Life, War and Peace: Towards a Hermeneutics of Human Rights

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"Only Human Life has Dignity"——Is it Right?

WHEN we speak today of a "hermeneutics of human rights," we are dealing, above all, with a problem of philosophical justification, so as to address the related questions "what are, after all, human rights?" and "why and how should we defend them?" These issues are inseparable from the question of our thematic panel: "The view of life and human rights" according to Western and Eastern perspectives. The relationship between life itself and human rights is tied in, moreover, with an ontological-semantic problem, in that we can always ask whether the adjective "human" qualifies not only the "rights" at stake but also the "life" in question. After all, if we take the concept of life in a broader sense, especially as we have learned from our Eastern friends, both human life and human rights would refer back to a non-anthropocentric view of life and nature, so that human beings no longer occupy a prominent place, say, as "the crown of creation," according to a known metaphor of the Judeo-Christian tradition. With the emergence of environmental ethics and movements for animal rights in the '70s, it became increasingly difficult to advocate "special" privileges for human beings to the detriment of other species, especially now when we can also talk of rights being ascribed to nonhuman persons and denounce speciesism as a prejudice or discrimination as untenable as racism or sexism. In effect, with the emergence of environmental ethics and the consolidation of a global ecological awareness, it doesn't seem fair to exalt human life at the expense of wild fauna and flora that have been threatened by the human exploitation and domination of nature.[2] It seems, therefore, it would be interesting to understand how humans ended up stealing the scene in evolutionary processes of nature just because they thought they were the main actors, when in fact they are still in the process of figuring out what, after all, is their place in this vast universe. At least today more than ever, we recognize that the irresponsible and unfair domination of nature, the systematic destruction of ecosystems, and the wars

humans have waged against fellow human beings in order to ensure a supposedly hegemonic domination only contribute to their own annihilation. The self-preservation of human beings, now more than ever, is related to our own self-understanding as a species and to our understanding of sustainability, not only of our natural environment but of our social, economic, legal, and political milieux. Only a comprehensive view of sustainability can ensure a promising future for ourselves and future generations, as well as for other species of animal and plant life. A hermeneutics of human rights assumes, moreover, that, as Hans-Georg Gadamer put, the being that can be understood is language and self-understanding is correlative with historical consciousness.[3] This means that a philosophical hermeneutics of human rights requires an interdisciplinary empirical research in intercultural dialogue of different philosophical traditions, in a reflective process of self-understanding of history, language, and cultures that contribute to understanding the so-called "human nature." At the end of the day, we finally come to realize that there is no such thing as a human, essentialized nature, a *Gattungswesen*, a species being that could be reduced to its material or immaterial determinations. In a Heideggerian vein, being human means, all in all, calling into question our very being and modes of existence. In this brief communication, we will revisit some of the complex relations between humans in their social life and its vicissitudes of war and peace in the many attempts of Western philosophy to reconcile humanity with its other—the abstract other of reason, demonized in the ideologies of the other and excluded as the concrete other that threatens the horizon of our taken-for-granted cultural identities.

Need to Justify Human Rights

In order to revisit the problem of the justification or the foundations of human rights in the twenty-first century we could, therefore, address at least three distinct levels of philosophical inquiry, namely: (1) the ontological-semantic problem, including epistemic questions of meaning and language, seeking a plausible definition of what human rights are; (2) the problem of philosophical anthropology and historicity around the so-called "human nature" or whatever points to an anthropocentric specificity of human rights; (3) the hermeneutic problem of how to interpret, justify and defend human rights, including an intercultural approach, a cross-cultural or a multicultural one, and to what extent such a hermeneutic standpoint would still make any universalist validity claim. Given our time constraints, we'll try to outline these three levels, espe-

cially the problem of the correlation between universalizability and human dignity in light of the indelible contributions of Immanuel Kant's cosmopolitanism and modern critics of our civilization, so as to account for a philosophical foundation of human rights today. Indeed, contemporary authors such as John Rawls, Norberto Bobbio, Jürgen Habermas, Paul Ricoeur, Otfried Höffe, Thomas Pogge, Bernard Bourgeois, and Axel Honneth have all contributed decisively in recent decades to a philosophical foundation of human rights, towards taking into account the interdisciplinary approach of the three levels mentioned above, especially with respect to contributions from economics, political theory, social psychology and legal sciences. Departing from universalists and communitarians in their various interpretations of the problem of the philosophical foundations of human rights, we'll try to show in what sense variants of cosmopolitanism of Kantian inspiration still shows a highly defensible model, through the semantic transformations operated by the Hegelian-Marxist criticism (esp. the Frankfurt School) and the recent appropriation of liberal and republican authors like Rawls and Habermas. While the universalist conceptions of human rights inevitably refer to natural law and natural rights formulations in the social contract models, especially with Locke, Rousseau and Kant, cosmopolitanism remains the most appropriate model to account for the constant tension between cultural relativism and dogmatic claims of comprehensive doctrines (moral, ideological or religious, fundamentalist or not). Thus, both contextualist and the so-called post-modernist and translocalist models seem to incur in the same sort of deficiency that undermines the socially-laden arguments of communitarian models, as they seek to justify an ethos, beliefs, values, and traditions inherent to particular communities, without any pretension to universal, normative validity claims.[4] Cosmopolitanism has proved limited in its universalist aspirations of freedom and equality, having been criticized, on the one hand, along the same line of criticisms that Hegel raised against natural law models, in particular, the abstract and individualistic conception of morality, and on the other hand, by the materialist conception of history and their neo-Marxist versions which subverted all forms of idealism. Furthermore, many documents of conventions, treaties and international agreements (e.g., UN and EU) lead us directly or indirectly to the recourse to principles of universalization, particularly inspired by cosmopolitan, Kantian philosophy of right. My working hypothesis is that this correlation reflects the most important original contribution to the reformulation of Kant's philosophical problem of human nature, rehabilitating universalism in ethics and political philosophy and making the

juridification of human dealings and relations highly defensible, insofar as the liberal principles of constitutional democracy may be extended to all peoples and ensure the promotion of human rights under international law. So we can show that the correlation between Kantian universalizability and humanity enables us to overcome all the suspicions against Eurocentrism and imperialism (economic, political and cultural) in order to corroborate a reasonable multiculturalism and pluralism, respecting the criticisms raised by communitarianism, without succumbing to a nihilistic and irresponsible relativism. Ultimately, it can be shown in which sense a cosmopolitan conception of human rights leads us, on the one hand, to endorse the correlation between freedom and equality and, on the other hand, to maintain the Kantian correlation between universalizability and humanity, and how it can enable an identification between human rights as moral norms (*Menschenrechte*) and as basic rights (*Grundrechte*), positively valued by the constitutional law and legal procedures that take human dignity (*Menschenwürde*) seriously, whether identified with humanity (*Menschlichkeit*, *Menschheit*) or with some other broader, ultimate principle.

Ethical Problem: Why We Ought to Defend Peace?

Now, in order to reconstruct a hermeneutics of human rights, it is necessary to recapitulate the anthropocentric language and the historicity of the Eurocentric, modern natural law that paved the way for the reformulation of a universal declaration of human rights in the twentieth century. Since natural law postulated a state of nature as an inevitable state of war between members of a society, the challenge of attributing rights of all human beings to ensure a peaceful co-existence has become increasingly complex and more difficult to be satisfied, given the cultural relativism and the growing diversity of conflicting positions both in the domestic scale and on the level of international relations. The idea of a "human nature" that emerged within nature to dominate it by controlling and directing their humanizing and civilizing potential to preserve homogeneous units of social groups, primarily in tribes, villages and boroughs, leading to the civilizing processes of modern nation-states, has been visibly marked more by war than by peace treaties. "War and Peace" is not, moreover, only a literary theme for historical novels and romances, but can be taken here as the subject-matter par excellence of human history. Certainly when we talk about War and Peace (Russian *Vojnai i mir*), we immediately think of the title chosen by the Russian writer Leo Tolstoy for his epic novel

published between 1865 and 1869 in four volumes and of the setting of the Napoleonic wars where social and personal conflicts marked the lives of five aristocratic families. The contradictions of human experience with all the surprises, successes, and failures are contrasted with the apparent determinism of universal history. This great literary theme also occupied the thinking of many philosophers, notably Hugo Grotius, with the publication of his famous treatise on the Law of War and Peace (*De Jure Belli ac Pacis*), 1625, and Carl von Clausewitz , author of a monumental study On War (*Vom Kriege*), 1832. From the writings of Greek historians like Thucydides and Herodotus on the Peloponnesian Wars and the battles of the Hellenistic world, particularly against the Persians, until the recent writings of Michael Walzer, Eric Hobsbawm and Samuel Huntington on theories of just war, the Age of Extremes and the clash of civilizations in our century we have witnessed an endless cycle of wars that make "war and peace" paradoxically the most human of all the basic correlated features of humankind.[5] As they have been variously defined as *Homo sapiens sapiens, homo faber and homo oeconomicus*, human beings have proved themselves the *homo bellicus* par excellence, because no other known species in the evolutionary history of our planet depends on warlike conflicts against its own kind in order to assert itself in its survival. In effect, only the human animal is paradoxically characterized as the one that justifies its own survival by the killing of members of its own species—for various reasons: economic, political, social, religious, moral or even philosophical. This definition would, moreover, favor an interdisciplinary research on war in history, social sciences and philosophy.[6] To paraphrase Alexander Solzhenitsyn, we remark that there is nothing, at once, more human and more inhuman in humanity than the perpetual conflict and cessation of hostilities in endless processes of war and peace: "War is the price we pay for living in a state. Before you can abolish war you will have to abolish all states. But that is unthinkable until the propensity to violence and evil is rooted out of human beings. The state was created to protect us from evil. In ordinary life thousands of bad impulses, from a thousand foci of evil, move chaotically, randomly, against the vulnerable. The state is called upon to check these impulses—but it generates others of its own, still more powerful, and this time one-directional. At times it throws them all in a single direction—and that is war."[7] The importance of a philosophical reflection on the theme "War and Peace" is precisely to rescue an ethical, normative argument to justify why we ought to defend peace and condemn war, and why, despite this posi-

tion, humans end up defending some legitimate use of force and violence by the state and, under certain conditions, a just war so as to promote peace.[8] Thus, we can reconsider the proposal in the sense that ethical and normative contractarian arguments, more precisely, Kantian, remain some of the most defensible justifications to prevent war and promote peace among peoples, particularly as they pave the way for a veritable hermeneutic reformulation of human rights.

Beyond Cultural Relativism and Naturalistic Fallacy

The problem of the philosophical foundations of human rights can be, it seems, made possible by a hermeneutic conception of normativity, as it reminds us of the ontological-semantic distinction between "understanding" (*verstehen*) and "explicating" (*erklären*) natural and cultural phenomena..Certainly every culture develops "inside" nature, from within, as it were, and insofar as there is nothing "outside" of nature, naturalism in the broadest sense can be easily reconciled with hermeneutics, as it has been articulated through concepts of moral phenomenology and analytical normativity of ethics. But everything depends ultimately on how we define "naturalism" and what is at stake in a normative approach to the problem. After all, what is naturalism? We can speak of a methodological naturalism or scientific naturalism in the sense proposed by a program of naturalized epistemology, following the lapidary formula of W.V.O. Quine, for whom the hypotheses are formulated so as to explain, predict and control events by observation of natural causes and may be confirmed or refuted. The so-called hard-line naturalism, following the work of Quine and more recently of the cognitive sciences, neuroscience and sociobiology, has implications not only for the reductionist philosophy of mind and philosophy of language, but also for psychology and moral-ethical, normative conceptions.

We can also evoke a metaphysical or ontological naturalism, whereby the existence of things, events or properties is what ultimately determines the nature of reality. Authors such as Habermas, Apel, Ricoeur and contemporary moral thinkers sought to rehabilitate an ethical universalism, between the abstract universalism of Kantian conceptions and the relativism inherent in naturalists, contextualist and communitarians, avoiding thus the reductionism of cultural relativism and variants of the naturalistic fallacy (inferring actions from the prescription of describable facts). Interestingly enough, life is also something to be described in terms of naturalism, to the extent that life is a natural phenomenon, but human life and life in general as it has

been thematized by human beings is something that should be pre-scribed, for instance, as something to be preserved and deemed sacred, as we say that to live is often better than cease to live and that we should live well (in Greek, *eu zein*). Life can be described in terms of battles, wars, and selection processes that eventually reward the strongest or the fittest to survive. Competition turns out to be as fun-damental and conducive to the preservation of our species as mutual cooperation. From Hobbes to Rawls, the idea of socialization through social cooperation and competition determines the roles to be played by different players within the contractarian model. In this sense, peace can be pursued rather than war, because only in a state of peace can we cultivate the arts and sciences, politics and law, enjoy life to its fullest and to envision a morally good life. In the words of Daisaku Ikeda, "the recognition of human rights is the foundation of peace." The hermeneutic circle of human rights finds thus its normative rea-soning in our own experience of peace: beginning, middle, and end. To understand life and to appreciate life, especially by taking human life as an end in itself, a supreme good to be pursued, cherished and cultivated, as something priceless and of matchless value, such has been a constant concern for moral thinkers from Aristotle to Kant, Plato to Gadamer. Moreover, it seems that Gadamer's hermeneutics provides a more compelling proposal than the Habermasian one, inso-far as it favors an interpretive reading of the exciting relationship between nature and culture, life and normativity. The term "culture" may have a wider meaning than "civilization" in order to also cover pre-literary cultures with a level of relatively "primitive" practices. Citing Spengler and Toynbee, historian Edward McNall Burns sought to explain cultural evolution through the civilizing process, preceded by cultural and technological developments widely known as the Stone Age and the Bronze Age, the two periods extending over about two million to 2,500 years before the Christian era.[9] The emergence, con-solidation and transmission of the spoken language, knowledge of fire, social practices such as burying the dead, the invention of the wheel, weapons and stone tools (during the Paleolithic below), needles, har-poons, fishhooks, magic, art and the gradual development of social organization (Upper Paleolithic), agriculture, animal husbandry, navi-gation, and improvement of social institutions (Neolithic), all these long processes of cultural evolution have contributed to the formation of so called "civilized man," the *Homo sapiens* sapiens dominating techniques of working with materials from nature such as bronze, cop-per, steel and iron, as well as to the development of writing and the

transmission from one generation to another of its cultural legacies of art, technology, science and literature. According to this historiographical or ethnographical perspective, technique and culture would be like the matter and form of civilizing processes: a culture deserves the name of "civilization" when it reached a level of progress in which writing had a wide use in the arts and sciences achieve a certain degree of progress and social, political, legal, and economic institutions set the background to the development of problems of order, safety, and efficiency facing a complex society. While history, anthropology, sociology and psychology have contributed over one hundred of consistent definitions and insights on the meaning and scope of culture, as Mukerji and Schudson observed, "no single discipline has a monopoly of the word culture."[10] The traditional opposition, especially in English, between culture and civilization (as a more or less broad and vague way to account for the processes of historical development) becomes even more problematic when one considers the similarities and contrasts that we find in the use of terms *Kultur*, *Zivilisation* and *Bildung* in post-Kantian thinkers such as Fichte, Hegel, Schelling, Marx, Nietzsche, and Freud, following the Enlightenment opposition between nature (*Natur*) and freedom (*Freiheit*) or spirit (*Geist*). Gadamer's hermeneutics favors a reading of these traditions that promote genuine culture as values, beliefs and judgments shared by a community, usually closer to the arts (especially music, literature, theater, and rhetoric) than to science and emerging technologies, following the tension between enlightenment and romanticism, high culture and popular culture, avant-garde, modernism and postmodernism. We get a clear broader and narrower senses of that will be culture, which inevitably leads us to processes of self-understanding and interpretation of cultures. A cultural identity, in fact, cannot be reduced to a single tradition or scope of cultural significance, e.g. an ethnic, racial, religious, national, sexual, gender or any particular cultural significance. Besides being porous, fluid, dynamic and susceptible to mutations or radical transvaluations, every culture can be combined with one or more other cultures in a complex process known as cultural hybridity. Thus, a Brazilian can be differentiated as a Nisei, Afro-Brazilian, German-Gaucho, Italian-Paulista or Tupi-Guarani, and could be, at the same time, Jewish, Spiritualist, leftist, and gay activist. A political culture, a Jesuit culture and a culture of prevention, define heteromorphous spaces of meaning that may take on more or less broad, intertwined senses in order to defy rigid, fixed definitions. The current research in philosophy of culture tend to consolidate more and

more as inter-, multi- and transdisciplinary approaches in their various, possible ways of accounting for inter-, multi-, and cross-cultural features. Ultimately, as stated by Jay Newman, culture can not be confined to their cultural products, "artifacts" and "objects" resulting from its subtle processes of reification, as opposed to the positivist failure and frustrated attempts to arrive at a value-free definition and supposedly scientific take on culture, regardless of their reflective interpretations.[11] If we are to avoid reductionism inherent in generalizing contrasts between naturalism and culturalism, following the neo-Kantian opposition between fact and value or the quarrel between innate "psychological" and acquired "behavioral," between what is natural and what is culturally and socially acquired (*nature-nurture*), we recourse to a hermeneutic conception of culture as the most promising and capable of coping with the growing conflict of interpretations of the fruitful diversity of cultures, pluralism, and cultural identities. According to naturalist media psychologist Susan Blackmore, culture is nothing but "a mass of memes," reminiscent of Hume's definition of the self as a bundle of perceptions: "Culture is carried forward by memes, [which are] units of ideas, habits, skills, stories, customs, and beliefs that are passed from one person to another by imitation or teaching. Memes are, in effect, self-replicating, changeable units of information."[12] So how genes shape and inform the living organisms and their vital functions, myths, inventions, languages and political systems comes down to structures made of memes. But not everything is a meme. For example, playing football, to use tactical schemes and techniques to play soccer can be a meme, but players' skills, the body language, swings and bodily experience of playing football are not memes. Personal experience and awareness of one's own body (*corps propre*) demand, in effect, a phenomenological analysis and a hermeneutics of subjectivity. This would be, moreover, a point of rupture with the naturalism of analytical thinkers like Daniel Dennett and Fred Dretske, who deny the importance of phenomenology for an account of the interaction between genes and memes in evolutionary processes of nature and humanity. We believe further that a moral phenomenology can contribute to an analytic hermeneutics of social phenomena in search of a justification of normativity. A hermeneutics of human rights can rescue the semantic-pragmatic dimension of sociocultural correlates that tends to be overshadowed by the predominance of the ontological dimension of Gadamer's philosophical hermeneutics, making it more defensible in its practical and normative intent.

"Justice as Fairness" to Guarantee Human Rights

The theme of war and peace served as a conceptual reason for the formulation of various theories of social contract, since the formulation of natural law theories by Althusius, Pufendorf and Grotius to the neocontractualism of Rawls and Scanlon. The contractarian model posits a hypothetical way, a way out of a permanent state of war (*bellum omnium contra omnes*, the inevitable "war of all against all" in the state of nature) to a state of peace (Commonwealth, State law or civil society) through the transfer of natural rights to a sovereign, so as to regulate the legal-political relations (initially the recasting of the executive and legislative branches, later, especially after the work *De l'esprit des lois* by Montesquieu, the constitution of a third power, the judiciary). Contractarian models in Hobbes, Locke and Rousseau, in their respective formulations of absolutism, liberalism and radical democracy, gradually consolidated the pillars of the democratic and constitutional model, as we know it today in most countries that subscribe to a constitution and ensure human rights (especially political and social) to its citizens. As we can see, despite all criticisms stemming from Vico, Hume and Hegel, the contractarian model can still be restored in our days, according to Rawls, to justify political institutions and the legitimate use of force by the state, especially when it is evoked as a proceduralism which accounts for the stability of social, economic, and political institutions that determine the criteria of public justice, namely, as a model of liberal democracy, which guarantees freedom also extended to all citizens in that it promotes an equal and fair distribution of fundamental rights and duties to everyone. The aim of a theory of "justice as fairness," for Rawls, is precisely to guarantee the inviolability of basic human rights (physical integrity, self-esteem and self-respect, basic freedoms and rights to education, work, health, moral and political autonomy) while ensuring a fair equality of opportunity for all (allowing for quota systems and other public policies of affirmative action) and only permits inequality to the extent that they are acceptable for the disadvantaged.[13] The political liberalism of Rawls's egalitarianism and versions of liberal socialism (or social liberalism) cannot be reduced to welfare or state socialism nor be confused with a kind of neo-economic liberalism or libertarianism of the minimal state. In this sense, such an ethical-political view of life and human rights contributes to a culture of peace and to a permanent critique of state policies that promote war.

War Should be Ruled Under Law

Already in Grotius, war is conceived as a legal procedure to protect rights and punish infractions. Hence the need to seek a rational philosophical foundation for the so-called "just war" for what would be considered a necessary evil, having to be regulated. In Book I of his magnum opus (*De Jure Belli ac Pacis*), Grotius refers to Cicero to recall that the use of military force was justified for fighting the simplest to the most complex battles. Indeed, Grotius reminds us that the proper Latin word *bellum* (war) comes from the ancient word *duellum*, a duel, a contest between two people, as well as peace between people evokes the idea of unity, unitas, like its opposite . Hence Grotius reminds us that the word in Greek, *polemos*, leads us to the "multiple," "the many" (*hoi polloi*) that form the polis, the ancient city-state. As Heraclitus in the fifth century BC had already mentioned in a famous fragment (D. 53), "war (*polemos*) is father and king of all things,"[14] a cosmological conception of the conflicts inherent in the process of becoming the contrary, war for Grotius is compared to a process or ritual, enabling the formulation of a "just war" under the principles of military law, anticipating the transition from natural law morality toward positivist formulations, reducible to specific regulations or technical procedures of international law. According to Grotius,

> "That war is a solemn right of people under the two conditions are necessary: first, that both parties participants are invested in their nations by the sovereign, and, secondly, that certain formalities are observed."[15]

Like all human activities under the rule of law, war should also be ruled according to criteria set out publicly, as well as law and policy would be gradually transformed in their philosophical arguments increasingly secularized, to replace the religious and theological arguments supposedly "justifying" the "holy war" (e.g., the people of Israel against their neighbors in Deuteronomy 7, 1–3). The constant changes, according to several models of theories about wars, in fact take us back to the "perennial" problem of political philosophy and philosophy *tout court*, namely, the relationship between *praxis* and *theoria*. I think it would be fair to assert that a good social theory should be capable of accounting for whatever happens *in der Praxis*, through the historical practices and concrete, material human relations, as well as through the observation of natural events. The classical concepts of war unite us somewhat to the contemporary reformulations of this theme. However, as rightly pointed

Bonanata Luigi, "the doctrine of 'just war' declines, it is because, in theory at least, has the right to occupy the place of morality, the legal reason is, by definition, universal."[16] Thus we come to the famous definition of von Clausewitz, considered the most important theoretician of modern war: "War is nothing but a duel on an extensive scale. Each [party] strives by physical force to compel the other to submit to his will: his first object is to throw his adversary, and thus to render him incapable of further resistance." The three plans that determine the trihedral of war, according to Clausewitz, are the outcome of "(1) the original violence of its elements, hatred and animosity, which may be looked upon as blind instinct; (2) the play of probabilities and chance, which make it a free activity of the soul; and of (3) the subordinate nature of a political instrument, by which it belongs purely to the reason."[17]

His best-known formulation by the maxim that "war is merely the continuation of politics by other means" to legitimize the hegemony of power, would be reversed a century later by Michel Foucault, asserting that "politics is the continuation of war by other means" so as to emphasize the endless power games, of veridiction and jurisdiction, in the interstices of our unsocial sociability.[18]

Today's Greatest Challenge: Wars of Intolerance

The theme of just war (*bellum justum*) was, in effect, approached by several classical and medieval thinkers in the West even before Grotius, such as Augustine and Thomas Aquinas, and is already found in several passages of the Hebrew Bible (*Tanakh*) and the New Testament. It was often regarded as a moral argument in order to justify wars, especially with a view to defending the people of God according to the divine plan for humanity, so that the horrors and hardships of a given situation of war were justified in light of a greater good or peace to be realized in the immediate future. War was thus conceived as a kind of necessary evil. The rules that govern the justice of war (*jus ad bellum*) should therefore be differentiated from those that govern a just and fair conduct in war (*jus in bello*), as we find today in the Geneva Convention. John Rawls revisited this tradition in the twentieth century, in his attempt to extend a theory of justice to international relations. The ideal of perpetual peace advocated by Saint-Pierre, Rousseau and Kant in the eighteenth century are rescued by Rawls into what he calls a "realistic utopia" as a concrete alternative to the *pax americana* that, like the *pax romana* two millennia ago, lacks normative basis for the imposition of their own particular economic, geopolitical interests. Rawls was ruthless in his criticism of

American foreign policy since the use of atomic bombs against the civilian population of Hiroshima and Nagasaki, and the disastrous intervention against democratic regimes like Allende, by economic and ideological interests of "national security." Rawls also did not hesitate to link the Holocaust to the culture of anti-Semitism, just like the problem of wars of intolerance, revived in Northern Ireland and the Palestinian-Israeli conflict, remains the greatest challenge to modern ethical and political normativity, namely, how can different, incompatible comprehensive doctrines (religious, moral, ideological, etc.) live together peacefully in order to enable sociability? The question of tolerance, discussed by Rawls in the context of the emergence of political liberalism, in the midst of religious wars, it also brings us to the fundamental problem of human rights.

After all, what are human rights? An encyclopedic definition can help us: "Human Rights: powers, conditions of existence, and possessions to which an individual has a claim or title by virtue of being human."[19] A simple empirical observation, through the Universal History can help us but does not seem conclusive to understand what "human being" refers to or what authorizes us to grant such rights to an alleged "human nature." This seems to be, as we suspected, a philosophical question that requires an interpretive work not only of texts and cultural traditions, but a self-understanding of how we become who we are today, modern individuals, heirs of the Enlightenment and the emancipatory ideals of liberal democracy—what Foucault called a hermeneutics of subjectivity. While not necessarily prior to historical events or the observation of empirical phenomena, moral philosophy has always sought to justify the customs and beliefs of people beyond the mere instrumentalization of mythologies and the institutionalization of religious sacrament. Thus, we can revisit the history of universal human rights and seek to understand why we defend those rights, what is the legitimacy and whether we can rationally justify its purported universality. Thus, philosophical hermeneutics can help us better define what are, after all, "human rights."

Extension of Rights: From "Inside" to "Outside"

We usually attribute to ancient Babylonians the encoding and the first formulations of human rights, notably in the celebrated Code of Hammurabi (18th century before the Christian era). Various cultures, religions and ancient civilizations attest to the importance of sedimented, standardized and codified practices of social coexistence, so as to safe-

guard the lives, possessions and relationships between members of a community, tribe, clan or city. The Torah itself, the ancient Jewish law (also called the "Pentateuch" in allusion to the first five books of the Bible), has contributed decisively to the consolidation of these rights in our civilization processes. Particularly, in the Ten Commandments (the Decalogue) we find a moral foundation for the community life of a people. As we find the so-called "golden rule" in Judaism, Buddhism and Christianity, in its negative versions ("We should not do unto others what we do not want to be done to ourselves") and positive variants ("Do unto others as you would have do unto you "), the principle of universalization of Judaism ("In thee shall be blessed all the nations of the earth") and Christianity ("In Christ we are all one") would constantly challenge the intolerance of people, especially in the persecution of minorities and religious wars. In Greece and ancient Rome, we find several examples of such encodings in legal writings and philosophical texts. The Stoic philosophy and philosophical anthropology of Plato and Aristotle made an important contribution to the discussions that resulted in medieval and Renaissance humanism in the reformulation of the socalled natural rights. Thus, it can be to assert that universal rights, within the incipient meaning of what we now call "human rights," find their sources in Roman law and natural law in the classics, although the current political and legal conception is certainly due to the universal adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations, on 10 December 1948, following the major revolutions of 1688 and related statements (English Glorious Revolution), 1776 (Declaration of Independence) and 1789 ("Déclaration des droits de l'homme et du citoyen," during the French Revolution).

We may as well go back to the times preceding William of Ockham, Thomas Hobbes and John Locke, as we have witnessed an interactive transformation of traditions and conceptions of human nature and human rights, as evidenced by important documents like the Magna Carta (1215), the "Petition of Right (1628) and "Bill of Rights (1689) in Britain, predating the U.S. Constitution (1789), its Bill of Rights" (1791) and the numerous texts of abolitionists that resulted in the abolition of slavery in the Americas in the second half of the 19th century. We recall that Brazil was the last country in the hemisphere to abolish slavery in 1888. In general, one can see that there was a constant conjunction between the liberal concern to determine the boundaries of the modern state, related to the extension of universal rights and duties (basic freedoms, rights) to all citizens, and the evolution of our own perception of the Other, that have not yet won full citizenship—always

starting from the "inside" towards the "outside," for example, when we first learned to tolerate non-Anglican Protestants (Calvinists, for instance), among Anglicans in England and then extended to the tolerance of non-Protestant Christians (Catholics) before watching the political emancipation of Jews and other excluded groups, to the extent that anyone could claim their rights as human beings. Thus, when the *habeas corpus* was instituted in the eighteenth century, a Scottish philosopher like David Hume could anticipate that it was to acknowledge a sense of universality in our human nature, not because of any innate idea but just for convenience, empathy and fairness. As Rawls put it so aptly, from the perspective of political pragmatism, we are continually learning to tolerate one another and especially to deal with the intolerant (hence the tricky boundaries of democratic toleration) in society and between countries, representing national states.[20]

"Impossibility of Justice" or "Realistic Utopia"?

Moreover, since the first day slavery ships arrived in Brazil, one cannot help wondering that there was resistance to the violent domination, oppression and exploitation of human beings, as we are reminded of the brave activism of Zumbi dos Palmares. There was, moreover, a genocide of indigenous peoples in the first decades of colonization processes in Luso-Hispanic Americas, promptly denounced by the Fray Bartolome de las Casas in the 16th centure, who would be later reputed as a precursor of liberation theology in the 70s and 80s. Genocide, racism and the systemic discrimination of Jews, Indians, Blacks, Armenians, Roma, Kurds and other persecuted groups (we think today of the delicate situation of Palestinians in the occupied territories in the West Bank in Israel, as we think also of all refugees who suffer political persecution today) only confirms the worsening of an inevitable "cycle of violence"—to use the felicitous formula of Dom Helder Camara—that shames the human species, the only one among all animals which is capable of systematically torturing, killing, and exterminating other fellow creatures. The worst part of this whole story is that many of these instances of barbarism and massacres are committed in the name of God, for the sake of a religion or for some supposedly defensible ideal (moral, ideological or political). Just as there was always resistance of dominated groups, despite the law and all the repressive ideological apparatus. By law and codifications of existing institutions, the tragedy of Antigone could teach us something, as we dare to subvert and transgress the laws of the Polis in the name of an inherent right to our human condition, or some

ethical ideal that transcends the legal order of political institutions and the power that be. There are always those who dare to claim a right to an invisible ethical ideal that transcends the existing order and positive legislations. It is always possible to envision and foster a culture of peace, even in a given status quo, supposedly legitimated by force and by military culture. In a post-Cold war, post-9/11 globalized world we need a new conception of military identity, the identity of the peace manager, as Volker Franke put so well, "that merges adherence to combat and noncombat values in order to ensure cognitive preparation of military leaders for these challenges."[21] If Samuel Huntington has shown that military ethics results from the combination of political realism and conservatism, it is possible to call into question the very clash of civilizations that seems to deem our condition to warlike creatures in perpetual conflict.

In light of UN documents, and notably the High Commissioner for Human Rights, one can speak today of human rights in the sense of economic, political and socio-cultural rights of all human beings, to include groups that have been systematically excluded from the very discourse of human rights. Throughout world history, we have seen new claims being made by different groups such as women, children, ethnic minorities as well as groups with particular claims, such as gays, lesbians, people with physical or mental disabilities. The ideals of liberty, equality and justice are now translated by the new discourses of an ever-increasing inclusion in participatory democracy. This is therefore the most intriguing level of our philosophical and moral grounds of human rights, as the non-essence of our human freedom has paved the way for the so-called third generation human rights (right to development, right to a healthy and ecologically balanced environment, right to peace, right of ownership of the common heritage of mankind) and other expressions of such rights, that were not at some point perceived as legitimate claims (for example, the union of homosexuals or a basic minimum income program)—and who will judge, or rather, who is entitled to say what is, after all, right? After all, we must start from a political pragmatism on the diversity of cultures and conceptions of the good, to follow our processes of collective learning, especially learning to tolerate and respect each other accordingly. Basic human rights are those that enable the peoples all over the earth to endure their existence and protect their integrity and their very lives (for example, guaranteeing them minimum conditions of subsistence and their individual liberties). Let me conclude by saying that it is possible to conceive of human rights in a non-ethnocentric approach that allows for the possibility of cultural exchanges and

the dialogue of cultures, so as to include the values and contributions of non-Eurocentric, non-Christian and non-Western peoples and cultures.

The question of the possibility of a normative foundation of a just war theory, as we would refer to the problem of the impossibility of justice (so dear to Derrida) reveals also its correlation with the problem of philosophical foundations of human rights. Precisely because many try to justify recourse to arms as the only form of "doing justice," even in contexts that are obviously not constrained by religious arguments of fanatics or fundamentalists. The unfortunate coincidence of a nation that is one of the most successful democracies with the war-promoting foreign policies of the United States past administrations only confirms the tremendous ethical crisis of our day. And this is a problem that concerns the entire world, including millions of Americans who are influenced by the powerful war machine, arms industry and the military complex. We all know today that "defense" has emerged as the most important source of GDP of the United States of America and of many developed countries, more than tourism, industry and financial speculation. In fact, scientific and technological research itself, in almost all fields of inquiry, depend on all wartime applications. Thus, the conquest of space reveals itself as the conquest of the earth, and every political gain, *intra nationes*, involves some war or a peace agreement: hence the challenge to discuss the relationship between war and peace, even from a perspective of ethics and political philosophy. The theories of just war were, from their classic formulations to our day, attempts to meet these challenges. The theories of just war serve, in effect, to clarify the transforming nature of war as an object of interdisciplinary theoretical research, especially after the end of the Cold War and the beginning of the ongoing "war on terror." The problem of globalization has been, since September 11, certainly complexified, as well as democracy itself and the whole question of human rights were put in check. Also, the way George W. Bush administration led the most controversial issue raised in discussions of international policy forums, the UN and the world, even in academic circles. The war in Iraq also raised criticisms of the most eminent European philosophers like Habermas, Derrida, Hosler, Tugendhat, Apel, and Kersting, as well as important American thinkers or who teach in the United States, such as Putnam, Walzer, Pogge, Chomsky and Richard Rorty. Both Rawls and Habermas provide us with theoretical and conceptual resources to continue defending the possibility of a more just society and a world with less war and more peace without shame or any pejorative suspicion of utopia. The messianic and utopias failed precisely because of his Manichean vision of the world in

which war itself is justified by the victory of good over evil. Beyond good and evil, an attitude of sober nihilism, we can also consider situations in which conflicts are more acceptable although they are multiplied in proportion to the diversity of peoples and their interests, no matter how different they are. This would just be an extension of strategic global justice, reflexively calibrated by ideal theory (for peace through the UN and its bodies of international arbitration) and the non-ideal theory (*in medias res*, from our actual conflicts and wars, through bargaining and international relations of *Realpolitik*). According to Rawls, what is important for the Law of Peoples is the justice and stability of liberal and decent societies, without regard to questions of distributive justice, but such a reading would be quite defensible, as shown by Thomas Pogge and exponent of cosmopolitanism. According to these criteria, the U.S. would not be justified in its attack on Iraq, to the extent that they do not act according to criteria universal and not resort to any means recognized by other people, through the United Nations to combat terrorism. After all, the question will always be positioning themselves for or against the war, in certain contexts. The same realistic utopia of Kantian inspiration that guided the research of Rawls, in effect, had been based on three definitive articles for perpetual peace, namely: (1) the establishment of a republican constitution (ie democratic), (2) basing the law of nations or people in a federalism of free states, and (3) limiting the cosmopolitan right to conditions of universal hospitality.[22] Even though one cannot draw normative claims from the analyses of world history, military power, and regional and international wars, one can always call into question human collective behavior and the conduct of political figures and power relations in world history. Since Hobbes and Kant called into question, by very different reasons, the state of nature and war between humans and peoples by means of a social contract, it seems that human sociality and sociability defy our given conceptions of human nature so as to allow for the emergence of normativity in moral, legal, and political terms. For Kant this is the very ideal of practical reason, which subordinates empirical descriptions to prescriptive, normative claims that cannot be reduced to any descriptive constatation in history. To paraphrase Albert Einstein, one might argue that the "discovery of general laws in the field of [social sciences] is made difficult by the circumstance that observed [social] phenomena are often affected by many factors which are very hard to evaluate separately."[23] For instance, class, gender, ethnic and racial identities, as well as religious and diverse cultural features that determine value fomation and the codifications of norms and laws, these are all empirically accessible

and yet they all seem to fall short of establishing normativity as such. In Neo-Kantian terms, natural facts can be contrasted with moral values and normative claims, just like systemic mechanisms and empirical conditioning can be fairly described but are not prescribed in a morally normative way, say, as the Golden Rule and "ought" claims.

In conclusion, I should like to wrap up with two quotes from contemporary thinkers from the Western and Eastern pacifist traditions who were dedicated to cultivating peace and the informed dialogue between peoples and different cultures. First, I would like to recall an instigating excerpt from Albert Einstein's *Mein Weltbild*, as he compared Kant's perpetual peace to the peacemaking projects of Jesus Christ, the Buddha, and Mahatma Gandhi:

> "As long as the possibility of war remains, nations will insist on being as perfectly prepared militarily as they can, in order to emerge triumphant from the next war. It will also be impossible to avoid educating the youth in warlike traditions and cultivating narrow national vanity joined to the glorification of the warlike spirit, as long as people have to be prepared for occasions when such a spirit will be needed in the citizens for the purpose of war. To arm is to give one's voice and make one's preparations not for peace but for war. Therefore people will not disarm step by step; they will disarm at one blow or not at all... Anyone who is not prepared to make the fate of his country in case of a dispute depend entirely on the decisions of an international court of arbitration, and to enter into a treaty to this effect without reserve, is not really resolved to avoid war. It is a case of all or nothing."[24]

The second quote comes from a dialogue between the President of Soka Gakkai International, Daisaku Ikeda, and Brazilian intellectual Austregésilo Athayde, when the Buddhist philosopher forcefully defended the right to live in peace as the foundation of human rights:

> "This peace does not only indicate a situation without war: it frees from the fear of destruction by nuclear weapons and also the woes caused by clashing nationalist interests. This indicates the full flourishing of peace and full human dignity."[25]

Notes

1 I should like to thank Mr Wallace Moura for his invitation to attend the First Symposium on Oriental and Western Philosophy, as well as to congratulate the Japanese colleagues and members of the Brazilian branch of Soka Gakkai International for carrying on this debate on "Contemporary Civilization and Philosophy."

2 Cf. Peter Singer, *Practical Ethics*. Cambridge: Cambridge University Press, 2011 [1979].

3 Hans-Georg Gadamer, *Truth and Method*. New York: Crossroad, 1986 [1960], p. xxii.

4 See my "Zu einer hermeneutischen Begründung der Menschenrechte," *Deutsche Zeitschrift für Philosophie* 54/6 (2006): p. 829-840.

5 Cf. Michael Walzer, *Just and Unjust Wars: A Moral Argument With Historical Illustrations*. London: Allen Lane, 1978; Eric Hobsbawm, *The Age of Extremes: The Short Twentieth Century, 1914–1991*. Time Warner Books, 2002; Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order*, New York: Simon & Schuster, 1996.

6 Cf. Hew Strachan, *European Armies and the Conduct of War*. London: Routledge, 1998; *The First World War: To Arms*. Oxford University Press, 2003; *Financing the First World War*. Oxford University Press, 2004.

7 Aleksandr Isayevich Solzhenitsyn, *November 1916: The Red Wheel: Knot II*. Farrar, Straus and Giroux, 2000.

8 Cf. Terry Nardin (org.), *The Ethics of War and Peace*. Princeton, NJ: Princeton University Press, 1996.

9 Edward McNall Burns, *Western Civilizations: Their History and Their Culture*, W W Norton & Co, 1998.

10 Chandra Mukerji & Michael Schudson, *Rethinking Popular Culture: Contemporary Perspectives in Cultural Studies*. University of California Press, 1991, p. 35.

11 Jay Newman, *Inauthentic Culture and Its Philosophical Critics*. Montreal: McGill-Queen's University Press, 1997, p. 121.

12 Susan Blackmore, *Conversations on Consciousness: What the Best Minds Think about the Brain, Free Will, and What It Means to Be Human*. Oxford University Press, 2006, p. 24.

13 Cf. my *Rawls*. Coleção Passo a Passo. Rio de Janeiro: Zahar, 2003.

14 Cf. Charles Kahn, *The Art and Thought of Heraclitus*. Cambridge University Press, 1979, p. 205–210.

15 H. Grotius, *De Jure Belli ac Pacis* I, iii, 4.

16 Cf. L. Bonanate, A Guerra. São Paulo: Estação Liberdade, 2001, p. 133; N. de Oliveira, *Tractatus practico-theoreticus*. Porto Alegre: Edipucrs, 1999.

17 C. von Clausewitz, *Da Guerra* I, i, 28.

18 Michel Foucault, *Power/Knowledge*, ed. C. Gordon. New York: Pantheon, 1980, p. 90.

19 *The Random House Encyclopedia*. New York: Random House, 1990, p. 2289

20 Cf. *Rawls, op. cit.*

21 Volker Franke, *Preparing for Peace: Military Identity, Value Orientations, and Professional Military Education*. Praeger, 1999, p. 39.

22 Cf. Immanuel Kant, *Zum ewigen Frieden* (1795), em port. *À Paz Perpétua*. Trad. Marco A. Zingano. Porto Alegre: L&PM, 1989.

[23]   Albert Einstein, "Why Socialism?," *Monthly Review* (May 1949), p. 123.

[24]   Albert Einstein, *The World as I See It*. New York: Citadel, 2001, p. 87.

[25]   In Austregésilo de Athayde and Daisaku Ikeda, *Diálogo: Direitos Humanos no Século XXI*. Rio de Janeiro: Record, 2000, p. 196.