

The Declaration of Human Rights in Postmodernity

*José A. Lindgren Alves**

I. INTRODUCTION

For more than half a century, the Universal Declaration of Human Rights, proclaimed by the United Nations in 1948, has played an extraordinary role in the history of mankind.¹ It codified the hopes of the oppressed, supplying authoritative language to the semantics of their claims. It offered a legislative basis to the political struggles for liberty and led national constitutions to transform the notion of citizens' rights into positive law. It subverted the rules of the Westphalian system of international relations, in which sovereign states were the only actors, by conferring upon the human person the status of a subject of law beyond domestic jurisdiction. It launched a new and profuse juridical discipline, the International Law of Human Rights, substituting *erga omnes* obligations for the criterion of reciprocity. It set parameters for evaluating the legitimacy of any government, replacing the efficacy of force by the force of ethics. It mobilized

* *José A. Lindgren Alves* is a career diplomat, now Consul General of Brazil in San Francisco, California, and former member of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Geneva, 1994–1998), who worked for eleven years as a delegate to the United Nations Commission on Human Rights (Geneva, 1986–1997) and to several world conferences on social issues (Vienna, 1993; Cairo, 1994; Copenhagen, 1995; Beijing, 1996; Istanbul, 1996). He also established the Human Rights and Social Department at the Brazilian Ministry of External Relations (Brasilia, 1995). Mr Lindgren Alves has given lectures and published many articles on international relations and human rights in Brazil and abroad, as well as two books in Portuguese, the titles of which translate as “Human Rights as a Global Theme” (*Os direitos humanos como tema global*, S. Paulo, Perspectiva, 1994) and “The International Architecture of Human Rights” (*A arquitetura internacional dos direitos humanos*, S. Paulo, FTD, 1997).

1. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, Resolutions, pt. 1, at 71, U.N. Doc. A/810 (1948), *reprinted in* 43 Am. J. Int'l L. 127 (Supp. 1949) [hereinafter UDHR].

consciences and agencies, both governmental and nongovernmental, for international solidarity action, thereby outlining the embryo of a transcultural civil society that may one day develop into a real, richly diverse world community.

It is true that none of those achievements took place without dispute. At its beginning, not even those states that drafted the Declaration looked seriously committed to abide by it. This was demonstrated by their resistance to accord an obligatory nature to the document. In contrast to the mere two and a half years that negotiations lasted for the proclamation of the Universal Declaration, the two formal covenants that would ensure compulsory character to the rights it enshrined—within and among state-parties—took thirty years to come into force.² Even today, neither covenant has received the adherence of every existing country. In light of such political reluctance and other concrete shortcomings, the fact that the 1948 Declaration, a piece of recommendatory soft law, did have an immense, historical outreach might seem, at least, intriguing. Far more paradoxical is the situation it faces at this end of the century.

Although human rights basically received the stamp of universality at the Vienna Conference of 1993,³ when the end of the Cold War appeared to afford an unprecedented opportunity for their worldwide strengthening, multiple factors create a current threat to them. Some of these factors have always existed and will tend to exist forever. Arising from power politics, arbitrary authority, deep-rooted prejudices, and economic exploitation, such threats are neither old nor new. They are virtually eternal, having changed only in intensity and shape. Others, however, are typical of contemporary times, though not necessarily exclusive of the present decade. More difficult to face than the traditional challenges, the new factors that oppose human rights are insidious and effective. They can be found both in the side-effects of economic globalization and in the prevailing anti-universalistic stance of postmodernity. It is to these new factors that this essay turns its focus.

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2. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were negotiated over 20 years and adopted by the United Nations General Assembly in 1966. Only in 1976 did they gather the 35 instruments of ratification necessary to bring them into force. See International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976) [hereinafter ICESCR].
 3. See Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. On Hum. Rts, 48th Sess., 22d plen. mtg., pt. I, U.N. Doc. A/CONF.157/24 (1993), *reprinted in* 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration].

II. THE QUESTION OF UNIVERSALITY

Heir to the European Enlightenment as much as the United Nations Organization itself, the 1948 Declaration makes clear from the start its modern, universalistic doctrine. As expressed in its Preamble, the whole document results from the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world.”⁴ In order that member states fully implement the commitment to promote universal respect for human rights—a commitment they had pledged three years before when signing the Charter of the United Nations in San Francisco—the Preamble stresses the importance of “a common understanding of these rights and freedoms.”⁵

Thirty articles follow the Preamble, although not all of them are truly operative. Article 1 is doctrinal: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁶ Article 2 asserts the axiological principle of non-discrimination of any kind (“such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”), having first stated that “(E)veryone is entitled to all the rights and freedoms set forth in this Declaration.”⁷ Moving on from doctrinal assertions to an imperative mode, Article 2 itself commands that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”⁸ Essential in a document aiming at all human beings, in a period when three-fourths of mankind still lived under colonial yoke, it was this stipulation of Article 2—a self-restriction by the West on its own, often brutal, action in the colonies—that enabled the Declaration to be called Universal, instead of simply International as should commonly be expected.⁹

The human rights enshrined in the Declaration are widely known and acknowledged today: to life, liberty, and security of person; to freedom from

4. UDHR, *supra* note 1, pmb1.

5. *Id.*

6. *Id.* art. 1.

7. *Id.* art. 2.

8. *Id.*

9. The 1948 Declaration is the only human rights instrument entitled “Universal;” all of the others are simply “International.” The idea of calling it Universal was put forth by the French delegate, and future Nobel Prize winner, René Cassin with a view to accommodating under its umbrella the rights of those individuals that lived in non-self-governing territories. See M. GLEN JOHNSON & JANUSZ SYMONIDES, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A HISTORY OF ITS CREATION AND IMPLEMENTATION* 76–78 (1998).

torture or enslavement; to protection from arbitrary arrest or exile; to equality before the law and to remedies for violations suffered; to a fair trial; to freedom of thought, opinion, expression, movement, and peaceful assembly; to participation in the political and cultural life of the community; to remunerated work, free choice of employment, and protection against unemployment; to education; to social security; to a standard of life adequate for one's and one's family's health and well-being, as well as to a series of other human necessities generally understood by most conscious citizens and individuals in any part of the world to be legitimate rights.

Controversial as a fundamental right, the "right to own property alone as well as in association with others"¹⁰ displeased many socialist states, while economic and social rights did not fit orthodox liberal thinking. Equality of rights between men and women, especially in marriage,¹¹ as well as the ban on cruel punishment¹² caused some difficulties for Moslem tradition. However, none of the stipulations were envisaged as really offensive to any cultural or sociopolitical system. Had they been so envisaged, the document would have faced stronger opposition and negative votes at the United Nations General Assembly. The Declaration of Human Rights was not, however, fully consensual. Submitted to a vote before the United Nations on 10 December 1948, it was adopted forty-six to zero, with eight abstentions (South Africa, Saudi Arabia and the European socialist countries).¹³

Given that eight countries abstained out of an international body made up then of only fifty-six states—most of which were from the West or politically "Westernized"¹⁴—the Universal Declaration of Human Rights was thus not born "universal," even for those who took direct part in the process of its elaboration. There is no denying, therefore, that those who had not participated in the negotiations and who labeled the Declaration as a "Western product" did indeed have a point. Having had no voice in the negotiations period from 1946 to 1948 because they were, largely, Western colonies, Afro-Asian countries had a valid reason to question the legitimacy of the Declaration's authority over every cultural or political system. To a lesser extent, the same logic applied to the European socialist states, which abstained in the vote despite the inclusion in the document of the social and

10. UDHR, *supra* note 1, art. 17(1).

11. See *id.* art. 16(1).

12. See *id.* art. 5.

13. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 21 (1999).

14. The Non-Aligned Movement still did not exist; China, at the United Nations, was Taiwan; Lebanon was ruled by Maronite Christians; India had just acceded to independence; Latin America did not hold any Third World position; and the very notion of a "Third World" had not yet been devised.

economic rights they had firmly defended. Nevertheless, all of them quickly lost the grounds for their objections. Human rights became strongly entrenched in the minds of their own citizens, who used the Declaration to support their claims for freedom and struggles for decolonization.¹⁵ Additionally, those very states never refrained from resorting to the Declaration whenever their own objectives were at stake: for example, in the mobilization of international action against South African apartheid and for the defense of the Palestinian cause. The logical foundation of their refusal was also shaken to the extent that these states voluntarily adhered, on a selective basis, to other international human rights instruments founded upon the Declaration¹⁶—all of which fit into the category of hard law that requires ratification, entails legal obligation, and implies accountability before monitoring bodies.

The most meaningful—albeit not definitive—step towards the formal universalization of the 1948 Declaration was taken in June 1993 at the World Conference on Human Rights in Vienna. Drawing representatives from the existing major cultures, religions, and sociopolitical systems, with delegations from over 170 countries, in a world virtually without colonies, the Vienna Conference was the largest international gathering ever convened on the theme of human rights. Its final document, the Vienna Declaration and Programme of Action—adopted by consensus without a vote or reservations, although with some interpretive statements—unambiguously affirms, in Article 1 that: “The universal nature of these rights and freedoms is beyond question.”¹⁷

No doubt the consensus achieved at the World Conference was, as

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15. The right of self-determination of peoples is the first right established in the two Covenants of 1966 (and the first to give birth to the concept of “third generation rights”). ICCPR, *supra* note 2, art. 1(1); ICESCR, *supra* note 2, art. 1(1).
 16. Based on the principle of racial non-discrimination of the Declaration, the International Convention on the Elimination of All Forms of Racial Discrimination was in fact initiated by the Afro-Asian countries that had massively acceded to independence and become members of the United Nations in the 1950s and early 1960s. See International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966). Adherence to the other conventions is less widespread, although all of them took part, more or less, enthusiastically in their elaboration. The Convention on the Rights of the Child is the only one that has already been almost universally ratified; the United States and Somalia are the only two exceptions. See Connie de la Vega & Jennifer Brown, *Can a United States Treaty Reservation Provide a Sanctuary for the Juvenile Death Penalty*, 32 U.S.F. L. Rev. 735 (1998); Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989); *Rights of the Child: Status of the Convention on the Rights of the Child*, U.N. ESCOR, Comm’n on Hum. Rts., 55th Sess., annex, U.N. Doc. E/CN.4/1999/70 (1999).
 17. Vienna Declaration, *supra* note 3, art. 1.

could be expected, the result of long and difficult negotiations. There was not, however, anything tantamount to unilateral impositions, nor did the document purport to violate the core of any culture. Instead, after reasserting the universality, indivisibility, interdependence, and interrelationship of all human rights, Article 5 of the Vienna Declaration states: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."¹⁸ Thus, human rights do not intend to overrule traditions that do not violate their essence. Nor do they require uniformity in forms of implementation.

Whereas Article 5 of the Vienna Declaration may sound insufficient to maximalist militants or inconsistent to those who did not take part in the negotiations, it does not seem to be so envisaged by the vast majority of states that previously rejected the Declaration of 1948. With very few exceptions, Afro-Asian leaders—and for that matter Socialist leaders in any region of the world—generally no longer resort to labeling human rights "Western-only" when facing international pressure. In order to respond to accusations of violations within their countries, they now make use of arguments other than respect for traditional values: they explain violations as either side-effects of other domestic difficulties or preventive countermeasures against violence and turmoil. Many also adopt a more constructive stance by recognizing the problems and describing efforts deployed in order to overcome them.¹⁹

It is, therefore, no longer under the simple excuse of different cultural backgrounds that the universality of human rights is being undermined. On the contrary, human rights language is today part and parcel of legitimate international political discourse. The most serious challenges to human rights are now disguised in areas outside traditional politics. They underlie current trends in the socioeconomic sphere as well as widely disseminated bona fide theories aiming at the emancipation of men and women. Together or apart, these trends and these theories enhance the feeling that there is no salvation outside "the community of equals," thereby disclaiming universality appeals.

18. *Id.* art. 5.

19. A remarkable example of such a constructive stance has been the campaign under way in African countries to eradicate the "cultural" practice of clitoridectomy, or female genital mutilation. See Halima Embarek Warzazi, *Final Report of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children*, U.N. ESCOR, Comm'n on Hum. Rts, 48th Sess., U.N. Doc. E/CN.4/Sub.4/1996/6 (1996).

III. GLOBALIZATION AND THE NEW FORMS OF SOCIALIZATION

An evident contradiction of this *fin-de-siècle* is the vigor with which human rights have imposed themselves on the contemporary discourse as if they were the natural counterpart to economic globalization. Reality proves to be very different.

The term “globalization” itself is misleading. Besides erroneously implying the existence of a truly global market of producers and consumers, it connotes equality of opportunities. Rather than a phenomenon that can and needs to be regulated, the concept has become a sort of ideology of the dominant. The actual characteristics of the globalizing phenomenon in the nineties—centered on the efficiency of the free market, with the support of computers and instant communication—barely encompasses one-third of the total world population. At most, the other two-thirds, on every continent, get its disruptive side-effects.²⁰

Today's trademarks of globalization (a process that started in the fifteenth century) are well known. The obsessive search for efficiency continually increases the number of people marginalized by it, not only in the Third World, but also in developed countries.²¹ Just as mechanization of agriculture led to rural exodus and thereby enormously inflated urban centers and neighborhoods, present efforts at production rationalization push the poor still further onto the margins of the economy and society itself. With the computerization of industry and services, non-specialized labor becomes superfluous and unemployment becomes structural. A cheap workforce, whenever needed, specialized or not, is recruited outside national boundaries, both directly abroad through the transfer of branches of large corporations to foreign lands and through the import—or brain

20. One does not need to be on the left of the political spectrum to notice the current social ravages caused by present economic trends and “advanced” technology. The World Council of Churches, which is supposed to represent up to 450 million non-Catholic Christians, explicitly regrets the rise of “a subtle but powerful ideology which assumes that the most promising way to improve the quality of life for all peoples is to give free rein to market forces.” Richard N. Ostling, *World Church Council Urges Curbs on World Economy*, CLEV. PLAIN DEALER, 15 Dec. 1998, at 7A. Similar views have often been expressed by leaders of the Roman Catholic Church, first and foremost by Pope John Paul II, whose historic opposition to leftist regimes and ideas is notorious. See John Tagliabue, *Looking Back at 20th Century, Pope Says Respecting Human Dignity is Key to World Peace*, N.Y. TIMES, 2 Jan. 1999, at A1.

21. The phenomenon is quite obvious in Europe. In the United States the situation is peculiar: While the economy is growing, and so seems to be the rate of employment, the number of homeless people appears unprecedented, as does the number of people in prison. While “zero tolerance” policies have probably been influential in the overall drop of crime rates, it is difficult not to relate the estimated more than 1.8 million prisoners to a scarcity of minimum wage jobs. See *Doubling of Prison Population Has U.S. on Track to Be Leading Jailer*, CHI. TRIB., 15 Mar. 1999, at 17.

drain—of experts poorly remunerated at home. In rich societies, dismantling the institutions of the Welfare State is a necessary step for the efficacy of state management, transforming social exclusion into an acceptable counterpart of competitiveness. In poor societies, attraction of foreign investment becomes a factor of life or death. But attractions like high interest rates, political stability or even good economic performance, outside the First World, are never strong enough to ensure that volatile capital will stay. On the contrary, it can flow away overnight as a result of crises that may take place even on the other side of the planet, either to compensate for losses experienced elsewhere, or because lack of confidence in one situation can contaminate all. As a sort of remedy for the negative side-effects of globalization, socially protective initiatives are transferred to the private sector and nongovernmental organizations. These can only function, however, on the scale of their means, up to the level and scope of their humanitarian concerns. In such a scene, the struggle for social and economic rights, almost always inconsistent and never totally victorious even on the conceptual level, seems abandoned for good.

In the class society of the modern, industrial age, a proletarian workforce was necessary and had to be maintained with minimal living conditions (hence the general acceptance of the Welfare State as something that was just and useful). In postmodern, “globalized” societies the poor are stigmatized and held responsible for their own poverty. Far from generating solidarity, they are associated with everything evil, both at home and on the planetary scale: overpopulation, epidemics, environmental destruction, vices, drug trafficking, the exploitation of child labor, fanaticism, terrorism, urban violence, and crime.²² The rich isolate themselves in private systems of security. The middle class (which today encompasses employed workers), living in permanent anxiety, demands that legislators increase the penalties for common crimes and resorts to scapegoating by displaying intolerance towards anyone “different,” including members of national minorities and

22. Stereotypes are very frequent. Overpopulation is always Asian or Latin American. The origins of the AIDS pandemic is African. Brazilian “garimpeiros” (gold diggers) damage the environment more than the industries and consumption patterns of developed nations. Blacks and Asians smoke, drink, and use drugs more than Whites. Third World production, not universal demand, is responsible for the drug traffic. Destitute parents who put their kids to work, or who force them to go into prostitution, probably do so because they are naturally cruel. While religious fanaticism is typical of “primitive peoples,” outside the Jewish-Christian civilization, integristism among Protestants, Catholics, and Jews is surely wholesome. Terrorism is essentially a Moslem phenomenon, while American supremacist “militias” and European neo-nazis are tolerated on the basis of the freedoms of expression and assembly. Rio de Janeiro, with its slums, had to be “the most dangerous city in the world.” Crime is “rampant among the poor” (who are also the most common victims). And crime refers only to violent action, while white-collar misdeeds tend to be condoned, no matter how much wider the scope of their effects.

both illegal and legal immigrants. Civil rights are thus denied in practice to those who are not in a position of relative power.

The state, previously regarded as the essential promoter of freedom and minimum conditions of equality in its capacity as social regulator, tends to become a simple manager of economic competitiveness, domestically and on the world market. Distorted, ineffective, and deprived of the idea of human progress, politics lacks credibility and becomes suspect. Not only does it acquire mostly ceremonial functions, but it also tends to be seen as a “natural bearer” of corruption and waste. Popular opinion loses interest in political matters, as noticed both in the growing levels of electoral abstention (wherever abstention is legal) and in the lack of enthusiasm of voters (wherever voting is compulsory). Political rights, one of the most outstanding achievements of modernity, tend in consequence to lack luster and appeal.

Bereft of a unifying capacity as a result of both its abuse of “metadiscourses” and of the contemporary acknowledgement of the “capilarity of power,”²³ the national state, formerly the locus of social assertion and individual self-fulfillment, is gradually deprived even of its identity function. The individual, often discriminated against within national borders as a result of incomplete—or biased—implementation of human rights and fundamental freedoms, looks for other sorts of communities for his or her self-identification. Ethnicity, religion, cultural origins, gender, and sexual orientation impose themselves above the notion of nationality and citizenship.

Obviously, such new forms of self-identification are positive and in full conformity with the anti-discriminatory stance of the Universal Declaration of Human Rights. A problem only arises when they assert themselves in a fundamentalist mode. When exacerbated, they can lead to practices like those of the ethnic cleansing in Bosnia, of the bloody Algerian massacres perpetrated in the name of religious purity, of the genocidal frenzy of Hutus and Tutsis in Rwanda, or of the delirious anti-feminism of the Taliban in Afghanistan. Such identification might even *contrario sensu* “legitimize” other obnoxious kinds of radicalism like that of “supremacist militias,” ethnic hatred, and subnational separatism, as well as the more widespread occurrences of xenophobia, nazi-fascist ultra-nationalism, reactionary isolationism, male anti-feminism—now substantially controlled in the West—and aggressive homophobia, still present and often violent worldwide.

23. Both expressions will be better explained further on. For now, suffice it to recall the most absurd policies of genocide and extermination put into practice by Nazi-fascist and Stalinist states in the name of the metadiscourse of progress, as well as the negligence—or connivance—of some states with regard to instances of domestic discriminatory aggression against minorities and women.

Arguably, most contemporary identity struggles have as their foundation the general principle of non-discrimination enshrined in the Universal Declaration of Human Rights. Perhaps because of this, none of the great thinkers who fostered the prevailing concepts of postmodernity ever denied the relevance of that normative document—however easily it could be “deconstructed.”²⁴ This notwithstanding, it is clear that the very notion of a “postmodernity”—a term that implies a temporal overcoming or a conceptual superseding of modernity (quite often both)—tends, under either meaning, to weaken the Declaration as a guideline for international action.

IV. THE ENLIGHTENMENT REBUFFED

Less publicized than globalization but equally effective in contemporary social thought, the concept of postmodernity has become sort of commonplace, despite its varied meanings. Originally developed in the academic arena, it has entered into current policies, practices, and claims.²⁵

In modernity, social disputes took place within the national community either through the assertion of a generic and universal Man as representative of the species or in the context of class struggles. In postmodernity, on the other hand, social mobilization often takes place in the name of communities of identification that are smaller than the national state and different from social classes. Governments, in turn, resemble chief executive officers, concerned mostly or only with the permanent efficacy of the national economy—an elusive objective as long as some form of supranational control for floating capital speculation (in amounts far bigger than most GNPs) is not devised.

Similar to “capilar power” as described by Michel Foucault,²⁶ post-

24. “Deconstruction” of texts, beliefs, and assertions of the Western philosophical discourse, originally proposed and attempted by contemporary French thinker Jacques Derrida, has come to be almost synonymous with the idea of postmodernity. For an understandable and quite comprehensive description of Derrida’s main ideas, see CHRISTOPHER NORRIS, *DECONSTRUCTION, THEORY AND PRACTICE* (1982).

25. Although the term itself varies—postmodernity in social sciences, postmodernism in art and urban planning, etc., here the expressions modernity and postmodernity will have an epistemological and temporal use.

26. Michel Foucault’s work as a whole was dedicated to proving that, in the modern world, power is exerted in a capilar way, with a microphysics of its own, disseminated in society by means of techniques of discipline and surveillance that control the bodies of individuals, as exemplified in schools, prisons, hospitals, and military establishments. For a general outlook into Foucault’s ideas, see MICHEL FOUCAULT, *THE FOUCAULT READER* (Paul Rabinow ed., 1984) [hereinafter FOUCAULT, READER]. In the area of law and rights, his most influential book was MICHEL FOUCAULT, *SURVEILLER ET PUNIR—NAISSANCE DE LA PRISON* (1975). This kind of power that is exerted without being “invested” applies also to the dominance of men over women at home, of adults over children, of doctors over patients, and so on.

modernity is something that does not announce itself and is not properly “invested”; both are simply exerted, in open or covert fashions. In order to understand its meaning, in the sense here employed, suffice it to compare the general characteristics of postmodernity to those of the modernity it supposedly overcomes.

Developed in parallel to and as a result of the European Enlightenment, which reached its climax in Immanuel Kant’s teachings, classical modernity presented itself as rational, secular, democratic, and universal. Reason was the attribute of human nature by means of which Man would liberate himself from political and social forms of submission. These were yokes under which he only accepted to live for not knowing Truth.²⁷ To the extent that societies rejected their religious substratum, they would get rid of despotic absolutism. Arbitrary power would be controlled by means of law, liberty, and progress. Man was, therefore, the subject and mastermind of history. Human rights, as defined by John Locke (for the American Revolution), with input from Jean-Jacques Rousseau (for the French Revolution), were, and still are, the essential instruments for attaining the triadic ideal inherited from the Century of Lights: Liberty, Equality, Fraternity.

Such a bright, humanistic vision of history soon started to be qualified within the Enlightenment itself, by philosophers like Hegel and Herder,²⁸ mostly in the nineteenth century. More down to earth than his idealistic predecessors and resorting to historical praxis as his instrument of analysis, Karl Marx believed that Man made his own history but not under circumstances chosen by himself.²⁹ Marx was also the first to clearly make use of the notion of structure—in his case, economic structure—as a

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27. “Sapere aude! Dare to know! Have the courage to make use of your own intelligence” was Kant’s most famous advice to those who still lived in conditions of intellectual and moral servitude, in order to attain freedom. See, e.g., PETER GAY, *AGE OF ENLIGHTENMENT* 11 (1967).
 28. German idealist philosopher Georg W. F. Hegel (1770–1831) adapted Kant’s abstract metaphysics to the historical world. According to him, ideas and History evolved in a dialectical system, in which each stage of progress was a synthesis that developed its antithesis and, together, they formed a new and higher synthesis, in a continuous process. Among his most famous studies were GEORG WILHELM FRIEDRICH HEGEL, *THE PHENOMENOLOGY OF SPIRIT* (A.V. Miller trans., 1979); GEORG WILHELM FRIEDRICH HEGEL, *SCIENCE OF LOGIC* (W.H. Johnston & L.G. Struthers trans., 1961); and the very influential GEORG WILHELM FRIEDRICH HEGEL, *THE PHILOSOPHY OF RIGHT* (S.W. Dyde trans., 1996). Johann Gottfried Herder (1744–1803) was the critic and philosopher who most influenced the German romantic literary movement, emphasizing the importance of communal heritage and national values and asserting that Man could only glimpse at his future by grounding himself in his own particular past. Among his works stand JOHANN GOTTFRIED HERDER, *ANOTHER PHILOSOPHY OF HISTORY CONCERNING THE DEVELOPMENT OF MANKIND*; and JOHANN GOTTFRIED HERDER, *OUTLINES OF A PHILOSOPHY OF THE HISTORY OF MAN* (T. Churchill trans., 1966).
 29. See Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, in *SELECTED WRITINGS* 300 (David McLellan ed., 1977).

limiting factor for human liberty, a limitation that could only be overcome by revolution. Nevertheless, and in his self-entitled scientific, dialectical materialistic terms, Marx developed his beliefs within the logic of “enlightened” universal rationalism, of which he was a self-assumed heir and promoter. In a radically different vein, Friedrich Nietzsche, in his dissection of culture with recourse to the genealogy of morals and to epistemological analyses, opened up the way for postmodernism in philosophy by dismantling rationalism, as well as the ethic it disseminated (labeled as resentful, false, and mean).³⁰

While these developments took place in the area of social thinking, the dawn of the twentieth century saw progress in several other areas. In the realm of psychoanalysis, Sigmund Freud proved, when studying the unconscious Id, that Man’s self was neither unified nor autonomous, thereby modifying previous understandings about individual personality.³¹ Further, in the field of linguistics, Ferdinand de Saussure identified the relationships between spoken and written signs and the structures of language that determine the apprehension of reality and therefore inevitably condition human knowledge.³² The bases were thus set for the postmodern “deconstruction of the subject.”

It is not necessary to make an inventory of the contributions by all influential thinkers—structuralist and post-structuralist, modern and postmodern—to reach an elementary understanding of present day postmodern social practices. Nor is it necessary to list every form of distorted uses of “enlightened” rationality, particularly in our century, to realize why the Enlightenment has been questioned. Suffice it to recall that Jean-François Lyotard, in 1979, offered the most agreed upon definition of the term “postmodernity” when he diagnosed the end of the Grand Narratives—of Reason, Emancipation, and Human Progress—as the necessary means of legitimization of the search for knowledge. Lyotard believes that, in a systemic reality like ours, deprived of ethical values and of a sense

30. In particular, see FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALS: A POLEMIC* (Douglas Smith trans., rev. ed. 1999); and FRIEDRICH NIETZSCHE, *ECCE HOMO: HOW ONE BECOMES WHAT ONE IS* (R.J. Hollingdale trans., reprint ed. 1992) (1979). For a wider glimpse of Nietzsche ideas, see FRIEDRICH NIETZSCHE, *A NIETZSCHE READER* (R.J. Hollingdale trans., 1977). A very brief summary of Nietzsche’s thought can also be found in DOUGLAS E. LITOWITZ, *POSTMODERN PHILOSOPHY AND LAW* (1997).

31. See, e.g., SIGMUND FREUD, *THE INTERPRETATION OF DREAMS* (A.A. Brill trans., Modern Library 1994); SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* (Joan Riviere trans., 1958).

32. The extraordinary influence of French Swiss linguist Ferdinand de Saussure on social sciences stem from his “Cours de linguistique generale,” first published in Paris by Payot, in 1916. There are many studies in English on Saussure’s analyses of language and their reflection on structuralist thinking in general. I myself first read about Saussure’s linguistics in FERDINAND DE SAUSSURE, *SAUSSURE OU LE STRUCTURALISME SANS LE SAVOIR* (Georges Mounin ed., 1968).

of human progress, knowledge now has only performance-oriented goals.³³ However unpleasant it may be, the present characteristics of the phenomenon of globalization seem to confirm Lyotard's diagnosis.

If it is taken for granted, as is now generally accepted, that men and women, in their mental and bodily existence, are beings built within the culture in which they live—Foucault would say in their *episteme*³⁴—one may seriously doubt whether something like a universal human nature does exist. If knowledge is a function of inescapable economic, social, cultural, and linguistic structures, then truth can only be relative. “Enlightened” reason is thus replaced by, at most, varied and specific “reasons.” Power, on the other hand, is now proven to be an element that imposes itself in all areas of inter-personal relationships, beyond and below the state apparatus. No longer regarded as a democratic attribute of politics and exerted in a capilar way by means of a microphysics that distributes disciplinary practices, power cannot be exerted with emancipatory aims and becomes only an instrument of oppression.³⁵ Without any explanatory or justifying Grand Narrative, history—itself a Grand Narrative—not only loses its sense of progress, but in fact ceases to exist. In its place there are only local, specific “histories.”

“Deconstructed” by psychoanalysis, linguistics, and ethnology (the three “countersciences” identified by Foucault), as well as by the language games and micro-narratives (according to Lyotard), and by the referential “texts” in which it is inserted in an endless inter-textuality (as interpreted by Jacques Derrida), the human being cannot *ipso facto* be an autonomous subject. In order to constitute himself as a full individual, he needs to resort to different forms of self-identification. Self-identification and self-constitution thus tend to prioritize different forms of “community” as spaces of self-accomplishment, no matter if the community is real or imaginary, self-selected or simply imposed. Those spaces of self-accomplishment rarely fit the national state—another inheritance from the Enlightenment—nor the social classes of modern times, modified or seduced as they are by consumer capitalism. But if, on one hand, the national community is nowadays insufficient, social class an outdated social category, and transnational communities still embryonic formations, then, on the other hand, a truly comprehensive international community would not only be utopian, it would blatantly contradict the particularity of each new “com-

33. See JEAN-FRANÇOIS LYOTARD, *LA CONDITION POSTMODERNE: RAPPORT SUR LE SAVOIR* 7–11 (1979). The expression used by Lyotard is “metadiscourse,” normally interpreted as the “Grand Narratives” of modernity.

34. See MICHEL FOUCAULT, *LES MOTS ET LES CHOSSES—UNE ARCHÉOLOGIE DES SCIENCES HUMAINES* (1966).

35. See FOUCAULT, *supra* note 26.

munity of identification." The local, therefore, supersedes the universal, no matter how globally one may try to think.

In postmodernity, the eternal becomes contingent; universalism, a delusion; metaphysics, a meaningless contrivance. The idea of foundations loses its grasp in politics, law, and ethics. Everything becomes relative, localized, and ephemeral. This is the situation in which political and social demands now take place, having in the background performance technologies, elusive knowledge, and a type of globalization that excludes most people from its benefits.

Facing such conditions, how can one still uphold the validity of the Universal Declaration of Human Rights, grounded on the rational and humanistic foundations of the Enlightenment, with inputs from its liberal and socialist currents? How can one defend the idea that "the equal and inalienable rights of all members of the human family [are] the foundation of freedom, justice and peace in the world"?³⁶ How can one insist on the assertion that all human beings "are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"?³⁷ How can those rights historically built on the Western tradition be made universal without adopting an imperialistic stance? None of these questions has an easy answer. Many studies have approached the matter without finding a definitive solution.³⁸ What is attempted here is but a brief outline of some of the best known paths suggested by others, in order to propose another course of action. The proposal will be more intuitive than "scientific" and more pragmatic than "grounded." Perhaps, because of this, this proposal might be also labeled "postmodern."

V. POSSIBLE FORMS OF CONCILIATION

Whereas the strongest objections to the Universal Declaration of Human Rights still come from political leaders (in contradiction to what their own representatives had subscribed to—however reluctantly—in 1993 at the Vienna Conference), with the obvious intent of justifying violations in governmental policies, the anti-universalistic stance prevailing in contemporary social thinking also brings into question the legitimacy of that

36. UDHR, *supra* note 1, pmb1.

37. *Id.* art. 1.

38. Significant collections of such efforts can be found, for instance, in two volumes of lectures sponsored by Amnesty International: FREEDOM AND INTERPRETATION—THE OXFORD AMNESTY LECTURES 1992 (Barbara Johnson ed., 1993) [hereinafter FREEDOM AND INTERPRETATION]; ON HUMAN RIGHTS—THE OXFORD AMNESTY LECTURES 1993 (Stephen Shute & Susan Hurley eds., 1993) [hereinafter ON HUMAN RIGHTS].

document. Paradoxically, this current brand of radical anti-universalism is adopted with allegedly libertarian, left-wing objectives, despite the support that it unavoidably lends to the anti-democratic relativism of the extreme right. Bona fide stances of this kind can be found among Western ethnologists too enthusiastic about the non-Western cultures they study,³⁹ among grassroots activists ideologically opposed to the national state because of the harm it causes to traditional minorities,⁴⁰ and among leaders of assertive identity movements who, in a quest for updated ameliorations to the text of the 1948 Declaration, risk opening the way to its very destruction.⁴¹

Over the last fifty years, many constructive theoretical attempts have been made to reconcile the particularities of diverse cultures with what is really universal in the notion of fundamental, inherent, and inalienable human rights. Such an intellectual effort is complex to the extent that the concept of rights itself, as well as that of the autonomous individual, historically emerged in the West. Non-Western cultures instead stressed the notion

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39. In the 1994 session of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, when the draft Declaration on the Rights of Indigenous People was being considered, I tried to call my colleagues' attention to the lack of concern in the text for the rights of indigenous women, often mistreated and hurt by tribal practices. My effort, caused by an appeal made to me by indigenous women from Central America who were present at the meeting, bore no result. Another Latin American member of the Sub-Commission, an anthropologist, in a conversation with me, stressed his view that indigenous traditions must be integrally preserved, even if they involve infanticide. Nevertheless, that same human rights "expert" would not hesitate to sponsor resolutions that criticized discrimination against women in Moslem countries, condemned Iran for persecuting the *Baha'is*, Algeria for brutalities committed by the Government, and the fundamentalists of Turkey for excesses against Kurdish insurgents.
40. This is the case, among others, of Gustavo Esteva and Madhu Suri Prakash, who reject the national state as a whole and human rights as "the Trojan horse of recolonization," in defense of Third World cultures as the only hope against the "Global Project" of Western capitalism. GUSTAVO ESTEVA & MADHU SURI PRAKASH, *GRASSROOTS POSTMODERNISM: REMAKING THE SOIL OF CULTURES* (1998).
41. It is the case, for instance, of the feminists who have collectively produced a draft for a new, postmodern Universal Declaration of Human Rights From a Gender Perspective, submitted to the UN Commission on Human Rights by several nongovernmental organizations as a contribution to the celebrations of the 50th Anniversary of the 1948 Declaration. See *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms*, U.N. ESCOR, Comm'n on Hum. Rts, 55th Sess. U.N. Doc. E/CN.4/1998/3 (1998). The proposal is constructive and the text very well drafted. Yet, it clearly looks untimely in a period of exacerbated fundamentalism, after the enormous difficulties faced for the mere assertion that "women's rights are human rights" in the Beijing Declaration of the World Conference on Women in 1995. Article 14 of the Beijing Declaration was difficult to approve in the corresponding working group because of the opposition some countries still have to the notion of sexual and reproductive rights. See *Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action*, U.N. GAOR, art. 14, U.N. Doc. A/CONF.177/20 (1995), reprinted in *REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN* (1995) (recommended to the UN General Assembly by the Committee on the Status of Women on 7 Oct. 1995).

of duties, prioritizing collective values over personal rights either on behalf of social harmony or in defense of hierarchy and authority (both religious and secular), no matter the degree of suffering they might inflict upon each of their members.

Such attempts at theoretical reconciliation between human rights and “premodern” traditions have been developed by jurists, sociologists, and theologians of every continent. Different “solutions” have been found: assimilation of human rights into the Christian teachings on human dignity, tolerance, and universal brotherhood; updated interpretations of the Islamic *shari’a*; incorporation of human rights within the Hindu *dharma*; identification of human rights with the spirit of the African *ujama* or traditional extended family; adoption of a “diatopic hermeneutics,” according to which, by self-acknowledging its own incompleteness, any culture would voluntarily recognize and fill up the lacunae with alien complements;⁴² communicative intercultural action towards ethical consensus;⁴³ cross-cultural dialogue;⁴⁴ and many other ideas invariably centered on the concept of multiculturalism. None of these enjoys general acceptance.

Acceptance of multiculturalism in place of rational, universalistic humanism is, in fact, if not the “foundation,” at least the keynote of all brands of postmodern thinking. Current postmodern theories evolved from the self-criticism of Western culture made by some of the most insightful Western thinkers of this century, commonly called “post-structuralists.”⁴⁵ In such an undertaking, they were basically urged by what Michel Foucault called his own “impatience for liberty.”⁴⁶ The problem with this process of critical self-enlightenment, supposed to continue the emancipatory philosophy of the eighteenth and nineteenth centuries, is that, by denouncing the distortions of Western rationalism, it ended up discrediting the Enlightenment as a whole. Together with the Enlightenment it may destroy the egalitarian foundations of universalistic humanism, as well as the very idea

42. See Boaventura de Sousa Santos, *Towards a Multicultural Conception of Human Rights*, in *SPACES OF CULTURE: CITY, NATION, WORLD* 214 (Mike Featherstone & Scott Lash eds., 1999).

43. This has been insistently proposed by German philosopher Jürgen Habermas in the large body of work that makes up his theory of communicative action. See, e.g., JURGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* (T. McCarthy trans., 1994). For a brief outline of Habermas’ ideas, see Anthony Giddens, *Jürgen Habermas*, in *THE RETURN OF GRAND THEORY IN THE HUMAN SCIENCES* 123 (Quentin Skinner ed., 1990) (the discussion on page 132 is particularly relevant).

44. See *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES—A QUEST FOR CONSENSUS* (Abdullahi Ahmed An-Na’im ed., 1992).

45. For a straightforward, comprehensive description of the main ideas of post-structuralist thinkers, see MADAN SARUP, *AN INTRODUCTORY GUIDE TO POST-STRUCTURALISM AND POSTMODERNISM* (2d ed. 1993).

46. MICHEL FOUCAULT, *What is Enlightenment?*, in *THE FOUCAULT READER* 50 (Paul Rabinow, ed. 1984).

of progress that inspired the political struggles of the Modern Age in the West, the East, the North, and the South.⁴⁷

Aware of the challenges their analyses represent to modern political praxis and also conscious of the emancipatory strength of the struggle for human rights, the most coherent post-structuralists⁴⁸—reluctant parents of theoretical postmodernity—have tried to prove the non-nihilistic nature of their different approaches and interpretations. Convincingly or unconvincingly, they undertake to show ways out of the straitjackets they have found hidden beneath the discourse of modernity and out of the dead-ends created by their all-encompassing critique of the Enlightenment. To that aim, they attempt to conciliate the end of universalism with an imprecise notion of justice, the particularism of inflexible cultural structures with the notion of universal human rights, and the capilarity of power/knowledge with the struggle for autonomous identity. They try to convert the acceptance of pure contingency as a means for obtaining progress. On rebuffing totalizing interpretations, they envisage specific microdiscourses as more capable of leading to true liberty than the metadiscourse of progress.

For instance, for Derrida, the inventor of “deconstruction,” “nothing seems less obsolete than the classical ideal of emancipation.”⁴⁹ Justice, “if such a thing exists, outside and beyond law, is not deconstructible.”⁵⁰ Law, of course, can and must be deconstructed, for “deconstruction is justice.”⁵¹ Nevertheless, justice is not a universal category, but something differently built by all diverse cultures. On the same line, Lyotard stresses the importance of micronarratives instead of the “universal metadiscourse of Justice” as the only way to avoid the “terrorist” imposition of the language

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47. This is the reason why Habermas envisages the post-structuralists as “neo-conservatives.” See, e.g., JURGEN HABERMAS, *THE PHILOSOPHICAL DISCOURSE OF MODERNITY: TWELVE LECTURES* (Frederick G. Lawrence trans., 1987) (for his critical appraisal of their work). This is also the reason why they were rebuffed for quite a long time by the traditional Left and, on the other hand, enthusiastically welcomed by academic defenders of the status quo—which does not invalidate the contribution they have brought to contemporary identity struggles of oppressed minorities, and to a better, demystified understanding of modernity itself.
48. All of the original “post-structuralists,” dead and alive, were or are French: Jacques Lacan, Michel Foucault, Giles Deleuze, Jacques Derrida, Jean-François Lyotard, Jean Baudrillard, and many others. The influence of these so-called “French thinkers” in contemporary social thinking is, however, worldwide, particularly in the whole of Europe, Latin America, and the United States.
49. In Jacques Derrida’s original words: “*Rien ne me semble moins périmé que le classique idéal émancipatoire.*” Jacques Derrida, *Force de Loi: Le “Fondement Mystique de l’Autorité”*, 11 *CARDOZO L. REV.* 919, 972 (1990) (present quotations have been translated by me from the French version).
50. *Id.* at 944 (“*La justice en elle-même, si quelque chose de tel existe, hors ou au-delà du droit, n’est pas déconstructible*”).
51. *Id.* (“*La déconstruction est la justice.*”).

game of the majority on the voice of oppressed minorities.⁵² It is essential to respect “the other” and “the human community present in him as both capacity and promise.”⁵³ More directly addressed to the Western notion of justice and more influential on the contemporary social action of Western societies, Michel Foucault’s analyses of the microphysics of power and of the repressive character of law and the modern state offer substantial support to the contemporary search for identity communities. In addition, Foucault provides support for the widespread affirmation of the “right to difference”—a nonjuridical expression that has come to mean the assertive obverse of the negative practices of racial, social, cultural, religious and sexual discrimination, including discrimination and stigmatization for reasons of sexual orientation.

Other postmodern thinkers have, however, a different understanding and probably different concerns. As pointed out by Terry Eagleton, the very expression “human rights” causes embarrassment to the idea of deconstruction. The embarrassment is twofold, with either term of the expression being strategically usable but “ontologically baseless.” Postmodernists further believe that these terms belong to “discreditable metaphysical humanism.”⁵⁴ Mostly for these reasons and because he agrees with Derrida’s critique of Western male logocentrism, or “phallogocentrism,” Richard Rorty proposes a pragmatic approach to education for human rights. He describes the approach as feminine and affective, as opposed to knowledge-seeking or rationally “enlightened.” In adopting this approach, Rorty first takes into consideration that an individual who is not exposed to Kantian teachings does not recognize himself as a human being with an equal value to any other’s. Rather he sees himself as belonging to a group that is better. Therefore, instead of appealing to humanistic foundations, one should appeal to individual feelings in a form of sentimental education: I must treat foreigners well, not because they are morally my equals, but because they are distant from their own people, because their relatives may be suffering, or because one of them may one day become my brother or sister-in-law.⁵⁵

From all of these theoretical proposals and other similar interpretations, it is difficult to extract justification for the relevance of the Universal

52. For a detailed analysis of the possible effects of Derrida’s, Lyotard’s, and Foucault’s (as well as Nietzsche’s and Rorty’s) teachings on the application of law, see LITOWITZ, *supra* note 30.

53. Jean-François Lyotard, *The Other’s Rights*, in *ON HUMAN RIGHTS*, *supra* note 38, at 135, 136.

54. Terry Eagleton, *Deconstruction and Human Rights*, in *FREEDOM AND INTERPRETATION*, *supra* note 38, at 121, 122.

55. Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS*, *supra* note 38, at 111.

Declaration of Human Rights in the “postmodern age.” Rorty’s pragmatic approach may be effective in some specific situations, but it contradicts the very idea of rights—although he recognizes that a culture of human rights does exist at present.

If pragmatism is important to raise human rights from the level of utopia, and this seems to be the case at present, then other possibilities, equally pragmatic, can be envisaged. Some have long been applied.

VI. HUMAN RIGHTS AS TRANSCULTURAL VALUES

Long before post-structural and postmodern doctrines came into being the doctrine of natural rights had already lost its preeminence. Rights, in domestic law as in international law, are acknowledged to be historical achievements that extrapolate both religious and secular metaphysical foundations. Their historical nature enables them to adapt and develop with the evolution of the times. For this reason, and only in the sense of temporal progression, it is still possible to refer to generations of human rights. Without any difference in terms of intrinsic value, the “second generation” economic and social rights were historically incorporated into juridical doctrines after the Lockean “first generation” civil and political rights. However, they are all duly enshrined in the Universal Declaration of Human Rights.⁵⁶ Without losing sight of this doctrinal evolution, and bearing in mind the historical events that have taken place in the world since 1948, the simple fact that such a Declaration, proclaimed as Universal by the United Nations, has resisted change for already half a century is quite significant.

Italian political scientist Norberto Bobbio stressed in 1964 that “[t]he fundamental problem with human rights is not, nowadays, how to justify them, but rather how to protect them. The problem is not philosophical, but rather political.”⁵⁷ No doubt Bobbio was correct when he made this statement. After all, politicians, not philosophers, are those who can promote, by choice or under pressure, effective observance of human rights. Nevertheless, one of the problems of postmodernity arises from philosophical positions. The arguments of postmodern thinkers, far from justifying the fundamental human rights consecrated in the Universal Declaration, may represent an instrument of legitimacy for the objections of political and

56. “Third generation” or solidarity rights, like the right to self-determination and the right to development, can thus be envisaged as interpretive complements to the first two categories, for they set the necessary conditions for actual implementation of civil, political, economic, social, and cultural rights without affecting their legal substance.

57. NORBERTO BOBBIO, *L’ETÀ DEI DIRITTI* 24 (1992).

religious leaders opposed to them. For, if rights are a nontransferrable creation of Western culture, itself unjust and only cosmetically libertarian, how can anyone coherently demand that the Taliban not enclose Afghani women according to ancestral tradition? How can one expect the Islamic Republic of Iran not to discriminate against the *Baha'i* community, if the *Baha'i* religion is proscribed in the Iranian Constitution? How can one impose the cancellation of Ayatollah Khomeini's capital *fatwa* against Salman Rushdie, if a *fatwa* is by definition irrevocable except by its own pronouncer? How can one promote freedom of religion in fundamentalist Moslem countries where the morally strict *shari'a* legally punishes apostasy with death by crucifixion? How can one condemn repression of Chinese and Korean dissidents if Confucianism, rather than socialism, requires obedience to authority as a fundamental communal value?

The reply to all of these questions does not need to be metaphysical nor "imperialistic." It can be historical and in conformity with international law.

The commanding importance of the Universal Declaration as a world-wide referential document for the past fifty years proves that, regardless of their origins, positive values of one culture can be assimilated in good faith by another without prejudice to the essential canons of each civilization (negative values, as the diverse "histories" abundantly demonstrate, are more easily incorporated). The vast majority of countries that acceded to independence after the proclamation of the Universal Declaration of Human Rights on 10 December 1948 had no difficulty in accepting its dispositions, having even adopted them in domestic legislation. They did not do so as a result of imperialistic pressure. They chose to do so because they recognized the importance of the Universal Declaration for their own anti-colonial struggle. They incorporated its tenets because they wanted to accede not only to political autonomy, but also to social and economic modernity. Whether human rights are effectively observed in the policies of these and other countries is a different issue.

Ghandi's proper appreciation of the Hindu *dharma* never impeded his followers in independent India from adopting the democratic system of government, legally abolishing castes, and stimulating the concept of human rights in Indian secular society. With the sole exception of Saudi Arabia, almost all Moslem countries did, in the past, adopt civil and criminal codes very distanced from the *shari'a*—a doctrinal set of rules emanating from an interpretation of the Quran in the first centuries of Islam but not directly emanating from prophet Mohammed. Insistent reversal to the *shari'a* as a sacred all-embracing social code is a recent phenomenon that accompanies the widespread growth of fundamentalistic movements. These movements, however, are not exclusive to Moslem cultures. They can be detected in religious and secular spheres all over the world, including the "developed" Western societies. Rather than an accident of history (or

“histories”) or an incidental regression to archaic pre-modernity, they are a “postmodern” substitute for the vanished metadiscourses. They constitute a resource against the cultural homogenization of the globalizing process and an ideological compensation for the cult of the free market. As George Soros himself denounces: “At present an uneasy alliance prevails in politics between market fundamentalists and religious fundamentalists.”⁵⁸

Besides having inspired domestic legislation, the anti-colonial struggle, and the claims of the oppressed, the Universal Declaration of Human Rights forms the basis of an impressive corpus of treaties and mechanisms to which states voluntarily adhere. To the extent that it is self-imposed on different countries by their own adherence, the Declaration is not an “imperialistic” instrument. As stressed by UN Secretary General Kofi Annan: “It was never the people who complained of the universality of human rights, nor did the people consider human rights as a Western or Northern imposition. It was often their leaders who did so.”⁵⁹ Additionally, Gilberto Saboia, who chaired the Drafting Committee of the World Conference on Human Rights in 1993, noted, “The consensus obtained in Vienna, despite its fragile nature, makes it possible to expect the overcoming of resistances as well as the affirmation of human rights applicability.”⁶⁰

Whereas human rights can now be envisaged as officially “universalized” by the consensus of all states at the Vienna Conference, they look even more like contemporary transcultural values in the behavior of nongovernmental organizations. It is on the basis of the Universal Declaration and of the treaties and declarations that stem therefrom that all of these non-profit private entities with diverse origins—and they are also a worldwide phenomenon of our times—pursue their public aims, both in the area of individual rights and in defense of collective rights of specific groups and communities.

If, according to Foucault’s teachings, Law was invented to legitimize disciplinary power in the Classical Age,⁶¹ would human rights stop being a form of assertion of the individual vis-à-vis the state? It does not seem to have ever been the case. This is certainly not the case now, when human rights are mostly justiciable under positive law and closely scrutinized by international monitoring bodies. Furthermore, with the interpretations conferred upon them by the Vienna Conference of 1993 and the Beijing Conference of 1995, human rights are not exclusively aimed against the

58. GEORGE SOROS, *THE CRISIS OF GLOBAL CAPITALISM* 231 (1998).

59. Kofi Annan, *United Nations High Commissioner for Human Rights* (last modified 22 Feb. 2000) <<http://www.unhchr.ch>>.

60. Gilberto Saboia, *O Brasil e o sistema internacional dos direitos humanos*, in 6 *TEXTOS DO BRASIL* 17 (1998).

61. This idea permeates Foucault’s thought. See generally FOUCAULT, *READER*, *supra* note 26.

state. By more clearly protecting the rights of women, children, indigenous communities, and minorities oppressed within national societies, human rights have also become instruments against the “capilarity of power,” exercised by nongovernmental agents. The obligation to avoid violations of these specific rights, however diffuse they are, is therefore incumbent not only on the state, but on society as a whole—although the main responsibility still remains with the state.

If, according to Derrida, Justice is an imprecise reference for the application of Law, something that imposes itself but cannot be legally prescribed in the form of rights and duties,⁶² the 1984 Declaration, in its shape of a manifesto (or “shaped as a manifest”), may, at least, represent a legitimate yard stick. For in different degrees, all civilizations have by now been influenced by it. Likewise, bearing in mind Lyotard’s concerns, since its “universalization” by the Vienna Conference, and because of its constant use by “voiceless minorities,” the Declaration can also be envisaged as a widely accepted point of convergence for all micronarratives and different language games.

Therefore, even for the staunchest post-structuralists and postmodern theoreticians, the Universal Declaration of Human Rights opens invaluable paths. To the same extent that post-structuralism presents itself as emancipatory, the multiculturalism it justifiably endorses cannot remain indifferent to non-Western forms of oppression. Nor can postmodernity become fundamentalistic, accepting as unavoidable the integristism of the free market.

The fifty-year-old Universal Declaration of Human Rights is neither a magical formula nor a sacred decalogue. Its Preamble and Article 1 sound today, perhaps, outdatedly metaphysical. According to the prevailing currents of contemporary social thought, people are not born “free and equal” anywhere, nor do they properly make up a “human family.” Reality also shows that human rights have not been consistently respected in any community, be it national or elective, real or imaginary. However, Law is a normative discourse that aims at regulating—and improving—an often elusive reality. David Weissbrodt did not make an overstatement when, in describing the treaties and mechanisms that purport to implement human rights, he called human rights “the world’s first universal ideology.”⁶³ He meant that the idea of human rights, because of their very nature and because of the international legislation existing to protect them, has everything needed to become, and has already started to become, “the world’s first universal ideology.”

62. See NORRIS, *supra* note 24.

63. David Weissbrodt, *Human Rights: A Historical Perspective*, in *Human Rights 1* (Peter Davies ed., 1988); MICHAEL FREEDEN, RIGHTS 102 (1991).

In light of the persuasive, liberating force it has proven to carry for individuals and groups for over five decades, the 1948 Declaration must be cherished and kept as it is. To dismiss it as ineffective in a multicultural world would mean to abandon the search for human improvement. To reopen it now would mean to open a Pandora's box, at a moment too favorable for demons. Without bias and manipulation, the Universal Declaration of Human Rights must, on the contrary, be strengthened, as it has been at the conferences of the nineties, in Vienna (on human rights), Cairo (on population and development), Copenhagen (on social development), Beijing (on women), and Istanbul (on human settlements).⁶⁴ It must be preserved as what it is: a least common denominator for a culturally varied universe; a quite precise parameter for the behavior of all; a yardstick of progress for an unjust reality; a tool for the attainment of the other aims of society without losing their human dimension.

In spite of its small size, the Universal Declaration is still, and must continue to be, a totalizing Grand Narrative. In the postmodern condition of the end of the millennium, this Grand Narrative seems to be the last remaining one.

64. See J.A. Lindgren Alves, *The United Nations, Postmodernity and Human Rights*, 32 U.S.F. L. Rev. 479 (1998).