

## ANTHROPOLOGICAL FOUNDATIONS OF HUMAN RIGHTS

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### RESUMO

Este artigo analisa uma série de questões sobre os direitos humanos, como as variações em torno do conceito e identidade, e a influência das diferentes culturas sobre eles. Também são analisados alguns modelos jurídicos ocidentais com o objetivo de compreender o tratamento dado aos direitos humanos em diferentes culturas. A partir destas questões, será analisada a questão da universalidade dos direitos humanos no Século XXI, além da questão da flexibilidade dos modelos jurídicos ocidentais. Por fim, a dimensão histórica dos direitos humanos é analisada, demonstrando os fundamentos antropológicos que os embasam.

Palavras-chave: Direitos Humanos. Fundamentos Antropológicos. Cultura. Universalidade dos Direitos Humanos.

### ABSTRACT

This article examines a series of questions about human rights, such as variations around the concept and identity, and the influence of different cultures about them. They are also analyzed some western legal models with the objective to understand the treatment of human rights in different cultures. From these issues, the question of the universality of human rights in the twenty-first century will be analyzed, beyond the issue of flexibility of western legal models. Lastly, the historical dimension of human rights is analyzed, demonstrating the anthropological foundations that underlie them.

Keywords: Human Rights. Anthropological foundations. Culture. Universality of Human Rights.

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## INTRODUCTION: VARIATIONS ON THE CONCEPT OF IDENTITY

In 1993 the United Nations held, in Vienna, a conference on human rights

( H.R.)<sup>1</sup>. Two themes were covered: that of the western countries: H.R expressed universal values even if their origins were a result of historic experiences of the Occident. On many occasions the Dalai Lama has taken it upon himself to agree with this theory, and will continue to do so. But his position remains relatively isolated among the non western civilizations and cultures. Several muslim countries reject vigorously the theme of following an idea of the H.R. which says nothing about the rights of God. Shortly before the Vienna Conference, the Asian states, during a regional conference, laid out a Declaration of Bangkok where they link the universalism of H.R. with the necessity to respect particularisms:

“ While H.R. are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds. ”<sup>2</sup>. This text was adopted, word for word, in the final Vienna Declaration (§ III).

It is open to one of two interpretations. Either it will express a position of compromise which will be attached to an illusory consensus ; or it will define a specific program at the beginning of the XXIst century showing how to establish a new method of Universal H.R. which will take into account the factors of each individual culture, without however getting bogged down. To reply to this question, of what is right or wrong, is not enough. We must add the factor of anthropology.

*Who are we ?* The ability of mankind to ask itself this question is an expression of its specificity when you consider all the millions of human beings. We shall never know the truth about the stages of our slow germination in the course of becoming *Homo Sapiens*.

But, much nearer to us, several ideas emerge of our ignorance. Traditional societies, themselves near to our conventional technologies, can no longer be taken for traces of our past. But they reveal that mankind has not wait to know or to appreciate that which we refer to as modernity, in order to question its identity.

So many people in so many societies believe themselves to be super, good, excellent and completely rounded. While, according to other societies the opposite definitions are of being “ bad, unkind monkeys, bad eggs, of louse ” or merely qualifying the foreigner as being “ phantom”<sup>3</sup>. When, in spite of all this, human contact was established or begun, limited to the discreet forms of “ silent trade ” , that is to say that goods were exchanged without any meeting between their owners. Thus sequestred groups of human beings could have been able to destroy each other by war, when destiny should have put them in contact with each other. But this supposition is only true in respect of its recent history, because the period of wars begins only in neolithic time. However, the need to exchange goods, as opposed to violence, was imposed by circumstances.

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The banning of incest was key to opening society to the exchange of husbands and wives. Commerce allowed goods to circulate, and even the gods themselves changed their “residences”. Humanity thus began the game of alliances. There is another development which is easier for us to date approximately, that of monotheisms. Today, some of their representatives declare that they alone constitute the first “formulation of H.R.”. The Jewish people underline that the Decalogue does not concern only the Jews but is addressed to all peoples<sup>4</sup>. The Muslims insist on the fact that God himself is the creator of Man and all laws, therefore it is He who is also the source of H.R., which no government is able, or has the right to violate or to repeal<sup>5</sup>. As for the Catholics, christianity is based on the brotherhood of all men under Christ, only undertakes to look after H.R. based on natural law(6). But this union is sacred and illusory. On the one hand, monotheisms are divided into several movements which are not in complete agreement<sup>7</sup>.

On the other hand, atheists and agnostics can only with difficulty recognise themselves in the doctrines which uphold the existence of a God as *terminus a quo* as regards H.R. Lastly we see through history that monotheisms are very able to discriminate and exclude as well as to build unity, because one must accept their way of considering God and mankind if one wishes to be accepted by them.

For many years, although it does not apply nowadays, the Catholic Church taught the doctrine that “outside the Church, there was no redemption”. Rabbi Kaplan wrote that equality is a natural belief of monotheism, but not with paganism: for, the multiplicity of gods created inequality in the heavens. There were gods of different importance and rank. One stated or believed that if there was inequality in the eyes of God, how could one accept this inequality for the inhabitants of the “earth” ?<sup>8</sup>

Did the map of equality correspond that of the monotheism ? The example of Islam - but we have examples in other religions - shows that religion is able to be a source of negative discriminations.

The community of all believers is therefore divided into several schools of beliefs. The Arabs enjoy a pre-eminence among the African and Asian peoples ; slaves and women occupy among them subaltern position. According to Muslims, Christians and Jews are protected, but overwhelmed by multiple incapacities and the pagans are deprived of certain guarantees accorded by divine law. In fact, we see that often history is not in accordance with the beliefs of diverse monotheisms according to which God would be the foundation of universalism of H.R..

The French Declaration of 1789 of H.R., even adopted under the authority of a Supreme Being, breaks this long history. Regarding H.R., God is no longer necessary even if He exists. This non-religious position is nowadays that the great texts of international law. All men possess natural and inalienable rights. The universalism must be superior to the particularisms. That is the message that France sent to the world. In 1789, the Comte de Clermont Tonnerre proclaimed about the legal status of the Jews : “ It is necessary to refuse to the Jews any rights as a nation, but one must grant rights to them as individuals. It is necessary to refuse legal protection which maintains their pretensions to specific Jewish laws. It is necessary that they no longer be a specific group or order in the State. But it is necessary for them to be individual citizens”.

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A century and a half later, the Universal Declaration of H.R. of the United Nations, laid down the same beliefs, which will be absorbed, but slowly, in the “ city of law ”.<sup>9</sup> A sign, among many, of the difficulty of their reception : the maps of the application of the H.R. regularly laid out, testify that as regards the essential, these would mainly applicable only in the areas of diffusion of western culture. This is a major change from the sixties, when the colonization by the european countries was denounced as the source of all evils. This evolution is much more evident when we think to the genocides perpetrated in Cambodgia or Rwanda, where previously the dominating philosophies were those of compassion or a religion of “ love your neighbour ”, are the bloody proof of universal evil. (In Rwanda children were crucified). Parallel to all this, some recent famous texts<sup>11</sup> warn us that history and its evolution is not yet over, but that the XXIst century will be one of wars caused and fed by cultural confrontations.

Very serious reasons cause us to doubt the future of H.R. and their universality, for the weight of the diversity of cultures will be too heavy to bring about the uplifting of humanity towards universalism. Will it be necessary to persist in this doubt ? The lines which follow will try to reply to this question by studying successively the influence of cultural factors on the idea of H.R., and the conditions of the elaboration of a new universalism of these rights.

## **FIRST PART: THE INFLUENCE OF THE CULTURAL DIFFERENCES ON HUMAN RIGHTS**

Mankind achieved humanity throughout a long series of historical and local accidents. From these incarnations spring the plurality of cultures, and the differences that followed : their ascertainment concerns us first. But as we have seen, the game of alliances imposed itself quickly in human societies as a condition of reproduction. We will establish real models by examining the techniques of management of the differences. These are themselves plural: it is necessary to state the reasons for this multiplicity.

### **A. THE ASCERTAINMENT OF DIFFERENCES**

In 1948 the statement of differences was not on the agenda . No country voted in a negative fashion as regards the Universal Declaration, and the eight countries which abstained were not in disagreement with the principles of the Declaration, but only regarding certain articles(12). Among the eight were six communist states who made the judgement that it should have been necessary to insist on the *duties* of the individual. These six were Poland, Bielorrussia, Czechoslovakia, Ukraine, the USSR, and Yugoslavia. In addition, South Africa was opposed to the declaration of economic, social and cultural rights, and finally Saudi Arabia criticised religious freedom.<sup>13</sup>

The differences being hidden, they did not reappear until later. Let us look at the two examples.

Fistly, the place of God. Art. I of the Declaration stipulated that all human beings are gifted with reason and conscience, but by virtue of what and by whom ? Is it in effect because of the willingness of a Creator, or of human nature ? No reply to that question is given. The West has chosen, by virtue of the French Declaration of 1789, a lay version of H.R. which was

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confirmed in 1948. The socialist countries however were saying, as for them, that if Marx wrote that religion was “ the sigh of the oppressed creature ”<sup>14</sup>, then people would no longer need God in a future socialist society set free from alienation. And, at that time, 1948, the moslem states were not thought to be important enough for their beliefs to be taken into account.

Secondly, the rights of the minorities. One had thought, and the USSR had insisted, that the Declaration should take them into account<sup>15</sup>.

But one remembers vividly the manner in which these rights had once served as a pretext to the Nazi aggression against its neighbours. Moreover, the western States believed that economic development would increase the homogeneity of liberal societies and uphold the belief of the pre-eminence of the rights of the individual against those of groups. As for the socialist states, the concret policy carried out as regards the minorities and the aboriginal peoples revealed very quickly that individual rights hardly mattered at all in the so-called edification of the “New Man”.

*Homo Sovieticus* was the socialist parallel of the liberal *Individual*. Today some elements have disappeared from this obsolete world. One speaks about “ the wrath of God ”, let us state, in any case, that the states which underline these rights are no longer without influence on the international arena. The rights of minorities, and maybe soon those of aboriginal peoples, are proclaimed by the United Nations<sup>16</sup>. The economists appreciate that the standardisation of demand did not necessarily bring with it the uniformity of supply<sup>17</sup> and developed the study of intercultural management. Finally UNESCO says in principle that cultural factors are primordial in analysing economic development.<sup>18</sup>

And indeed, many states oppose the argument of the cultural difference to the reception of H.R.. But here cultural argumentation is only a political pretext. The authoritarian states refuse H.R. because of the potential freedom they offer. This attitude is not a new one. Two centuries ago, the French enemies of Revolution were using it already. In “The Considerations on France ”, J. de Maistre wrote : “ There is no such thing in the World as Man. I have seen in my life Frenchmen, Italians, Russians, and so on. But as regards Man, I declare that I have never met him in my life; if he exists, really I do not know him”.

Rivarol fulminated strongly that the Declaration of 1789 was only “the criminal preface to an impossible book”. The differences are stated here, simply in order to conclude the impossibility of their being overcome.

But the perversion of the cultural argument does not cancel its reality, as noted by the legal anthropologists<sup>19</sup>. What do they say?

Non-western societies, rightly or wrongly, do not separate individuals from groups as much as do the western ones. In fact, in all societies, individuals are in relations within groups. The individual exists everywhere, but his existence is conditioned by his standing in multiple communities. The differences of standing on a straight line between two extremes (individuals, groups) explain how in a large part of the world, the idea of subjective rights, belonging to an individual from his birth, the same for everyone, on which are based the great declarations, is not able to be understood everywhere in the same manner. And even in the western world the need to grow roots cannot be denied, bearing in mind that modern society produces solitude. By the same token, if H.R. rest on the principle of

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equality, most of the time unequal relations organize human societies. Individuals have their rights and their duties defined by their status, established according to different criteria. What poses the big problem in this case is the confrontation between the universalism of a concept, and the quasi-universality of derogations concerning it.

Generally speaking, these remarks do not suffice necessarily to demonstrate non-existence of H.R. because very often law uses fictions. But they explain that we must never be surprised by the relative inefficiency of the H.R., which does not always correspond to their declarations.

An anthropological approach is therefore necessary, which will consist of placing the notion of the H.R. at the centre of the great cultural traditions in order to decide upon a basic inventory, from which it will be perhaps possible to build convergences if we really wish to do so.

Starting from reflections already begun<sup>20</sup> we shall insist with M. Alliot<sup>21</sup> on the role of religious beliefs and we shall draw from them the consequences as to the different conceptions of the H.R..

The material world only imposes itself on man by means of the mediatizations that occupy his mind and his passions. For man is looking for a sense that is not explained in his immediate daily life. He is obliged therefore to build this sense and to find in it the assorted manifestations of the outside world, often conceived in the images of an invisible world. For it is striking to note that there exist undeniable parallels between the ways of thinking of the universe, of God, and of Law. On the other hand, if legal and religious thoughts are correlate, there can be no priority between the one or the other; the manner of thinking of a Divine Being is not above the thinking of the world and its institutions. Religious thought, and that of the social institutions, legal and political, express in different domains a way of thinking of the universe corresponding to each and every society. For M. Alliot, the ways of thinking are able to be placed under three different headings: Identification, Differentiation and Obedience, which correspond to different logics.

## 1. Identification

We can illustrate this archetype and its logic, by looking at the example of ancient China. For the learned people of this epoch, the world is infinite in number (plurality of worlds) and in time ; it combines the opposites, without excluding either one or the other (it is impossible to think of the good without the bad, spirit without matter, rationality without the sensitivity, *yin* without *yang*). Its dynamism is not limited by any law imposed upon it from outside: the universe governs itself spontaneously. It must be the same for each individual. Confucius postulates the relationship between the cosmos and the individual: he implies a logic which man should follow and he must perfect himself according to rites, and not to look for help or protection according to the Law of a God. From this belief stems the scorn in which law is held, which is also reflected in the contempt of litigation (which anyway is always resolved either by a third party or by mutual conciliation).

H.R., as western countries conceive them to be, are based on different parameters. In the West, we rely on law and judges to guide us. It is in and by law that the individual aspires to liberty, solidarity, and equality. On the contrary, in many non western countries, the idea

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of equal rights for everyone is completely foreign to the way of thought. Even today, M. Chiba, an anthropologist of Japanese law, can write :

“This personalization is not quite the same as that in western societies. The individual rights of a person are not fully defined by the clauses of a contract under modern law. There remains room for them to be modified by different kinds of actual social relationships which would be non-legal in the western conception. Whether the parties are employer and employee, landlord and tenant, citizen or government, whether they are connected by particular common goals or by close, personal relationships, and whether they are negotiating with each other directly or through intermediaries, they are all apt to be compelled, as well as allowed, to accept on all occasions some factors inherent in their particular relationships as specifying the particular substance of their individual rights and duties. Particular relationships between the parties can be said to form the functional complement to the conceptual indefiniteness of individual rights, which helps the Japanese indefinite conception to function as a legal frame of reference equivalently to the western definitive concept of individual rights”<sup>22</sup>

## 2. Differentiation

This heading may be illustrated by the examples of ancient Egypt, and of animist Africa. Their outlooks are often close to each other at this level. At the beginning there was only chaos ; that is to say, a badly organised collection of assorted parts (whilst the nothingness means the total absence of parts). This chaos contained not only the miracle of creation but also the Creator himself. God the Creator is absolutely unique, then he gets mixed up with assorted, other forces which organise progressively the universe. This latter is so, fragile, because disorder is always present, and can never be eliminated. Man plays a fundamental role. With the help of invisible forces, he must assure both order and harmony.

On the other hand, in these beliefs, the world and the forces which make it go round, are plural, but complementary, to that which makes them coherent. Man follows the same rules of organisation, because he is one of the elements of the universe. He believes himself to be too isolated as an individual. But he is moreover, a *person* who belongs, simultaneously, to distinct communities based on age, sex, residence, as well as other assorted criteria. A person has various abilities on which depend the functions that she carries out in the society.

In such conditions, one can scarcely apply the modern idea, so precious to the French Declaration of 1789 of H.R., according to which law and right must be uniform.

For in general, one is unable to belong to several groups of the same kind (uni-lineal filiation is the most frequent), and that limits opportunities for competition. Besides, when this, in spite of everything, reveals itself, one tries to mitigate it, or to ritualise it. The accumulation of goods must be periodically interrupted by the redistribution of wealth ; preferential marriages attenuate the competition for spouses ; in the exercise of power, unanimity is preferred to majority rule ; in the techniques of ruling on conflicts, many avoid juridical ways of settlement.

One can understand therefore that law does not play in these societies the same role as in the contemporary Western world. The individual is scarcely recognizable. One should choose to use the word *person*, a term which we use to refer to the individual and his different

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social extentions, and necessitates associating the notion of duty with that of rights. Because he is situated at the crossroads of several groups.

Outside, or away from his ethnic group, man is considered to be a "slave", an "animal" - a "bird" or something other<sup>23</sup>. The legal personality is not necessarily limited by birth or by death : one is able to choose as a wife a child who is still at her mother's breast ; a child born of a dead brother is able to be known as that of the dead man. Moreover, legal personality is able to develop in the course of life (circumcision, marriage, birth of children, initiations) or can be weakened following certain events (illness, funerals, etc.). The representation of the individual as an unsplitable atom, and that of the inborn rights which are dear to the modern West, are only able to impose themselves at the price of a slow and profound work by these societies on themselves. If India is more polytheist than animist, the Hindu tradition offers certain similarities with these of Africa.

As in the case of Africa, India attaches great importance to the notion of duty. But it attaches even greater importance to the need for man to be integrated into the cosmos, inside a hierarchy having as its end universal harmony.<sup>24</sup> The difference between the western idea of H.R. is immediately evident. Let us take an example. The Universal Declaration of the Rights of Man (1948) is inspired by the ideology of the French Declaration of 1789. The first article affirms that : " all human beings are born free and equal as regard rights. " This definition is very difficult to integrate into the hindu system. For according to the hindu belief, each man has only relative rights by virtue of the position that he occupies in society and in the universe.

One is able to understand these beliefs better if one considers the central idea of *dharmā*.

The *dharmā* is that which maintains, gives strength, and cohesion to everything that exists. One can imagine it in different ways, and see its effect in religion (that which maintains the universe) ; morals (that which keeps the human being in harmony) ; the law (which unites human relationships); justice (which maintains them together) and truth (or the internal cohesion of being). The idea of a subjective law, enjoyed by individuals who live under the protection of a State, is completely foreign and unacceptable to *dharmā*. It does not have an authoritative character : it suggests certain behaviours which however are not definite as such, the suggestions are supple and can be "bent", according to circumstances.

*Dharmā* is based firmly on the theme of duties : everyone must carry out his own particular duties, which of course vary according to the age, the sex and the social position of the individual. Traditional thought believes that it is not the rights which express that which is just or unjust, but the character "dharmic" or "undharmic" of a thought, or of an act. Certainly *dharmā* does not exclude every idea regarding H.R. But these would be different from the ideas formulated and which, are carried out in the West, but will find certain similarities to those operating in black Africa and in the Far East. They include thus it reciprocal duties of the rights : the human species has only the right to survive as long as he carries out its duties to maintain the world. The rights are not only those of Man, for in fact he is only a part of the cosmos : he should also take into account, and to guarantee, the rights of animals, of inanimate beings, and even of the gods. To sum up, the individual is only abstract, he does not exist independent from the ties that unite him to all true elements. The individual is not able to be the exclusive beneficiary of all declared rights.



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However, one must not idealise the hindu vision: the existence of outcasts, the caste system, which constitutes so much degeneracy, and the falsehoods regarding the idea of universal harmony. Broadly speaking the confrontation between the hindu vision and that of the modern West shows us that their two, logics, such as they are, are not satisfactory enough to build universal H.R. In effect, one cannot admit that either the rights of the individuals depend only on their place at the heart of society and of the universe, or that they do not belong at all on this place.

### 3. Submission

For monotheism, God existed before His creation and governed it from outside. Man is thus subjected to a power and to a law which are outside himself. In Islam, the law has continued to be personified with God, as revealed by its Prophet and in the Koran : it imposes itself upon everyone, including the holders of political power . The islamic State has neither the intention, nor the means, to change society, it can only assure the respect of a Divine law. The Christian Western world shares with Islam the belief of a law imposed upon the world and upon Man. But its thought has moved from this common base in quite another direction. The outside authority which makes the law is not God, it is the State, sometimes referred to as "Providence", (the law is not God, it is the State ; sometimes there is the same word to qualify God and the State ... ). God being absent, the State takes it upon itself to create a better world, and to transform society by the law, superior in the hierarchy of the legal norms, and supplied by the administration and the courts of the same State, to which every citizen must submit.

Society therefore tends to offload its responsibilities onto the shoulders of the State. This change of perspective rests on a logic which has the reverse effect than that which we have observed in traditional societies.

These three different archetypes represent ideal examples. But the tide of history has turned them in specific directions. In the European states with latin traditions, the Catholic Counter Reform has exacerbated the representation of an exterior God who is superior to his creatures, All Powerful and Always Present, who will influence profoundly the continental tradition of the rights of the individual, and of the role of the state<sup>25</sup> and will grant to the legislator the first role in the production of law.

But in the Anglo-Saxon countries, the Protestants have introduced the possibility of a more direct relationship between christians and God, without the intervention of a clerical hierarchy directed by the Vicar of God. The result is a more pluralist conception of the law, a role more as an intermediary as a sovereign of the state, and specially with much less confidence in the legislator.

A common factor at least exists between all these cultural traditions: does their long history condemn them to being considered today only as historical references ? For in the past there were contacts between civilisations, either peaceful or violent, which sometimes led to syncretism. But today their rhythm has accelerated, to the point where one could think that these ancient systems have broken up. However, modernity has not destroyed them. In extreme cases, identity crises occur. There, where the tensions are less strong and less wide, the examples do not fade away, but move on with the population who incarnate them who come in contact with and are transformed by the people who welcome them. One can appreciate there being so much interest in the understanding of their history and their

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current practices. Moreover, this confusion caused the welcoming societies to look at themselves. They must express their ways of handling their differences, written into their own traditional cultures. *A priori*, one leaves the domain of H.R., in order to enter the world of the management of immigration. This apparent turning is not however completely useless. In fact the differences between the examples reflect certain constitutive elements of the plurality of the conceptions of H.R.. On the other hand, as we shall observe in the second part of this article, flexibility offers some comparisons with that which stands out today in the history and geography of H.R..

## **B. THE WESTERN MODELS OF MANAGEMENT OF DIFFERENCES**

They organise themselves around two poles : *assimilation* and *insertion* with several variations.<sup>26</sup>

*Assimilation* does not exclude the acceptance of the other, but conditions it on the throwing out of his differences. It was for many years the traditional doctrine of France and corresponds today to the greater part of public opinion.

The right to difference was only briefly valorised by the progressive political parties in the 80's. It has only been taken up again today by those of the extreme Right who interpret it in the sense of exclusion : the cultural differences between the receiving society and those of non-european immigrants render the latter unassimilable. This assimilative tension was not always of a high level. In its colonies France introduced a form of *apartheid* with a bias of distinction between subjects (the majority of the indigenous people) and citizens (the Europeans and a minority of aboriginals).<sup>27</sup> The Vichy regime (during World War II) imposed on the Jews anti-semitic legislation constituted by series of negative discriminations.

The French model which is clearly in the minority in the world, finds its roots in the ideological body of thought which was assembled under the French Revolution of 1789<sup>28</sup> and which contained the individualistic version of H.R.. Society is composed of individuals all of whom have the same rights (Renan will add, a century later, his own definitions of the political Nation: values shared by all nations, transcending their diverse origins). This equality is only legal. The second part of the famous art. 1 states it well, and authorises social/economical inequalities : “ Men are born and live freely and equal in law. The social distinctions may be based only on common usefulness”. Nowadays, the official. doctrine appears to have more nuances, in so far as the word integration is substituted for assimilation. There is no need to consider the cultures as finished entities of which one, that of the receiving society, resting upon its dominant position, will be concerned in priority about looking after its own interests, while the other, the minority, have no choice but to give in to the demands of the other and thereby abandoning most of its original characteristics. Culture cannot be frozen. It is above all a continuous process with reciprocal effects by which individuals are able to reinterpret their traditions, their beliefs, their values according to their social environment, and to their personal history<sup>29</sup>. ”

One must however, doubt the harmony thus described, and think that the *terminus ad quem* scarcely differs from an assimilation, for in this game all cultures are not in the same level.

The pressures exerted by the receiving society are much more intense and powerful than that of the migrants. Besides, it would appear that today Europe assures and underlines the

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tendency toward territorialisation of family law (the law of the receiving country has priority) rather than that of personalisation (the personal status of foreigners produces the same effect in the receiving society)<sup>30</sup>. Whatever one may think, this French tradition corresponds to a policy pursued by France beyond the administration of immigration. In international forums, France reaffirms her opposition to the Declaration of Rights of the minorities and of the aboriginal peoples, and refuses to ratify - or expresses reservations concerning - the international instruments which list them<sup>31</sup>. French universalism is astonishing, when one appreciates that the French are passionately egocentric, as remarked Durkheim :

“We [French people] do not take into account the fact that national differences exist, we have a self-respect suspicious to a high degree, we shut ourselves out from all foreign ideas, and even from foreigners themselves, we permit very rarely to anyone to enter into our private lives, and we have only recently allowed ourselves to meet with the outside world.”<sup>32</sup>

Of course it is easier to think that your own values are universal when you under-estimate the multiplicity of differences...

The other pole is that of *insertion*<sup>33</sup> which corresponds to the diverse degrees of plural-culturalism : the other is accepted with his cultural particularities, without planning their dissolution. Even when integration brings with it the danger of only being assimilation under another name, insertion may degenerate into closed groups, cutting off the possibilities of reciprocal influences.

The attitudes of the receiving societies here are decisive<sup>34</sup>. Germany and Greece practise insertion in a very closed manner, full of exclusions and tensions, by restricting the conditions of access to nationality; the rights of citizenship are granted with reticence and inequalities between religions are frequent. Specially in the Netherlands, and in some scandinavian states, and to lesser degree in Great Britain, pluralism has emerged into the collective organisation of minorities, national and ethnic, trying to avoid the risks of a communitarist closing, notably thanks to the easing of the economic and social situation of these groups. A proof *a contrario* of the pertinence of these policies: the economic and financial crises are largely responsible for signs of trouble in these systems. Lastly, we know that in North America pluralism is largely dominant.

One can individually agree with each one of these models. But we must never forget that the legal rules will be what men will make of them; it is by way of practices that we have to judge norms and to validate their systems of representation. The number of inter-marriages, the existence of common cemeteries are by themselves a good indication. As E. Todd wrote rightly: “Neighbourhood, school and marriage are by their nature the anthropological variables the combination of which defines the field of concrete interpersonal relations for the individual”<sup>35</sup>.

In conclusion, we may ask ourselves about the profound reasons of the plurality of these models of management in western societies. They are certainly of a cultural nature, because we can hardly invoke either biological or geographical criteria. No doubt, as we have seen, history is a powerful factor of differentiation. The voluntary construction of the nation by the state, the persistence of the legacy of the Revolution explain largely the French position, as the theory of "pillars" can only be understood in relation to the

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circumstances which have presided over it for several centuries like the constitution of the Netherlands. The colonial history proper to a country is decisive. Religion has an equal influence. The vertical conception of Catholicism can explain the tendency of latin countries towards assimilation. Protestantism being more favourable to the pluralist examples favoured by the Anglo-Saxon countries and the northern European states. Very recently, E. Todd accused the anthropological structures of leaning towards different models of familial organisation<sup>36</sup>.

According to Todd, adults renew in their relationship with each other the types of relations that they enjoyed as children in their own families, these attitudes being understood in collective terms. In the French case, the typical french family structure from the centre of the country, characterized by a relation of equality, has triumphed over the non-equal families on the peripheries of the country that which must explain the tendency towards assimilation. Besides, the differentialist type has excelled for the original cultures being marked by unequal family hierarchies, interpreted in assorted ways (strongly, as in Germany, or more freely as in the English speaking countries). This theory is interesting, and the list of examples quoted by the author in order to give weight to his argument is impressive, even if the transition from the child model to the adult's perception of the world, decisive in this theory, is not explicit. On the other hand this factor is not the only one: history intervenes to temper its effect, as it shown, by several examples quoted by the author (the case of the Turks, the Jews, and the Protestants). By the same token, it is impossible in France to do without revolutionary ideas. It remains that this theory shows an important advance, at the same time underlining a factor whose importance we must not underestimate.

In the end, and in spite of everything, there remain two certitudes.

Let us state first of all that every society only determines its attitude in respect of cultural differences because of the existence of several factors which produce simultaneously their effects : a single reason, does not exist. Let us note secondly that the differences and the manner in which they are considered are changing all the time. The cultural traditions that we have examined mix themselves up, more so today that in the past. History exercises its influence on the application of the abstract types that are elaborated by each society to manage its differences. It is in a evolving manner that we must look at the reconstruction of the universality of H.R., towards which we must proceed into the XXIst century.

## **PART II: THE UNIVERSALITY OF HUMAN RIGHTS IN THE XXIst CENTURY**

“There are certain ideas of uniformity which occupy from time to time these great minds but which strikes strongly and unfailingly the smaller minds. They find a type of perfection that they recognise, because it is impossible not to discover the same weight in the administration, the same standards in commerce, the same laws in the State, the same religion in all parties. The greatness of genius should it not consist of knowing in which cases uniformity is necessary, and in which cases it is necessary to have differences. As long as citizens obey the laws, does it matter that they be the same law...,” (Montesquieu, *L'Esprit des lois*, XXIX, 18).

Rightly or wrongly, we by no means think that the universality of H.R. are absolutely determinated by economy or history. Economic development does not bring with itself, *ipso facto*, respect of H.R., even if the history of the West has gone in that direction : democracy

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is culture, and not the automatic effect of economic structure. On the other hand, there is no certainty that humanity will see a trend to progressive unification. Contact between cultures can also provoke the disappearance of some of them, even the dissolution of many of them. We believed for a long time that the Indians of Amazonia were offering the image, miraculously preserved, of an archaic humanity. We know today that they often are the last remains of high civilisations destroyed by the Spanish or the Portuguese<sup>37</sup>: the “primitive” Indians nowadays are often the descendants of citizens grouped together in towns of the lower Amazonia which counted thousands of inhabitants, flanked by important fortified buildings and fed by important roads.

We can have no guarantee to escape from such a destiny, under other forms. But we must think of some examples of traditional societies.

At the arrival of the white men in America, the Indians tried very hard to understand the reasons of the cataclysm which had fallen upon them. Some of them tried to understand, to create meaning by manipulating myths of the origins. The White Man was the last to be created by God, when the riches of our planet had already been distributed to other races. The White Man had therefore to fight in order to grab a little of what was left. Nowadays, their descendants have pulled from their myths the ideas that the whole human race has the same origin. It is able to destroy itself, for all cultures are dependant upon each other. Belief in the universality of the duties of man are expressed today, in their own way, by Hopi Indians: “Here is the universal plan, speaking through the Great Spirit since the beginning of the time. [ ... ] Hopi have been placed on this side of the earth in order to look after it by virtue of their ceremonial acts and obligations, as indeed other races or people have been placed elsewhere around the world to look after their patch in the same manner. Together we maintain the world in a good balance, turning as is necessary. If the Hopi nation disappeared, the movement of the Earth will become excentric, water will swallow up the earth and man will perish. Only a brother and a sister will survive in order to begin a new life”<sup>38</sup>.

The ideology of H.R. rests too on a mythology. We have to reinterpret it in a voluntarist manner, through the historic context which is ours: H.R. have a history and a geography. This process is not surprising for the jurist. He well knows that the law evolves as much by interpretation of ancient rules as by the addition, of new ones.

### **A. The flexibility of models and archetypes**

In the first part of this work we have identified a certain number of models and archetypes. It is now necessary to look at their flexibility.

Flexibility of the archetypes first of all. There are several reasons. The first being the changing character of identity. Each of these archetypes expresses a vision of the world which is referred to by a certain number of societies looking for their own particular identity. For one knows that two conceptions of identity exist. One is substantial and objective, corresponding in a determined historical and cultural testament which serves as a precise reference. It is the identity as lived by the militants. The other is instrumental and subjective. It therefore corresponds to interpretations of the past, allied to present requirements and to future objectives. It is identity as seen by the majority of scientific minds<sup>39</sup>. As C. Levi-Strauss has written about the transformation of myths:

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“ That does not mean that in every stage of its complex development, the myth does not deviate at all, while passing from one society to another, by the influence of different social and economic infrastructures and of which it sustains every time the attractions. It must be eroded by these mechanisms and we have shown many times that, in order to understand the différential variations which reveal themselves in the versions of the same myth belonging to neighbouring societies and even those which are far away, we must render the infrastructure its rights ”<sup>40</sup>.

It is therefore historical contingency which explains the variety of interpretations of traditional cultures, or the sacred texts (fundamentalism is a vision of Islam among others, which finds its source less in God than in the particular conditions of the muslim countries in our world). The same contingency explain also that the archetypes referred to above never present themselves isolated in the societies that they dominate. Modernity under its different forms (not only in the western part of the world) and to various degrees touches nearly the whole world, and unites itself, more or less agreeably to traditional values which find themselves either destroyed or, at best, redefined. We live accordingly with the pluralism of logics.

Moreover this pluralism is not only engendered by the mutual contact between different cultures. It is also possible for it to occur within a society by a purely internal process<sup>41</sup>.

In general the groups which constitute modern societies are divided between those that adopt the logic of responsibility and those who reject it. Thus modern societies can in some cases resemble traditional societies. Thus, in the French political administrative class, the tendency to diversity and to complementarity is very strong and the exercise of power is organised by rules other than those contained in the Constitution and taught in the legal textbooks. Ministerial cabinets, important officials, parties, unions: each of these groups insists on its own special competence or its way of thought, in order to impose themselves on the others. This diversification constitutes the real foundation of unwritten rules (for indeed this law is mainly secret: there does not exist any written code whatsoever for the French high administration). These groups are rivals, but their rivalry is more often calmed by agreements which impose a give and take: the Council of State is on a level with the legislator pronouncing general principles of law, and imposes itself on the administration affirming that it has to control the relations between the costs and the advantages of its action; but, in exchange, it agrees not to oversee acts of government .

Other convergences can be demonstrated. Thus the importance accorded to the principles of unanimity : one tries to achieve this by dialogue, by negotiation (reunion of commissions) or by the procedures of attenuation or by the limiting of conflicts. One will look for a conciliation between the interests of the two parties rather than application of strict rules. At the very worst one can recourse to the intervention of a judge, which is however exceptional. These convergences, *a priori* surprising, are explained by a common denominator : the absence of a superior power capable of imposing its authority. The system works for traditional societies with archetypes of identification or differentiation. But it is also the case of the executive groups at the summit of the political/administrative hierarchy of the state. Being unable to be judged by a superior power, they are obliged to manage themselves following the principles used in the past by traditional societies. By contrast, it is different for the majority of individuals who have to submit themselves to the power of the state and its administration: in the same society one passes to another logic,

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that of the prototype of submission. The official law, the law of codes, the law taught in the universities, controls, at last partly, the human reactions of the common people.

Whatever its origins are, the plurality of logics at work in the same society implies therefore, and this is the major teaching as regards legal anthropology, that the comparison between cultural systems are not exclusively those of norms, or of rules, as it would appear instinctively to a western observer, especially one from a continental tradition. One must scrutinize the behaviours which are able to obey logics other than those of established rules. The norms and official models are even able to hide a reality very different from that which they pretend to describe. S. Pierré-Caps observed<sup>42</sup> politics of states about minorities range from the refusal of their existence to the institutionalisation of pluralism. But as regards minorities, refusal is not necessarily hell, nor institutionalisation necessarily paradise. The first attitude is that of France, which refuses to recognise, on its own territory, the existence of minorities or indigenous peoples. Moreover, the official insistence on these republican principles does not prevent the legislator, the administration or the courts from reinterpreting today these same principles. The negation of the right *to* a difference does not forbid the elaboration of the right *of* a difference, in metropolitan France, and more particularly overseas<sup>43</sup>, even if the signs of closing the doors are seen concerning the immigration from the Maghreb<sup>44</sup>.

The second case is that of the possible deviations of multiculturalism. For the XVIIIth century intellectuals, the indian reservations of North America had to be organised in order to preserve the Indians from any contact with the very different European cultures. In fact, a real ethnocide began, because many efforts had been made (by means of missionaries and through sedentarisation) in order to acculturate these societies: the recognition of the difference can abolish it.

In South Africa, the regime of *apartheid* was justified by the right to be different and so the necessity to have separate developments: in fact, this "right" led to a closing up of racial differences which were strictly hierarchised.

Today in the USA multiculturalism bases itself on ethnic differences, often reelaborated rather than objective. E. Todd says that American society is in reality powerfully assimilative, a "fantastic machine to pulverize the differences"<sup>45</sup>. The USA only leaves one difference intact: that of separating whites and blacks. The author mentions elsewhere that whites have forgotten their origins, while blacks have a mythical vision of Africa. When contact between the blacks of North America and blacks of Africa occurred, the result was not necessarily an easy one. According to E. Todd, the ethnicisation of the behaviours would be largely contradicted by the concrete measures of inter-ethnic relations, showing that these are progressive (for instance, in the frequency of inter-marriages and in the mixity caused by residence and by schooling).

We may discuss the size of the gaps existing between the models and the behaviours. Nevertheless, they are frequent, and they warn us not to be too confident as regards the declared objectives. These variations, always present, can have negative effects. They may also favourise not the dividing of cultures, but their meeting.

For the flexibilities of which both models and archetypes are able show that one can channel them by virtue of the objective targets which have been formulated. That tends to prove that the cultural differences need not necessarily act as a brake concerning the

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progress of universalism. But the fatal error would be to deny them, instead of letting them serve as a starting point. For the recognition of historicity of H.R. gives cause for hope in the next century.

## **B. The historicity of the human rights**

H.R. have a history. Some say that it follows three successive stages. Firstly that of the rights of the individual, the symbol of which is the French Declaration of 1789. Secondly that of economic and social rights, stemming in the XIXst century from socialist thoughts, and social catholicism. The state must not only recognise the liberty of all individuals but it is obliged also to put into effect the means whereby they can effectively be carried out : the right to work, to health, to education, the right to strike, the right for trade unions, etc. One finds these notably formulated in articles 22 to 27 of the Universal Declaration of 1948 and in the Covenant of 1966. And finally the rights of solidarity (right of the environment, of peace, and of the respect for the common heritage). This history is accompanied by the progression of the collective character; the rights for the people to autonomy, as well as certain collective rights recognised by the UN, in respect of the minorities and the aboriginals, without forgetting the multiplication of categorical protection (children, refugees, women, etc.). The economic and social rights are not necessarily collective, one can analyse them - the French legal tradition insists on this point - as being consisting in the collective exercise of the individual rights. It remains to be said that it is difficult to imagine them independent of existing or elaborating groups.

The history of H.R. gives rise to another category : that of duties, for without them, the rights of solidarity are unable to exist, because they imply that man has responsibilities towards his fellowmen and even towards other fellow-living creatures, and also to the environment. One notes that the diachronic vision of the H.R. is well known in international organisations and in the UN, but it does not universal support among the jurists, notably among the French. Certain of their arguments correspond to real dangers. The collectivisation of H.R. can be of benefit to certain dictatorial states and can empty individual rights of their meaning(46). The rights of solidarity too vague(47). It is necessary to go however so far as to declare that the " logomachy of the U.N. forgets the essential : individual rights and liberties"<sup>48</sup> ? The reverse danger would thus appear: considering only rights and individuality, one runs the risk of blocking all development of elaborating a universalism of H.R. which takes into account all the cultural differences without becoming too paralyzed by them.

As we have seen, all the great cultural traditions insist upon the notion of duties, which does not mean that all types of duties are admissible : it is impossible, for example, to justify the existence of casts, or the inequality of women. Moreover, the right of the environment should be able to constitute a bridge with non-western cultures, like Hinduism confirming the solidarity of man in relation to all the elements of the universe. The movement of the decentralisation of H.R. can favorise the mutual understanding and syncretisms. It also reveals equally incompatible differences, but only the inter-cultural dialogue it may provoke is able to begin a process to bridge these differences. That at least is our conviction.

The regionalisation of H.R. is not a new phenomenon. It began in 1950 with the signature in Rome of the Convention of the protection of H.R., and of fundamental liberties. Previously, in 1948 there had been adopted in Bogota an American Declaration of the rights and duties, prolonged by the adoption in 1969 in San Jose, of the American Convention on H.R..



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It concerns only South America, because the United States and Canada did not ratify it. But the beginning of the 80's marked a turning point, in so far as there have been presented texts which seek to synthetise the various perspectives between the West and the non-occidental world<sup>49</sup>. The first one is the African Charter of Human and People's rights, adopted by the OAU in 1981. It insisted upon a link between rights and duties, and on the need to balance the relations between the individual and the groups to which he belongs. The respect of identity is underlined; notably by agreement with the right of development which allows the thought that all peoples have the right to choose the type of development adapted to their own traditions and which is conform to the latest orientations of UNESCO : culture becomes one of the conditions of development. The individual must

*“ preserve and strenghten the positive cultural values”* (emphasis added) (art. 29-7), that is to recognise the necessity to control an acculturation adapted to modernity, that is the condition of an intercultural dialogue. In general, western jurists point out the insufficiencies of the Charter, but accept as being positive its syncretic aspects.

Asia is a problem so far as there does not exist any comparable regional instrument of the H.R.. One can mention nevertheless the Declaration of the fundamental rights of the peoples of the Asian States, adopted in 1983 by the regional council of the H.R. in Asia; the Declaration of Bangkok of April 1993, which resulted in the construction of 110 NGO in Asia, and insisted on the rights of vulnerable groups (minorities, refugees, women and children) as well as on the aspect of pluralism ; last of all, the chinese democratic opposition has drawn up several declarations (a Manifest on H.R. in China, a product of the H.R. League in China; the Chinese Declaration of H.R.) very similar to western declarations<sup>50</sup>.

The rights of the aboriginal peoples are emerging in international law. Most of the 300 million individuals who constitute this category live in the non-western world (only 1,4 % of them live in the First World, but 190 million in Asia).

In 1989, Convention 169 of the ILO made a declaration concerning the rights “ of indigenous and tribal peoples ”. In some time, the UN will probably adopt a declaration of the rights of aboriginal peoples. These texts, to different degrees<sup>51</sup>, insist on the obligation of the states to respect and to promote the specific cultures of the aboriginals, who claim the rights to self-determination, territorial rights and, more recently, the right of intellectual ownership of their cultural heritage. While laying down certain conditions, the western states appear to be progressive in their legal position towards indigenous peoples. However, they judged more severely the Islamic interpretations of the H.R.<sup>52</sup>. F. Sudre writes: “ There is a radical contradiction between the H.R. proclaimed on the universal level, and the Islamic norms since the moslem States refuse to give priority to the universal norms over the divine norms, because this would be blasphemous against their author, Allah ”<sup>53</sup>. If these divine norms carry with them the penalties of physical punishment, of torture, or approve the inequality of man and woman in different domains (rupture of marriage, rights of succession), they are effectively incompatible as regards the international instruments of H.R. However it would be completely dishonest not to take into account the perfectly acceptable elements with the same instruments. The Universal Declaration of Islam of the H.R. of 1981 vouches for the respect of the sacred character of the human being, of his body (and even of the corpse), the right of the freedom of all peoples and every individual ; the right and the duty to resist oppression. The Declaration of Ryad anticipates that if anyone has the right to adopt the religion to which God has prepared him, he can, at any time, change his religion. Elsewhere these texts can also favourise the mutual understanding of the non-western

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societies themselves. Many Africans are able to recognise themselves in certain statements of the Declaration of 1981 : “ Reason itself, in light of God's Truth, is neither able to constitute an infallible guide in the affairs of humanity, nor can it bring spiritual nourishment to the human soul ”. One can add the definition of the family as “the foundation of all social life ”.

One will object, not without reason, that these declarations are only playing to a limited audience: moslems are far from unanimity concerning them<sup>54</sup>, and the fundamentalists throw out every idea of conciliation between their conception of H.R. and the occidental ones<sup>55</sup>. The most important thing is to exchange ideas with those who want such a dialogue. One will observe that in many moslem countries, behaviour does not correspond to good intentions and that regarding the norms proclaimed in the Declarations, there were several glaring and worrying omissions. Is the lack of mention in the 1981 Declaration of corporal punishment really compatible with the statement about the sacred character and equality of all human beings? These problems are very real and one cannot dismiss their existence by pretending there is such a thing as Western ethnocentrism.

However it is clear to us that the universality of H.R. cannot be decreed : it has to be built, slowly and surely. And that will require two conditions. The first is that cultures must be able to take to each other : in order to do that, they must recognise each other, and we should not be surprised when divergences appear during these discussions.

The second is there must be a desire on both sides to go beyond certain specifics and to favourise the elements of agreement rather than those of disagreement. In this sense it would be a fatal error to sacrifice the former to the latter : we have to favorise any willingness for a dialogue, however imperfect. For universalism of H.R. is only able to come about through hard work and effort by each society<sup>56</sup> by means of mutual reinterpretation resulting from the comparison between cultures, their pluses and minuses, and the choice between that which is obsolete and that which is progressive<sup>57</sup>.

What will be the result of these contacts? The blending will not be easy, it is not even certain. One can imagine a world which bursts under its own weight, breaking itself up into new feudal states. One culture is able to impose itself on the another, a solution which in the long term can only be transitory. The most welcome development would be the elaboration of a world which is both unitary and plural, structured by the recognition of a hierarchy of norms, liberated by the guarantee of a margin of autonomy for each of its componants. Humanity would thus be able to progress by increasing its knowledge of itself. The non-western cultures bring with them thoughts which unite the human subject to the world, which the western modernity has divided ; they teach us that man is not alone, that God is with him, that the universe welcomes him, or more simply, that his fellow-men will help him. Western society offers a message, a very worthy one in spite of the fact it has been abused so many times : all men share equal dignity and possess intangible rights ; the idea of justice can insist that the established order may be put into question.

If this blend ever comes to pass it will open, at last, a new chapter in the history of democracy. In the last analysis, it can be defined as having the culture of respect for others. Until now the majority rule has been dominant. This is explained historically by circumstances which implied that political power had to be taken from tyrants or oligarchic ruling classes.

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The XXIst century may discover that democracy could also be judged by the degree of diversity which its laws and customs can accept.<sup>58</sup>

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## **NOTES**

1. See R. Mattarollo, La Conférence de Vienne sur les droits de l'Homme, *Le Monde Diplomatique*, Aug. 1993, 5.

2. Art. 8 of the Declaration.

3. This information is given by C. Lévi-Strauss, *Race et Histoire*, Paris, Denoël, 1987, 20-21. In the same way, we can observe that the word "Eskimoos" was used by the Indians about Inuit; it means "men who eat crude meat", that is savages...

4. See J. KAPLAN, Les origines juives des droits de l'Homme, *Revue des Sciences Morales et Politiques*, 1(1989), 15-24.

5. See M. ARKOUN, Les origines islamiques des droits de l'Homme, *ibid.*, 27.

6. See *Droits de Dieu et droits de l'Homme, Actes du IXe Colloque national des juristes catholiques, Téqui*, 1989.

7. See, for instance, the hard review of A. Seriaux of work quoted *supra* n. 6 in *Revue de la recherche juridique*, 3 (1991), 799-901. About the muslims' world, there are strong differences : compare (*infra*, n. 55) the speech before UNO of the representation of Iranian government and the Islamic universal Declaration of human Rights (UNESCO, 1981).

8. J. KAPLAN, *op. cit. supra* n. 4, 21.

9. The 1948 Declaration has not legally binding force. It appears with the Covenants of 1966, ratified by France only in 1980...

10. Few human rights are considered as unconditional by main international law texts : see F. Sudre, *Droit international et européen des droits de l'Homme*, Paris, PUF, 1989, 133-143. Sanctions by jurisdictional institutions are not easy to get, or even possible. Such gaps would not exist if the universality of H.R. were effective.

11. See S. HUNTINGTON, The clash of civilisations ? *Foreign Affairs* (French version in *Commentaire*, 18-66 [1994], 238-253).

12. See G. JOHNSON - J. SYMONIDES, *La Déclaration universelle des droits de l'Homme*, Paris, Unesco/L'Harmattan, 1991, 78.

13. See Y. MADIOT, *Droits de l'Homme*, Paris, Masson, 1991

14. K. Marx, Contribution à la critique de la philosophie du droit de Hegel, in : *Critique du droit politique hegelien*, Paris, Ed. Sociales, 1975, 197.

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15. See G. JOHNSON - J. SYMONIDES, *op. cit.*, 76.
16. In Dec. 1992, the UN adopted a Declaration of rights of persons belonging to national or ethnic, religious and linguistic minorities. It works on a project of Declaration of Rights of Aboriginal Peoples.
17. See J.C. USUNIER, *Commerce entre cultures*, I, Paris, PUF, 1989, 165-175.
18. See J.P. DE CUELLAR, *Le Contrat*, *Le Monde*, Dec. 12, 1992, 19.
19. See R. VERDIER, *Droits des peuples et droits de l'homme à la lumière de l'anthropologie*, 15 (1988), *Droit et Cultures*, 188-190 ; G. COURTOIS, *Le procès des Droits de l'Homme*, 22 (1991), *Droits et Cultures*, 153-156; G. VEDEL, *Les droits de l'Homme: quels droits ? quel homme ?* (1991), *Mél. R.J. Dupuy*, 349-362.
20. See N. ROULAND, *Les fondements anthropologiques des droits de l'Homme*, *Revue générale de droit* (Law Faculty of Ottawa, Canada), 25 (1994), 5-47.
21. See M. ALLIOT, *Les transferts de droit ou la double illusion*, *Bulletin de liaison du Laboratoire d'anthropologie juridique de Paris*, 5 (1983), 121-131.
22. M. CHIBA, *Legal pluralism*, Tokyo, Tokai Univ. Press, 1989, 149.
23. See I. NGUEMA, *Universalité et spécificité des droits de l'homme en Afrique : la conception traditionnelle de la personne humaine*, *Droit et Cultures*, 19 (1990), 215-217.
24. See R. PANIKKAR, *La notion de droits de l'homme est-elle un concept occidental?*, *Interculture*, 82 (1984), 17-20.
25. See E. LE ROY, *Les fondements anthropologiques des droits de l'Homme*, *Revue de la recherche juridique*, 1 (1992), 147.
26. There are many works about this topic. We quote some of them in: N. ROULAND, *L'inscription juridique des identités*, *Revue trimestrielle de droit civil*, 2 (avril-juin 1994), 316-319. One can add : D. SCHNAPPER, *L'Europe des immigrés*, Paris, F. Bourin, 1992 ; E. RUDE-ANTOINE (ed.), *L'immigration face aux lois de la République*, Paris, Karthala, 1992 ; M.C. FOBLETS, *Les familles maghrébines et la justice en Belgique*, Paris, Karthala, 1994 ; R. BISTOLFI - F. ZABBAL, *Islams d'Europe*, La Tour d'Aigues, Ed. de l'Aube, 1995).
27. See N. ROULAND (ed.), *Droit des minorités et des peuples autochtones*, Paris, PUF, 1996.
28. See N. ROULAND, *La tradition juridique française et la diversité culturelle*, *Droit et Société*, 27 (1994), 381-419.
29. Haut Conseil à l'Intégration, *L'intégration française*, Paris, UGE 10/18, 1993, 88-89.
30. See R. BISTOLFI - F. ZABBAL, *op. cit. supra* n. 26, 48-53.



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31. See the texts quoted in N. ROULAND, *Statut juridique des minorités et traditions culturelles*, op. cit. *supra* n. 20.

32. E. Durkheim, *L'éducation morale*, Paris, PUF, rééd. 1974, 238.

33. See R. BISTOLFI - F. ZABBAL, op. cit. *supra* n. 26, 28-30.

34. *Ibid.*

35. E. TODD, *Le destin des immigrés*, Paris, Le Seuil, 1994, 86. This work contains many useful statistics concerning the numbers of inter-marriages in the different western states. In the case of the USA, where the extremes of the "politically correct" movement are frequently quoted in France as a sort of driving force. One will observe that, in any case, the pluriculturalism has not ended in claims for territorial secession among the black and the hispanic peoples, and that interracial marriages have passed from 310000 in 1970 to attain 827000 in 1986. (Cf. NOBLET, *L'Amérique des minorités*, Paris, L'Harmattan, 1993).

36. See E. TODD, op. cit. *supra* n. 35.

37. See C. Levi-Strauss, *Saudades do Brasil*, Paris, Plon, 1994, 10-18.

38. D. KATCHONGVA, L'arrivée d'une nouvelle race-Prophétie Hopi, *Ethnies*, 14 (1992-93),47.

39. See the works made by the dynamist school, above all F. BARTH, *Ethnic groups and boundaries*, Bergen-Oslo, Universtet Forlagen ; London, George Allen and Unwin, 1969 ; P. BRASS, *Ethnic Group and the State*, London, Croom Helm, 1985). See also C. LEVI-STRAUSS, *L'identité*, Paris, Grasset, 1977.

40. C. LEVI-STRAUSS, *L'homme nu*, Paris, 1971, 561-562.

41. See M. ALLIOT, L'anthropologie juridique et le droit des manuels, *Archiv für Rechts und Sozialphilosophie*, 24 (1983).

42. In N. ROULAND (dir.), *Droit des minorités et des peuples autochtones*, Paris, PUF, 1995. See also S. PIERRE-CAPS, *La Multination*, Paris, Odile Jacob, 1995.

43. See our examples in various texts ; La tradition juridique française face à la diversité culturelle, *Droit et Société*, 27 (1994), 407-413 ; L'inscription juridique des identités, *Revue trimestrielle de droit civil*, 2 (avril-juin 1994), 302-320.

44. See R. BISTOLFI - F. ZABBAL, op. cit. *supra* n. 26, 57-58.

45. E. TODD, op. cit., 101.

46. See Y. MADIOT, *Droits de l'homme*, Paris, Masson, 1991, 54-74.

47. " they are wishes, revendications, incantations, they are no rights [...] To qualify the "human right" as right of peace, right of environment or right of develoment, is to speak the

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logornachy of human rights; there is neither right, nor man ”. (F. Sudre, *Droit international et européen des droits de l'homme*, Paris, PUF, 1989, 127).

48. *Ibid.*, 128.

49. See G.A. KOUEVI, *Les déclarations non occidentales des droits de l'homme*, mémoire de DEA de Théorie juridique, Faculté de droit d'Aix-en-Provence, 1993.

50. See the texts quoted in HUANG SAN - P. EGSTEIN, *Un bol de nids d'hirondelles ne fait pas le printemps de Pékin*, Paris, C. Bourjois, 1980) ; C. LICHAN - C. THIMONIER, *L'impossible printemps : une anthologie du printemps de Pékin*, Paris, Ed. Rivages, 1990.

51. I study them in : Les fondements anthropologiques des droits de l'homme, *Revue générale de droit*, 25 (1994), 38-42.

52. The best known is the Islamic Declaration of the rights of man, published in 1981, on an initiative of the Islamic Council for Europe in the offices of UNESCO. But it is necessary to add other texts not so well known, which have not, in general, legal effects : the Kuwait Declaration of 1980; the Declaration of Taif, elaborated in 1981 by the Organisation of the Islamic Conference ; the Declaration of Ryad, adopted by the same institution in 1989. Very important differences exist between these texts ; they are studied by G.A. KOUEVI, *op. cit.* n. 47.

53. F. SUDRE, *op. cit.*, 80. In the same sense, see K. Chammari, Pour un observatoire méditerranéen des droits de l'homme, dans P. BALTA (dir.), *La Méditerranée réinventée*, Paris, La Découverte, 1992, 157-160.

54. Such a Declaration as that of 1981 is not made in a moslem country, for it is not the result of a work done by the society itself, like the French society in 1789 ; it is a form of defensive reaction to western opinion which accuses Islam of totalitarianism, of tyranny and of ignorance of the human rights ” (M. ARKOUN, Les droits de l'homme en Islam, *Recherches et documents du Centre Thomas More*, 4.4 (1984), 22-23.

55. The Iranian government does not recognise any other authority or power than that of a God who is All Powerful and no other legal tradition other than that of Islamic Law. In its conditions, the Iranian delegation reaffirms that conventions, declarations or decisions of international organisations which are contrary to those of Islam have no validity in the Islamic Republic of Iran. The Universal Declaration of H.R. which illustrate a lay conception of the judeo-christian tradition cannot be applied by the Moslems and does not correspond in any way to values recognised by the Islamic Republic of Iran ; this latter (Iran) has not hesitate to transgress their dispositions, should it be necessary to choose between betraying the Divine law of the country or the lay conventions ”. *Declaration made by the representative of Iranian government at the 39th session of the General Assembly of the UN, 7th dec. 1984.*

56. In the same sense, A.A. AN-NA'IM (ed.), *Human Rights in Cross-Cultural Perspective. A Quest for Consensus*, Philadelphia, Univ. of Pennsylvania Press, 1992), 3. Such an engagement carries with it some risks. A.A. An-Na'im lost his position in the University of Khartoum, was imprisoned by the Sudanese fundamentalists et lives in exile (see R. BISTOLFI, *op. cit.*, 247). A recent comparative study shows that most cultures agree about

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the contents of a list of fundamental human rights. But consensus is only about general formulations...See : Controversies and Culture, *The Economist*, Dec. 5, 1998.

57. In the same sense, see S. ABOU, *Cultures et droits de l'Homme*, Paris, Hachette, 1992, 116.

58. It is the opinion notably of A. Touraine, *La recomposition du monde*, *La République internationale des lettres*, 10 (30 déc. 1994), 3.