need to affirm multiculturalism. In some way, this discrepancy has contaminated the origin and the historical development of human rights and of the successive generations in which they have been expressed.

With respect to human rights, from the very text of the Universal Declaration of Human Rights in 1948, Susan George also states that more attention was paid to the decisions of society with respect to the “just distribution of material and non-material advantages.”²² This meant economic redistribution (of the material advantages) and recognition of cultures and identities (the non-material advantages) in order to sustain the system of human rights.

1.5 The characteristics of human rights

It has been said many times that human rights were proclaimed to be “universal” and “inherent” in every person, that is, that they are “included by default” in the fact of being a person. Expressed in a more formal way, it is said that they are universal and inherent because they are rooted in the dignity common to every human being and they reach each and every human being. Human rights rest on an essential condition of dignity that gives them meaning.

Human rights were proclaimed in solemn declarations, treaties and international agreements. In them it is said that they are also “unable to be renounced, inalienable, and cannot be proscribed”. They are unable to be renounced because they do not depend on one’s volition. The person who holds the rights does not have the capability of disposing of that ownership. To some degree, it is unavoidable. Rights are outside of the area of the will. For that reason they are also proclaimed to be inalienable. They cannot be ceded or transmitted to another person. They are inalienable because they cannot be taken away by anyone, neither by the State nor by the law of the State. They cannot be proscribed because the passage of time does not invalidate them. Human rights are not voided by age. Human rights are not connected to time periods.

These are the characteristics of human rights: universality, inherency, inability to be renounced, alienated or proscribed. They are the rich soil of the earth in which human rights were sown. (And there was already found the idea of an identical dignity for all human beings.)

22 GEORGE, Susan (2003), *La globalización de los derechos humanos*. Barcelona: Critica, p. 24.

Also, the characteristics of human rights were defined to apply to individual persons. Therefore, dignity was not understood from the beginning as a dignity that was also collective, but rather as individual dignity. But over time it was seen as common and equal for all human beings.

Human rights were rights based on a radical, shared equality. We are all humans. And as Mamadou was taught clearly in Conakry by his teacher of mathematics, when inequality appears, dignity is held in low esteem and human rights are severely damaged.

1.6 The generations of human rights

The ideals of the French Revolution are in the origin of the idea of systematizing human rights in the form of generations. *Liberté, égalité, fraternité* inspired the three generations of human rights which we recognize today.

The first generation is that of civil and political human rights, one we could identify with individual *liberté*, that “of man and citizen” mentioned in the initial historical declarations. They are the rights of freedom, of guarantees and of political participation, freedom of thought or conscience, freedom of expression, religious freedom, the right to life, to moral and physical integrity, to honor and privacy, to equality before the law, the right of access to justice,²³ the right to vote, the rights of assembly, association and protest. Among all of the civil and political rights and freedoms there is only one prohibition that does not admit discussion, a right that is formulated in the negative and in absolute form. It is nothing less than the prohibition against torture.

The second generation is that of economic, social and cultural human rights, that which can be identified with *égalité*. Examples of these rights include the right to have protection of the family, maternity, infancy and health, the right to an adequate education, to culture, to dignified work, to food, to decent housing, the rights to unionize and to strike, and the right to social security.

The third generation is that of the human rights of *fraternité*, those which we would call today rights of “solidarity”, the human rights of groups or those that defend “diffuse” interests (rights of minorities, of consumers and end users, of the environment, of peace, of the common patrimony of humanity), so named because the title holders of these rights are not clearly identifiable with names and surnames as happens in the other classic individual rights. Other examples of these rights are the right of self-determination of peoples, the right to economic and political independence, to national and cultural identity, to food and productive independence and to development for a decent life.

Finally, it would not be too much to mention that there are those who speak about a fourth generation of human rights which would include rights such as

23 From the presumption of innocence, to a fair trial, to appeal of a judgment, to making use of an adequate legal defense, to habeas corpus, etc.

protection in facing the use of technology, privacy on the internet or the right to be forgotten (that personal references and data that circulate freely through cyberspace can be eliminated), rights to protect the human genome and individual genetic information, and ecological rights which are meant to safeguard the biosphere and not only humanity.

1.7 Human rights and forgetfulness

There is a curious internal dynamic in the generation of human rights. Each generation has tried to recognize the rights of those who were made invisible or forgotten in the previous generation. Perhaps we are dealing with a guilty conscience. In the first generation of human rights, there remained unincorporated in the juridical validation the area of work and the efforts of those who protect, care for others, work, learn and educate. The second generation failed to include ethnic, sexual, cultural and national minorities.

Human rights are defined historically by the voluntary forgetting about those people who do not have their rights recognized. A graphic example has to do with the Convention on the Status of Refugees which was adopted in Geneva (Switzerland) on July 28, 1951.

If we rescue from the internet or an encyclopedia the photo of the act of signing the Convention, we can appreciate that the signers are adult males, of the European-Caucasian race, all dressed alike. You have to look closely for a few seconds in order to distinguish the presence of two women, one seated at the table and the other standing, both in the background, who are contemplating the proceedings.

It is true that in 1951 many of the refugee people in the world were European. But it is also true that the process of decolonization after the Second World War also caused great movement of peoples in Asia and Africa. They are scarcely reflected in the definition of the right to asylum. For example, the independence of India in 1947 provoked a crisis of forced displacement between the new states of India and Pakistan and among the different regions which were subjected to religious and territorial disputes. This was a crisis which was never cited during the discussion four years later for the approval of the Geneva Convention on refugees. Questions of gender or sexual identity were also not relevant in 1951 so as to be able to merit the protections of the Convention.

Repairing forgetfulness in the history of human rights is done in a slow way, but above all in a partial and incomplete way. Continuing with the example of the right to asylum and refuge, it was only in 1967 that the geographical restriction to Europe found in the Convention was lifted. The task of interpreting the Convention by the European Court of Human Rights only introduced in the 1980s sexual identity and gender as causes for international protection.

And it was only at the beginning of this century that the Convention of the African Union for protection and aid to the internally displaced in Africa, which was adopted in Kampala (Uganda) on October 22, 2009, recognized that people;

who are victims of “forced evacuations in the cases of natural disasters or those produced by human beings” merited the protection of the statute. In the preparatory work done by the African Union it was discovered that the Convention refers to these forced evacuations, among other reasons, which were as a consequence of climate change. For the first time a degree of protection is recognized that goes beyond ethnic, religious, ideological or political persecution. Going beyond the narrow definitions of refuge and asylum in the Geneva Convention of 1951 was the enormous lesson of Kampala for the whole world.

Nevertheless, there remain lost in oblivion many other human rights.

1.8 The economy and culture of human rights

The injustice in the distribution of rights among different social classes was supposedly resolved by the egalitarian universalization of rights. That is, with a redistribution of the symbolic capital that human rights signified. Symbolic because they are rooted in the inherent dignity of every person. This task was carried out by the Welfare State and the United Nations Organization. The result was the first generation of human rights: the superficial distribution of human rights among existing groups and classes.

The same States and the UN tried to resolve the injustice in the recognition of rights with multiculturalism. The result was the second generation of human rights: the superficial distribution of respect among the different identities of the existing groups.

The history of the approval process of the fundamental instruments of human rights by the UN and of their taking effect can help us to understand better why the two distributions of redistribution and recognition of rights were only superficial.

On December 10, 1948, the General Assembly of the United Nations approved the Universal Declaration of Human Rights (UDHR). It was drafted without the participation of the majority of people in the world, at a moment which was the beginning of the Cold War, the period of confrontation between the States of the Communist bloc controlled by the USSR and the Western States under the leadership of the USA.

The international treaty which should have converted the mere declaration into a juridical norm turned out to be impossible to approve. In 1952 the General Assembly decided to divide the project into two independent treaties which allowed the two blocs confronting each other to prioritize some rights over others. While the Western countries placed the emphasis on civil and political rights, they avoided agreements which underscored social rights. The countries of the East defended the priority of economic, social and cultural rights, postponing any agreements to comply with civil and political rights.

In 1966, 18 years after the UDHR, they were finally able to approve both international treaties: the International Treaty on Civil and Political Rights and

the International Treaty on Economic Social and Cultural Rights. But these two treaties only took effect ten years later, in January and March, 1976, respectively.

Thus, until almost 30 years after the UDHR, there were no international juridical norms in effect which would have recognized and guaranteed human rights. Until that time the Cold War influenced and conditioned the result of the treaties. They were the fruit of a pragmatic struggle and power politics and influences in a bipolar world after three decades of hard negotiations. Moreover, if one observes the history of human rights in the post-war era, it is easy to conclude that the policies of human rights have been, altogether, at the service of the economic and geopolitical interests of the capitalist and hegemonic States. This is something far distant from the humanistic, optimistic and almost bucolic image that human rights have in public opinion.

2 THE DEATH OF HUMAN RIGHTS

But what seems indisputable is that the redistribution of rights is not universal. Human rights are not universal either. The academics dealing with Public International Law defend the point that they are. The International Treaty on Civil and Political Rights (PIDCP) and the International Treaty on Economic, Social and Cultural Rights (PIDESC) have reached and surpassed the number of 160 participating countries and so have become universal.

Mamadou calls out that that is not the case. The suffering people of the world call out that that is a lie. First, because it is a question of fact. Human rights are not applied in a universal way. If that were the case, they would also have been applied extensively in Mamadou's native Guinea. Second, in their conceptualization, human rights today, like many other things, are a "modality of globalized localisms." Just as they have been conceived, human rights are an instrument for the West to conquer the world and they are formulated contrary to "any alternative conception of human dignity that is socially acceptable" in another part of the world which is different from the West.²⁴

The West has not played fairly with the rest of the world and has betrayed the principle of good faith. It has disdained what other parts of the world could think. The architects of the policies dealing with human rights have trodden under foot what the father of modern capitalism, Adam Smith, wrote in a book entitled *The Theory of Moral Sentiments*. In it, Smith develops the notion of what he calls *fellow-feeling* (sympathy, commiseration), which is basically the human instinct of impartiality and justice. Adam Smith believes that all of us abstain from certain actions because what matters greatly to us is "a good reputation" among others.

24 DE SOUSA SANTOS, Boaventura (2009), *Sociología jurídica crítica. Para un nuevo sentido común en el derecho*. Madrid: Trotta, Consejo Latinoamericano de Ciencias Sociales, p. 513.

We respect those that Smith calls “*spectators*”, those who observe, or could observe, our behavior. I have here a short excerpt from the book:

In the race for riches, honors and promotions, [a man] will be able to run with all of his strength, straining every nerve and every muscle in order to leave behind all of his rivals. But if he pushes or knocks someone over, the indulgence of the spectators melts away. We are dealing with a violation of fair play which they will not be able to accept.

Truly, the “good reputation” among others has not presumed to be an obstacle in the struggle in the West for global hegemony concerning human rights.

What has happened to human rights is the same as has happened to the modern concept of law since the 18th century. What was not a state-sponsored, scientific or positive law, was not considered to be a law. What do not fit into the Western conception of human rights, are not human rights.

In reality, to even ask the question about the universality of human rights is already a Western cultural question. Only Western thought has the need to confirm or demonstrate that human rights are universal. No other present culture on the planet feels the irresistible urge to claim that their thought is universal. This urge, which is puerile and narcissistic, is seen not only with respect to this theme. It is striking that Western literature, painting, architecture, music, and even science and economics have to be universal. If they look for universal models, they find them in the works of Shakespeare, Cervantes, Phidias, Michelangelo, Mozart, Newton, Galileo or Keynes.

The Western canon has been imposed juridically not only through the vehicle of human rights.

Modern human rights conceptually are Western, but they are also colonialist, imperialist with regard to culture and they have forced the trashing of the experience of the non-Western world. As Boaventura de Sousa Santos writes, they have been “*epistemicidal*”. In the world of human rights there also underlies the world of modernity with a cannibalistic structure, as described by Achille Mbembe. The dominant idea of human rights, which has been and is exported by the West, has devoured other ways of thinking about and expressing justice and human rights in other places on the planet.

Finally, if human rights are not universal, if they are simply local to the West, what consequences are there to that statement? Well, that human rights safeguard and protect only some human beings and not others, that they are dissolved like sugar cubes in clear situations of inequality and that they agonize in irrelevancy when dealing with overturning injustices.

In his commentaries on the concept of citizenship as it pertained to a determined state political community, the legal scholar Luigi Ferrajoli cites the contradictions in the first international law concerning human rights, the so-called *ius gentium* or “law of the peoples”. From the 16th century, during the Spanish conquest of America, rights “were proclaimed as equal and universal in the abstract even when they were concretely unequal and asymmetrical in practice, due

to the fact that emigration of the Indians to the West was unimaginable. They served to legitimize the colonial occupation and the war of conquest. ... Today the situation is reversed. The reciprocity and universality of those rights has been negated. The rights have been converted into rights of citizenship, exclusive and privileged, beginning at the moment when it was decided to take them seriously and to pay their cost.²⁵

The premise with which this essay began was that human rights have ceased being a safe place. They have lost their point of reference in the defense of human life. Definitely, human rights have died after a long agony.

Now it is possible to affirm also that during their historical development and their being sustained, human rights have caused to perish ways of thinking and powers which to their eyes were incompatible with the rationality of the dignity conceived by the West. It is possible to affirm that human rights have killed or aborted other forms of understanding, other epistemologies about what is human.²⁶

2.1 Un-thinking law and human rights

Recapitulating what I have said up to this point: the suffering of the weak and their knowledge compels an explanation of human rights. One answer is based on the fact that the passion of those who are marginalized, of those who are excluded, is the passion for human rights. In what way does the economic and social crisis affect human rights? How do these crises redefine who enjoys them and who aspires to them? How do we recover human rights as a proposition and as a claim by other human beings and not only as a supposedly universal imposition? How do we articulate them politically and in a viable way?

25 FERAJOLI, Luigi (2001), *Derechos y garantías. La ley del más débil*. Madrid: Trotta, p. 118.

26 As a consequence of this desolate panorama, a Portuguese jurist and philosopher, Boaventura de Sousa Santos, invites an un-thinking of law. If it is true enough that Boaventura de Sousa Santos is better known for his work as a sociologist and as an activist in the World Social Forums, from the first of these in Porto Alegre, he has never let go of his personal involvement in the problems of this world. He was a strong opponent in his native Coimbra of the Salazar dictatorship when he was studying at the university and in his beginning years as a professor and social investigator. He has lived in the favelas of Rio de Janeiro, with the native peoples of Mozambique and Cabo Verde, with the indigenous communities of Brazil, Ecuador and Bolivia. In the last few years, he has explored the ways of rap and hip hop with Portuguese and Brazilian young people in poor neighborhoods and urban suburbs, as an expression of social discontent and the desire to transform the future. It is necessary to make note of these biographical details of Santos because they have made him who he is. He is not simply an intellectual; he has a lot of the contemplative in action. When he writes and speaks about Law, he also speaks and writes about human rights. For the presentation of the thread of his discussion of human rights, I will use the second part of this work.

In order to do that, we have to decolonialize the diagnosis of the crises and not look at them only from the point of view of their consequences on the part of the world that has been enriched, nor falling into the trap that the wealth of a few is going to benefit everyone. Zygmunt Bauman has alerted us to this fallacy with his analysis of inequality in our world. It is not that the rich get richer and the poor get poorer, but rather that the rich are richer because they are rich and the poor are poorer because they are poor.

The differences that are found in inequality are similar to the differences in human rights. A few of us enjoy the rights and almost all suffer from them. That inequality which is the touchstone of human rights is expressed in its raw form by Daniel Dorling, the professor of Human Geography at the University of Sheffield:

The poorest ten percent of the world's population experiences hunger habitually; the richest ten percent is not capable of remembering any time in the history of their family in which they may have gone hungry. The poorest ten percent rarely can offer the most basic education to their children; the richest ten percent worries about paying tuition in schools that are sufficiently expensive to assure themselves that their children are mixing only with those called "peers" or "superiors", because they are afraid that their children might mix with other children. The poorest ten percent almost always live in places where there is no social security or unemployment insurance; the richest ten percent is not capable of even imagining themselves attempting to live without those helps. The poorest ten percent can only get a job as an employee in the city or as a field worker in rural areas; the richest ten percent cannot imagine not earning a high monthly salary. On top of them all (the richest fringe of that ten percent), the richest cannot imagine themselves living on a salary instead of the income from the interest that their wealth earns.²⁷

The growing gap between the people with all the rights and those with few rights or directly without them is the reality of two separate worlds, with hardly any places for a social encounter or communication.

The un-thinking of law is suggested as a way to articulate new agendas, both politically and in a viable way. Un-thinking is a complex task. It implies a total deconstruction of law, but it is not nihilistic nor does it try to destroy all law. It also implies a discontinuous reconstruction, although not one that is arbitrary. Un-thinking deals with making problematic what had been taken for granted. It is very probable that this movement of un-thinking will help in the resurrection of human rights in the form of other rights that are more humanized and open.

The exercise of un-thinking human rights is "to take rights seriously", as stated by Luigi Ferrajoli, which is to recognize their character as being cosmopolitan, going beyond any single state and panhuman. This would guarantee them

27 DORLING, Daniel (2011), *Injustice: Why Social Inequality Persists*. Cambridge: Polity Press, p. 132. Cited by BAUMAN, Zygmunt (2014), *¿La riqueza de unos pocos nos beneficia a todos?*, Barcelona: Pardós.

not only within, but also from the outside and against all States. Thus, it would “put an end to this great *apartheid* which excludes from their enjoyment the majority of the human race.

To try to respond to the question of un-thinking, the following paragraphs are presented:

The paradigmatic transition

The Great Transformation, caused by economic liberalism and described perfectly by Karl Polanyi, passed through the Great Depression of the 1930s and, since the Great Recession of 2008 is being turned into the Great Regression for the subordinate classes. For what has been said up to this point, it seems that we now find ourselves in the time in which we have come to allow

the mechanics of the market to direct things on their own accord and to decide the fate of human beings and their natural habitat. They also in fact decide about the level and utilization of the power of acquisition. This necessarily leads to the destruction of society. ... Deprived of the protective blanket of cultural institutions, human beings will perish when they are abandoned in society. They will die converting themselves into victims of an acute social disorganization.²⁸

In this context, it is possible to state that we find ourselves in a *paradigmatic transition*, in a period of change from the preceding paradigm to another succeeding paradigm. This phrase recurs in the work of Boaventura de Sousa Santos and it recalls a question that the Cristianisme i Justicia Center for Studies asked some time ago. Is this an era of changes or the change of an era?²⁹ Within the framework of this paradigmatic transition, the movement is considered to be a change of era, obviously.

But with nuances. In the first place, the change of eras is going on today, now. It has begun but it has not reached its culmination. We have begun to leave behind the previous era and we have only begun to move along the road toward the new era. In this is the transition, in the “not yet like the new paradigm, but also not yet entirely like the old paradigm.” This transitional moment is so genuine that it allows some people to affirm that the previous paradigm still has something to say to us, as well as for others to state that the paradigm that is to come is already here with us. Although it has not become one thing or the other, both are found at the same time and neither one entirely.

28 POLANYI, Karl (1989), *La Gran Transformación. Crítica del liberalismo económico*. Madrid: Ediciones La Piqueta, pp. 128-129. See also VARIOUS AUTHORS (2023), *Fictitious Commodities. Rediscovering Polanyi For The 21st Century*, Barcelona: Cristianisme i Justicia, Booklet 188.

29 SANZ, Jesus and MATEOS, Oscar (2013), *Cambio de época. ¿Cambio de rumbo?*, Barcelona: Cristianisme i Justicia, Cuaderno 186.

And so, what is the paradigm from which we are coming or in which we still are? It is the paradigm of Western modernity. In it we are passing inexorably *toward and in* the paradigmatic transition.

A trajectory of the paradigm of today will help to contextualize historically and conceptually the statement of the death of human rights.

Western modernism

Western modernism historically developed a very ambitious plan of transformation. For some people, modernism is used up and its promises have been irremediably betrayed. For others, the plan of Western modernism can still give more of itself, that is, its still unfulfilled promises can be developed even more.

But in what does the plan of modernism consist? Summing it up, modernism created a constructive tension between regulation and emancipation. An equilibrium between order and chaos, solidarity and freedom. In order to build and maintain this tension, both unstable and precarious, modernism sustained itself by resting on the two pillars of science and law.

Modern science

Hannah Arendt in *The Human Condition* writes beautifully about science as an epistemological and paradigmatic pillar of modernism. The characteristic of modern science is the conversion of the world into mathematical language. That is, modern science tries to translate the phenomena of the world into mathematics in order to make them comprehensible, to predict them and to dominate them. This *reductio scientiae ad mathematicum* by modernism caused the fact that

the alienation of the Earth came to be, and continues being, the distinguishing mark of modern science. ... Modern mathematics liberated mankind from the shackles of experience subjected to the Earth, and its power of cognition from the shackles of finiteness. ... We have come to live in a world entirely dominated by a science and technology.³⁰

Modern science reduces the experience of the world to calculations. In that way it simplifies it and is able to manage it. Explaining the world in a form that is rational and calculated, is the great service of science to Western modernism. Thus, scientific language, that is, mathematics, makes the world manageable, predictable and able to be dominated. The promise of modern science was to liberate mankind from superstition, from the ignorance of uncertainty, from the pain of illness, and even from decrepitude and death.

30 ARENDT, Hannah (2011), *La condición humana (Estado y Sociedad)*. Barcelona: Pardós, pp. 384, 290 *et seq.*

2.2 Modern legal system

Historically, the modern paradigm was conceived out of a dialectic tension between order (the regulatory tension, the “determination of the world” of Arendt) and solidarity (the emancipatory tension, the “liberation from shackles” of Arendt). The situation of jurisprudence in 13th century Europe can be characterized by fragmentation, complexity, chaos and the arbitrariness of the rules and ordinances of law. In that century, the rediscovery of the old Roman law, which had been forgotten for centuries, supposed the reliance on a single corpus of law and texts, as well as a common language and method. All of this supposed a regulation of the social order that did not lose sight of emancipatory objectives. Roman law carried within it a combination of authority, reason and ethics. The Roman law revolution in Europe, in the end, led to conflict resolution based on legal standards and the centrality of juridical argumentation.

In the same way that modern science acted upon natural phenomena, the modern legal system acted upon social phenomena. It translated it into a common language (that of juridical argumentation) which made interpersonal, social and international conflicts comprehensible, manageable and able to be dominated. This translation is a view which sees everything in terms of the law that was brought about by rational entrepreneurs, the jurists, erudite in the law. Free and autonomous in the exegesis and interpretation of the Roman texts, they were judges, lawyers, diplomats, notaries, counselors, courtiers. They were the mediators between conflicts and their solution. Mediators between the law and the reality of society, just as the scientists were the mediators between mathematics and the reality of nature.

The autonomy and the independence of the jurists, with respect to the institutions holding effective control which were involved in the conflicts, produced the emancipatory tensions in the law. For that reason, the capacity for legal argumentation by the jurists was critical, since it was the expression of that freedom.

The modern legal system offered a juridical, unique, and common body of law, language and rationality, that permitted a shared rational construction which unified regulation and emancipation. It is a rational construction applied by and for free and autonomous individuals and groups. Thus, the promise of the modern legal system was to liberate humankind from vengeance, war, inequality, poverty and injustice.

2.3 Capitalism

Capitalism voraciously swallowed up the emancipatory potential of law and of science. When the trajectories of modernism and capitalism were superimposed on each other, the tension declined on the side of regulation in the form of good order which was counter to the chaos of emancipation. To the modern legal system was given the task of constructing and assuring good order, taking ad-

vantage of the rationality which was the instrument of modern science. The legal system became scientific and that was when it also became an instrument of the state. The hegemony of good order needed a modern State which was strong and based on a monopoly on violence.

The transformation of modern science into hegemonic rationality and into a fundamental productive force, on the one hand, and the transformation of the modern legal system into state-sponsored science-based law, on the other, are the two faces of the same historical process.³¹

The potential of the modern legal system for emancipation was neutralized in the 19th century when Roman law was reduced to a techno-rational formalism, when the science of jurisprudence was transformed into mathematics, universal and universally applicable, when the preservation of the social order was converted into the true inspiration and source of law.

As long as liberalism as a political idea of modernism maintained itself independent of capitalism, in the 18th century it was possible to have the dialectic tension between regulation and emancipation contained in modern science and the modern legal system.

The marriage of political liberalism with economic capitalism caused the legal system to become a necessary tool to exercise social regulation and to permit the hegemony of capitalism as the only and incontrovertible system of “social order”. Either chaos or capitalism. The labor taken on by the legal system in modern times has been Herculean in order to accomplish that goal. The State managed to monopolize the production of law in order to emphasize “social order” and condemn “chaos” to regulation and to any emancipation which did not come from the State itself. So as to underscore that monopoly, law became the science of jurisprudence which only the State could understand, manage and produce.

2.4 The social contract and human rights

In modern times, the social order is formulated through the theories of social contract, the pact which creates social order and progress. At the beginning of the modern era there were at least three definitions of the social contract. In the first, the principle that sustains the social order, for Jean-Jacques Rousseau, is the community. In the second, for Thomas Hobbes, it is the State. In third place, for John Locke, it is the market.

For Rousseau, the State is secondary because it is not distinguished from its citizens and he gives privilege to the principle of community. By community, he is referring to the integral community that is shown by the sovereignty of the

31 DE SOUSA SANTOS, Boaventura (2003), *Op. cit.*, p. 134.

State. The characteristics of the general will of Rousseau's community are horizontality, solidarity and transparency.

On the other hand, the principle of the Hobbesian State is based on peace and authority. For this thinker, law is the fruit of the will of the sovereign and it is instrumental. In the thinking of Hobbes, the tension between regulation and emancipation is reduced to a tension between war and peace.

In third place, John Locke is the lieutenant of the market. His thinking can be explained as an antithesis of the Hobbesian statism. A government is legitimate if and as long as it respects individual rights and protects them. Law is, therefore, the only guarantee against abuses of power and tyranny. Its immediate objective is to resolve by peaceful means the disputes which might lead to war. Along with peace and order, its objective is to preserve property. This is property that is legitimate and has no limits, despite inequality. And the State is obligated to protect it in order to legitimize it.

The three theories of the modern social contract signify the exercise of regulation in the name of emancipation, in the face of a reality which is unequal and unjust. Later, in the 19th century, when capitalism was identified with the social contract theories, the regulation-emancipation tension was substituted by the juridical regulation which was confided to the State. That is, the fact that the liberal State had the monopoly on the legal system should have brought by itself the emancipatory tension to the system. And this, evidently, was an illusion, a utopia.

The social contract allowed for the production of a legal system by the State in order to regulate the free and peaceful access to the market. The bourgeois and nationalistic revolutions of the 19th century were limited to modifying the social contract by changing the hands of those who were in charge of the government of the State. That is, changing those who would control the production of the only legitimate laws so as to carry out the regulation of the community and the emancipation of the market.

In the midst of this juridical utopia, human rights were born, suffered and died in the 20th and 21st centuries.

2.5 Intercultural and cosmopolitan human rights

In order to recover the emancipatory energies of science and law, it is necessary to un-think both of them radically outside the paradigms of Western modernism. This is not about rethinking law from inside modernism. We must move toward another conception of science and the legal system.

When it is proposed to un-think the legal system, we are talking about assuming that the other, that which does not come from the State, is also law. In reality, in spite of its efforts, the State never monopolized law, although it pursued that objective incessantly. Neither did the State allow itself to be monopolized by law. That is, it never accepted being conditioned by the law in an absolute way.

The alternative to the State as creator and guarantor of human rights was already present in 1950. Hannah Arendt wrote that anti-Semitism (not just hatred

of the Jews), imperialism (not just conquest) and totalitarianism (not just dictatorship), one after the other, one more brutal than the other,

has demonstrated that human dignity is in need of a new safeguard that can only be found in a new political principle, in a new lay of the Earth, whose validity should reach this time all of Humanity, and whose powers should be strictly limited, rooted in and controlled by newly defined territorial entities.³²

To continue anchoring the ultimate guarantee of human rights to the State would be an error which was made manifest in Europe between 1919 and 1945. The contempt for human rights and the treatment of human beings as superfluous entities began, according to Arendt, when millions of human beings were left “stateless” and they were denied the “right to have rights”. The statelessness was the equivalent of the loss of all of their rights. The stateless persons were deprived not only of their rights as citizens. They were deprived of human rights.

The example of refugees and stateless persons in the period between the wars is one of the failure of human rights. The failure consisted in the fact that the declaration of inalienable human rights referred to a human being in the abstract who seemed not to exist anywhere, that is, that he was not a national of any State in particular.

In our world of today, the one where there are nearly 80 million forcibly displaced persons,³³ it seems ironic that 100 years ago the touchstone for human rights was represented by refugees and stateless persons. When human rights had been defined as “inalienable” because it was supposed that they were independent of all Governments, it happened that in reality “in the moment that human beings lacked a government of their own and they had recourse to a minimum of their rights, there was no remaining authority to protect them nor any institution which wanted to guarantee them.”³⁴

Human rights should become independent of the States. Their recognition, protection and guarantees should remain beyond the States. It is in the teaching of the refugees and stateless persons.

Without a State, the reconstruction of human rights can be intercultural so that they can stop being a kind of European “globalized localism” and being converted into a sort of “secondary and insurgent cosmopolitanism”. It would present the leadership of globalization coming from above, from the instigation of the State, but allow it to rise up from below. And this can be very inspiring because it means that human rights ought to be counterhegemonic, they should stop looking for universalism and they should be conceptualized as intercultural.

Achille Mbembe also proposes the collective growth in humanity. For that, necessary conditions are restitution, reparation and justice in the face of so much epistemicide committed in the name of human rights. It is not now simply an act

32 ARENDT, Hannah (2004), *Op. cit.*, p. 11.

33 According to the official data from ACNUR.

34 ARENDT, Hannah (2004), *Op. cit.*, p. 370.

of recognition of cultural injustice, but rather, necessarily, “the thought that what is to come ought to be about life, about the preservation of life, of what should escape the sacrifice of capitalism.”³⁵

Human rights should be cosmopolitan because they correspond to the interests and expectations of all human beings. Cosmopolitan rights are different from universal rights. Cosmopolitanism speaks to citizenship in the whole world. Universality speaks to an imposed unity above all. Universalities should not continue to be affirmed because they are applied over all human beings. Instead, they should be cosmopolitan because we human beings can see ourselves included in them.

They should form the basis and the parameters of equality under the law. They are the substance of democracy, whose form (republican, constitutionalist, presidential, federal ...) is based on the power of the majority, which is different from human rights. To say that human rights are democratically based on the powers of the majority is in error. It is exactly the reverse. Without intercultural and cosmopolitan human rights there is not democracy.

35 MBEMBE, Achille (2016), *Op. cit.*

3 THE RESURRECTION OF HUMAN RIGHTS

It has been said above that the substratum of human rights is fed by the idea of dignity. At the base of human rights was the belief in a common dignity of rational, free and equal individuals. If we are dealing now with un-thinking human rights using a cosmopolitan and intercultural key, we ought to attend to the evidence that there are multiple ways of understanding dignity.

3.1 Dignity

Dignity as the image of God

Although there is a theology about mankind as image of God, what confers on them the lordship over all creation nowadays makes no reference to that theology because of the maximalism with which modernism was applied to conceive that “all the goods of the earth should be ordered in function of man, the center and apex of all of them. ... And that by God man has been constituted lord of the entirety of visible creation to govern it and to use it for the glory of God”³⁶ has been a magnificent religious pretext for the ecological craziness of the capitalist economic civilization. It is preferable here to note the feminist theology proposed by Elizabeth Johnson for whom women and the poor are the *imago Dei*, “image of God”, because they and the others who suffer in the world are *orphans*. That is, they are the manifestation of everything sacred that a human being has. Before the suffering dignity of these little ones, one has to go barefoot and prostrate oneself as Moses did in the desert before the burning bush. This sacredness of suffering dignity is what makes it untouchable and close to the mystery, the sublime and the venerable.

36 Pastoral Constitution, *Gaudium et spes*, chapter I, §12.

Dignity as liberation

Liberation theology has taught us that liberation is something greater than mere liberty. It is a task of searching, of preparation. Liberation has to be stoked. Effective liberation begins in history. It is primordially real. And while liberty is ecstatic and is easy prey for fundamentalisms, liberation is preached in relation to something. Liberation theology does not pretend to reach out to just free people, but those who have been liberated from hunger, from exploitation, from sickness, from injustices and from the abuse of power, arbitrariness and pain. Perhaps civil and political liberty might come afterwards, but beforehand should come liberation. From there, it is in this moment, prior to rights (like liberty) that liberation is discovered as a task for dignity.

Dignity as cultural resistance

The African philosophy of *ubuntu* or the current of thought called *sumaq kawsay*, inspired in the indigenous Quechua and Aymara of the Andes, are examples of alternative conceptions of a resistant dignity.³⁷ *Ubuntu* is originally from South Africa and it spreads and promotes the idea of interdependence among all humankind. This has been translated as “I am because you are.” In this philosophy, dignity is rooted in that one is a person by means of others. Dignity is preserved through mutual care and sharing. Thus, the importance of the community of those who are alive, of ancestors and those who have not yet been born. Also, the concept of life widens to include the environment and its preservation by means of rituals and the observance of taboos.³⁸ Good living (*sumaq kawsay*) could be considered as a philosophy of life based on harmony with the community and the rest of other living beings and nature (*Pachamama*). The dignity of the human being is indistinguishable from the dignity of nature. For that reason, the *sumaq kawsay* proposes ways of life based on economic self-sufficiency and ecological solidarity. That is, it consists in getting from nature what one needs and sharing the surplus when there is any. The *Pachamama* is to be understood holistically. Its care is the equivalent of care for the *ayllu*,³⁹ because the one forms part of the other. Living well has also been translated into normative juridical language. In the preamble to the current Political Constitution of Ecuador, for example, we read, “A new form of living together as citizens, in diversity and harmony with nature, in order to obtain ‘the good life’, the *sumaq kawsay*, a society that respects the dignity of persons and groups in all their dimensions.” *Ubuntu* and *sumaq kawsay* allow us to speak about eco-dignity, from the ecological perspective of our belonging to the ecosystems of planet Earth and recognizing our dependence on the goods and services that are doled out to us by the biosphere.

37 To *ubuntu* and *sumaq kawsay* as economic and ethical alternatives to unlimited development, see

Joan Carrera in *Vivir con menos*, *Op. cit.*

38 CARRERA, Joan (2019), *Op. cit.*

39 “Community” in Quechua.

The movement toward downsizing also can be an expression of cultural resistance to the modern dystopia of unlimited and unsustainable growth. It proposes an economic dignity of human beings that is counter-hegemonic, beyond one's belonging to the market society as either a consumer or producer.

Intercultural human rights should take into account dignity based on these and multiple other forms of cultural resistance in order to be truly cosmopolitan.

Forgotten dignity of "the flesh" and human bodies

The Western idea of a dignity above all spiritual and incorporeal surely comes from a prejudice that is too Platonic about the low worth of the body and its dignity. A theology of the flesh as a permanent temptation and open door for sin has also had something to do with it. From that point has come the forgotten quality of the flesh and the body as things which would be susceptible to being stripped of human dignity. Consideration is not given to the human body as an object of respect through the right to life and physical integrity nor to the dead and their bodies. Nor is thought given to the prohibition against torture which is meant to protect the bodies of human beings from physical torment. In those cases, there is also an underlying idea of transcorporeal dignity.

The example of refugees and stateless people has served us above. Now, in order to express this forgottenness, we bring here the example of migrants and refugees who have been deprived of their freedom in the Centers for the Internment of Foreigners. (CIE). In these places are incarcerated people who have received an order of expulsion and who have not obeyed it, that is, who have not returned to their countries of origin voluntarily. There are also incarcerated those persons whose expulsion for one reason or another the authorities have not been able to effectuate.

According to the logic of the law of foreign nationality, these persons ought not to be within the territory of the State, because in fact they have been juridically expelled. Their presence is a juridical contradiction. It is as if they did not exist on the territory of the State, at least from the point of view of the law. The persons incarcerated in the CIE are there for having had applied to them the juridical statute of "expulsion". It seems that their physical existence stops being united to their juridical existence. They are expelled persons who are only waiting for their bodies to be transported beyond the frontiers. Once they have disappeared juridically through expulsion, there only remains the disappearance of their bodies.

Giorgio Aremben has thought about in a masterful way this paradox of the human body which is available to the power of the sovereign and which is not given shelter by anything more than a bare life.⁴⁰ Bioethical matters such as gene editing, the extraction and transplanting of organs and tissues, the technological "betterment" of the human body (which is studied by the so-called transhu-

40 AGAMBEN, Giorgio (2006), *Op. cit.*

manism), the treatment of chronic illnesses and aging, all put on the table also the consideration of the human body with dignity. Recently the question of the control of mobility by remote cameras has arisen in the context of the pandemic. In some countries there are available mobile apps that geolocate the bodies of infected or sick persons which allow for the tracing of possible contagions. Critics point out the almost totalitarian limits to intimacy to which this kind of tracing can lead. On the other hand, the exposition of the dignity of bodies to cold, statistical, epidemiological examination continues without being relevant.

3.2 Human Rights Resurrected

The following list of rights is a humble proposal which, like many others, walks on the shoulders of giants. It is a proposal encouraged by all those authors who have gone before me and who have been the inspiration for the pages of this text. It does not pretend to be a perfect catalogue or decalogue, closed and self-referencing, but rather an approximation to the unedited and viable responses which can be considered and made real when faced with the urgent requests about human rights. Like the historical declarations of human rights, this proposal could well have had an introductory proclamation. In order to recreate it, a few words are taken from professor Vicent Martínez Guzmán, a scholar and expert about peace and intercultural dialogue, to whom this Notebook is dedicated.

We overcome the unilateralization of reason in order to talk about reasons, feelings, emotions, affection and tenderness. There is no dichotomy between reason and “caring”, defended by feminists of this kind of ethic. ... Let’s stop conceiving of the world as an abstract space and start thinking of it as a diversity of places. We pledge ourselves to rebuild the knowledge of those places, the vernacular knowledge. ... We human beings are nature, *humus*, meaningful earth. We reclaim the earthliness of human beings, the pact with the environment of which we form a part. ... In this sense we overcome the dichotomy between nature and culture. We denounce the fact that many times there has been an appeal to the natural, including to the biological, without realizing the social and cultural conditions that make possible this consideration of nature. ... Finally, we believe that knowing how to make peace is not only for heroes and saints, but rather for people like us, with our greatness and our foibles, with our egoism and our capacity for solidarity. For that reason there comes the need for public debate, social movements and ways of conducting ourselves, ways of governing ourselves, on top of or below the nation state.⁴¹

- The right to the recognition of the diverse dignities in human beings. Dignities ought to be at the root of intercultural and cosmopolitan human rights.

41 MARTÍNEZ GUZMÁN, Vicent (2001), *Filosofía para hacer las paces*. Barcelona: Icarta, pp. 114-116.

- The right to alternative ways of perceiving. The massive epistemicide perpetrated by Western modernism involves this right.
- The right to restitution, reparation and justice for the individual and, above all, massive violation of human rights.
- The right to a transformation of the right to property which is oriented toward solidarity. Beyond the State and the market, it is necessary to reinvent a third area of domination: the domination of a social group, not centered in the State, and private, but not oriented toward monetary gain.
- The right to the recognition of human rights for entities that are not capable of owning bonds. Concretely, nature, our common home, and future generations.
- The right to bring historic capitalism to trial in a world court. Capitalism should render accounts for its high degree of responsibility for the death of human rights by the “creation of massive amounts of misery, cultural impoverishment and ecological destruction.”
- The right to development on a human scale and to peace. *Development* is not the same as *growth* and development does not refer to objects (like GNP or the balance of payments) but rather to people in as much as they are capable of bettering their quality of life and of covering their fundamental human necessities.
- The right to democratic self-determination.
- The right to sentiments, to be cared for, to tenderness and mercy.
- The right to organize and to participate in the creation of rights. This human right ought to be a basic political principle.

The challenge for these intercultural and cosmopolitan human rights is in listening and taking seriously the things known by the local communities from diverse parts of the world. The practice of these human rights is a form of straightening out the twistedness which human actions can take, and to recognize dignity to increase the ability to live together and to make peace.

We do not know if after the passion and death of human rights we will ever reach living out their resurrection. We only believe in that resurrection which, as such, is not to a prior life already lived, but to a new and renewed existence. Paraphrasing Vicent Martínez Guzmán, we have to invent, imagine and bring to light human rights.

This project can sound illusive and not very concrete. It has been formulated that way on purpose, but as John-Paul Sartre pointed out on one occasion, “ideas, before they materialize, possess a strange resemblance to utopia.” However that may be, it is important not to reduce reality only to what exists.

That is what Mamadou did, the man who crossed the desert.

Cristianisme i Justícia (Lluís Espinal Foundation) is a study center that was created in Barcelona in 1981. It brings together a team of volunteer scholars and activists who desire to promote social and theological reflection that will contribute to the transformation of social and ecclesial structures. It is part of the network of Faith-Culture-Justice Centers of Spain and also of the European Social Centers of the Society of Jesus.

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