

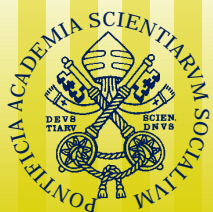
THE PONTIFICAL
ACADEMY OF
SOCIAL SCIENCES

Acta

11

Conceptualization of the Person in Social Sciences

Edited by
EDMOND MALINVAUD
MARY ANN GLENDON



VATICAN CITY
2006

*The Proceedings of the Eleventh Plenary Session
of the Pontifical Academy of Social Sciences*

18-22 NOVEMBER 2005

CONCEPTUALIZATION
OF THE PERSON
IN SOCIAL SCIENCES

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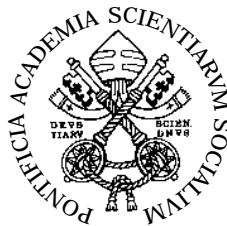
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The opinions expressed with absolute freedom during the presentation of the papers of this meeting, although published by the Academy, represent only the points of view of the participants and not those of the Academy.

Editors of the Proceedings:
Prof. EDMOND MALINVAUD
Prof. MARY ANN GLENDON

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THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES
VATICAN CITY



Pope Benedict XVI



The Pontifical Academy of Social Sciences, Casina Pio IV



Pope Benedict XVI and the President in the Chapel of Casina Pio IV, 21 Nov. 2005



President Mary Ann Glendon addresses the Holy Father Benedict XVI, 21 Nov. 2005



The Holy Father Benedict XVI addresses the Participants, 21 Nov. 2005



The Holy Father Benedict XVI and the Chancellor H.E. Msgr. Marcelo Sánchez Sorondo, 21 Nov. 2005



Some Participants at the Eleventh Plenary Session, 21 Nov. 2005



Professor Margaret Archer presents her paper, 19 Nov. 2005

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WELCOMING ADDRESS
TO HIS HOLINESS POPE BENEDICT XVI

MARY ANN GLENDON

Your Holiness,

The members of the Pontifical Academy of Social Sciences are delighted to join our sister Academy of Sciences and its President Dr. Cabibbo in welcoming you. We are deeply honored by your presence among us today.

For us social scientists, this gathering in memory of our beloved John Paul II has special meaning. It was he who called our Academy into being eleven years ago. It was he who encouraged us to bring the wisdom of the social sciences to bear on concrete social problems. And it was he who charged us with responsibility to help ensure that 'social doctrines do not ignore the spiritual nature of human beings...'¹

By founding this Academy, your predecessor challenged us to overcome the separations that often stand in the way of effective collaboration among the disciplines concerned with the human person. As we strive to meet that challenge, Holy Father, we are mindful of your own warnings about the encroachments of relativism. For we must admit that the social sciences have contributed more than a little to the progress of relativistic attitudes. Yet reason tells us that common ground among the human sciences must not be found in attitudes that deny the existence of truth. For if there is no truth, there is no sure principle of justly ordering social relations.

It thus seems fitting that this week the Academy is reflecting upon a topic that was always close to the heart of John Paul II, and central to Catholic social thought: the concept of the human person. As we do so, we cannot help but recall his passionate insistence that: 'Man remains

¹ John Paul II, Address to Participants in the Sixth Plenary Session of the Pontifical Academy of Social Sciences (2000), 1.

above all a being who seeks the truth and strives to live in that truth, deepening his understanding of it through a dialogue which involves past and future generations'.²

This week we also mark a milestone in our ongoing studies of democracy with the publication of a volume titled, 'Democracy in Debate: The Contribution of the Pontifical Academy'. On behalf of the director of our democracy project, Professor Hans Zacher, and the entire membership of the Academy, I hope you will do us the honor of accepting the first copy of this book.

Holy Father, as our Academy looks to the future, we are eager to have your guidance concerning the ways we may continue to fulfil the missions for which this body was created. The epigraphs that you dedicate today will keep those missions before our eyes. They will remind us that we are part of a living tradition. They will strengthen our resolve to be worthy of those who have gone before us, even as we prepare the way for those who will come after us.

As for the bronze likeness that you dedicate today, that kindly face we loved so well will be a constant reminder to all of us to 'Be not afraid' to press the frontiers of human knowledge. It will remind us to be not afraid to listen to what modern science has to teach us about ourselves and the world around us. And, above all, it will remind us to be not afraid in the quest for social justice.

It only remains for me, Holy Father, on behalf of all our members, to assure you of our heartfelt desire to be of service to you and the Church in the days and years to come.

² *Centesimus Annus*, 49.

ADDRESS OF HIS HOLINESS BENEDICT XVI
TO THE MEMBERS
OF THE PONTIFICAL ACADEMY OF SCIENCES
AND THE PONTIFICAL ACADEMY OF SOCIAL SCIENCES

Monday, 21 November 2005

Distinguished Ladies and Gentlemen,

I wish to extend my warm greetings to all those taking part in this important gathering. In a special way I wish to thank Professor Nicola Cabibbo, President of the Pontifical Academy of Sciences, and Professor Mary Ann Glendon, President of the Pontifical Academy of Social Sciences, for their words of welcome. I am also happy to greet Cardinal Angelo Sodano, Secretary of State, Cardinal Carlo Maria Martini and Cardinal Georges Cottier, who has always been very dedicated to the work of the Pontifical Academies.

I am particularly pleased that the Pontifical Academy of Social Sciences has chosen 'the concept of the person in social sciences' as the subject to be examined this year. The human person is at the heart of the whole social order and consequently at the very centre of your field of study. In the words of Saint Thomas Aquinas, the human person 'signifies what is most perfect in nature' (*S. Th.*, I, 29, 3). Human beings are part of nature and, yet, as free subjects who have moral and spiritual values, they transcend nature. This anthropological reality is an integral part of Christian thought, and responds directly to the attempts to abolish the boundary between human sciences and natural sciences, often proposed in contemporary society.

Understood correctly, this reality offers a profound answer to the questions posed today concerning the status of the human being. This is a theme which must continue to be part of the dialogue with science. The Church's teaching is based on the fact that God created man and woman in his own image and likeness and granted them a superior dignity and a shared mission towards the whole of creation (cf. *Gen 1* and *2*).

According to God's design, persons cannot be separated from the physical, psychological or spiritual dimensions of human nature. Even though cultures change over time, to suppress or ignore the nature that they claim to 'cultivate' can have serious consequences. Likewise, individuals will only find authentic fulfilment when they accept the genuine elements of nature that constitute them as persons.

The concept of person continues to bring about a profound understanding of the unique character and social dimension of every human being. This is especially true in legal and social institutions, where the notion of 'person' is fundamental. Sometimes, however, even when this is recognized in international declarations and legal statutes, certain cultures, especially when not deeply touched by the Gospel, remain strongly influenced by group-centred ideologies or by an individualistic and secularist view of society. The social doctrine of the Catholic Church, which places the human person at the heart and source of social order, can offer much to the contemporary consideration of social themes.

It is providential that we are discussing the subject of the person as we pay particular honour to my venerable predecessor, Pope John Paul II. In a way, his undisputed contribution to Christian thought can be understood as a profound meditation on the person. He enriched and expanded the concept in his Encyclicals and other writings. These texts represent a patrimony to be received, collected and assimilated with care, particularly by the Pontifical Academies.

It is, therefore, with gratitude that I avail myself of this occasion to unveil this sculpture of Pope John Paul II, flanked by two memorial inscriptions. They remind us of the Servant of God's special interest in the work of your Academies, especially the Pontifical Academy of Social Sciences, founded by him in 1994. They also point to his enlightened readiness to reach out in a dialogue of salvation to the world of science and culture, a desire which is entrusted in a particular way to the Pontifical Academies. It is my prayer that your activities will continue to produce a fruitful interchange between the Church's teaching on the human person and the sciences and social sciences which you represent. Upon all present on this significant occasion, I invoke abundant divine blessings.

REPORT OF THE PRESIDENT – APRIL 2004 THROUGH DECEMBER 2005

MARY ANN GLENDON

The period from April 2004 through December 2005 was an eventful one in the life of the Pontifical Academy of Social Sciences. In April 2005, we were deeply saddened by the death of our beloved founder, Pope John Paul II, and on November 21 of that year we were honored by Pope Benedict XVI who made the Casina Pio IV the site of his first official visit to a Vatican department. On that occasion, the Holy Father dedicated a bronze bust and two marble epigraphs commemorating his predecessor's contributions to the Academy of Sciences and the Academy of Social Sciences. Our Academy marked another milestone on May 3, 2004, when we celebrated our tenth anniversary with a colloquium attended by well-wishers from other departments of the Holy See, several ambassadors to the Holy See, and representatives of sister academies. That happy occasion provided an opportunity to pay a well-deserved tribute to former President Edmond Malinvaud who guided our work during the Academy's first ten years, as well as to review the Academy's record of accomplishments in those years.

Intergenerational Solidarity and Human Ecology: Plenary Sessions X and XII

The first plenary session devoted to the Academy's Intergenerational Solidarity Project was held from April 28 – May 3, 2004, on the topic 'Intergenerational Solidarity, Welfare, and Human Ecology'. The meeting, coordinated by Professor Pierpaolo Donati and your President, focused on the problems arising from a new demographic situation that poses challenges to nearly every nation in the world, to varying degrees: the combination of falling birth rates and greater longevity, with the resultant declining ratio of active workers to dependent persons. Although these developments have shaken all the main pillars of each society's system for dealing with dependency (pensions, social assistance, community services, and the

family), there has been relatively little in-depth discussion of the new dilemmas they pose. Public debate, such as it is, has tended to be limited to the economic dimensions of the problems.

From the perspective of Catholic Social Teaching, however, it is of concern that policy makers are regularly overlooking important medical, psychological, and moral issues. It is to be hoped, therefore, that the Academy's work in this area can perform a valuable public service, by helping to heighten awareness of the human dimensions of the challenges ahead. It also seems reasonable to hope that our work will stimulate the search for practices and ideals adequate to the new situation. In our conclusions, we pointed out that unless the framework for discussion is broadened soon, the risk of divisive inter-generational competition for resources will be great, and important ethical and human aspects of the coming challenges may well be brushed aside. The most ominous development, of course, is the growing normalization of the extermination of persons who become inconvenient and burdensome to maintain at life's frail beginnings and endings. The proceedings and conclusions of the Xth Plenary Session have now been published in *Acta 10*.

Among the conclusions of the Xth Plenary Session were several that led to the decision to focus on children and young persons in the XIIth Plenary Session to be held April 28 – May 2, 2006. We noted that the aging society posed new challenges not only for the elderly population, but also for children and child-raising families. We noted, too, that Catholic social thought has been rather silent on the subject of young people. In our final report, we said, 'A deeper analysis seems to be required of the new circumstances young people face, both in society and within the family', and that 'the Church should address them more fully in her teaching'. Accordingly, the second plenary session on Intergenerational Solidarity and Human Ecology will be devoted to the topic, 'Vanishing Youth? Solidarity with Children and Young People in an Age of Turbulence'. That session, coordinated by Professor Donati, will feature reports on the situation of young people in six regions of the world, followed by comments from a panel of young observers, one from each of the six regions.

Conceptualization of the Human Person in the Social Sciences: Plenary Session XI

The Academy's XIth Plenary Session, on 'Conceptualization of the Human Person in the Social Sciences' was originally to have been held in the spring of 2005, but was postponed to November 18-22, 2005, due to the

death of Pope John Paul II. This session, coordinated by Professor Malinvaud, represented a departure from the Academy's usual programs devoted to studies of concrete social problems in the areas of labor, democracy, globalization and inter-generational relations. There were two main reasons for the decision to devote a special meeting to exploration of issues relating to personhood. In the first place, since a major part of the Academy's mission is to offer the Church elements that may be useful in the development of her social thought, it was necessary, sooner or later, to gain a deeper understanding of personhood, a concept that is central to, but not systematically developed in, the social teachings. Secondly, it was desirable to look critically at each of the social sciences from the perspective of Catholic social thought and to try to discern the extent to which they are consistent with Christian anthropology.

Since the Academy has no special competence in philosophy, the aim was not to produce a full treatment of the subject, but rather to improve our own understanding. To that end, a number of outside experts were invited to give us the benefit of their specialized knowledge. After reviewing the proceedings published in the present edition of the *Acta*, the Academy will decide whether and how to pursue this exploration so fruitfully begun in 2005.

Final Report of the Democracy Project

The culmination of the Academy's Democracy Project was marked at the XIth Plenary Session, first with a presentation to the Holy Father on November 21, 2005 of the first copy of the project's final report, and later that day with a ceremony in which Professor Hans Zacher, the Director of the Project, and President Glendon formally presented the book to the Church and the public. The report is titled 'Democracy in Debate: The Contribution of the Pontifical Academy of Social Sciences'.* Edited and largely written by Professor Zacher, this magisterial report is 'final' only in the sense that it summarizes and evaluates the results of the many workshops and conferences the Academy has devoted to democracy studies over the preceding decade. As Professor Zacher noted in his conclusion, 'Democracy will always remain an unfinished experiment, a work in progress'. It thus seems likely that the Academy, sooner or later, will feel the need to embark on a second phase of democracy studies.

* H. Zacher ed., *Miscellanea 5* (Vatican City, 2005), 320 pp.

Four Joint Meetings

From June 3-5, 2004, the Academy co-sponsored a colloquium on 'Globalization and International Justice' with the Mexican Secretariat of External Relations. This colloquium, held in Mexico City and underwritten by the Mexican government, was an experiment in two respects: it was the first time our Academy participated in a meeting outside the Vatican, and it was the first time the Academy co-operated with another group in organizing a meeting. The Academy was represented by Professors Malinvaud, Morandé Court and Sabourin, and our Chancellor H.E. Sánchez Sorondo, all of whom reported that they were impressed by the scholarly quality of the proceedings.

In view of the favorable reports from the Mexico City meeting and the need to disseminate awareness of the practical implications of the Academy's studies, the Council decided to accept the kind invitation from our colleague Professor Betancur, the former President of Columbia, to co-sponsor a conference in Bogotá on 'Globalization and Social Responsibility in a Time of Change: The Ethical Teaching of the Catholic Church'. Representing the Academy at this conference, held on October 6, 2005, were your President, the Chancellor, Professor Betancur, and Bishop Crepaldi. Once again, the experience provided an excellent opportunity to promote the work of the Academy to a wider audience.

A third joint meeting was held just prior to our November 2005 Plenary Session, this time in the Casina Pio IV in collaboration with our sister Pontifical Academy of Sciences. The joint working group on 'Globalization and Education', held on Nov. 16-17, 2005, brought natural and social scientists together to launch a discussion of an educational project for an increasingly globalized world. The interchange between the two academies was regarded on both sides as so fruitful that hopes were expressed for continued and closer work on this and other projects of mutual interest.

Finally, in testimony to the success of the 2004 meeting in Mexico City, the Mexican Secretary for External Affairs issued an invitation to the Academy to co-sponsor a second colloquium on March 27-28, 2006, on the subject of 'International Migration: The Human Aspects of Globalization'. Representing the Academy on this occasion will be the President, the former President Professor Malinvaud, the Chancellor H.E. Sánchez Sorondo and Professor Raga.

* * *

With the terms of the Academy Council due to expire on October 21, 2004, your President undertook the obligatory statutory consultation with the Members concerning the future composition of the Council (Prot. 0139). The responses indicated that a substantial body of opinion favored a balance among maintaining some continuity, introducing new blood, and achieving wider geographical representation. Accordingly, I proposed to the Holy Father the appointment of Professors Archer, Llach, Raga, Sabourin, Tietmeyer and Archbishop Minnerath, all of whom were appointed in due course to five-year terms. In a special ceremony at the November 2005 Plenary Session, the Academicians expressed their heartfelt gratitude to outgoing Councilors, Ambassador Suchocka, and Professors Schambeck and Zacher, for their extraordinary and dedicated service.

* * *

At the close of the November 2005 Plenary Session, our dear colleague Jerzy Zubrzycki announced his resignation, citing the increasing hardships of travel from Australia. Professor Zubrzycki was one of the original members appointed to the Academy by Pope John Paul II. His resignation was accepted with great regret and with many expressions of appreciation for his exemplary collegiality as well as his outstanding scholarly contributions.

* * *

The membership of the Academy remains at 33, with the Holy Father's appointment of our newest member, Professor Kuan Hsin-chi, Chairman of the department of Government and Administration in the Chinese University of Hong Kong. We look forward to welcoming Professor Kuan at the 2006 Plenary Session.

PREFACE

The Pontifical Academy of Social Sciences presents here its reflections on 'Conceptualization of the Human Person in Social Sciences'. The subject, which was prepared during two years, is exceptional because more methodological and philosophical than those examined on previous occasions and than those intended to be tackled in the proximate future. The centrality of the person in Catholic social doctrine gives a good reason for such an exception: we had indeed, some day, to study the extent to which teachings of the social sciences in their diversity were consistent with Christian anthropology. We cannot claim our reflections on this subject to have been brought to completion. But at least some time seems to be required before we can wisely decide about further investigations in the same direction.

The eleventh Plenary Session of the Academy had been scheduled for early April 2005, but had to be postponed to November of the same year. Because of various reasons a few among the participants who had prepared written contributions were not able to come at that later period. Their contributions were, however, discussed and are here published. We are thankful for them to have accepted such an arrangement. They are: His Eminence Cardinal Angelo Scola, Professors Jon Elster, Academicians Paul Kirchhof and Pedro Morandé Court.

EDMOND MALINVAUD

PROGRAMME

FRIDAY 22 NOVEMBER

Mary Ann GLENDON, President of the Academy: *Word of Welcome*

Edmond MALINVAUD, Coordinator of the Meeting: *The Subject of the Meeting*

H.Em. Card. Georges COTTIER (Vatican City): *Menaces sur la Personne*

Comment:

H.E. Msgr. Roland MINNERATH

H.Em. Card. Angelo SCOLA (Patriarch of Venice): *Antropologia Cristiana*

Comment:

Edmond MALINVAUD

Jon ELSTER (Columbia University): *What Makes Us Tick? Interest, Passion and Reason*

Comment:

Paulus ZULU

John SHOTTER (University of New Hampshire): *Persons: Points of Condensation in a Sea of Living Interactions*

Comment:

Jerzy ZUBRZYCKI

Krzysztof SKUBISZEWSKI (presenter and commentator of Prof. Paul Kirchhofs paper): *The Idea of Human Dignity at the Center of Modern Constitutional States*

Comment:

Janne MATLARY (University of Oslo)

SATURDAY 19 NOVEMBER

Romano HARRÉ (Georgetown University): *Positioning Theory*

Comment:

Margaret ARCHER

Margaret ARCHER: *Persons and Ultimate Concerns: Who We Are is Defined by What We Care About*

Comment:

Pierpaolo DONATI

Rocco BUTTIGLIONE: *The Human Person in the Philosophy of John Paul II*

Comment:

Msgr. Michel SCHOONYANS

Mary Ann GLENDON: *Concepts of the Person in American Law*

Comment:

Nicholas McNALLY

SUNDAY 20 NOVEMBER

Enrico BERTI (University of Padua): *The Classical Notion of the Person in Today's Philosophical Debate*

Comment:

Vittorio POSSENTI

Francesco P. CASAVOLA (University of Naples, President of the Institute of the Italian Encyclopaedia): *From Roman Law to European Law*

Comment:

Ombretta FUMAGALLI CARULLI

MONDAY 21 NOVEMBER

Serge-Christophe KOLM (Ecole des Hautes Etudes en Sciences Sociales, Paris): *The Human Person in Normative Economics*

Comment:

Christopher BLISS (University of Oxford)

THE HOLY FATHER BENEDICT XVI VISITS THE CASINA PIO IV

Edmond MALINVAUD: *Conceptualization of Agents in Positive Economics*

Comment:

Joseph STIGLITZ

Juan J. LLACH: *Conceptions of Human Beings Implicit in Economics and in the Practice of Economic Policies*

Comment:

José T. RAGA

Presentation of the new book: *Democracy in Debate: The Contribution of the Pontifical Academy of Social Sciences by President Mary Ann Glendon and Prof. Hans Zacher*

TUESDAY 22 NOVEMBER

Wilfrido V. VILLACORTA: *The Human Person in Theravada Buddhism and Islam: Implications for Governance in Southeast Asia*

Comment:

Mina M. RAMIREZ

Herbert SCHAMBECK: *Concluding Reflections on the Papers which Dealt with the Human Person in Law and Political Science*

Edmond MALINVAUD: *Personal Reflections on what was Achieved and what might Remain to be Achieved*

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SCIENTIFIC PAPERS

L'OBJET DE LA SESSION

EDMOND MALINVAUD

Je pense être bref ce matin pour introduire notre session. Vous savez qu'elle a été longuement préparée depuis que, au printemps 2003, la suggestion a été faite que nous choissions pour sujet de la onzième session de notre académie: "La conceptualisation de la personne humaine dans les sciences sociales". Ce thème est atypique pour nous puisque, depuis notre institution en 1994, nous avons choisi de travailler dans le cadre de programmes concernant des chapitres importants de l'enseignement social de l'Eglise: ce furent successivement, moyennant quelques alternances: "le travail et l'emploi", "la démocratie", "la mondialisation", "la solidarité entre générations".

Deux raisons nous ont poussés à consacrer exceptionnellement une session à un sujet de nature plus méthodologique et philosophique. D'une part, les conceptualisations sont tant débattues à l'intérieur des sciences sociales et entre elles que l'Académie devait tôt ou tard considérer quoi dire à leur propos. D'autre part, la place centrale que tient la personne humaine dans la doctrine sociale catholique fait qu'il incombe à l'Académie d'examiner les tensions possibles entre cette doctrine et les enseignements des diverses sciences sociales.

Je ne vais pas commenter le programme dans le cadre duquel les contributions à présenter durant quatre jours ont été conçues et vont être examinées. Vous avez reçu successivement plusieurs versions voisines de ce programme et avez pu vous en pénétrer. Je me limite à insister sur l'importance qu'aura la discussion générale de mardi après-midi.

Nous n'avons pas d'intensions précises sur les suites à donner à cette session. Il va donc falloir que l'attention se porte mardi uniquement sur deux points: premièrement, une évaluation générale de l'expérience qu'aura constituée pour nous l'examen d'un sujet conceptuel particulier, mais central ici. Secondairement, mais également important, la discussion devra porter sur les suites à donner à cette session, question à propos de laquelle vos propositions aideront beaucoup le Conseil qui devra en décider.

J'ai rédigé en anglais une note de questions relatives aux conclusions à dégager mardi prochain. Cette note a été adressée aux académiciens. Elle est ici à la

disposition de tous. Je vais la présenter brièvement. Le service de nos interprètes pourra vous la rendre plus accessible, notamment si l'anglais vous gêne.

S'agissant d'évaluer l'expérience que cette session concrétise, je vous propose de répondre à quatre questions:

L'expérience a-t-elle été positive? On bien conduit-elle à regretter qu'un sujet directement lié aux problèmes concrets n'ait pas été choisi?

Avez-vous assez appris grâce aux contributions écrites et aux débats? Estimez-vous que les lecteurs de nos actes en apprendront assez?

Pourriez-vous identifier des points qui vous ont particulièrement intéressés?

Pensez-vous que nos études futures des quatre disciplines sur lesquelles nous avons compétence profiteront au même degré des éléments et opinions que nous avons rassemblés?

S'agissant des suites à donner à cette session, ma note vous propose le choix entre quatre options.

Option 1. Prendre un temps de réflexion avant d'engager des suites. Par exemple le Conseil, ou un groupe nommé par lui, devrait lors de la prochaine session en avril 2006, ou plus tard, présenter une note de propositions pour des suites.

Option 2. Décider dès maintenant que des compléments aux matériaux collectés doivent être recherchés et examinés par l'Académie. Bien entendu, si cette option est proposée, les compléments à collecter et le type d'examen par l'Académie doivent être précisés.

Option 3. Préférer que rapidement une note succincte soit écrite, par l'un ou plusieurs d'entre nous, pour usage interne à l'Académie. Ce document rendrait compte de l'expérience tentée cette année, en particulier des attitudes exprimées lors de la discussion générale.

L'option 4 serait plus ambitieuse quant à ce qui devrait être entrepris dans un futur proche. Elle consisterait à viser un document publié par l'Académie comme résultat de notre session.

Je vous propose deux titres possibles pour un document à portée générale, soit "État des principaux débats sur la conceptualisation de la personne dans les sciences sociales", soit "lieux de tension entre l'enseignement de l'Église sur la personne et les attitudes des sciences sociales à ce sujet". Si vous choisissez cette option, ayez soin de préciser ce que vous recommandez comme document à produire. Bien entendu ce document pourrait avoir un objectif plus circonscrit que ce que je viens de citer.

Enfin n'oubliez pas que, plus généralement pour les suites à donner à notre session, il serait intéressant que vous vous portiez volontaire pour contribuer à la réalisation de vos propositions. N'hésitez pas non plus à me parler de telle ou telle autre question qu'il vous paraîtrait utile d'aborder dans la discussion générale de mardi.

PART I

THEOLOGICAL AND PHILOSOPHICAL BACKGROUND

ANTROPOLOGIA CRISTIANA

ANGELO SCOLA

1. ANTROPOLOGIA DRAMMATICA

Parlare di *Antropologia cristiana* in vista della concettualizzazione della persona umana nelle scienze sociali necessita di qualche preliminare delimitazione.

Innanzitutto occorre rilevare che l'aggettivo *cristiana* lascia in sospeso la domanda su quale sia la disciplina propria a cui il titolo si riferisce e su quale debba essere la tradizione dottrinale di riferimento. Si tratta di affrontare il tema a partire dall'antropologia filosofica o da quella propriamente teologica? O piuttosto vogliamo riferirci all'immagine d'uomo che il *pensiero cristiano* propone? Affrontare problematiche di questo genere esula ovviamente dal nostro compito.

Non è nostra intenzione neppure offrire una ricostruzione storico-critica della nozione di persona elaborata nella storia della teologia, né offrire un quadro esaustivo di tutte le tematiche coinvolte nel discorso teologico sulla persona.¹

Tuttavia poiché occorre stabilire un punto di partenza per la nostra riflessione, esso può essere individuato nel passaggio della *Gaudium et spes* che il magistero di Giovanni Paolo II non ha mai smesso di riproporre. Mi riferisco al n. 22 della Costituzione Pastorale: *In realtà solamente nel mistero del Verbo incarnato trova vera luce il mistero dell'uomo. Adamo, infatti, il primo uomo, era figura di quello futuro (Rm 5,14) e cioè di Cristo Signore. Cristo, che è il nuovo Adamo, proprio rivelando il mistero del Padre e del suo amore svela anche pienamente l'uomo a se stesso e gli manifesta la sua altissima vocazione. Nessuna meraviglia, quindi, che tutte le verità su esposte in lui trovino la loro sorgente e tocchino il loro vertice. Egli è l'immagine del-*

¹ Cfr. A. SCOLA, *La persona umana. Antropologia teologica*, Jaca Book, Milano 2000.

l'invisibile Iddio (*Col 1, 15*) è l'uomo perfetto che ha restituito ai figli di Adamo la somiglianza con Dio, resa deforme già subito agli inizi a causa del peccato. Poiché in lui la natura umana è stata assunta, senza per questo venire annientata per ciò stesso essa è stata anche in noi innalzata a una dignità sublime. Con l'incarnazione il Figlio di Dio si è unito in certo modo ad ogni uomo.

Alla luce di quest'affermazione fondamentale vogliamo descrivere sinteticamente l'esperienza umana elementare – cioè universale e necessaria, propria quindi di ogni uomo di ogni tempo – alla luce della fede cattolica. Riferendoci a questo termine – *esperienza umana elementare*² – fissiamo il nostro sguardo non su una teoria dell'uomo, ma sul suo concreto porsi nella storia. Infatti, sulla scia di von Balthasar, occorre riconoscere che una antropologia è *adeguata* solo se tiene conto del fatto che quando l'uomo giunge a riflettere su di sé (fa un discorso – *logos* – sull'uomo – *anthropos* –), non può prima pensare il discorso e poi cominciare a essere uomo. È costretto a fare questo discorso essendo già in azione. È un *esserci* (*Dasein*) e, dall'interno di questo esserci, riflette su chi egli sia. Non v'è spazio per una impossibile riflessione aprioristica di carattere teoretico sulla natura dell'uomo da cui trarre conoscenze da applicare, poi, alla vita: *Noi possiamo interrogarci sull'essenza dell'uomo soltanto nel vivo atto della sua esistenza. Non esiste antropologia al di fuori di quella drammatica.*³

Cogliendosi in azione, l'uomo registra l'esistenza in se stesso di una triplice polarità costituiva: anima-corpo, uomo-donna, individuo-comunità. Di queste tre polarità, la prima individua la forma concreta dell'io. Per il corpo l'uomo si sente inevitabilmente inserito nel cosmo e partecipa, con tutta la sua sensibilità e in modo conforme al suo essere razionale, a ben stabilite leggi della natura, ma per lo spirito trascende il cosmo verso l'infinito, rivelando al contempo la capacità di trascendere se stesso. A questa forma concreta dell'io ineriscono, originariamente, le altre due polarità, uomo-donna e individuo-comunità. È opportuno precisare subito – per evitare equivoci – che quando si parla di polarità costitutive non si intende né cedere ad una sorta di pessimismo relativistico né, di conseguenza, negare la possibilità che l'uomo incontri la via per una stabilizzazione di tali "tensioni". Si tratterà se

² Cfr. Id., *L'esperienza elementare. La vena profonda del magistero di Giovanni Paolo II*, Marietti 1820, Genova 2003.

³ H.U. von Balthasar, *Teodrammatica. II Le persone del dramma: l'uomo in Dio*, Jaca Book, Milano 1982, 317. In modo analogo, si può affermare che *nell'esperienza ci è dato l'uomo come colui che esiste e che opera*, K. Wojtyła, *Perché l'uomo*, Leonardo, Milano, 1995, 62. Questa tesi ovviamente è ben diversa da quella sartriana dell'impossibilità dell'esistente.

mai di riconoscere la natura duale dell'unità originaria dell'uomo. La dualità non spezza mai l'unità. E, tuttavia, l'unità non è uno scontato a priori.

La nostra proposta, pertanto, alla luce dell'affermazione di *Gaudium et spes* 22 vuol chinarsi sulle tre polarità costitutive lette alla luce della fede ma senza operare distinzioni di campo tra filosofia e teologia. Una tale prospettiva, se proposta con rigore, può offrire taluni elementi di riflessione per il lavoro che spetta alle scienze sociali.

2. LA POLARITÀ ANIMA-CORPO

2.1. *L'unità duale della persona*

Come ha notato acutamente Romano Guardini nel suo studio su *L'opposizione polare*, il tratto che definisce la specificità dell'uomo è il suo essere al contempo spirituale e corporeo.⁴ Non si può dire in termini propri, come ha affermato l'antropologia filosofica moderna, erede del dualismo cartesiano di *res cogitans* e *res extensa*, che l'uomo ha un'anima e un corpo. È più corretto affermare che l'uomo è inseparabilmente anima e corpo, un tema questo su cui è incentrata la *teologia del corpo* proposta da Giovanni Paolo II fin dalle sue catechesi sull'amore umano all'inizio del pontificato.⁵ Cogliendosi in azione, l'uomo *si presenta come* "qualcuno materiale" *che è corpo, e nel contempo l'unità personale di questo qualcuno materiale è determinata dallo spirito*.⁶ Ogni persona vive se stessa come essere costitutivamente relazionale in cui convivono corpo e anima, identità e differenza: nel *proprio* corpo (identità) ogni uomo è "in relazione con", porta dentro di sé, l'eredità biologica dei genitori (differenza); a partire dal *proprio* corpo, dalla sfera sensibile, ogni uomo è "in relazione con", fa esperienza di una realtà più grande in cui è, ma che non è lui (differenza).

⁴ Si veda a questo proposito l'acuta affermazione di Guardini: *Non conosco un atto "puramente spirituale" nell'uomo. Tutto ciò che vi trovo è già per principio spirituale e corporeo insieme, il che vuol dire: umano*, R. Guardini, *L'opposizione polare. Saggio per una filosofia del concreto vivente*, Morcelliana, Brescia, 1997, 143.

⁵ Cfr. Giovanni Paolo II, *Uomo e donna lo creò. Catechesi sull'amore umano*, Città Nuova, Roma 1987.²

⁶ K. Wojtyła, *Persona e atto*, Libreria Editrice Vaticana, Città del Vaticano, 1982, 211. Considerazioni interessanti sul tentativo di pensare l'unità di corpo e anima nella persona si trovano anche in P. Haegel, *Le Corps, quel défi pour la personne? Essai de philosophie de la matière*, Fayard, Paris 1999.

L'uomo accede alla coscienza di sé a partire da quelle che Margaret Archer chiama *pratiche incarnate nella realtà*,⁷ pratiche che lo mettono in relazione con un dato che lo condiziona ma che non lo determina: in virtù del corpo partecipa della realtà naturale e dei dinamismi che la definiscono; ma in virtù della natura spirituale trascende la sua dipendenza dalla natura, in senso biologico o cosmologico. Il corpo è sacramento di tutta la persona.⁸

2.2. *Corpo senza anima: ritorno dell'homme machine?*

L'accentuazione unilaterale di una delle due dimensioni della persona, materiale e spirituale, è una tentazione ricorrente nella storia della civiltà: a turno corpo e anima diventano richiamo di puri epifenomeni l'uno dell'altra. Le diverse rappresentazioni culturali di questa unità duale sono oggi al centro della riflessione condotta nelle scienze sociali in modo particolare a partire dalla indagine sulla relazione tra identità biologica (genetica) e identità culturale. Da una parte c'è la tendenza a ridurre la persona alla sua componente biologica negandone la dimensione spirituale. Sembra oggi tornare sotto mentite spoglie la tesi dell'*homme-machine* sostenuta originariamente nel materialismo settecentesco di La Mettrie, d'Holbach, Helvetius. Se però in questa concezione la persona è considerata ancora un prodotto della natura (nel senso della sua costituzione biologica), oggi nelle tesi delle correnti più radicali, come ad esempio quelle del "postumano" – dell'uomo-*cyborg* – la persona produce se stessa: la persona è ridotta al corpo e il corpo è un prodotto culturale. Secondo alcuni studiosi, oggi si

⁷ Per Margaret Archer *l'autocoscienza deriva dalle nostre pratiche incarnate (embodied practices) nella realtà e l'incarnazione va necessariamente riferita a proprietà umane che non sono di natura sociale*, M. S. Archer, *Il realismo e il problema dell'agency*, in "Sociologia e politiche sociali" (2004) n. 3, 31-49, qui 36.

⁸ *Il mio corpo è una incomprensibile zona tramite fra me e il mondo. Il mio corpo appartiene a me non come un oggetto, ma come fosse un pezzo di me. E tuttavia esso è anche qualcosa come un pezzo del mondo esterno, fatto che mi viene spesso richiamato (ad esempio in un'amputazione). In quanto mi appartiene, esso è ciò mediante cui io – spesso non dolcemente – urto in altri corpi e solo allora mi accorgo che il mondo, gli altri, non sono per il mio spirito dominabili nella loro alterità (I pensieri abitano lievi l'uno con l'altro, ma dure nello spazio s'urtano le cose). Se in uno di questi urti vicendevoli si tratta di una creatura umana come me, allora scopro insieme due cose: il limite della mia libertà e la realtà della sua, la quale meditante l'incontro dei corpi diventa per me realtà. E proprio perché essa mi diventa così realmente esperibile, sperimento la sua qualità indomabile. Essa vale e io devo lasciarla valere, e unicamente con la dura esperienza del non-io può nascere una comunità umana* H. U. von Balthasar, *La mia opera ed epilogo*, Jaca Book, Milano 1994, 153.

può parlare non solo di una “biografia fai da te”,⁹ ma anche di un *bios* fai da te secondo cui *i corpi non nascono; si fanno. In quanto segni, contesto e tempo, i corpi sono completamente denaturalizzati*.¹⁰ In questa prospettiva si collocano sia i tentativi di superare il confine tra ciò che siamo dal punto di vista biologico, e ciò che ci diamo dal punto di vista biologico,¹¹ sia la ricerca affannosa, che in certi casi ha anche con una forte carica millenarista, di una *salute perfetta*.¹²

2.3. Anima senza corpo: lo spiritualismo disincarnato

Una tendenza speculare a quella descritta è l'emergere in Occidente di esperienze religiose che assumono in modo sincretico elementi delle grandi religioni orientali nel segno di uno spiritualismo disincarnato.¹³ Dal punto di vista sociale, queste forme di religiosità sono l'espressione di un atteggiamento assai diffuso nelle società occidentali contemporanee che, prendendo a prestito una felice espressione della sociologa Grace Davie, potremmo definire *believing without belonging*.¹⁴ Proponendo insidiose forme di spiritualismo disincarnato, questa nuova religiosità tende a dissolvere la polarità anima-corpo a favore dell'anima e a contraddire in tal modo l'unità della persona umana affermata dall'antropologia cristiana. È curioso notare

⁹ L'espressione è utilizzata dal sociologo tedesco U. Beck in *I rischi della libertà*, Il Mulino, Bologna 2000, 6.

¹⁰ D.J. Haraway, *Manifesto cyborg. Donne, tecnologie e biopolitiche*, Feltrinelli, Milano 1995, 142.

¹¹ Di recente hanno riflettuto in modo critico su questo tema, tra gli altri, Fukuyama e Habermas. Il primo analizza i pericoli insiti nella possibilità che, grazie alle biotecnologie, *alterando la natura umana, diamo origine a una nuova fase postumana*, F. Fukuyama, *L'uomo oltre l'uomo. Le conseguenze della rivoluzione biotecnologica*, Mondadori, Milano 2002, 14. Habermas critica l'estensione delle logiche di razionalità strumentale alla vita, anche se la sua etica consensuale non sembra una base adeguata per criticare in modo efficace le risorgenti tendenze eugenetiche (cfr. J. Habermas, *Il futuro della natura umana*, Einaudi, Torino 2002).

¹² Cfr. L. Sfez, *La salute perfetta: critica di una nuova utopia*, Spirali, Milano 1999. Sugli aspetti millenaristici presenti in certi progetti bio-tecnologici si veda D. F. Noble, *La religione della tecnologia. Divinità dell'uomo e spirito di invenzione*, Comunità, Torino 2000.

¹³ Il documento *Gesù Cristo portatore dell'acqua viva. Una riflessione cristiana sul New Age* pubblicato nel 2003 dal Pontificio Consiglio della Cultura e dal Pontificio Consiglio per il Dialogo Interreligioso individua, analizza e critica gli aspetti della inconciliabilità tra questo spiritualismo paganeggiante e il cattolicesimo.

¹⁴ Cfr. G. Davie, *Religion in Britain since 1945. Believing without Belonging*, Basil Blackwell, Oxford 1994.

come queste nuove forme di religiosità implicino una duplice e speculare rottura nella struttura relazionale della persona. Questa finisce con l'essere separata dalla relazione sociale con altri ("credere senza appartenere", individuo vs. comunità) e separata in se stessa ("spiritualismo disincarnato", anima vs. corpo). Queste nuove forme di religiosità esprimono una visione della persona umana alternativa a quella cristiana, non a caso si alimentano sovente delle teorie dell'ecologismo radicale che divinizza il cosmo e rifiuta proprio il cosiddetto antropocentrismo cristiano.¹⁵

2.4. *L'alternativa tra gratitudine e risentimento*

Nell'antropologia cristiana, la corporeità della persona non può essere intesa come un limite insuperabile, che rende precaria l'esperienza di una vita veramente unificata ed armonica. Né la corruttibilità del corpo appare soltanto come il sigillo della drammatica finitezza dell'esistenza, che l'uomo sente profondamente contraddittoria con la propria natura spirituale. Al contrario la corporeità costituisce una prima traccia che rinvia alla trascendenza. Si potrebbe addirittura dire che *comparato alle religioni dell'oriente, il cristianesimo potrebbe essere definito materialista, in virtù del suo dogma centrale che postula la realtà del corpo e della materia*.¹⁶

In conclusione, il riconoscimento della persona umana, non solo nella sua dimensione spirituale, ma già in quella biologica, come "sacramento di tutta la persona" rappresenta uno dei tratti costitutivi della visione cristiana del mondo. Un dato al quale la cultura moderna ha in molti casi voltato le spalle: per un uomo che vorrebbe essere creatore del mondo, ma non lo

¹⁵ Per una critica all'antropocentrismo cristiano che dovrebbe essere sostituito da una concezione olistica si veda ad esempio E. Goldsmith, *Il Tao dell'ecologia*, Muzzio. Padova 1997, 25-30, un libro che ha avuto un enorme successo di pubblico. L'ecologismo radicale addebita ingiustamente alla tradizione giudeo-cristiana la responsabilità di aver dimenticato il valore che la natura possiede in se stessa, e quindi di aver determinato una prassi scorretta dell'uomo nei suoi confronti, e propone una concezione olistica di impronta paganizzante: cfr. M. Schooyans, *Nuovo disordine mondiale*, San Paolo, Cinisello Balsamo 2000.

¹⁶ D. De Rougemont, *L'avventure occidentale de l'homme*, Albin Michel, Paris 1957, 172. Accanto alle due tendenze ora richiamate, togliere spirito alla materia (corpo), togliere materia (corpo) allo spirito, sembra farsi strada una nuova frontiera, quella di conferire spirito alla materia, basti pensare ai progetti per la creazione di intelligenza artificiale o al tentativo di riconoscere alla rete comunicativa globale le caratteristiche di una grande mente autonoma rispetto ai soggetti umani che le danno vita attraverso le loro azioni e la loro intelligenza.

è, il risentimento prende il posto di una *gratitudine di fondo* per tutto ciò che è così come è, *per ciò che è dato e non è, né potrebbe essere, fatto*.¹⁷ L'uomo post-moderno, però, che ha rotto almeno di fatto con la modernità, potrebbe essere condotto dal cristianesimo a riconsiderare la questione.

3. LA POLARITÀ UOMO-DONNA E LA FAMIGLIA

3.1. *La differenza sessuale e la socialità*

Mettendo a tema il nesso tra persona e famiglia nell'antropologia cristiana, non si può non riconoscere che per gran parte della storia del cristianesimo la riflessione teologica sul concetto di persona e quella riguardante il matrimonio e la famiglia sono procedute in modo parallelo,¹⁸ anche per questo una antropologia adeguata è oggi chiamata a superare questo iato. Nella prospettiva teorica che regge il nostro intervento, alla prima esperienza della persona come unità duale di anima e corpo, l'io in azione ne associa subito un'altra. La persona esiste sempre come uomo o come donna: l'essere situato dentro la differenza sessuale rappresenta una dimensione costitutiva della relazionalità umana ed esprime allo stesso tempo unità e dualità, identità e differenza. Ogni singolo non racchiude in sé la totalità dell'essere persona, ma è posto in una relazione costitutiva con l'altra originaria modalità a lui inaccessibile di essere persona (maschio *versus* femina e *viceversus*).

La pretesa del superamento di questa differenza può solo essere una tragica illusione. Tanto più che l'esperienza umana elementare mostra che la reciprocità nella differenza sessuale non è semplice complementarietà. Fin dentro l'atto coniugale tra gli sposi la differenza segna il posto del terzo. Accettare una concezione della complementarietà sessuale come l'unità pacificatrice di due metà aprirebbe la strada, come di fatto oggi accade, alla tentazione androgina.¹⁹

¹⁷ H. Arendt, *Ebraismo e modernità*, Feltrinelli, Milano 1993, 222. Uno sviluppo di questo aspetto arendtiano è offerto da A. Finkielkraut, *L'ingratitude: conversation sur notre temps avec Antoine Robitaille*, Gallimard, Paris 1999.

¹⁸ Cfr. A. Milano, *Persona in teologia. Alle origini del significato di persona nel cristianesimo antico*, Edizioni Dehoniane, Roma 1996, 61-352.

¹⁹ Sulle sfide culturali poste alla famiglia nella società contemporanea, ci permettiamo di rimandare a A. Scola, *Il mistero nuziale 2. Matrimonio e famiglia*, Pul-Mursia, Roma 2000, 184-188.

L'unità polare della differenza sessuale può essere considerata a buon diritto come il segno primigenio della terza polarità costitutiva della drammaticità dell'io, quella per la quale la persona esiste come individuo, cosciente della propria singolarità e della capacità di causare i suoi atti, e come comunità, cosciente dell'apertura e della partecipazione all'altro. Indubbiamente nell'uomo-donna la terza polarità è già contenuta, come *in nuce*, e può venire alla coscienza concretamente, cosa non immediata dall'interno della prima costitutiva polarità, quella anima-corpo, che apre piuttosto all'esperienza dell'individuo come soggetto spirituale.

Tuttavia la tensione individuo-comunità, pur presentandosi in un certo senso come la più pacificata, aggiunge al quadro antropologico che stiamo tracciando due dati importanti. Anzitutto essa compie la manifestazione dell'unità duale attraverso la presa di coscienza dell'originale socialità dell'uomo. Per von Balthasar, la reciprocità uomo-donna può essere considerata come *caso paradigmatico per il perenne carattere comunitario dell'uomo*.²⁰ L'uomo, quindi, non può essere concepito se non in riferimento all'altra modalità di essere uomo. Questo dato antropologico fondamentale implica, necessariamente, la realtà sociale come costitutiva dell'essere personale: l'individuo non è, in un certo senso, *tutto* l'uomo.

La polarità uomo-donna esprime, in questo senso, il carattere contingente dell'uomo, che segnala, ad un tempo, un limite e una possibilità. Un limite perché l'io, per il proprio compimento, ha bisogno dell'altro, una possibilità in quanto tale contingenza rivela che la capacità di autotrascendersi e di aprirsi all'altro è un fatto positivo per l'io. Nella prospettiva cristiana il contingente perde il carattere limitativo proprio perché viene abitato dall'altro che nell'amore mi consente il compimento. In Cristo Gesù il tempo diviene sacramento dell'eterno, luogo dell'incontro tra la libertà infinita di Dio e la mia libertà in vista del compimento di quest'ultima.

3.2. *La famiglia come relazione sociale sui generis*

Il primo ambito di questo esistere in relazione è la famiglia: in essa la relazione è una realtà naturale. Una prospettiva sociologica condivisibile definisce la famiglia come *un ambito primordiale di relazioni sociali*.²¹

²⁰ H.U. von Balthasar, *Teodrammatica. II*, 344.

²¹ Cfr. P. Donati, *Manuale di sociologia della famiglia*, Laterza, Roma-Bari 1998, 7-11; 27-33; 380-404.

L'aggettivo primordiale ne registra anzitutto l'imprescindibilità: con la famiglia nasce la storia umana, la famiglia è la matrice di ogni processo di civilizzazione (che consiste proprio nel rendere familiare il non-familiare) e di umanizzazione. Parlare di relazioni sociali significa poi indicare la famiglia come ambito di legami significativi, dotati di senso proprio in cui è presente una intenzionalità (cioè il generare in senso biologico nella procreazione e in senso culturale nella educazione), un medio (la differenza sessuale), una normatività (la reciprocità), un valore modale (il dono). Che cosa distingue la famiglia da tutti gli altri legami sociali stabiliti? Il fatto che la famiglia è l'intreccio dinamico di due tipi di relazioni: quella tra i sessi (relazione coniugale) e quella tra le generazioni (relazione parentale tra genitori e figli).²² Ciascuna delle due relazioni che individuano la famiglia nella sua essenza, presenta uno specifico modo di declinare il codice dell'amore (della gratuità e del dono) che è costitutivo degli interscambi familiari. È la famiglia, non solo la coppia, che per un determinato tempo implica la coabitazione fisica di tutte le persone legate a ciascun membro della coppia da un vincolo generazionale. Da questo punto di vista si può dire che la famiglia, per la sua natura relazionale, è una realtà sociale *sui generis* nel senso che, da una parte, non esisterebbe senza la relazione tra le persone che la compongono, ma dall'altra è qualcosa di più della somma delle persone che la compongono: la famiglia, come ha richiamato più volte il magistero sociale di Giovanni Paolo II,²³ è portatrice di diritti e di una soggettività sociale emergenti rispetto a quella dei suoi componenti (le politiche sociali dovrebbero tenere conto di questo principio invece di assumere come interlocutore dei propri interventi di volta in volta i singoli soggetti che compongono la famiglia).

In altra sede, indagando alcune sfaccettature della relazione coniugale, ne abbiamo parlato in termini di *reciprocità asimmetrica* e, come abbiamo detto, non di pura complementarietà.²⁴ Il rapporto tra le generazioni si caratterizza, invece, per una trasmissione in vista di una transizione. L'amore nelle relazioni intergenerazionali proprie della famiglia, senza pre-

²² Sulla famiglia come comunione di generazioni in senso teologico, si veda A. Scola, *Il mistero nuziale 2*, 53-59; sullo stesso tema in senso sociologico si veda invece S. Belardinelli, *La funzione sociale della famiglia come luogo di alleanza tra generazioni*, in Id., *La normalità e l'eccezione. Il ritorno della natura nella cultura contemporanea*, Rubbettino, Soveria Mannelli 2002, 85-100.

²³ Si veda ad esempio Giovanni Paolo II, *Lettera alle famiglie 17*.

²⁴ Cfr. A. Scola, *Il mistero nuziale 2*, 177-178.

scindere dalla differenza sessuale e dalla fecondità, che ovviamente hanno un peso diverso rispetto a quello che possiedono nella relazione coniugale, si manifesta nell'energia pedagogica mediante la quale una visione della vita passa (*traditio*) da una generazione all'altra: è nella famiglia, come soggetto educante per eccellenza, che si esercita una mediazione tra individuo e società, tra natura e cultura, tra pubblico e privato. Dal punto di vista esistenziale, si può osservare che la persona prima di definirsi in relazione alla comunità politica – cittadinanza – definisce se stessa a partire dalle relazioni con le reti primarie (la persona è padre/madre, sposo/sposa, figlio/figlia, fratello/sorella, amico/amica). Essendo prima di tutto membro di una famiglia ed essendo parte di una rete di relazioni primarie, la persona matura la sua identità personale e sociale. È nella trama quotidiana della vita familiare, che l'uomo acquista coscienza della propria singolarità personale, del suo essere *qualcuno e non qualcosa*, come afferma Spaemann,²⁵ e allo stesso tempo impara che c'è qualcosa che rende uguale a tutte le altre persone. Per propria ontologica costituzione, quindi, la famiglia è paradigma imprescindibile della distinzione e dell'uguaglianza che, come si vedrà ora, caratterizza la natura sociale della persona.

4. LA POLARITÀ INDIVIDUO-COMUNITÀ

4.1. *La socievolezza della persona tra distinzione e uguaglianza*

Il punto di vista sulla famiglia ora enunciato consente di avvicinarci con maggior chiarezza alla natura sociale dell'uomo. La persona, polarità anima-corpo, non è pensabile al di fuori della famiglia, polarità uomo-donna e questa a sua volta è in relazione alla polarità individuo-comunità.²⁶ L'uomo come essere sociale, come ha notato una acuta pensatrice di origini ebraiche, presenta *il duplice carattere dell'uguaglianza e della distinzione*.²⁷ Questo implica che da un certo punto di vista *noi siamo tutti uguali, cioè umani*, ma lo siamo in modo tale che *nessuno è mai identico ad alcun altro che visse, vive o vivrà*.²⁸ La singolarità si nutre di relazioni. Senza questa

²⁵ Cfr. R. Spaemann, *Persone. Sulla differenza tra qualcosa e qualcuno*, Laterza, Roma-Bari 2005.

²⁶ Cfr. H.U. von Balthasar, *Teodrammatica. II*, 360-370.

²⁷ H. Arendt, *Vita activa. La condizione umana*, Bompiani, Milano 1998,⁵ 127.

²⁸ *Ibid.*, 8.

peculiarità nella costituzione antropologica della persona umana, la stessa vita sociale sarebbe impossibile: *se gli uomini non fossero uguali non potrebbero né comprendersi fra loro, né comprendere i propri predecessori, né fare progetti per il futuro [...] se gli uomini non fossero diversi, e ogni essere umano distinto da ogni altro che è, fu o mai sarà, non avrebbero bisogno né del discorso né dell'azione per comprendersi a vicenda.*²⁹ La naturale socievolezza dell'uomo genera e si esprime in uno spazio comune, pubblico, in un *in-fra [che] mette in relazione e separa gli uomini allo stesso tempo. La sfera pubblica, in quanto mondo comune, ci riunisce insieme e tuttavia ci impedisce, per così dire, di caderci addosso a vicenda.*³⁰ Analogamente è stato osservato che *se ci si deve abituare a comprendere che il pensiero (cogitatio) non è contatto invisibile di sé con sé, che esso vive fuori di questa intimità con se stesso, davanti a noi, non in noi, sempre eccentrico, nello stesso modo [...] si deve ritrovare come realtà del mondo interumano e della storia una superficie di separazione fra me e l'altro che è anche il luogo della nostra unione, l'unica Erfüllung della sua vita e della mia vita.*³¹ La socievolezza dell'uomo, la sua tensione tra autenticità personale e apertura all'altro si esercita quindi in uno spazio che allo stesso tempo separa e mette in relazione le persone.

4.2. La persona tra vanificazione e assolutizzazione della socialità

La naturale socievolezza dell'uomo si esprime in ambiti che precedono la dimensione politico-statuale.³² Per l'antropologia cristiana, la persona è per sua natura votata alla socialità e la società è ciò che emerge dal libero associarsi ed organizzarsi delle persone: non c'è persona che non sia anche intenzionalità relazionale e allo stesso tempo non c'è società senza persone. Questi due elementi sono veri fino a che sono mantenuti insieme. L'intenzionalità relazionale della persona si rivolge all'altro umano e *in* esso e *attraverso* di esso all'altro divino.³³ La radice ontologica dell'uomo è sociale e allo stesso tempo non può essere ridotta alla società, lo spazio dell'umano si esprime *nel*

²⁹ *Ibid.*

³⁰ *Ibid.*, 39.

³¹ M. Merleau-Ponty, *Il visibile e l'invisibile*, Bompiani, Milano 1994, 247.

³² Cfr. K. Wojtyła, *La persona: soggetto e comunità*, in *Perché l'uomo*, 59-118.

³³ Interessanti spunti di riflessione per ripensare il tema della trascendenza a partire "dall'interno" della relazione con l'altro uomo si possono trovare in E. Przywara, *L'uomo: antropologia tipologica*, Fabbri, Milano 1968. Per una introduzione a questi temi si veda anche P. Molteni, *Al di là degli estremi: introduzione al pensiero di Erich Przywara*, Ares, Milano 1996.

sociale e *oltre* il sociale. Questi rilievi ci sembrano doverosi perché nel corso della storia la società è stata spesso interpretata come una entità autonoma che sovrasta la persona e che in virtù di qualche *totalismo*³⁴ tende a riassorbire in sé la pluralità di forme associative in cui si esprime la libertà generativa della persona (per descrivere la quale la dottrina sociale parla di *soggettività della società*³⁵ e la sociologia contemporanea di *cittadinanza societaria*³⁶).

La dottrina sociale della Chiesa, richiamando l'importanza dei corpi intermedi della società e del principio di sussidiarietà, ha sempre affermato la priorità della persona sulla società e della società sullo stato (inteso come principio regolativo del bene comune), all'interno di una concezione relazionale e non dicotomica. In una concezione cristiana della persona, la tensione tra individuo e comunità non può essere eliminata poiché è un tratto costitutivo della stessa contingenza umana. La diversa modulazione tra ciò che nella persona è autopossesso e ciò che in essa è apertura genera una gamma variegata di sistemi sociali. A livello scientifico, i paradigmi epistemologici oscillano tra concezioni individualiste che negano la realtà delle relazioni sociali e concezioni olistiche che vanificano la realtà della soggettività: alla riproposizione del libertarismo radicale fanno oggi da contraltare posizioni sistemiche che non trovano più posto per l'uomo all'interno di sfere sociali sempre più differenziate ed autoreferenziali.³⁷ L'esaltazione della dimensione individuale si esprime principalmente o in una volontà di potenza che è costretta a negare il senso della contingenza per autolegittimarsi o in una *cultura del narcisismo*³⁸ in cui il soggetto non definisce più la propria identità in una oggettiva relazione costitutiva con l'altro, ma a partire da quello che è stato definito un processo di *autosocializzazione*.³⁹ D'altro canto, riemergono oggi anche forme di assolutizzazione del legame sociale a partire da una matrice di tipo religioso, come nel fondamentalismo,⁴⁰ o di

³⁴ Cfr. K. Wojtyła, *Persona e atto*, 311.

³⁵ Giovanni Paolo II, *Centesimus annus* 49.

³⁶ Cfr. P. Donati, *La cittadinanza societaria*, Laterza, Roma-Bari 2000.²

³⁷ Per un superamento di questi due paradigmi nelle scienze sociali contemporanee si vedano, oltre agli studi di Donati, anche le opere di M. S. Archer, in particolare *Morfogenesi della società*, Angeli, Milano 1997; *Being Human. The Problem of Agency*, Cambridge University Press, Cambridge 2000; *Structure, agency and the internal conversation*, Cambridge University Press, Cambridge 2003.

³⁸ Cfr. C. Lasch, *La cultura del narcisismo: l'individuo in fuga dal sociale in un'età di disillusioni collettive*, Bompiani, Milano 1988.

³⁹ Questa espressione è utilizzata dal sociologo U. Beck, in *I rischi della libertà*, 84.

⁴⁰ S. Eisenstadt, *Fondamentalismo e modernità: eterodossie, utopismo, giacobinismo nella costruzione dei movimenti fondamentalisti*, Laterza, Roma-Bari 1994.

tipo secolare, come nei fenomeni di tribalizzazione (come solo per fare alcuni esempi, i *rave parties*, l'etnicizzazione dei quartieri nelle grandi città, i villaggi privati con un sistema di sicurezza privato), osservati spesso non senza un certo compiacimento dai teorici del post-moderno.⁴¹

L'esaltazione della dimensione sociale implica sempre una svalutazione della persona che viene considerata una semplice parte del tutto sia esso sociale, come avviene nei sociologismi, o cosmico, come avviene nei panteismi: in entrambi i casi comunque la finitezza della persona umana è di per sé identificata con il male. D'altra parte, solo nella visione ebraico-cristiana del mondo la contingenza, per la prima volta, non è stata considerata qualcosa che deve essere nascosto o negato (come nelle visioni gnostiche) ma che ha un valore positivo in quanto breccia che apre alla trascendenza.⁴²

La concezione della Chiesa come comunione fondata sull'Eucaristia mostra come persona e comunità possono stare in una feconda unità duale. Nella Chiesa il collettivo non assorbe mai la persona e la persona non è mai una monade.

Una volta affievolitasi l'incidenza nella vita personale e sociale del cristianesimo si riapre inevitabilmente lo spazio per modi di pensare pre-cristiani.

4.3. *I presupposti ontologici della società*

Il dilemma della scelta tra due diverse posizioni, che ha riverberi decisivi sul modo di concepire la persona e la società, si pone oggi nell'antropologia come nelle scienze sociali.⁴³ Da una parte si afferma un rinnovato panteismo: il divino è impersonale; la realtà ha origine per emanazione (*exitus*); la contingenza della persona, come di tutti gli altri esseri non divini, è di per sé una forma di peccato. In questa prospettiva *la via del reditus significa redenzione, e redenzione significa liberazione dalla finitezza che, come tale, è il vero fardello del nostro essere.*⁴⁴

⁴¹ Cfr. M. Maffesoli, *Il tempo delle tribù: il declino dell'individualismo nelle società post-moderne*, Armando, Roma 1988.

⁴² Cfr. H. Jonas, *Elementi ebraici e cristiani nella filosofia: il loro contributo alla nascita dello spirito moderno*, in Id., *Dalla fede antica all'uomo tecnologico. Saggi filosofici*, il Mulino, Bologna 1991, 65-94.

⁴³ Cfr. H. Hude, *Prolegomenes: introduction a la responsabilité philosophique*, Criterion, Paris 1997.

⁴⁴ J. Ratzinger, *Introduzione allo spirito della liturgia*, San Paolo, Cinisello Balsamo 2001, 27. Una stimolante riflessione sul ruolo del problema *exitus-reditus* nella progettazione della *Summa Theologica* è offerta in A. Hayen, *San Tommaso d'Aquino e la vita della Chiesa oggi*, Jaca Book, Milano 1993.

Più liberante è un'altra prospettiva, che il cristianesimo propone: la persona umana è libera e questa libertà ha la sua origine nella volontà libera di un Dio personale che crea liberamente il mondo e l'uomo; il male scaturisce invece dalla volontà libera dell'uomo ferita dal peccato originale. In questa prospettiva il *reditus* non annulla l'atto creatore, la persona e la libertà, ma lo porta a compimento. La distinzione proposta è fondamentale per comprendere in modo adeguato la persona e la sua vita all'interno della società, ed è significativo che a riconoscere questo siano non solo teologi cattolici, ma anche studiosi di scienze sociali.

Nelle sue diverse varianti, il panteismo si rivela una posizione che in ultima istanza è inconciliabile con l'affermazione del valore della persona e della sua libertà. Esiste un nesso tra teismo, creazione, libertà personale, da una parte, e panteismo, emanazione, necessità, dall'altra. Nella tradizione cosmogonica giudaico cristiana, all'origine di tutto c'è un Dio personale, che crea liberamente il mondo e l'uomo (il quale partecipando del creatore è a sua volta capace di dare inizio a qualcosa di nuovo). Ad essa si contrappone una concezione sostanzialmente gnostica propria di molte correnti mistiche eterodosse. In essa l'origine dell'universo consiste nella emanazione di una potenza impersonale e divina. In questo caso tutto ciò che esiste non gode di una propria autonomia ontologica, ma è solo una particella distaccatasi del tutto originario. Secondo la Arendt *tutte le dottrine moderne per le quali l'uomo non è altro che una parte di materia, ed è quindi soggetto a leggi fisiche e privo di libertà d'azione, ci riportano all'antica fede nell'emanazione, di origine gnostica. Poco importa sapere se la sostanza di cui l'uomo è ritenuto una parte sia materiale o divina. Ciò che conta è che l'uomo non è più una entità autonoma, un fine in sé.*⁴⁵

L'alternativa fondamentale sul piano ontologico, una alternativa che come si è detto ha profonde implicazioni anche sul piano sociale, è l'alternativa tra quella che De Rougemont ha chiamato *incarnation*, connessa al senso della nascita, *ex-carnation*, connessa al senso della morte. Nel primo caso *Dio è concepito come il Tu dell'uomo*, nel secondo caso *il Tutto non è altro che l'Io pienamente realizzato*.⁴⁶ Da questo diverso punto di partenza discendono due atteggiamenti alternativi nei confronti del mondo: nel primo caso c'è una valorizzazione della individualità, della concretezza, della storicità, della socialità dell'uomo, nel secondo caso c'è un tendenziale annullamento della persona nell'Uno.

⁴⁵ H. Arendt, *Ebraismo e modernità*, 149.

⁴⁶ D. De Rougemont, *L'avventure occidentale de l'homme*, 28.

5. ANTROPOLOGIA CRISTIANA E SCIENZE SOCIALI

In conclusione, conviene chiedersi quale è il contributo specifico che l'antropologia cristiana può portare alle scienze sociali e che tipo di relazione è auspicabile tra i due ambiti di ricerca. A questo proposito vorrei proporre cinque tracce di riflessione che potrebbero diventare oggetto della discussione.

5.1. *Rifiuto del deduttivismo*

In primo luogo va evitato il rischio del deduttivismo: la riflessione sulla persona che scaturisce dalla fede cristiana non può sostituirsi e rendere vana la ricerca condotta nelle scienze sociali. L'istanza in sé legittima di affermare la centralità della dottrina sociale della Chiesa, non può tradursi nell'applicazione estrinseca di contenuti della antropologia cristiana astrattamente considerati allo studio delle società. Il rischio di una teologia sociologica è pernicioso come quello rappresentato in passato da certe teologie politiche.⁴⁷

5.2. *Antropologia cristiana e sviluppo nella ricerca teologica*

L'antropologia cristiana non può farsi assorbire dalle scienze sociali, mutuando da esse paradigmi di ricerca e prospettive di analisi che in certi casi possono risultare estranei o contraddittori con la fede cristiana. Dal punto di vista metodologico, il contributo peculiare dell'antropologia cristiana è operare una riflessione teologica e filosofica originaria sull'esperienza umana elementare alla luce della Rivelazione. Da questo punto di vista ci sembra si possa affermare che il concetto che descrive meglio il compito che spetta alla antropologia cristiana di fronte alle sfide che la società contemporanea pone non è quello di *applicazione*, né quello di *aggiornamento*, ma quello di *sviluppo*⁴⁸ (in senso newmaniano): si tratta

⁴⁷ Una critica illuminante al concetto di teologia politica è offerta da R. Spaemann in *Per la critica dell'utopia politica*, Angeli, Milano 1994, 71-86. Sulla relazione tra teologia e scienze sociali dal punto di vista del sapere teologico si veda D. Schindler, *Heart of the World: Center of the Church. Communio Ecclesiology, Liberalism, and Liberation*, Eerdmans, Grand Rapids 1996. Dal punto di vista del sapere sociologico si veda: P. Donati, *Pensiero sociale cristiano e post-modernità*, Ave, Roma 1997, 331-364.

⁴⁸ Il concetto di sviluppo è stato indagato con particolare acume da J. H. Newman. Per una analisi e una ripresa recente del tema si vedano le considerazioni contenute in J. Ratzinger, *Natura e compito della teologia. Il teologo nella disputa contemporanea. Storia e dogma*, Jaca Book, Milano 1993.

ciò di tornare alla fonte del sapere cristiano sull'uomo, la Rivelazione visuta dal popolo di Dio, per trovare in essa verità sulla persona umana che richiedono ancora di essere sempre meglio comprese e sviluppate in modo adeguato a "rendere" ragione della speranza cristiana.

5.3. A difesa dell'appartenenza

Per operare una critica efficace, almeno a livello teorico, di quella che, come si è visto, è una tentazione ricorrente delle scienze sociali – la risoluzione delle polarità costitutive – appare importante rilevare che l'antropologia cristiana osserva che l'uomo fragile e ferito dal peccato tende a confondere la sua capacità di indagare la totalità con la considerazione di se stesso come la totalità,⁴⁹ in modo analogo, le scienze sociali hanno la tendenza a ridurre il sapere sulla persona e sulla società ad un sapere di tipo ideologico, a partire dallo schema *pars pro toto*.⁵⁰

In virtù della non distinzione tra questi due atteggiamenti, nei dibattiti in corso nelle società occidentali contemporanee, si tende a sostenere che ogni forma di appartenenza costituisce di per sé un pericolo, sia per la persona (in quanto essa perderebbe la sua individualità), sia per la società (in quanto l'appartenenza sarebbe il brodo di coltura di rivendicazioni identitarie di tipo fondamentalista).

5.4. La dignità della dipendenza

L'antropologia cristiana è chiamata a rendere ragione della pienezza di vita e di libertà che scaturiscono dalla fede. La persona per essere se stessa è chiamata a riconoscere la sua strutturale apertura e quindi dipendenza rettamente intesa da un altro e questo emerge nelle tre polarità che abbiamo preso in considerazione: in quanto unità duale di anima e corpo la persona deve la sua stessa vita ad altro da sé; in quanto unità duale fondata

⁴⁹ Su questo tema si vedano le stimolanti riflessioni del teologo protestante R. Niebuhr, *The Nature and Destiny of Man. A Christian Interpretation*, vol. I. *Human Nature*, Charles Scribners' Sons, New York 1941. Inoltre cfr. U. Borghello, *Liberare l'amore. La comune idolatria, l'angoscia in agguato, la salvezza cristiana*, Ares, Milano 1996, in particolare 62-161.

⁵⁰ Su questa tendenza ha riflettuto R. Boudon in *L'ideologia. Origine dei pregiudizi*, Einaudi, Torino 1991. Sulla tentazione riduzionista presente nelle scienze sociali come espressione della tentazione ideologica si veda anche P. Terenzi, *Ideologia e complessità. Da Mannheim a Boudon*, Studium, Roma 2002.

nella differenza sessuale la persona dipende per il suo compimento dall'incontro con l'altro e dall'amore dell'altro; in quanto in se stessa unità duale di individualità e di comunità, la persona dipende dalla relazione con altre persone significative per il compimento della sua naturale socialità. Si tratta in altri termini di ridare dignità alla *dipendenza* riconoscendo che *non tutto ciò che all'uomo è dato e non è costruito, scelto, voluto da lui, è ipso facto oppressivo, o alienante*.⁵¹

5.5. *Persona e relazione: oltre al modello iposocializzato ed a quello ipersocializzato*

Il dibattito in corso nella teologia sul concetto di persona e nelle scienze sociali sull'alternativa tra individualismo e olismo potrebbe trovare giovamento dalla messa a tema in modo analitico della nozione di relazione.

Già nel corso del novecento, le riflessioni di pensatori come F. Ebner, G. Fessard, R. Guardini, G. Marcel, J. Mouroux, H.U. von Balthasar, hanno proposto un ripensamento in chiave dialogica della persona. Ancora oggi vale la pena ricercare la ricchezza contenuta nelle opere di questi (ed altri più giovani) studiosi per metterne in luce tutte le possibili implicazioni per l'antropologia filosofica e teologica (piano della relazione tra l'io e il tu, umano o divino) ma anche per lo studio della società. Rifiutando l'*individualismo* e il *totalismo*, cioè un individualismo alla rovescia,⁵² rifiutando il modello di *uomo antropocentrico* iposocializzato che costruisce la società e Dio a sua immagine, e quello dell'*uomo sociocentrico* ipersocializzato in cui la società plasma tanto lui quanto Dio,⁵³ l'antropologia cristiana può ragionare in analogia alla riflessione della teologia trinitaria sulla relazione e sull'amore. Temi che hanno mostrato la loro fecondità anche in molti filosofi contemporanei (da Lévinas a Michel Henri a J.L. Marion). Allo stesso tempo anche le scienze sociali possono trarre beneficio dal guardare sia la relazione a partire dalla persona,⁵⁴ sia la persona a partire dalle relazioni

⁵¹ A. Finkelkraut, *L'umanità perduta. Saggio sul XX secolo*, Liberal, Roma 1997, 151.

⁵² Cfr. K. Wojtyła, *Persona e atto*, 309-312.

⁵³ M. Archer, *La fede e il concetto di genere umano nelle scienze sociali*, in Aa.Vv., *L'uomo alla ricerca della verità. Filosofia, scienza, teologia: prospettive per il terzo millennio*, Vita & Pensiero, Milano 2005, 223-242, in particolare 224 e ss.

⁵⁴ Alcuni spunti di riflessioni sulle analogie tra relazionalità umana e relazionalità trinitaria si possono trovare anche in P. Donati, *Dov'è Dio? La matrice teologica della società post-moderna*, in "Rivista Teologica di Lugano" (1998) n. 1, 9-25. Sulla relazione come aspetto costitutivo della persona si veda D. Schindler, *Heart of the World...*, 279-292.

che costituiscono il suo orizzonte morale (potrebbe essere feconda una indagine sulle analogie tra la relazione che sussiste tra persone umane nella società e le relazioni delle Persone divine nella Trinità).

6. CONCLUSIONE

Gli spunti offerti, precari e provvisori, intendono essere tracce di riflessione sul contributo della antropologia cristiana alla indagine sulla persona condotta nelle scienze sociali. Come ogni traccia anche queste non intendono chiudere il discorso. Vorrebbero invece indicare sentieri che possono essere percorsi in modo proficuo approfondendo il mistero della persona sul quale la teologia, la filosofia e le scienze sociali oggi più che mai non possono smettere di interrogarsi.

SUR "ANTHROPOLOGIE CHRÉTIENNE" DE ANGELO CARD. SCOLA

EDMOND MALINVAUD

Le sujet est traité directement par Angelo Scola, avec une telle profondeur et une telle lucidité que le lecteur y apprend beaucoup. Cela a aiguisé mon intérêt à tel point que j'en suis venu à attendre de l'analyse plus qu'elle ne s'est proposée d'apporter. Le spécialiste des sciences sociales que je suis est ainsi conduit à formuler à la fin de son commentaire des idées qu'il voudrait pouvoir soumettre à discussion. J'y serai incité non seulement par la dernière partie intitulée "Anthropologie chrétienne et sciences sociales" mais aussi par ce que je perçois comme une délimitation trop restrictive du champ étudié, ce sur quoi je m'expliquerai après être bien entré dans le cœur de l'étude et avoir fait quelques commentaires relatifs aux trois premières parties.

UNE APPROCHE PERSUASIVE

La première partie de l'exposé définit le point de vue adopté, et le caractérise par une expression calquée de von Balthasar: "anthropologie dramatique" évoquant sa "théodramatique". Cardinal Scola entend ainsi délimiter son sujet. Quant à l'histoire passée de la notion de personne humaine telle qu'élaborée par la théologie chrétienne, il n'entend pas en traiter et s'en tient à la section 22 de la déclaration *Gaudium et Spes* adoptée par le Concile Vatican II. L'essentiel, explique-t-il, est de se fonder sur l'expérience humaine élémentaire, universelle quoique propre à chaque époque. En effet, comme von Balthasar l'a soutenu, "il n'existe pas d'anthropologie en dehors de cette dramatique" de l'action.

Nous aurons d'autres occasions dans notre session de revenir sur ce point de vue. Ainsi, notre collègue Rocco Buttiglione nous rappellera que,

selon Aristote ou Saint Thomas, la 'substance' humaine réside dans la possibilité de l'individu de croître par ses propres actions. Il expliquera ensuite comment Karol Wojtyła redécouvrit les principes thomistes quand il s'assigna l'objectif de mieux comprendre la nature humaine dans l'action et de mieux comprendre, à travers cette action, la nature de l'individu humain. Buttiglione résumera ainsi l'analyse phénoménologique de Wojtyła: "the fundamental experience in which a man becomes conscious of his nature as a moral subject is that of the choice", par quoi il entendra le libre choix laissé à l'homme de ses actions.

Pour sa part, le professeur Enrico Berti en viendra à des considérations voisines dans la dernière partie de son exposé où il traitera de la redécouverte récente du concept classique de la personne tel qu'il fut introduit par Aristote, développé ensuite par une longue lignée de philosophes dont Thomas d'Aquin et retrouvé, après bien des critiques, au milieu du vingtième siècle. Il citera alors notamment comme exemplaires la position prise par Paul Ricœur et son livre *Soi-même comme un autre*.

Ici je me permets une remarque dans ce qui est déjà une incidente de mon commentaire. Peut-être certains d'entre nous voudront-ils contester la réserve mineure exprimée au passage (pages 75-76) par le professeur Berti, précisément parce qu'elle pourrait révéler un léger désaccord avec Angelo Scola ou Rocco Buttiglione. L'idée de Ricœur selon laquelle la loyauté vis-à-vis de soi-même correspondrait à la véritable identité de la personne pourrait sembler insuffisante dans la bataille des concepts, dans la mesure où elle ne fournirait qu'un fondement éthique à la notion de personne et ne pourrait dès lors s'appliquer qu'à l'individu doué d'un sens moral.

Quoi qu'il en soit, après avoir posé le caractère 'dramatique' de l'anthropologie chrétienne, le texte d'Angelo Scola continue en énonçant que l'agent humain note en lui-même l'existence de trois polarités constitutives: âme-corps, homme-femme, individu-communauté. À chacune de ces polarités inhérentes à la nature humaine sont respectivement consacrées les trois parties suivantes. La distinction paraît tout à fait opportune à la lecture.

DEUX POLARITÉS BIEN COMPRISSES

Les cinq pages constituant les parties 2 et 3 me paraissent si pertinentes et probantes que je me limite à en rappeler les points les plus essentiels, qui pourraient susciter questions ou commentaires de mes collègues.

Dualité âme-corps

L'homme est inséparablement une âme et un corps, lequel exhibe sa matérialité, tandis que l'unité de la personne est déterminée par l'esprit. Chaque personne est un être dans lequel vivent, ensemble et en relation intime, corps et esprit, ce dernier transcendant la dépendance à la nature. Chacune des deux parties, le corps et l'esprit, accède à la connaissance de soi par sa pratique incarnée de la réalité.

L'accentuation unilatérale d'une des deux dimensions de la personne, matérielle ou spirituelle, fut une tentation récurrente et erronée au cours de l'histoire de la civilisation, nous rappelle Scola. Ainsi en fut-il, d'une part, de la thèse matérialiste de l'*homme-machine*, d'autre part, du *spiritualisme désincarné* qui, percevant l'âme comme opposée au corps, en vint souvent à voir l'individu croyant comme isolé aussi de toute appartenance sociale.

L'anthropologie chrétienne, reconnaissant la personne non seulement dans sa dimension spirituelle mais aussi dans sa biologie, nous protège contre le *ressentiment* de nous constater incapables d'avoir créé le monde et nous incite à une "*gratitude* de fond pour tout ce qui est, tel qu'il est" (passage emprunté à Hannah Arendt).

Polarité homme-femme et famille

Chaque individu ne rassemble pas en lui-même la totalité de l'être "personne humaine", mais il est placé dans une relation constitutive avec l'autre modalité originare, à lui inaccessible, de l'être personne. La prétention de surpasser cette différence ne peut être qu'une tragique illusion.

Pour son propre accomplissement, le moi a besoin de l'autre, étant de ce fait soumis à une contingence. Mais la capacité de s'autotranscender et de s'ouvrir à l'autre est aussi un fait positif pour le moi. Telle est une première source de réflexion pour l'éthique chrétienne.

Aller au delà conduit à anticiper sur l'analyse de la polarité individu-communauté qui sera envisagée plus généralement par la suite, car le couple peut être à bon droit considéré comme le premier domaine de manifestation de la troisième polarité dans la dramatique du moi. Chaque personne y existe comme individu, consciente de sa propre singularité et de sa capacité à produire des effets par ses actes, mais elle s'identifie aussi à la communauté constituée par le couple, consciente alors de l'ouverture et de la participation de l'autre, et prête à en tenir compte.

La doctrine chrétienne de la famille doit alors orienter le comportement. Elle est bien connue. Plutôt que la développer, Angelo Scola résume

comment la doctrine inspire en particulier cette partie de l'anthropologie dramatique qui traite la famille comme relation sociale *sui generis*.

Dans les relations internes à la famille sont présentes une intention (procréation et éducation), une capacité (la différence sexuelle), une norme (la réciprocité), une valeur (le don). En tant que siège de liaisons sociales stables, la famille se distingue comme intersection dynamique de deux types de relations: entre les sexes et entre les générations. Ainsi sont conditionnés les devoirs et les droits de la famille.

Anthropologie chrétienne et sciences sociales

A ce point de mon commentaire je diffère temporairement l'examen de la polarité individu-communauté et me reporte à la cinquième partie de l'étude, qui a précisément le titre ci-dessus. Dans cette partie les deux premières sections se font face, avec deux affirmations que nous accepterons. D'une part, la sociologie ne se déduit pas directement de l'anthropologie chrétienne: une application extrinsèque est requise qui prenne en considération l'étude de la société. Le risque d'une théologie sociologique serait aussi pernicieux que celui d'une théologie politique. De même en serait-il, me semble-t-il, d'une théologie du droit ou d'une théologie de l'économie.

D'autre part, l'anthropologie chrétienne ne peut se faire absorber dans les sciences sociales. De fait les sciences sociales comme la société contemporaine posent bien un défi à l'anthropologie chrétienne. Toutefois ce n'est ni celui de concevoir comment cette anthropologie s'appliquerait directement à notre société, ni même celui de procéder à une mise à jour de notre anthropologie, mais plutôt celui de la développer. Ainsi le défi adressé aux Chrétiens consiste à développer leur anthropologie en tenant compte des apports pertinents des sciences sociales. Retournant à la source de la pensée chrétienne sur la personne et à la Révélation reçue par le peuple de Dieu, il faut selon Scola y trouver les vérités sur la personne qui requièrent une compréhension toujours plus grande et adéquate, et ainsi donner de bonnes raisons à l'espérance chrétienne.

Les deux sections suivantes mettent en cause une attitude souvent exprimée dans les sociétés occidentales contemporaines, à savoir que toute espèce d'appartenance à une communauté constitue un danger à la fois pour la personne, qui y perdrait son individualité, et pour la société, qui serait exposée à des réclamations identitaires plus ou moins fondamentalistes. Mais il faut défendre certaines formes d'appartenance, avec les digni-

tés et les dépendances qu'elles impliquent. La considération des trois polarités énoncées ci-dessus nous amène à le reconnaître. Ainsi, la dualité individu-communauté conduit à constater la sociabilité naturelle de la personne et donc sa dépendance par rapport à d'autres personnes qui lui importent pour l'accomplissement de cette sociabilité. C'est pourquoi il serait faux de dire que tout ce qui est donné à l'homme, sans avoir été construit, choisi ou désiré par lui, soit de ce fait oppressif ou aliénant.

La cinquième section attire l'attention sur le fait que traiter des personnes ne suffirait pas si on ne considérait pas aussi simultanément les relations entre elles. Il est en effet encore aujourd'hui valable de suivre les réflexions des penseurs qui ont porté sur les dialogues constructifs de la personnalité. Ces réflexions conduisent à refuser l'individualisme et son modèle anthropocentrique hyposocialisé, et à refuser tout autant le totalisme et son modèle de l'homme sociocentrique hypersocialisé, selon lequel la société déterminerait ce que sont les personnes. Les sciences sociales devraient porter leurs regards aussi bien sur les relations induites par les actions de chaque individu, que sur les relations qui ont contribué à former cet individu grâce à l'horizon moral qu'elles lui ont offert.

Au début de sa dernière partie Angelo Scola nous invite à discuter les réflexions qui viennent d'être ainsi résumées. Quant à moi, je suis conduit à le faire en revenant sur sa quatrième partie qui me semble négliger la grande complexité de la polarité individu-communauté. Cette complexité est une dimension structurante majeure dans les sciences sociales. Elle ne devrait pas, me semble-t-il, être ignorée dans les réflexions philosophiques et théologiques sur la société. Je voudrais développer quelque peu ce point.

Complexité de la polarité individu-communauté

Quand les sciences sociales abordent les questions relatives aux rapports entre les personnes et la société, elles sentent immédiatement le besoin d'opérer des distinctions. Chaque individu appartient, non à une, mais à de multiples communautés: une ou des communautés de travail, une ou des communautés pour des échanges religieux, pour des échanges culturels ou pour des échanges économiques, des communautés politiques emboîtées les unes dans les autres, etc. Il y a trop à dire sur cette multiplicité d'appartenances pour la négliger. La multiplicité des sciences sociales en est le reflet. Il est fréquent aussi que, à l'intérieur de telle ou telle discipline scientifique, la multiplicité des appartenances ne puisse pas non plus être négligée.

Prenons à titre d'exemple la propre expérience de notre Académie. Ainsi, en rédigeant notre ouvrage, *Democracy in Debate*, qui synthétise notre contribution sur ce sujet, nous avons dû nettement distinguer l'analyse s'appliquant à l'intérieur d'un pays doué d'une constitution démocratique de ce qui pouvait être envisagé au niveau international pour l'organisation politique de "la grande famille humaine". Dans cette présente session il est facile d'identifier d'autres cas de même nature, tels ceux mentionnant les importants effets de la diversité des appartenances culturelles.

Plus généralement, au delà même de la multiplicité des appartenances, il est difficile d'échapper au sentiment que la diversité des analyses fournies par nos disciplines révèle des problèmes trop significatifs pour être négligeables. La question se pose dès lors de savoir si le développement de l'anthropologie chrétienne, auquel le Cardinal nous invite, ne devra pas faire intervenir de façon explicite des éléments de complexité reconnus dans les sciences sociales.

La quatrième partie de la contribution d'Angelo Scola m'a incité à y réfléchir, sans que j'aie pu encore aboutir à des conclusions fermes. Pour autant que j'aie compris cette partie, elle présente trois dilemmes philosophiques et théologiques posés à l'analyse de la polarité individu-communauté et elle situe l'attitude chrétienne face à ces dilemmes.

Je voudrais suggérer qu'approfondir ces dilemmes aboutira à révéler comme pertinentes certaines distinctions faites par les sciences sociales quant aux constituants de la communauté et à leurs rôles respectifs. Me permettant une définition trop synthétique de chacun de ces dilemmes, ainsi qu'un rappel, lui aussi trop synthétique de la réponse proposée par Scola au dilemme, je voudrais signaler, par une phrase ou deux, où des distinctions pratiquées dans les sciences sociales pourraient être opportunes.

Première dilemme (dans la section 4.1) – Les personnes dans leur sociabilité, c'est-à-dire dans leurs rapports avec la société, sont-elle toutes égales ou se distinguent-elles chacune comme unique en son genre? Scola répond que la tension à laquelle l'individu est soumis, entre son authenticité personnelle et son ouverture à l'autre, doit être acceptée. Elle s'exerce donc dans un espace qui, en même temps, sépare et met en relation les personnes. J'interjete: qui dit tension peut évoquer une force, plus au moins affectée par des causes diverses. Or la tension en cause doit beaucoup varier selon les formes et le degré de l'insertion que chaque individu peut avoir dans la communauté, formes et degré qui dépendent beaucoup des fonctions et appartenances.

Second dilemme (dans la section 4.2) – L'instinct social domine-t-il la personne humaine ou joue-t-il un rôle négligeable? Scola répond que la conception de l'Eglise comme communion fondée sur l'Eucharistie montre que personne et société peuvent rester dans une unité duale féconde. Dans l'Eglise le collectif n'absorbe jamais la personne et celle-ci n'est jamais une monade. Je dis: entre ces deux extrêmes du collectif et de la monade n'y a-t-il pas place à bien des intermédiaires? Ne faudrait-il pas étudier de près la nature variable du dilemme posé à chacun entre autonomie individuelle, responsabilité vis-à-vis des autres proches ou lointains, et prégnance sociale?

Troisième dilemme (dans la section 4.3) – La divinité est-elle impersonnelle, infiniment supérieure face à l'homme pécheur et racheté? Scola répond que le Christianisme propose une autre perspective: la personne humaine est libre et cette liberté a son origine dans la volonté libre d'un Dieu personnel qui a créé librement le monde et la personne humaine; le mal pour sa part provient de la volonté libre de l'homme blessé par le péché originel. Je demande alors: cette perspective chrétienne et la liberté reconnue à la personne humaine n'impliquent-elles pas le devoir d'une conduite adaptée à des circonstances qui méritent d'être étudiées et qui dépendent beaucoup elles aussi des fonctions et des appartenances?

Terminer ainsi avec une liste de dilemmes délicats reste évidemment très éloigné de la définition d'une stratégie pour aboutir à des propositions que feraient les experts des sciences sociales afin d'aider l'Eglise à nourrir sa doctrine quant à la polarité individu-communauté. Mon propos est plutôt d'inciter les spécialistes de nos sciences à contribuer au développement de l'anthropologie chrétienne dont Son Eminence Cardinal Scola a esquissé la perspective.

POST-SCRIPTUM

Dans une lettre qu'il m'a adressée personnellement, Son Eminence Angelo Scola a bien voulu préciser le propos de sa contribution et indiquer comment il situait mes remarques sur la polarité *individu-communauté*. Voici l'essentiel de son message.

Pour savoir si et comment il faut tenir compte de la complexité de la polarité individu-communauté, deux niveaux de réflexion doivent être distingués. Au niveau philosophique et théologique de la contribution du Cardinal, il est nécessaire de montrer le caractère constitutif de la polarité en cause. A cet égard la multiplicité des appartenances importe peu. Le

point fondamental consiste à expliquer que la dimension sociale est constitutive de, non extrinsèque à, la dimension personnelle. Car la dimension communautaire fait partie de l'expérience humaine élémentaire. La multiplicité des appartenances, et celle des sciences sociales, se greffe sur cette donnée première de la polarité constitutive.

Le second niveau, qui est le propre des sciences sociales, devra au contraire affronter les diverses modalités selon lesquelles la polarité individu-communauté s'articule dans l'espace et le temps avec l'histoire des hommes. Mais la recherche des sciences humaines ne peut pas nier le caractère insurmontable de la polarité constitutive. Cette recherche peut plutôt le vérifier. Comment documenter une telle insurmontabilité? Quelles routes suivre pour une 'possession positive' de la polarité sans tomber dans la tentation utopique de la matrice hégélienne?

Dans ce cadre, portant attention aux "trois dilemmes", l'Académie pourrait trouver un approfondissement adéquat. En outre une telle recherche pourrait expliquer que la tension dynamique de la polarité constitutive valorise les différences sans les faire exploser les unes par rapport aux autres.

UN PREMIER ESSAI D'ANTHROPOLOGIE CHRÉTIENNE: TERTULLIEN

ROLAND MINNERATH

Avant de s'atteler à la rédaction successive des traités *Sur la chair du Christ* et *Sur la résurrection*,¹ sans doute entre 208 et 211, Tertullien avait déjà développé les éléments de son anthropologie. Ce n'est pas la proximité de son passage définitif au montanisme qui a modifié ses vues. On peut y ajouter le *De anima*, composé pendant la même période 208-211, qui est une pièce maîtresse de l'anthropologie de Tertullien.² En fait, dans l'ensemble de ces traités, Tertullien confronte sa pensée non seulement à celle de Marcion, et aux gnostiques comme Basilide, Apelle, Valentin, Hermogène, mais aussi aux opinions néo-platoniciennes et pythagoriciennes, qui dit Tertullien, partagent volontiers l'incrédulité du commun (*Res.* 1,4-5; 3,6-4,1).³

¹ L'édition J.G.Ph.Borleffs, CCSL II, 921 suit la leçon la plus ancienne du Codex Trecensis (Troyes), qui reproduit le titre du catalogue de Cologne de 833, et se justifie par les premiers mots du traité (Fiducia christianorum resurrectio mortuorum). Le Codex de Montpellier, du XIe siècle porte "de resurrectione carnis". Le débat porte sur la chair. Le Carn. 25,2 annonçait le *Res.* comme devant traiter de la "resurrectio nostrae carnis", et notre traité se termine par les mots "resurrectionem quoque carnis..." (63). Il est vrai que le traité emploie huit fois l'expression "resurrectio mortuorum" contre cinq fois "resurrectio carnis". Il faut aussi tenir compte de l'édition, avec traduction anglaise et commentaire de E. Evans, *Tertullian's Treatise on the Resurrection*, S.P.C.K., London 1960; ainsi que de la traduction avec commentaire en italien de C. Micaelli, *Tertulliano, La risurrezione dei morti* (Collana di testi patristici), Città nuova editrice, Roma, 1990.

² L'anthropologie de Tertullien a été l'objet de l'étude exhaustive de Jérôme Alexandre, *Une chair pour la gloire. L'anthropologie réaliste et mystique de Tertullien* (Théologie historique 115), Beauchesne, Paris 2001.

³ En *Marc.* V,10,1, composé à la suite du *Res.*, Tertullien dit qu'il y a combattu "toutes les hérésies".

A. UNE ANTHROPOLOGIE À PARTIR DE LA CRÉATION

L'homme est chair

Qu'est-ce que l'homme? Corps, âme, esprit, chair, substance, Tertullien coule les concepts chers à la philosophie antique dans le moule d'une anthropologie d'inspiration biblique. Quand Tertullien lit *Gn* 2,7-8, "Et finxit Deus hominem limum de terra", il observe "il est déjà homme, celui qui est encore glaise!" Il poursuit "Et insufflavit in faciem eius flatum vitae et factus est homo – "c'est-à-dire la glaise" – in animam vivam..." (*Res.* 5,8). Première conclusion, "adeo homo figmentum primo, dehinc totus: donc l'homme est d'abord ce qui a été façonné, et en second lieu il est l'homme entier" (*id.*, 5,9). Tertullien voit dans les deux moments distincts de la création de l'homme: la *plasmatio* à partir du limon de la terre (*limus*), et l'insufflation de la vie (*flatus vitae*) par le Créateur, les deux moments de la constitution de la chair, matière d'abord, puis matière animée. Les mots *homme* et *chair* sont synonymes, mais *caro* précède *homo*. L'homme, est une "carnis animaeque textura", un tissu de chair et d'âme (*Res.* 34,10). La chair n'est ni le limon seul, ni l'âme qui l'anime seule. Elle est l'union de ces deux éléments, que Tertullien appelle deux substances. Tertullien porte tantôt le regard sur l'un ou l'autre aspect du composé humain: chacun exprime le tout, puisque l'un n'existe pas sans l'autre.⁴ Si la vie résulte de l'union de l'âme et de la chair, la mort est *discidium*, séparation de l'âme d'avec la chair (*Res.* 19,3).

Il convient de relever à quel point cette anthropologie valorise la composante matérielle de l'homme, aux antipodes des dualismes platoniciens et gnostiques. Tertullien va jusqu'à dire qu'en façonnant l'homme avec le limon de la terre, Dieu pensait déjà à l'incarnation de son Fils, Verbe fait chair, qui revêtirait un jour la forme qu'il avait imprimée au limon. "Ce que Dieu a façonné [la matière], il l'a façonné à son image, c'est-à-dire à l'image du Christ" (*Res.* 6,4-5).

L'âme est souffle de vie

Qu'est-ce que l'âme? Tertullien a déjà amplement répondu à cette question éternelle par son traité *De anima*. Lorsque Tertullien lit *Gn* 2,7, il tient

⁴ Par exemple: "souviens-toi que l'homme est proprement appelé chair" (*Res.* 5,8); et "tout ce que nous sommes, c'est une âme" (*Carn.* 12, 1).

pour exacte la traduction latine de *nephesh haia – pnoè zoès*: Dieu insuffla à l'homme, encore limon de la terre, un “*flatus vitae*”, un souffle de vie, et non un “*spiritus vitae*”!⁵ Car des gnostiques platonisants comme Hermogène voyaient dans l'âme un principe divin, pour mieux déprécier le corps, qui relevait à leurs yeux du principe matériel. L'âme n'est pas de nature divine, mais elle a son origine dans le souffle divin. Tertullien insiste sur la séquence: limon-souffle. Dieu a façonné le limon avant de lui insuffler la vie. En insufflant la vie, Dieu est créateur de la vie. Il n'émane pas sa propre vie. Il en suscite une. Le *flatus* envahit toutes les dimensions de l'homme: il anime le corps, se déploie dans la pensée et dans les sentiments. C'est la même âme qui est à la fois sensitive, intellectuelle, cognitive. L'âme est le siège du discernement moral. Elle est créée libre. L'homme est capable avec sa *mens*, son intelligence, de faire des choix qui engagent sa vie. Il peut se tourner vers les seules satisfactions sensibles; il laissera alors son âme se rapprocher de la matière. Il peut aussi se tourner vers Dieu, et son âme ira en se spiritualisant. Car la loi du changement est inscrite dans les êtres. L'âme restera toujours une âme humaine. Ses choix modifient non sa substance, mais sa qualité.⁶

Dans l'existence humaine, c'est l'âme qui pense, aime, éprouve des sensations, toujours au moyen de la chair. “Si toutes choses sont assujetties à l'âme, elles le sont également à la chair.. La chair, bien que reconnue servante et esclave (*ministra et famula*) de l'âme, se trouve être sa partenaire et sa co-héritière. Comme l'âme, la chair aura droit à la vie éternelle”. Il va de soi, pour Tertullien, que l'âme humaine a été créée immortelle. Sur le principe de l'immortalité de l'âme, tant les philosophes grecs que “presque tous les hérétiques” gnostiques de toute nuance peuvent s'accorder (*Res. 2,12*).

La substance de l'homme et le corps

Partageant sur ce point la vision des stoïciens, Tertullien considère que toute substance a un corps, qui en fait une réalité concrète.⁷ Même l'Esprit divin est un corps d'un genre particulier. “Il n'y a d'incorporel que ce qui n'existe pas”. Les êtres existent par leur corps.⁸ De même, chaque âme qui procède

⁵ La Bible latine de Tertullien, comme la *Vetus Latina* dit “*flatum vitae*”, tandis que la Vulgate dira: “*spiraculum vitae*”.

⁶ Cf. *An. 21,6-7*.

⁷ *Carn. 11,4*: “*nihil est incorporale nisi quod non est*”.

⁸ Cf. *Carn. 11,4*.

du souffle de Dieu, sans être Dieu, a-t-elle un corps correspondant à sa qualité.⁹ Le corps n'est donc pas identifié avec la matière. Ce qui n'a pas de corps, ce sont les abstractions créées par notre esprit, ou encore le mouvement.

Il convient ici de replacer l'homme dans l'échelle des êtres de Tertullien. Pour exprimer l'identité de chaque être, Tertullien fait appel au concept de substance. La *sub-stantia* est le fonds permanent des êtres, indépendamment de leurs actes et de leurs qualités changeantes. Ainsi y a-t-il trois degrés ou *gradus* des êtres: au sommet, la substance spirituelle divine; au bas de l'échelle: les substances matérielles que sont les quatre éléments (terre, eau, feu, air). Entre les deux, le *flatus vitae*, le souffle de vie, qui associé à la matière, suscite des êtres vivants, eux-mêmes hiérarchisés en anges,¹⁰ humains, animaux.

Tous les êtres vivants ont ainsi reçu un *flatus* qui les anime. Celui de l'homme leur est supérieur en qualité. Il se distingue par un *gradus* supérieur. Le *flatus* insufflé dans l'homme rend ce dernier image de Dieu. Tout dans l'homme est de l'ordre de la créature. La créature n'a pas une parcelle de divin en elle. L'homme n'est pas Dieu. Dieu est Esprit, *Spiritus*. On notera que l'Esprit divin ne fait pas partie de la substance de l'homme créé. C'est pourtant l'Esprit qui re-suscitera la chair, comme don gracieux eschatologique. L'homme est supérieur aux êtres vivants par le souffle qu'il a reçu, qui n'est pas seulement d'ordre "animal", mais comporte les potentialités de l'intelligence et de l'amour. La hiérarchisation des êtres ne les enferme pas dans l'immobilité, car chaque être porte inscrite en lui la loi de son propre développement.¹¹ Alors que seul Dieu est sans changement,¹² chaque être créé est sujet au changement, à l'intérieur de sa propre substance. Ce changement consiste dans le déploiement des virtualités contenues dans son germe, ou *census*.

Voici donc une première approximation des données anthropologiques de Tertullien. Si l'homme est chair, c'est-à-dire matière animée par le souffle vital, ces deux substances sont toujours unies dans toutes les opérations qu'il effectue. Il n'y a pas de pensée sans support physique. Les perceptions des sens et de l'intelligence sont des opérations de l'âme qui s'effectuent à travers la composante physique de l'être. Dans la vision de Tertullien, c'est

⁹ *Marc.* V,15,8: "anima corpus est aliquod suae qualitatis".

¹⁰ Les anges eux-mêmes ont été créés charnels, insiste Tertullien: *Carn.* 3; 6.

¹¹ Cf. *Gn* 1, 11-25: chaque être végétal ou animal a en lui sa semence pour croître et se perpétuer selon son espèce.

¹² Cf. *An.* 21,7.

la chair, composée de deux substances qui est appelée à être transformée par l'Esprit. L'Esprit commence d'ailleurs à transfigurer ensemble l'âme et la matière corporelle, dès cette vie.

B. UNE ANTHROPOLOGIE À PARTIR DE LA RÉSURRECTION

Un approfondissement de cette anthropologie nous est fourni dans les réflexions de Tertullien sur la mort et la résurrection de la chair.

Qu'est-ce que la mort?

Tertullien commence par écarter les interprétations gnostiques. Ceux-ci disent: la mort, c'est l'ignorance de Dieu (*Res.* 19,2-3). La mort physique n'est pas le vrai enjeu. La mort est de nature spirituelle. Dans cette optique, la résurrection est la passage de l'ignorance à la gnose. D'ailleurs, les gnostiques n'excluaient pas une résurrection future, et la voyaient dans l'instant où l'âme s'échappe du corps mort. Ce monde étant le domaine de la mort, c'est-à-dire de l'ignorance de Dieu, la sortie de ce monde matériel est une résurrection, qui vient rendre manifeste celle qui a déjà eu lieu par la connaissance (*Res.* 19,7). A tout ceci, Tertullien répond: "la mort au sens obvie, c'est la séparation de la chair et de l'âme – *discidium carnis atque animae*" (*Res.* 19,3). On relèvera les termes choisis.¹³

Les gnostiques s'appuient encore, entre autres, sur *2 Co* 4,16 – où il est dit que "notre homme extérieur dépérit, tandis que notre homme intérieur se renouvelle de jour en jour" – pour affirmer que seule l'âme est destinée à la vie ressuscitée, et que le corps est promis à la destruction (*Res.* 40,2). Tertullien répond: l'âme à elle seule n'est pas l'homme, de même que la chair seule n'est pas l'homme. Quand l'âme a quitté la chair, la chair prend le nom de cadavre. "Le mot 'homme' est comme la fibule qui attache ensemble les deux substances faites l'une pour l'autre..." (*Res.* 40,3). Paul entendait par 'l'homme intérieur' non l'âme seule, ni la substance de l'âme seule, mais l'esprit (*mens*) et l'intelligence (*animus*). Si le Christ habite dans l'homme intérieur, selon *Ep* 3,16, c'est dans l'intime de sa pensée. L'Esprit opère dans la *mens* pour pousser au progrès et de l'âme et du corps. Quand l'Apôtre dit que l'homme extérieur dépérit, il ne songe évidemment pas à la corruption de la

¹³ Tertullien a aussi parlé de "coniunctio" et "disiunctio corporis animaeque" (cf. *An.* 9).

chair; il fait allusion aux épreuves et aux persécutions que tout homme connaît au cours de cette vie dans la chair. Bien plus, si nous résistons dans la chair, la chair aussi devra avoir part à la récompense (*Res.* 40,4.8-14).

Tertullien rappelle que la mort consiste dans la séparation des deux substances qui conditionnent l'existence charnelle (souffle de vie et matière). La chair devient cadavre. L'âme émigre vers un autre monde. Unies depuis le moment de leur création, les deux substances connaissent maintenant une destinée séparée. Celle du corps physique, privé du souffle, redevenu limon, est la plus simple à constater: il retourne à la matrice originelle. Il se dissout dans les éléments de la matière et s'y transforme. "Ce que tu considères comme un anéantissement (*interitum*), sache que c'est un simple retrait (*secessum*): non seulement l'âme change de lieu, mais la chair aussi se retire: dans l'eau, dans le feu, dans les oiseaux, dans les fauves" (*Res.* 63,3). La chair est ainsi versée dans des récipients, qui sont appelés à disparaître à leur tour, eux-mêmes réabsorbés par la terre mère, la matrice à partir de laquelle elle a été façonnée. La résurrection sera symétrique à l'instant de la mort. Retenons que dans le langage de Tertullien, ce qui meurt, ce n'est pas l'âme, ni le corps tiré de la matière seul, c'est la chair, c'est-à-dire l'union de l'une et de l'autre. De même que la chair est venue à la vie au moment où le *flatus* l'a animée, elle redevient limon au moment où il la quitte.

L'âme émigre vers le séjour des morts, qui n'est pas encore le royaume définitif, "dans un lieu retiré sous terre et qu'on appelle enfers" (*An.* 55). Le Christ lui-même est descendu aux enfers avant de monter dans les hauteurs du ciel. Aucune âme n'est autorisée à sortir du séjour des morts jusqu'au jour du jugement. Tertullien s'appuie sur la parabole évangélique du riche et du pauvre Lazare (cf. *Lc* 16,19-31). Il en conclut que les enfers renferment deux catégories de séjours: l'un dédié aux supplices, l'autre à la consolation.¹⁴ Dans les enfers, "l'âme reçoit un acompte du jugement qui sera plus tard prononcé sur elle" (*An.* 58). Tertullien ne retient pas en revanche la métaphore biblique du sommeil de l'âme pendant le temps intérimaire. L'âme connaît une anticipation du sort qui lui sera réservée.¹⁵ "L'âme n'a pas recours à la chair pour tous ses actes...". Il est donc convenable qu'elle soit punie, avant même d'être réunie à la chair, pour les actes qu'elle a été seule à commettre. Pour la même raison, "elle sera seule récompensée pour les

¹⁴ Voir la pensée d'Irénée, *Adv. haer.* II, 34,1, dont Tertullien semble s'inspirer.

¹⁵ Par exemple *An.* 4: "on doit reconnaître que l'âme reçoit quelque rétribution dans les enfers, en attendant la résurrection où elle recevra son salaire complet".

bonnes pensées qu'elle a eues sans l'aide de la chair" (*An.* 58). Puisque l'âme est douée d'un corps qui lui est propre, elle est capable d'éprouver les souffrances ou les joies de l'état intermédiaire.

Le sort de l'âme à la résurrection

Quand le temps de ce monde sera accompli, le sort des âmes des humains déjà morts sera réglé en deux étapes. D'abord les martyrs dont parle *Ap* 20,4. Ils sont les protagonistes de la "première résurrection" (cf. *Ap* 20,5), alors que Satan aura été enchaîné pour mille ans. Dans leur chair ressuscitée, ils règnent pendant mille ans sur la terre avec le Christ. Pour eux, le temps de l'attente est fini. Tertullien partage avec tous les auteurs du deuxième siècle l'interprétation temporelle, intra-mondaine de ce règne, où le Christ manifesterait sa gloire en ce monde, avant la venue du royaume de Dieu. Il a soin cependant d'éviter toute description par trop matérialiste de ce règne millénaire, et se contente de dire que les saints y goûteront des "délices spirituels".¹⁶

L'attention de Tertullien se porte cependant sur la résurrection finale et le jugement. Cette résurrection concerne toutes les âmes qui séjournent dans les différentes régions des enfers. Tertullien se représente de la manière suivante les *infern*.

a) Dans sa partie la plus basse, les âmes condamnées connaissent un avant-goût des supplices qui leur sont réservés, en attendant la géhenne à laquelle elles sont destinées après la résurrection et le jugement final.

b) Dans une partie pour ainsi dire intermédiaire, les âmes des pécheurs repentis expient les fautes légères qu'elles ont commises. Elles passent un temps de purgatoire, sans le mot. C'est le moment de "payer jusqu'au dernier centime", comme dans les paraboles de *Mt* 5,26; *Lc* 12,59 (*Res.* 42,3).

c) Enfin la localisation appelée le "sein d'Abraham" paraît être la partie supérieure des enfers (cf. *Marc.* 4,34), la plus enviable, où les âmes des justes goûtent le repos, sans connaître encore le bonheur céleste.

La résurrection générale aura lieu au terme du règne terrestre millénaire. Satan relâché séduit encore les habitants de la terre, mais il est aussitôt vaincu et précipité dans l'étang de soufre et de feu pour y souffrir des tourments pour les siècles des siècles (cf. *Ap* 20,10). Le jugement commence après que "la mort et l'hadès eurent rendus leurs morts". Il consiste à véri-

¹⁶ Cf. *Marc.* 3,24.

fier qui est “inscrit dans le livre de vie” (Ap 20,13). Tertullien s’en tient à ces descriptions. Il va maintenant montrer quel est l’état de ces morts sortis des enfers pour comparaître pour le jugement.

L’âme et la chair seront jugées ensemble

Le cœur de sa démonstration tient dans la thèse que le jugement final concerne tout l’homme. Au jugement qui sera plénier et parfait, l’homme ne pourra comparaître que dans sa totalité. Pas seulement l’âme sera jugée, mais l’âme et la chair recomposées. Car, rappelle Tertullien, l’âme ne saurait être jugée seule, elle qui a été associée à la chair dans toutes les activités de cette vie. “L’âme a si peu abandonné seule cette vie, que même pas pour les pensées, y compris solitaires, y compris celles qui n’ont pas été traduites en actes avec le concours de la chair, on peut se passer de l’union avec la chair. Ce qui advient au plus profond du cœur, l’âme le réalise dans la chair, avec la chair et au moyen de la chair”.¹⁷

Marcion prétendait que dans 1 Co 15,44 (“semé corps animal, on ressuscite corps spirituel”), “corps animal” désignerait l’âme, pour exclure une fois de plus la chair de la rédemption. Tertullien répond: comment l’âme pourrait-elle être un corps animé, alors qu’elle est plutôt un “corpus animans”, qui donne vie au corps de chair. De plus, quand Paul ajoute en 1 Co 15,45: “le premier Adam est fait âme vivante, le second Esprit vivifiant”, il nous éclaire. L’un et l’autre Adam est chair. La différence est que la chair du premier Adam a été animée par son âme créée. Le second Adam a vu sa chair “spiritualisée”, saisie par l’Esprit, devenu “corps spirituel”... (Res. 53). Retenons que pour Tertullien, l’âme est aussi dotée d’un corps, et que ce corps n’est pas à confondre avec le corps glorieux de la résurrection.

Qu’est-ce qui ressuscite?

Pour cela, un préalable doit être clarifié. Qu’est-ce qui ressuscite en vue du jugement? L’âme n’a pas à ressusciter puisqu’il a continué de vivre des les enfers. Tertullien répond donc, suivant 1 Co 15,35, que la résurrection

¹⁷ Il ajoute: “même sans oeuvres et sans opérations, la pensée est un acte de la chair...” (Res. 15,4); et “si dans l’âme quelque chose se meut, le visage l’indique, la face est le miroir des intentions. Ils nient l’unité dans les oeuvres ceux qui ne peuvent la nier dans les pensées” (Res. 15,6).

concerne les corps charnels. Ainsi est posée la question de la *qualitas* du corps ressuscité. La même chair qui a été saisie par la mort, et pas une autre, sera revivifiée.¹⁸ “Ce qui ressuscite, c’est ce qui est tombé”. Tertullien utilise de préférence le vocable re-surgere/re-surrectio, car “resurgere non est nisi eius quod cecidit”, alors que “surgere enim potest dici et quod omnino non cecidit”.¹⁹ La chair, corps animal privé de son âme semé en terre, qui a déjà reçu les prémices de l’Esprit qui ressuscitera.²⁰ De même que la chair était devenue ‘corps animal’ en recevant l’âme, de même elle deviendra ‘corps spirituel’ en se revêtant de l’Esprit.²¹ Déjà en cette vie, la chair a reçu l’Esprit grâce à la foi, sous forme d’acompte. Elle ressuscitera en un corps entièrement spirituel. Ce corps spirituel, c’est le corps charnel transformé. La résurrection de la chair est comme une re-création dans l’Esprit.²²

Comment imaginer que la chair dissoute dans la matière puisse retrouver sa forme, alors qu’elle a été réabsorbée “dans les tortuosités de sa matrice la terre”.²³ La chair qui, sans le souffle, n’est que matière, s’est “retirée” dans d’autres réceptacles où elle s’est dissoute. C’est de cette même terre que sera à nouveau formé Adam.²⁴ Pour qu’il y ait retour d’une identité qui s’est dissoute, il faut qu’il y ait entre la chair jadis saisie par la mort et la chair ressuscitée un principe de continuité. Ce principe de continuité, Tertullien l’appelle substance.

L’identité de substance est assurée grâce au concept de *demutatio* ou transformation. Dans *Res*, Tertullien ne parle plus de *mutatio* comme de la destruction d’une chose qui se transforme en une autre.²⁵ Car la destruc-

¹⁸ *Res*. 52,2.

¹⁹ Cf. *Marc.* V 9,4: “hoc resurgit quod cadit”. Tertullien a forgé le néologisme *resurrecto* pour parler du Christ, auteur de la résurrection de la chair (*Praescr.* 36,5), ou encore celui de *resuscitator* (*Pat.* 15,1; *Marc.* III 8,2; *Res.* 12,8; 57,7). Tertullien emploie aussi les verbes *vivificare/vivificatio* (*Res.* 28,6) et *restituere/restitutio* (*Apol.* 23,13; 48,12). Dieu est aussi dit “*restitutor*” (*Res.* 12,8). Voir R. Braun, *Deus christianorum. Recherches sur le vocabulaire doctrinal de Tertullien*, Paris 1977, p. 536-537.

²⁰ *Res.* 53,4.

²¹ *Res.* 53,10. Il poursuit: “Donc la chair ressuscitera: identique, complète et intégrale. Où qu’elle soit, elle est déposée auprès de Dieu, par l’œuvre du très fidèle médiateur entre Dieu et les hommes, Jésus Christ, qui rendra Dieu à l’homme et l’homme à Dieu, l’esprit à la chair et la chair à l’esprit: les deux il les a déjà unis dans sa personne” (*Res.* 63,1).

²² Cf. *Res.* 57,7: “Celui qui a fait est capable de refaire”; ou *Apol.* 48,5: “Pourquoi ne pourrais-tu pas sortir une seconde fois du néant (de nihilo), par la volonté de Celui-là même qui a voulu une première fois te faire sortir du néant”.

²³ *Res.* 63,4.

²⁴ *Res.* 63,4.

²⁵ Cf. *Carn.* 3,4.

tion, c'est la non existence, tandis que "être transformé, c'est exister d'une autre manière". Et il ajoute: "donc, ce qui est transformé peut être identique". Etre sujet au changement et demeurer identique est le propre de l'homme déjà en cette vie. Il change d'aspect extérieur, d'environnement, de situation sociale, et pourtant il est le même. Tous ces changements permanents ne lui font rien perdre de son humanité. Il ne devient "pas un autre, mais quelque chose d'autre".²⁶ Le changement ne détruit pas la substance, mais la suppose. "Dans l'acte de la résurrection, [le corps] sera changé, transformé, reformé, tandis que sa substance demeurera sauve".²⁷ "La même et identique substance est rappelée à la vie".²⁸

Tertullien s'empresse de répondre à ceux qui prennent en dérision le résurrection de la chair. "Si l'on veut soutenir que la même et identique substance humaine est rappelée à la vie avec sa forme, son aspect et sa qualité, elle doit l'être aussi avec ses autres caractéristiques..." et donc ses défauts physiques, ses infirmités, etc.²⁹ La résurrection restitue la chair dans son intégrité, répond-il, non dans ses imperfections. "Si avec la résurrection est anéantie la mort complète, pourquoi pas la mort partielle? Si nous sommes transformés en gloire, combien plus le serons-nous en intégrité. Le défaut est accidentel pour le corps, l'intégrité lui est propre... Nous sommes rendus à la nature, pas à ses défauts. Nous revivons tels que nous sommes nés, non tels que nous avons été déformés".³⁰

C'est donc la chair qui ressuscite intègre grâce à la permanence de sa substance individuelle. La chair ressuscitée sera réunie à l'âme, qui attend ce moment dans les enfers depuis le jour de sa séparation d'avec la chair. Comme "l'homme entier résulte clairement de l'union de deux substances: il doit donc se présenter au jugement dans l'une et dans l'autre, car il doit être jugé dans sa totalité; c'est-à-dire dans l'union de ces deux substances, sans lesquelles il n'aurait pas vécu. Comme il a vécu, ainsi il doit être jugé, parce que le jugement concernera la façon dont il a vécu. La vie est la cause du jugement; celui-ci devra évaluer les deux substances dans lesquelles la vie a déroulé son cours".³¹ L'âme, dans les enfers, a conservé la conscience de soi

²⁶ *Res.* 55, 6-7.

²⁷ *Res.* 55,12 "in resurrectionis eventu mutari conuerti reformari licebit cum salute substantiae".

²⁸ *Res.* 57,2.

²⁹ *Res.* 57,1.

³⁰ *Res.* 57,2-5.

³¹ *Res.* 14,11. Cf. 36,3.

et la mémoire de son passé. L'âme aussi doit être saisie par la résurrection. "Si l'âme n'est pas transformée, il n'y a pas de résurrection pour l'âme, et elle ne ressusciterait pas, si elle ne ressuscitait pas autre".³² C'est recomposé en ses deux substances que l'homme comparaît pour le jugement.

La chair transformée par l'Esprit

Si elle en a été jugée digne, la chair ressuscitée revêtira l'Esprit pour la vie éternelle. Alors seulement s'opèrera la transformation en 'corps spirituel'. Tertullien dit encore que "dans le royaume de Dieu, la chair sera reformée et angélisée".³³ Les enfants de la résurrection, selon *Lc 20,36*, "seront semblables aux anges... revêtus d'incorruptibilité, à travers la transformation de la substance qui sera déjà ressuscitée".³⁴ Tertullien précise bien: "le Seigneur n'a pas dit 'ils seront des anges', mais 'ils seront comme les anges' pour conserver leur humanité. A qui il a accordé la ressemblance, il n'a pas enlevé la substance".³⁵ Revêtus de l'immortalité, les élus restent identiques à eux-mêmes. "Il n'est pas admissible que l'esprit, la mémoire et la conscience de l'homme actuel disparaissent quand il endosse le nouvel habit de l'immortalité et de l'incorruptibilité. Autrement, la récompense et le fruit de la résurrection seraient inutiles, ainsi que l'état qui lui a été assigné par le double jugement divin".³⁶

La chair ressuscitée ne sera plus sujette à la dégradation, car "la nature transformée" jouit d'une condition supérieure à la condition mortelle. "Après la résurrection, la chair se maintiendra passible en tant qu'elle est la même chair, et cependant impassible en tant qu'elle a été affranchie par le Seigneur pour qu'elle ne puisse plus souffrir".³⁷ Tertullien s'interdit de spéculer sur la condition des élus dans la vie éternelle. Les Ecritures enseignent la résurrection de la chair. Elles ne disent pas ce que sera la vie dans la gloire.

³² *Res.* 56,5.

³³ *Res.* 26, 7.

³⁴ *Res.* 36,5.

³⁵ *Res.* 62,4.

³⁶ *Res.* 56,3. Il poursuit: "si je ne me souviens pas moi-même d'être celui qui a mérité, comment pourrai-je glorifier Dieu?... Pourquoi admet-on seulement la mutation de la chair et non celle de l'âme, qui a toujours été le guide de la chair? (56,4).

³⁷ Cf. *Res.* 57,13.

THE ANTHROPOLOGY OF KAROL WOJTYLA HAS TWO MAIN FEATURES

ROCCO BUTTIGLIONE

1. First of all, it is based upon the classical philosophy of being and on the aristotelian/thomistic notion of substance. The word substance comes from Latin and means what lies under something else (*sub stare*). It gives us the idea that reality has a multiplicity of layers (at least two). Something stands at the surface and something stands at a deeper level. On the surface, we encounter many elements that are so, but might also be different. This is what Aristotle calls circumstances. Circumstances may easily change in time. In the perpetual change of the ways in which reality presents itself to us there is however something that does not change, or at least does not change at the same pace and in the same way. This is the deeper layer that we call substance. Let us provide an example. Imagine that you have a friend. She has long beautiful blond hair. One day you see her with a short, dark to violet haircut. The usual reaction of a male friend would be at first not to recognize her. Of course, after a while you became conscious that the fashion has changed but she is the same. The hair cut is an accident, but the substance of the person remains. The substance is what remains equal to itself while the circumstances change.

It is perhaps worthwhile remembering that the word substance is a literal translation of the greek word *hypokeimenon* (*hypo* = under; *keimenon* = what lays; *hypokeimenon* = what lays under).

Even more: the persistence of the substance is the condition for the existence of the circumstances. They enjoy real existence only in so far as they are inherent to a substance.

You can interpret this notion of substance in two different senses. If you interpret it absolutely, you will demand that substance never changes under any circumstances. In this sense, substance would coincide with the being (to on) of Parmenides or with the substance of Spinoza. In this sense, there

can be only one substance and that substance is God. This is not, however, the notion of substance that you find either in Aristotle or in St. Thomas. The meaning of substance here has a more methodological sense.

The substance has a movement in itself. It is implied in human substance that each man should be born out of the love of a man and a woman, that he should grow in time and then decay and die. Substances may be modified through the action of other substances and enter in relation with them. To understand this point better, we need to introduce another couple of categories that are decisive in classical aristotelian/thomistic philosophy. They are the categories of potency and act. In human substance, there is a potential to grow in many different directions. A child may become a computer expert, a priest or even a university professor. Some of these qualifications may be united in the same person, although some of them may exclude each other, and in one human life there is room only for a certain number of them. What interests us more is the fact that a child may become a good man or an evil man. Some elements of the evolution of human substance are predetermined. That a child should grow is something quite independent of her or his will. That she or he should become a good or an evil person is largely dependent upon her or his will. To a large extent, we create ourselves through our actions. To become an athlete, you need a certain predisposition, but even more important is willpower and how you train. The Greeks had discovered what we today call body building: the shape of one's body may be influenced through exercise. Socrates and Plato thought that the form and content of the soul may be influenced in the same way. St. Augustine expressed the same concept saying that God, who created you without your consent, will not save you without your consent.

There is a story about Abraham Lincoln that may help us to illustrate this point better. The story tells us that one day Lincoln dismissed his gardener. His family and his friends asked him why he had done that. Lincoln replied: I do not like his face. All his friends replied: he is not responsible for the face he has got. But Lincoln insisted: everybody who is over forty is responsible for the face he has got. Let us set aside the violation of the rights of labour and the naïve acceptance of the (Greek) principle of the correspondence between the traits of the body and those of the soul (the principle: *kalos kai agathos*. The beautiful is also good). What is really valuable in the example is the idea that we change because of our actions, that what we do remains in us and changes the moral substance of our souls.

Aristotle explains that all human action has a double effect. One effect regards the exterior environment, the other modifies the person itself. When

we lift a weight, we change the position of that object, but at the same time, we exercise our muscles and make them stronger. In the same way, if one kills an innocent human being, he changes the world outside himself and, at the same time, changes the moral character of his soul: he becomes a murderer.

There is a beautiful tale by Oscar Wilde that illustrates this point (it is worthwhile remembering that Oscar Wilde studied with the Jesuits and seems to often have a keen understanding of theology). A young man makes a pact with the devil. He is, and will remain forever, exceedingly beautiful and the effects of his evil deeds will be transposed upon a painting of him, a portrait. One day, he looks at the painting and is terrified by what he has become. He destroys the portrait, dies and saves his soul. The portrait is, of course, the soul, the substance of man in which all what he has done of good or of evil is recorded and contained.

Our actions make us what we really are. Although they may not be recorded on our face, as A. Lincoln seems to have believed according to the story I told, they are surely recorded in our inner being that we may call heart or soul.

This principle has been attacked in modern philosophy for different reasons.

To make a long story short, we may say that after Spinoza, some accepted his notion of substance that does not do justice to the substance of the many real existing beings, and others criticized the notion of substance in general. The result was a great uncertainty about the human substance. Leibniz has developed the notion of *mens momentanea* to describe a human conscience that is not rooted in a moral substance in which what I was yesterday bears no relation to what I am today. In this kind of human being, no moral responsibility is possible. Why should I be held responsible for the actions of my *ego* of yesterday that has no essential link to my *ego* of today? No community of law is possible because the experience of the promise, that lies at the basis of all law of contracts, becomes rigorously unthinkable. Man is reduced to a system of loosely connected impressions and passions that are no longer unified in any coherent way. In his *Treatise on human understanding*, D. Hume recognizes this difficulty, but does not provide us with any acceptable solution.

The great difficulty for the foundation of morals in modern philosophy is largely dependent upon the loss of the notion of substance.

Wojtyla learned about this notion in the Angelicum of Rome at the school of great Dominicans like Garrigou Lagrange and Philippe, and this

concept has remained a cornerstone of his anthropology throughout his whole philosophical career.

In the continental philosophical tradition, the widespread acceptance of the spinozist concept of the unique substance has led to the loss of the concept of individual responsibility and to the development of an idea of social or collective responsibility. The real moral subject, then, becomes Man capitalised, mankind as such. What is really important is to be part of the collective progressive movement of the human race towards its accomplishment. K. Marx drew the last conclusions of this spiritual attitude: individual human rights have no real meaning.

Crimes committed by those who struggle for world revolution are deprived of their moral negativity and become even positive.

Political judgement substituted for moral judgement that loses its autonomy.

In the Anglo-Saxon tradition, this conclusion has been partly avoided because the spinozist notion of substance has not been accepted and has been strongly criticized; here another danger arises. In this philosophical tradition, we do not miss only the spinozist notion of substance; we lose the notion of substance in general, also in the more methodological, aristotelian and thomistic version. Against Spinoza, the Anglo-Saxon philosophy defended the rights of the individual against their submersion in an absolute substance. On the other hand, this philosophy did not succeed in giving an adequate foundation to the individual who runs the risk of being reduced to a loose connection of states of mind or of circumstances not linked to any underlying substance. The classical definition of the person 'intellectualis naturae individua substantia' seems to Wojtyla to better preserve and express the essence of man as a moral subject.

2. The second main feature of Wojtyla's anthropology regards the way in which we become aware of the nature of our moral substance. Although Wojtyla, as we have seen, is completely aware of the classical philosophy of substance and the philosophy of potency and act, and adheres without doubts or reserves to this philosophical tradition, it would not correspond to his thought to say that he deduces, in any form, the living experience of the person from a metaphysics of the person.

What we have described is an account of the classical thomist anthropology with which Wojtyla became familiar in the Angelicum in Rome and stood with slight modifications in the centre of the teaching of the personalist school of Lublin. What is new in Wojtyla's thought is that he has, in one sense, reread these metaphysical characteristics of the human

person in the actual living experience of the human subject. For this reason, and in this sense, Wojtyła is a phenomenologist. It is important that we grasp the reason why this is so important. In one sense, the philosophical method does not change one iota in the classical understanding of the human person: Wojtyła is as much of a thomist as Garrigou Lagrange, Philippe or Krapiec. On the other hand, reading Wojtyła's philosophy, we find ourselves in a completely different spiritual atmosphere. Thomistic principles are not presupposed but, in a certain sense, rediscovered through a thorough analysis of human experience as it is immediately given to each one of us. This gives us evidence of the truth of the metaphysical principles of the philosophy of being because they are confirmed by our immediate experience. On the other hand, a certain knowledge of those principles may be useful to orient our phenomenological research in the interpretation of the given. This previous knowledge of the metaphysics of the substance and of the metaphysics of potency and act is not properly presupposed. It is rather an euristic hypothesis that leads our research and is confirmed by its outcome.

Phenomenology deals with what is immediately given in consciousness. The purpose of Wojtyła is to better understand man in his actions and through his actions. He wants to know how the metaphysical structures effectively function in the everyday life of the human being. The classical philosophy of the person gives us, in a certain sense, a static definition of human essence. Here, we enter into the dynamism of existence. This allows us better to understand not only the anthropological principles but the way in which they are true for us, the way in which their truth can be experienced in our life experience. In one sense, all this is aimed at the individual appropriation of truth, to the discovery of how the objective truth on man is accomplished in my personal and particular form as a human being, and becomes the truth of my own life. Only through this process, abstract universal truth becomes personalized and becomes a living interest for us. Objective truth must become subjective to be lived from within. Only then does it enlighten our action and move us to action.

The phenomenological method deals with consciousness. In Wojtyła's interpretation, this does not mean that this method must be subjectivist and cannot reach being in itself. There is at least one kind of being that is immediately given in consciousness and this is the being of the subject and of consciousness itself. Human consciousness has a structure of its own, and the human spirit is an objective reality that we experience in this structure and through this structure.

This is what characterizes Wojtyla's thought. Our author accepts, in one sense, the great discovery of Descartes: the research on the human subject and human consciousness starts exactly with the immediate human experience as it is given in consciousness. This allows him to study the human act from within, in how it is immediately experienced by the subject and not only in how it can be deduced from the general metaphysical structure of the human being. Wojtyla's philosophy of the subject does not enter into the trap of subjectivity. Wojtyla's subject is real; it is objective subject. The dominating stream of existentialist philosophy has imagined that the subject created a world of its own completely disconnected from human nature. Jean Paul Sartre has considered liberty as the essence of human nature, liberty of being or becoming what anyone wants to be.

As a matter of fact, we always start with something that is pregiven to us and we have to take a stand in front of it. Our first and fundamental anthropological choice that conditions any subsequent moral choice is the decision we make on the basis of what is pregiven to us. The pregiven is what classical philosophy calls nature. Nature derives from the Latin word *nascor*; *natus*. Nature is what is given to us because of the fact of having been born. Since it is pregiven, we can consider it a gift. As all lovers know, a gift carries a meaning, according to the intention for which it was given to you. Let us give the example of a girl that receives an engagement ring. She is supposed to wear it on her finger as a sign of a loving relationship. If she sells the ring to buy herself a fashionable dress, this means that she has not accepted the gift. Regarding the gift, another attitude is also possible. The attitude of one that considers the ring a hostile act and tries to destroy the gift. These are exactly the two stands that we can take in front of our nature and in front of our freedom. We can make use of our freedom to further develop our nature that is entrusted to our liberty, or we can try to destroy our nature. The first is a creative attitude: we participate in God's act who wants our cooperation in order to complete the work of art that human life is. When you accept 'with gratitude' the fact that you are, for instance, a male or female, an American or an African, and all the other determinations of your existential condition, it is still uncertain whether (by exercising your freedom) you will become the father or mother of a large family, a lawyer, an engineer or anything else. The attitude of refusing the first gift of being can be called, if I may use a neologism of the English language, *discreative*. I try to destroy the preconditions of my being to substitute them with completely other determinations. I want to be just a product of my action. This seems to be, to a large extent, the meaning of mod-

ern atheism. To accept the idea of nature and of human nature as something originally pregiven means, at the same time, to imply that somebody has given us a nature. The gift has a meaning that is worthwhile searching for because the original benefactor of the gift has put meaning in it or has that intention in giving it to us. Our intention is to discover the intention of the benefactor and to enter into a dialogue with it.

In one sense, this redefines the conditions and the meaning of phenomenological intentionality, or perhaps it leads us back to the first formulation of the intentions in the work of Edmund Husserl in his period of Goettingen, before his famous transcendental turn.

The phenomenological analysis shows man as a being that discovers himself in action and through action. The action is therefore the key to understanding the human being as much as the metaphysical vision of the human person as contained in classical philosophy is a general research hypothesis in our attempt to adequately understand the structure of the human person. Classical philosophy and phenomenology both contribute in a delicate balance to the specific form of Wojtyła's anthropology. The phenomenological enquiry shows man as a moral subject. The fundamental experience in which a man becomes conscious of his nature as a moral subject is that of choice. In this experience, the starting point is a state of conscience of the form 'I can, but I'm not obliged to do it'. Here, one can choose not to do what he could have done, and he also discovers that he may resist the instinctive drives that are a part of his experience. The instinctive drives may be satisfied in various forms, and in a choice between different forms, the subject is led by an inherent pre-occupation to preserve his personal dignity. We all carry a sexual drive and we all choose different alternatives to satisfy it. We are led (or ought to be led) in this choice by an immanent idea of dignity that experiences some forms of satisfaction as unworthy and some are worthy of the human person. This experience does not contain a metaphysical concept as such, but we can say that the metaphysical concept of person does not contradict, but confirms what is immediately given in human experience. We can even say that the metaphysics of substance, potency and act gives us the best possible hypothesis to adequately understand the experience of man when we try to understand the underlying structure that makes moral experience, in general, possible. Addressing the specifics of moral experience, Wojtyła finds the link between phenomenological description and metaphysics. In moral experience, the human being is given in one sense as the cause of his action.

Through classical metaphysics and phenomenology, we have been trying to understand human essence better. It is now necessary to deal with the specific relationship of man with another. This requires an analysis of two fundamental experiences: that of friendship and that of conjugal love. There is a short poem that stands at the beginning of German literature which describes the experience of love.

Translation:

You are mine and I'm yours,
of this you can be sure.
You are contained in my heart,
The key was lost,
forever you will stay there.

In this poem, the person is represented as something that is void in its interior in which another being may live. The relation to this other is constitutive to the being of the person because without it, we cannot exist. Without denying the metaphysical subjectivity of the person, Wojtyla tells us that the relation to the other is not an accident, but fundamental to the fulfilment of human beings. There is one specific experience that is reserved to women that shows us this dynamism in the human flesh. It is the experience of child bearing. Here, the presence of one human being in the other is so immediately given that it cannot be denied. Males do not have this experience, and it is easier for them to develop a form of self consciousness centred only upon themselves. It remains, however, true that in the spiritual dimension, the capacity of opening oneself to the presence of another in oneself is a distinctive character of the human being as such, male or female. As a rule, in the development of human culture, women help men to become conscious of this essential determination. We learn what it means to be a father through the education given to us by our wives. The substance that man is determined in its interiority through the capacity of becoming a member of a community, of becoming part of a life in common with others, and through the act of carrying other human beings in ourselves. All this can be expressed with the word love. Here, the anthropology of Karol Wojtyla moves from a philosophical to a theological dimension. The idea of a person as a being whose substance is essentially affected through the relation to another, so much so that the relation constitutes the substance, can be justified through a phenomenological analysis of the specific human form of being in the world. This idea, however, was born in theology in order to understand, firstly, the relation of Jesus to His Father and, then, the relation of

the Christian to Christ. Becoming part of Him through love, we enter into his divine nature and are adopted as children of God.

In this perspective, we understand better the profound devotion of the Pope to the Mother of God. In her being mother, she gives us not the model of Christian femininity, but of being a person in general. To be a person means to love other human beings so much that you can only determine your identity in relation to them, that you carry them in your heart to generate them in eternal life. A true love wants for the beloved that truth and fullness of life are indicated with the words 'eternal life'.

If we consider the defence of the substantiality of the human being, we understand the reasons of the opposition of the Pope both to Communism, western agnosticism and moral relativism.

Communism believes in a universal human substance, in Man written in capital letters, but not in the substantiality of the individual human beings, and that is the reason why it thinks that their individual rights can be violated.

Western agnosticism and moral relativism do not believe that man has any substance or any nature, and therefore each human being creates himself in an arbitrary way without having to recognize an original gift of sense and of being given by God. This creation easily becomes a discreation, a self destruction, because the inherent laws of the human being are violated.

If we consider the phenomenological method used by Wojtyla, we understand his relation to the Vatican Council better. The major philosophical work of Wojtyla was written on the benches of the Council and is, in one sense, a great philosophical commentary to the Council. The Council has not changed anything in the catholic doctrine. It was not a dogmatic Council, convened to define a new doctrine. It was a pastoral Council, to express the same truth in the context of a new historical age and of a new human form of life. The old truth has to be rediscovered from a new starting point. The Council fathers wanted to build a path leading from the immediate life experience of the man of today to the eternal truth. Phenomenology is the tool of this voyage. Here, we see how much this Pope owes to the Council and is a man of the Council without ceasing, in any way, to be a man of Christian tradition.

If we consider his anthropology of communion, we understand why the family and the role of women is so important to him. In the family, we learn the logics of self giving and love, and women (mothers) have a fundamental role in teaching us this logic. It is true that males have very often abused

this and exploited women, denying them their rights in many areas of social action. It remains, nevertheless, true that mothers have a right to become mothers, and a society without mothers must perish before being destroyed in a pit of violence and fear.

Moreover, the anthropology of communion introduces us to Wojtyla's understanding of the life of the Church. The Church is the community of those who, through an act of love, accept the gift of the life of Christ for their salvation and, at the same time, offer their own lives entering into the life of Jesus and becoming a part of the others.

COMMENTAIRE À LA RELATION DU PROF. BUTTIGLIONE

MICHEL SCHOOPYANS

Je pense pouvoir m'exprimer au nom de tous les membres de notre Académie pour remercier le Professeur Buttiglione du brillant exposé qu'il nous a offert. Dans sa présentation, deux traits m'ont particulièrement frappé. Tout d'abord, notre collègue nous a présenté, si j'ose dire, Jean-Paul II avant Jean-Paul II. Cette dimension philosophique de la personnalité de Jean-Paul II est largement méconnue. L'œuvre de l'ancien professeur de philosophie est pour ainsi dire ombragée par l'autre œuvre, monumentale, celle édifiée par le Pape au cours de plus d'un quart de siècle de pontificat. Or de l'exposé de Rocco Buttiglione il ressort que cet enseignement pontifical ne peut se comprendre que si l'on tient compte de cette longue activité professorale pendant laquelle le Seigneur a préparé Karol Wojtyła à devenir Jean-Paul II.

Un second trait m'a frappé. Nous savons tous les liens spirituels et intellectuels d'amitié qui unissent le Pape Jean-Paul II à Rocco Buttiglione. En écoutant la communication que nous venons d'entendre, on a peine à distinguer le seuil à partir duquel le philosophe engagé s'efface pour exposer la pensée philosophique de l'ancien professeur de Lublin.

Telle est la richesse de la pensée de nos deux auteurs qu'elle laisse ce que Paul Ricœur appelle des *résidus*. Cela veut dire que Rocco Buttiglione montre que, dans l'œuvre de Karol Wojtyła, il y a des germes qui ne demandent qu'à être développés, des pierres d'attente qui sont autant d'invitations à prolonger la réflexion entreprise.

Dans le cadre de ce bref commentaire, je voudrais focaliser l'attention sur l'un des points qui m'ont le plus interpellé dans l'exposé. Il s'agit de la *discréation*, de la destruction, ou plutôt de l'auto-destruction qui atteint l'homme lui-même dans la société contemporaine. "The attitude of the refusal of the first gift of being can be called [...] discreative". A partir du moment où je refuse d'accepter ce cadeau, ce pré-donné qu'est la nature, je

ne suis plus que le produit de mes propres actions. Tel est, pour Karol Wojtyła, le point focal de l'athéisme moderne, qui s'est notamment développé à l'ombre de Feuerbach.

Nos auteurs ont proposé une analyse de cette *discréation* à partir d'une "relecture des caractéristiques métaphysiques de la personne humaine dans l'expérience immédiate que le sujet humain a de son expérience vivante". Je voudrais procéder à une analyse de cette même *discréation* à partir d'une réflexion sur la philosophie du langage. Ainsi qu'il apparaîtra, cette réflexion devrait avoir un impact sur nos travaux ultérieurs.

Du nominalisme au "constructionnisme"

La conception du langage qui prédomine aujourd'hui est très éloignée de celle qui sous-tend la conception du langage de Karol Wojtyła. La conception du langage aujourd'hui prédominante s'inscrit dans la tradition du *nominalisme analytique*, et en particulier dans deux de ses manifestations contemporaines, le *constructivisme* ou le *constructionnisme*. Le langage est constitutif du réel. La seule norme est le locuteur, c'est-à-dire celui qui a le pouvoir de définir les mots et par là de *construire* une réalité.¹ Le débat à ce sujet est ancien dans l'histoire de la philosophie. Il porte sur la question de la vérité et de la connaissance de la vérité. Y a-t-il une réalité que l'on puisse connaître? Notre connaissance nous apprend-elle quelque chose de celle-ci?

À ces questions, la tradition *réaliste*, à laquelle se rattache clairement Karol Wojtyła, a toujours répondu par l'affirmative. Oui, nous sommes capables de connaître quelque chose des réalités que nous percevons dans le monde. Les mots renvoient à des concepts, lesquels sont des réalités mentales correspondant à des types d'être que l'on retrouve en nombre indéfini dans les réalités concrètes.²

Annah Arendt a bien montré comment l'abandon de ce réalisme conduisait au totalitarisme et qu'il en était une des caractéristiques:

¹ Ce *constructivisme* a sa source principale dans la philosophie de Hume (1711-1776). Le constructivisme (ou constructionnisme) est une version contemporaine de l'empirisme logique du Cercle de Vienne. Sur cette question, voir l'ouvrage de Ian HACKING, *Entre science et réalité: La construction sociale de quoi?*, Paris, Éd. de la Découverte, 2001.

² Pour plus de détails concernant les questions abordées ici, voir Paul FOULQUIÉ, *Dictionnaire de la langue philosophique*, Paris, PUF, 1962.

La force de la propagande totalitaire [...] repose sur sa capacité de couper les masses du monde réel. [...] Avant que les leaders des masses prennent le pouvoir pour plier la réalité à leurs mensonges, leur propagande se distingue par un complet mépris pour les faits en tant que tels: c'est qu'à leur avis les faits dépendent entièrement du pouvoir de celui qui peut les fabriquer.³

Cependant, très éloignée de ce réalisme est la tradition qui aboutit au constructionnisme. Pour celui-ci, il n'est pas sûr qu'il y ait un monde, qu'il y ait des réalités concrètes; et, s'il devait y en avoir, elles échapperaient à notre saisie. Si réalité il y a, elle n'est que virtuelle. Nous ne saisissons que des phénomènes, qui ne nous disent rien, et ne peuvent rien nous dire de la nature intime des choses. L'idée même de *nature* est exclue, et avec elle celle de *substance*, si centrale, ainsi que Rocco Buttiglione l'a montré, dans la pensée de Karol Wojtyła. La pensée ne peut rien êtreindre du réel. Ces phénomènes sont la seule source de notre expérience, celle-ci étant la seule source de notre connaissance. Cette connaissance s'exprime dans un système de langage ayant sa propre cohérence et ses propres structures. Dès lors, l'ontologie n'a plus, ici, aucune pertinence. Ou plutôt ne subsiste qu'une ontologie résiduelle vouée à postuler qu'il n'y a pas d'ontologie, parce qu'aucune réalité ne *s'objecte* à nous, ne surgit devant nous, ne nous résiste.

À priori, les mots, le langage échouent donc à dire des choses qui seraient réelles: *nihilisme critique* oblige. L'objet connaissable ne tire sa consistance que de l'activité discursive. Quant au sujet, il est avant tout un locuteur. Il n'y plus que des locuteurs, individuels ou collectifs, qui constituent le sens conventionnel, voire arbitraire, des mots. Les mots peuvent à leur tour être combinés entre eux selon des règles syntaxiques que l'on modifie, toujours en marge de toute référence à un insaisissable réel.

Au terme de cette mise entre parenthèses de la réalité, de son gel, le champ est libre pour une reconstruction, ou plus exactement pour une *construction* de l'esprit à partir du langage et des mots – ceux-ci ne représentant les choses que par un artifice. Les mots signifieront ce que le locuteur, individuel ou collectif, décidera de leur faire dire. De là cette gymnastique sémantique où les sens des mots se réfléchissent comme dans un jeu de miroirs, sans égard pour une réalité éventuelle. D'où la nécessité d'établir des lexiques pour ce que George Orwell a appelé la Nouvelle

³ Hannah ARENDT, *Les origines du totalitarisme. Eichmann à Jérusalem*, Paris, Ed. Quarto-Gallimard, 2002; les citations se trouvent aux pp. 672 et 668.

Langue. Grâce à celle-ci, une Nouvelle Révolution Culturelle pourra éventuellement être entreprise.

Nous pouvons voir cette conception du langage à l'œuvre dans les définitions données par bon nombre de technocrates à des mots comme sexe, *gender*, fécondation, personne, sociabilité, amour, famille, vie, mort, etc., mais aussi vrai-faux, bien-mal, juste-injuste. Dans une tradition qui remonte à Hobbes et même bien au-delà, ces mots reçoivent la signification que les locuteurs ont décidé de leur donner, à l'abri de toute référence à des réalités rejetées à priori et sans appel.

Dogmatisme idéologique

Cette façon *volontariste* de concevoir et d'utiliser le langage ouvre la voie à des projets idéologiques à forte connotation utopique. Les locuteurs rêvent en effet de bâtir une construction procédant de leur seul vouloir et de leur seule action. Les locuteurs s'auto-légitiment en s'appropriant le pouvoir de définir le langage et en utilisant les mots pour modeler l'homme à leur convenance, pour construire le monde et la société qui leur convient.

Cet usage du langage permet à l'establishment de prendre les plus grandes libertés avec les règles les plus élémentaires de la connaissance, et de recourir à une "logique" où cercles vicieux, pétitions de principes et autres procédés sophistiqués tiennent lieu de démonstration. Ce même usage du langage permet à chaque individu d'inventer son système de valeurs. Il permet à la société de justifier n'importe quelle morale, puisque celle-ci n'est plus qu'une convention toujours renégociable; il permet de construire un droit international auto-légitimé; il permet au pouvoir politique de se donner à lui-même les normes qui le justifieront.⁴

Le démiurge

Comme on le voit, l'immense faiblesse de cette pensée est double. Tout d'abord, *il faut toujours un sujet réel*, individuel ou collectif, *qui dise qu'il n'y a pas de réalité* au-delà du phénomène, ou que cette réalité est inconnaissable. En ce sens, lorsqu'il met le réel entre parenthèses, le locuteur doit lui-

⁴ Nous avons abordé ces problèmes dans *La face cachée de l'ONU*, Paris, Éd. Le Sarmant-Fayard, 2002; voir spécialement la Deuxième partie, intitulée *Vers la gouvernance mondiale*, consacrée à la théorie du Droit selon Hans Kelsen, pp. 133-172.

même *réserver* sa propre réalité s'il veut maintenir son privilège de définir les mots et de bricoler avec eux un monde dont il serait forcément le démiurge. On voit aussitôt que pareille démarche a toutes les caractéristiques d'un postulat kantien où, après s'être débarrassé d'un fondement réel jugé à priori embarrassant, le sujet réel fait soudainement surface pour s'adjuger le rôle fondateur qu'il venait de déclarer irrecevable.

Une déconstruction systématique

Faire accepter partout cette conception du langage constitue le point de départ d'une *nouvelle révolution culturelle*, qui trouve son inspiration dans une idéologie radicale dont la caractéristique principale est le *nihilisme*. Au terme de cette idéologie, l'homme ne peut en fin de compte rien dire de lui-même, ni du sens de son existence. Il ne doit répondre de sa conduite devant personne. Comme l'a montré Rocco Buttiglione, toute la philosophie de Karol Wojtyła s'inscrit en faux contre cette forme d'amoralisme.

Au cœur de cette idéologie se trouve le *rejet de la sociabilité naturelle*, décrété par Hobbes. Plus précisément, nous sommes en présence d'un projet intégré de *déconstruction systématique de la société humaine et de l'homme lui-même*. On commence par déconstruire le *langage* en faisant dire aux mots ce qu'on veut bien leur faire dire. Il s'agit ensuite de déconstruire la référence à des *valeurs* qui s'imposeraient à nous et de leur substituer des "valeurs" définies au terme d'une procédure consensuelle. La sociabilité, l'amitié, l'amour sont remplacés par des contrats pouvant toujours être marchandés. Il s'agit encore de déconstruire la *famille*, institution naturelle de base de la société: on voudrait que les relations y soient purement contractuelles, ouvrant ainsi la voie à des "modèles" extravagants. Il s'agit aussi de fragiliser les *sociétés particulières*, civiles et politiques, lieux par excellence où s'organise la sociabilité humaine. D'où la multiplication des conventions, protocoles, pactes, traités et autres recommandations, vidant l'autonomie des sociétés particulières de tout contenu. Il s'agit de déconstruire la *société internationale*, imprégnée d'un idéal démocratique, visant à promouvoir partout les droits fondamentaux et l'égalité de dignité de chaque homme. On continue en déconstruisant l'*Église*, parce que son message, à la fois réaliste, prophétique et critique, est aux antipodes de l'agressivité et de la mort. Il s'agit enfin de déconstruire le *droit*, que l'idéologie veut rendre étranger aux valeurs, aux personnes, à la société civile et politique, ainsi qu'à la religion. Le droit traditionnel, qui offrait des instruments juridiques pour prévenir la terreur classique, la *terreur dure*, la contenir, la réprimer,

est ici paralysé et tend à s'effacer devant une nouvelle terreur, que nous avons appelée la *terreur douce*. Désormais, non seulement la terreur douce échappe à ce droit mais elle le désactive. Bien plus, elle impose un droit entièrement positif *qu'elle met à son service*.

Le terrorisme doux a besoin de procéder à ces déconstructions en cascade pour pouvoir se déployer. Nous avons montré que ses militants les plus actifs se trouvent parmi les intellectuels. Il me semble qu'à l'Académie nous devrions mettre davantage en lumière le *ralliement* de certains médecins, de clercs, de juristes, d'hommes politiques à cette nouvelle révolution culturelle, qui désactive leur capacité critique. La nouvelle révolution recycle en effet de nombreux leaders d'opinion. Au terme d'une série de capitulations, beaucoup d'adversaires d'hier se sont métamorphosés en alliés objectifs. Ils sont récupérés. Ils sont à la fois victimes et agents de la terreur douce, dont ils ont introjecté le langage.

Une idéologie négationniste

Ce programme de déconstruction systématique est nécessaire pour "faire du passé table rase" à l'échelle mondiale. Il est indispensable pour détruire toutes les conquêtes réalisées au cours de l'histoire afin que prévale l'universalité des droits de l'homme et afin de sauver les valeurs sous-jacentes à toute démocratie authentique. Somme toute, négationniste, l'idéologie nihiliste l'est parce qu'elle veut détruire et nier tout ce que l'humanité a fait de bien pour que, dans les relations humaines, la sociabilité l'emporte sur la violence.

Cette déconstruction-destruction au lance-flamme est perçue comme l'étape préliminaire par laquelle il faut passer impérativement pour que la terreur douce puisse réaliser son rêve. Au niveau des moyens, il faudra investir les médias, les réseaux éducatifs et médicaux. Mais au niveau des objectifs? On n'est pas surpris de constater que l'idéologie nihiliste de la révolution culturelle vise à l'instauration d'une nouvelle société et d'une nouvelle conception de l'homme. Il faut recréer l'homme et refaire la société.

On voit donc le caractère paradoxal de cette révolution portée par le rêve d'un âge nouveau, d'une ère nouvelle, mais qui, dans ce but, enseigne à l'homme à détester ses semblables et à se détester lui-même. Selon ces révolutionnaires, tout serait à construire, mais les normes de la construction sont totalement coupées du réel, puisqu'ils viennent de faire acte de liberté souveraine en niant, en néantisant ce réel lui-même, et en se flattant de pouvoir le reconstruire grâce à la magie du langage. C'est désormais l'utopie qui

est appelée à être la source ultime de la norme suprême et des normes particulières, auxquelles toute réalité à venir devra se conformer si elle veut que son existence puisse être légitimée.⁵ Hors de ces normes, point de salut.

Le texte lumineux de Rocco Buttiglione nous fait découvrir que Karol Wojtyła a commencé sa dénonciation de la *décréation*, de la terreur douce et du nihilisme en contreposant à ceux-ci une conception philosophique de l'homme empreinte d'ouverture à autrui et enracinée dans la participation de tous, au titre d'analogues secondaires, à l'existence de Dieu, analogue principal. Au cours de son long pontificat, Jean-Paul II a explicité son intuition philosophique originaire et a conforté celle-ci grâce à l'apport de la Révélation. *Fides et Ratio* se donnent la main pour conduire l'homme à la vérité sur ce qu'il est dans le dessein de Dieu.

Par le fait même, Jean-Paul II a aussi montré combien les hommes d'aujourd'hui sont capables de résister, s'ils le veulent, aux mystifications nihilistes qu'on leur propose, et pourquoi ils ne doivent pas hésiter à affronter les camelots de la mort avec un courage qui ne se résigne pas à faiblir.

⁵ Voir à ce sujet les références à Kelsen, *supra*, note 4.

THE HUMAN PERSON CONCEPTUALIZED
BY JOHN PAUL II AS A 'BRIDGE BUILDER' (PONTI-FEX)

JERZY ZUBRZYCKI

It may be of interest to the participants of the XI Session to note the little known fragment of the late Pope's thought on Christian humanism which – as far as I have been able to ascertain – is only available in the Polish language. I refer to the source of his theological inspiration in the poetry of Cyprian Kamil Norwid (1821-1883), the most original and least appreciated Polish poet of the nineteenth century. Norwid's poetry and prose, largely written in an idiosyncratic and difficult style, was rediscovered in the early years of the twentieth century and soon became the standard literary diet of high school students aspiring to a university education. I can testify to this as a contemporary of Karol Wojtyła (although in two different schools) because I shared his fascination with Norwid's profound understanding of history with its underlying respect for the dignity of the individual.

To the best of my knowledge only one of the Pope's many biographers – George Weigel – noted the inspiration of Norwid's writings on the pontiff's teaching: the encyclical *Laborem Exercens* (1981) with its stress on the 'redeeming power of work accepted with love [as] the highest manifestation of human freedom' (*Witness to Hope*, p.401).

Much later in his pontificate John Paul had a special occasion to acknowledge his indebtedness to Norwid and again focus on the dignity of the human person. The occasion was the message composed in Polish dated 31 June 2001 and addressed to organizers of the conference 'Cypriana Norwida Projekt Cywilizacyjny' (Cyprian Norwid's Civilizing Plans) which I attended in Krakow in September 2001.

The message begins with the acknowledgement of his 'long and close spiritual association with the poet'. The Pope went on to say:

His thoughts helped us to maintain our set values and live with dignity during the German occupation and then during the long peri-

od full of injustice and contempt with which the communist system treated the human person. Cyprian Norwid had bequeathed us his writings that contain unique insights into the nature and the truth of our existence...

In many of his poems and other forms of narrative framed as parables, Norwid used Greek mythology to focus on moral and spiritual relations between people. In 'Sfinks' it is the myth of Oedipus and his encounter with the Sphinx – a fabulous winged monster, half human, half leonine, who used to put a riddle to all passersby and destroyed those who could not answer. Oedipus solved the riddle: 'man' and the Sphinx killed itself. As a reward, Oedipus received the throne of Thebes.

The myth of Oedipus features as a background of Norwid's narrative. Writing in the first person he gives an account of the poet's encounter with the Sphinx.

'Tell the *truth*, he said, he who would not tolerate a moment's respite. I answered him, '*man? – Who is priest but not yet fully conscious [of it] and immature*'. And wonder of wonders, Sphinx retreated to his cave and I escaped alive.

John Paul quotes this stanza from Norwid and adds his comment:

Man is a priest whose life-long task from the very beginning is to be a builder of bridges (*ponti-fex*) that link person to person and all of us to God. Societies that allow this priestly role to be neglected will not develop their full potential. I can now conclude that this Norwidian idea has always been central in my thinking and *crucial in the development of the social dimension of my pontificate* (paragraph 6, Vatican 31 June 2001).

John Paul's admission that the Norwidian vision of the human person whose inherent dignity makes him capable of promoting human bonds through the building of bridges will be of special interest to students of the late Pope's teaching. But the centrality of this vision enables us also to focus on his philosophy of personalism as well as on his own poetry – both seen as responses to the crisis of civilization. At the same time, however, his writings demonstrate the acute awareness of the sociologist focussed on the significance of the human bond in the quest for social justice.

THE CLASSICAL NOTION OF PERSON IN TODAY'S PHILOSOPHICAL DEBATE

ENRICO BERTI

The Classical Notion of Person

By classical notion we mean the definition of 'person' formulated by Boethius (5th-6th century A.D.), that is, 'an individual substance of a rational nature' (*rationalis naturae individua substantia*, cf. *Contra Eutychem* III 1-6). This definition possesses the unique characteristic of being theological in origin and of using at the same time purely philosophical categories. The origin of the definition is theological because Boethius introduces it polemically in opposition to the monophysitic heresy of Eutyches, which attributed to Jesus Christ a single nature, the divine one, and against the dualistic heresy of Nestorius, which attributed to him, as well as two natures, also two persons, one divine and one human. Against these positions Boethius defends the Christological dogma of the Council of Chalcedon (451 A.D.), which affirms the 'hypostatic union', in a single person (the Greek term *hypostasis* is rendered in Latin as *person*), of two natures, one divine and one human. However, in order to formulate his definition of person, Boethius uses two concepts derived from Aristotle's *Categories*, of which he was the first Latin translator and commentator (together with all of Aristotle's writings on logic, i.e. the collection called *Organon*, which Boethius made known to the Medieval Latin world).

Indeed, the concept of 'individual substance' corresponds to what Aristotle in the *Categories* calls 'primary substance' (*ousia prôtê*), that is, what is neither the predicate of a substrate nor inherent in a substrate, because it is itself a substrate. 'Substrate' translates the Greek *hypokeimenon*, which literally means 'that which lies underneath', which underlies becoming, change, inasmuch as it is its subject, that is, the thing that becomes, the thing that changes and which, in changing, persists dur-

ing the entire process of change. It might also be translated as 'subject' (*subjectum* in Latin is equivalent to the Greek *hypokeimenon*), but modern philosophy has agreed to use this term only for the human subject, while the substrate as intended by Aristotle indicates any subject of becoming, both living and non living. For Aristotle, substrate is that of which universal concepts are predicates, such as species, e.g. 'man', and genus, e.g. 'animal', and which accidental properties inhere in, e.g. 'white' or 'grammatical' (i.e., capable of reading and writing). Therefore, as the substrate is not predicated of anything else and is not inherent in anything else, it is 'in itself'. Since, in order to exist, both the universal and the accidental properties suppose the existence of a substrate on which they may be predicated or in which to inhere, this is termed not only *ousia* (literally 'being' in a strong sense, that is, permanent, lasting), which in Latin is translated as *substantia* (literally 'what is underneath', like the Greek *hypostasis*), but also 'primary' *ousia*, that is, preceding all others. On the contrary, species and genus, which do not exist 'in themselves', but only in the substrate, and nevertheless constitute its essence (that is, tell 'what it is'), are termed 'secondary' *ousia*.

As an example of 'primary substance' Aristotle indicates 'a certain man', that is Socrates, or Callias, and, more in general 'a certain "this"' (*tode ti*), that is, a determinate individual. Therefore Boethius rightly interprets the Aristotelic concept of 'primary substance' as 'individual substance'. In this case, 'individual' does not mean 'indivisible' (*atomos* in Greek) but 'particular', not universal, because species and genus, that is, 'secondary substances' are universal. Thus it is not indivisibility which is essential to the Aristotelian concept of primary substance, but individuality, i.e. particularity, the non universality, because the universal, that is, the species and genus is always 'in something other', while the primary substance is always 'in itself'. Individuality, however, is not sufficient to build a primary substance, because there can also be particular or individual properties, for example Socrates' particular whiteness. Thus a primary substance must first and foremost be a substrate, or subject, and must also be individual. This is why Boethius, wanting to say that the person is first of all a primary substance, says that it is an 'individual substance'.

Even the concept of 'nature', used by Boethius to characterise the type of primary substance which the person consists in, derives from Aristotle, where it is expressed by the term *physis*, which alludes to 'birth' (the Greek verb *phuô*, in its intransitive meaning, corresponds to the Latin *nascor*, whose participle is *natum*), that is, what a thing is 'by birth': e.g. a man is a man because he is born of human parents. In Aristotle 'nature',

in this sense, is synonymous with 'essence', a concept also expressed by the term *ousia*, but with the meaning of 'what something is by its own nature', which corresponds to the question 'what is it by its own nature?'. E.g., if I ask, 'what is Socrates?', meaning what is he by nature, that is, by birth, the answer is: 'man'.

Finally, the term 'rational', which Boethius uses to clarify the nature of the person, translates the Greek *logon ekhon*, that is 'possessing *logos*'. The term *logos*, as is well-known, in Greek certainly means 'reason' (Latin *ratio*), but it first and foremost means 'word' (Latin *verbum*) and 'discourse' (Latin *sermo, oratio*). Therefore, Boethius' expression 'of a rational nature', contained in the definition of 'person', indicates an individual substance that, by its nature, that is, by its essence, possesses *logos*, i.e. speech, language. According to Aristotle, this is what distinguishes man from other animals, what constitutes the specific difference of the species 'man' within the genus 'animal'. Since Boethius' definition applies first of all to divine persons, or to the person of Jesus Christ, the determination of 'rational' cannot simply allude to the capability to reason, but must allude more in general to the capability to communicate, to enter into a mutual relationship. Indeed, according to the Trinitarian dogma, formulated by the Council of Nicaea (325 A.D.), the three persons of the Holy Trinity possess the same nature, that is, divine nature, and are distinguished only by the relationship they entertain mutually, that is, because the Son 'is generated' by the Father and the Holy Spirit 'proceeds' from the Father and from the Son. Already in the *Gospel of John*, the Son is called *Logos*, that is 'word' (*verbum*).

Returning once again to speak of the human person, to whom Boethius' definition is applied by analogy with the divine one, we must remark that 'substance possessing *logos* by its nature' does not necessarily mean 'substance which currently exercises *logos*', but rather also substance that, by nature, possesses the capability of exercising *logos* even when it does not exercise it. Indeed, nature is what Aristotle would call a 'primary act', that is the current possession of a body of capabilities, the exercise of which should be called 'secondary act' or 'activity'. Therefore, on the basis of Boethius' definition, a new-born is also a person, even though he is as yet unable to speak, and so is a human individual affected by aphasia, since he is born of human parents and therefore possesses a rational nature (leaving aside the problem of the human embryo, which would lead to a whole other series of problems, although, in my opinion, what has been said about the new-born can be applied).

Criticism of Modern and Contemporary Philosophy

Boethius' definition of person can be considered 'classical' because it has remained at the basis of global culture, not only Christian but also Jewish and Muslim, both ancient, medieval and modern, that is of the entire culture which Aristotelic tradition has influenced: indeed, we find it with irrelevant variations in Augustine, John Damascene, Richard of St Victor, Thomas Aquinas, G.W. Leibniz, Antonio Rosmini, Jacques Maritain and several other thinkers I do not need to mention.¹ However, starting from the seventeenth century the classical notion of person has been jeopardised, not so much because it has been criticised directly, but because the notions on which it is founded, i.e. 'substance', 'nature' and, more recently, 'individual', have been criticised. First of all, the notion of 'substance' has been, so to say, over-determined by Descartes and Spinoza, who defined it as 'what does not need anything else to exist' or 'that which exists by itself', which strictly can only be applied to a divine substance. As a reaction, the notion of substance was criticised by John Locke (1632-1704), who considered it 'a complex idea', that is, borne not of direct experience (sensation and reflection), like 'simple ideas', but of a combination of several simple ideas, that is, as a construction of the intellect, which does not correspond to any experience. The object of such an idea, that is, the substance strictly speaking, remains for Locke a *substratum obscurum*, that is, something that, so to say, is 'underneath' or 'behind' the primary or secondary qualities that can be seen and therefore cannot be seen, cannot be touched, cannot be perceived in any way. With this doctrine we are very far from the Aristotelian notion for which substance is the single individual of whom one has a direct experience, e.g. Socrates. The notion of substance then underwent a further transformation on behalf of George Berkeley (1685-1753), for whom material substances do not exist, inasmuch as existence consists in being perceived (*esse est percipi*), thus the same qualities are nothing but perceptions and the only really existing substance is the percipient subject, that is, the human spirit (besides the divine Spirit).

These transformations led to the explicit criticism of the concept of substance on behalf of David Hume (1711-1776), according to which we do not have a direct experience either of material substances or of spiritual sub-

¹ Cfr. E. Berti, *Il concetto di persona nella storia del pensiero filosofico*, in AA. VV., *Persona e personalismo*, Padova, Gregoriana, 1992, pp. 43-74; *Individuo e persona: la concezione classica*, 'Studium', 91, 1995, pp. 515-528.

stances (that is, of ourselves as substance), therefore the idea of substance (as indeed also that of cause, which is the object of another memorable criticism by Hume) is only a belief of ours generated by habit, to which we cannot say any independent reality corresponds. For Hume we do not even have experience of ourselves, thus we are not a substance that persists, equipped with its own identity, but only a bundle of impressions that follow one another over time. Personal identity itself, which for Locke was guaranteed at least by memory, that is by conscience, for Hume is not guaranteed by any experience, although this is a problem for him, because in the Appendix to his *Treatise of Human Nature* he declares himself unsatisfied with the doctrine he himself had expounded and admits he has not been able to find a solution.

The Anglican bishop Joseph Butler (1692-1752) and the Scottish philosopher Thomas Reid (1710-1796) reacted to the criticism respectively of Locke and Hume. They referred to the classical notion of substance as the only thing capable of guaranteeing individual identity. But the somewhat narrow notion of experience as formed by individual sensations, or impressions, proper of empiricism, prevented the Aristotelic doctrine from being fully recovered, according to which the true object of experience is the primary substance itself, that is, the individual substance perceived in its entirety, with all its properties, including identity and persistence in change.

Even the attempt, made by Immanuel Kant (1724-1804), to give back objective value to the idea of substance (and to that of cause, on which the entire Newtonian mechanics is founded), considering it as an a priori concept, that is, a category of reason, universal and necessary, has not led to an actual recovery of the classical notion, because even Kant continued to admit that we do not have any experience of substance and the perception that we have of ourselves – the ‘transcendental apperception’, or ‘I think’ – is not the experience of a substance but is only the condition of each of our experiences. The idea of ‘soul’ for Kant is an idea of reason, that is, the rational need to unify the psychic phenomena that we know of, which in any case is destined not to be able to be translated into authentic knowledge, for the very lack of an authentic experience of the soul. However, from the practical point of view, Kant has recovered the concept of person as a subject bearing the moral law and thus possessing his own ‘dignity’, i.e., not exchangeability, which distinguishes him from things that are exchangeable and thus only have a ‘price’, and makes him worthy of ‘respect’, worthy of being considered always, in the person proper and in the others, not only as a medium but also as an end.

The concept of 'nature', on the contrary, which is still present in Hume, who writes a *Treatise of Human Nature* trying to build a science of this analogous to the one build by Newton for non human nature, is also undermined in the nineteenth century, first by idealist and historicist philosophy and then by evolutionistic anthropology. Fichte, Schelling and Hegel's idealistic philosophy denies the existence of unchangeable essences and, resolving reality in thought, which is a continuous process, dissolves substances, essences and the bodies themselves in moments of a single major process, which is the becoming of the Spirit. However, it is worth noting that Hegel's most important critics, that is, Feuerbach, Marx and Kierkegaard, objected that it is not possible to have a process without a substrate, and conceived this substrate as the individual human subject, just as Aristotle did, explicitly recalling the latter (Marx even went as far as using the Aristotelic term of *hypokeimenon*).²

Evolutionistic anthropology, as is well-known, denies the fixed nature of the species and thus the interpretation that has been given of it by positivistic philosophy has gone as far as denying the existence of an unchangeable human nature, which is the same at all stages of evolution and in all the earth's peoples. The concept of 'human nature' is thus replaced by the concept of 'culture', intended as a differentiated, dynamic reality. However, also for this very reason, we must report a misunderstanding that took place at the beginning of the modern age, when 'nature', in particular 'human nature', was intended as an unchangeable essence, belonging to a hypothetical 'state of nature', that is, to a primitive, pre-political condition of man. This notion, belonging to the so-called 'jus-naturalism' (Hobbes, Locke, Rousseau), led to the opposition between 'nature' and 'culture' or between 'nature' and 'history', exposing the concept of nature to the criticism of evolutionism and historicism, which have shown that such a 'nature' never existed and that the true nature of man is culture itself, that is, what man makes of himself. But, if we apply such criticisms to the Aristotelian and then to the classical concept of nature, they completely miss the mark, because for Aristotle, as we have seen, the true nature of man is *logos*, that is, speech, therefore political life, 'culture'. Indeed, man is for Aristotle 'an animal who is political by his nature', precisely because of language, and the pre-political condition can belong only to beasts or

² Cfr. E. Berti, *Aristote dans les premières critiques adressées à Hegel par Feuerbach, Marx et Kierkegaard*, in D. Thouard (éd), *Aristote au XIX^{ème} siècle*, Villeneuve d'Ascq, Presses Universitaires du Septentrion, 2004, pp. 23-35.

gods. Besides, Aristotle explicitly states that the true nature of man is the end (*telos*), the achievement, the total fulfilment of human capabilities. Even from the point of view of the modern evolutionistic anthropology I do not think it can be denied that there is a marked difference between the human species and the other animal species, thanks to evolution, and this difference consists precisely in language and culture.

Finally, even the concept of individual, and the connected notion of 'personal identity', has been the object of criticism on behalf of contemporary philosophy of empiricist and neopositivist inspiration. Alfred J. Ayer, the greatest representative of neo-positivism in Great Britain, has gone as far as denying the experience that we have of our very thought, declaring that one can never affirm 'I think', but can only say 'it is thought' or 'there is a thought'.³ Derek Parfit, echoing Hume, maintained that the person is nothing but a series of subsequent 'selves' equipped with a collective identity, comparable to what is proper, for example, of a nation, in which individuals change continuously and what persists is only their common quality, that is, the fact of all belonging to the same nation.⁴

Reaction to Criticism and the Rediscovery of the Classical Concept of Person

In the Anglo-American philosophy of the second half of the twentieth century, characterised by analytic-linguistic inspiration, that is, by the notion of philosophy as language analysis – not only of scientific language, as was the case in neo-positivism (Russell, the early Wittgenstein, Carnap), but also of ordinary language – we see a progressive rediscovery of the classical notion of person, as an answer to the criticisms of modern and contemporary philosophy of Humean inspiration to the concept of substance and personal identity. To this end we must recall first of all the position of Peter F. Strawson, the continuer of the Oxford and Cambridge School inspired by the late Wittgenstein (Austin, Ryle), who, in the work *Individuals* (1959), tried to describe how the world must be able to explain the way in which we speak of it in ordinary language. By means of this description, which he called 'descriptive metaphysics', Strawson showed that the ultimate reference of our language is always made up of particular objects, which are identifiable by means of space-time coordinates and rei-

³ A.J. Ayer, *The Concept of Person and Other Essays*, Oxford, Clarendon Press, 1963.

⁴ D. Parfit, *Reasons and Persons*, Oxford, Clarendon Press, 1984.

identifiable through 'sortal' designators (a term derived from Locke to indicate 'what sort of' an object it is), that is, of a universal type. Among these particular objects, Strawson remarked, there are some that serve as a reference for the identification of others, which are called by him 'basic particulars' or 'individuals': they correspond exactly to what Aristotle called 'primary substances' and which he indicated as the logical subjects of propositions. Among individuals, Strawson continued, there are some that play an even more basic identificatory role and correspond to original and not further analysable units of physical and psychic facts, which are persons. Persons are thus basic particulars, or individuals, that is 'primary substances', with indissolubly united physical and psychic properties.⁵ The affinity between this notion and the classical one is evident.

Simultaneously, in the United States he who today is perhaps considered the greatest American philosopher of the twentieth century, that is Willard v. O. Quine, in his work *Word and Object* (1960), maintained that the possibility of referring language to objects, that is, to give meaning to language, requires as a necessary condition the fact of being able to identify objects: indeed, there is no entity without identity.⁶ This way, he repropounded the problem of personal identity, denied by Hume and by his most recent continuers. This has given rise to a debate the first document of which was constituted by the seminar on *Identity and Individuation*, which took place at the Institute of Philosophy of New York University during the academic year 1969-70, the proceedings of which were published in a book by the same title edited by Milton K. Munitz.⁷ The problem is how it is possible to identify an individual, that is, to distinguish him from others coexisting in space and recognising he has a certain persistence, or identity, over time.

This problem in turn contains various issues, for example what authorises us to affirm the identity of a thing or a person when these change over time. Then there is the issue raised by Leibniz with the so-called 'principle of the identity of the indiscernibles': is it true that two individuals who have exactly the same properties, that is, that are indiscernible, are also identical, i.e., are the same individual? Finally, there is a third issue, called forth by the famous essay by G. Frege, *Über Sinn und Bedeutung*, of 1892, that is,

⁵ P.F. Strawson, *Individuals. An Essay in Descriptive Metaphysics*, Oxford, Oxford University Press, 1959.

⁶ W.v.O. Quine, *Word and Object*, Cambridge Mass., M.I.T., 1960.

⁷ M.K. Munitz (ed.), *Identity and Individuation*, New York, 1971.

how is identity possible between realities that are the object of different descriptions, for instance 'morning star' and 'evening star'.

A famous solution to this problem was suggested by Saul Kripke in *Naming and Necessity* (1980), according to whom there is identity when two 'rigid designators', that is, two signs, that indicate essential properties, have the same referent in all possible worlds. But this supposes, exactly, that there are essences, the object of necessary truths, that is, of necessarily true although not analytic judgements (distinction introduced by Quine), which are first and foremost natural species but can also be classes of artificial objects.⁸ The reference to essences naturally calls to mind Aristotle, but this is not essential to Kripke's thesis, which, although criticised and contested, is certainly considered an important reference point within the framework of analytic philosophy and thus makes enough sense to be able to be discussed.

David Wiggins is also moving in the same direction as Kripke, but with more explicit references to Aristotle, and in *Sameness and Substance* (1980) he explicitly advocates that, to establish an absolute identity, as is the case in a single individual, it is necessary to resort to the Aristotelian concept of substance. Also for Wiggins natural species are substances and are each characterised by an 'activity', that is, life, therefore they are not plain nominal essences in Locke's sense. The same character is possessed, although to a lesser degree, by artificial objects, for which functioning is analogous to activity. Thus, to identify something, it is necessary to say what it is, that is, to subsume it under a predicate that offers for it a principle of continuity or of individuation: this is what predicates indicating a principle of activity or functioning – i.e. the concepts of natural or artificial substances – do.⁹

The debate on identity was finally summarised in the treatise by D. W. Hamlyn on *Metaphysics* (1981), where the author showed that, in order to identify any object, first of all the reference to its space-time coordinates is necessary, then to its 'space-time history' and, finally, to the species it belongs to.¹⁰ This can lead to a form of essentialism, which, however – as Putnam noted in *The Meaning of Meaning* (1975) – is indispensable, especially for natural substances, such as water, which has as its essence the fact of being H₂O, whether we know it or not, in all possible worlds.¹¹

⁸ S. Kripke, *Naming and Necessity*, Oxford, Blackwell, 1980.

⁹ D. Wiggins, *Sameness and Substance*, Oxford, Blackwell, 1980 (II ed. 1990).

¹⁰ D.W. Hamlyn, *Metaphysics*, Cambridge, Cambridge University Press, 1984.

¹¹ H. Putnam, *Mind, Language and Reality*, *Philosophical Papers*, vol. 2, Cambridge, Cambridge University Press, 1975.

Within the framework of the problem of the identity of substances, the problem of personal identity was recently taken up again, always in the framework of Anglo-American analytic philosophy. Wiggling suggested an original solution to this problem, indicating as the condition of personal identity not conscience, like Locke, but the continuity of life. Parfit objected to this that the important continuity for the person is not the biological one but the psychological one, which may fail during character mutations,¹² and Williams observed that this notion makes of the human person a simple natural species (it is the accusation of 'biologism').¹³ These objections of a spiritualistic nature do not take into account the fact that the higher functions of man are strongly conditioned by the biological ones, and that thought itself is a form of life, as proved today by the fact that the *Mind-Body Problem* is no longer addressed by the cognitive sciences by means of information technology or computer science, but especially by recourse to the neurosciences. This emerges clearly from the most recent formulation of 'functionalism' by H. Putnam in the book *Words and Life*, where the author goes as far as speaking of a 'return to Aristotle after Wittgenstein'.¹⁴

However, together with the notion of person, analytic philosophy has also recovered the Aristotelic notion of substance. For example, in the *Blackwell Companion to Metaphysics*, the author of the entry 'Substance', Peter Simson, illustrated a whole range of possible meanings of this term, affirming the need for a metaphysical perspective in which a single notion of substance can play its role consistently. Indeed, substance can mean: A) being independent, as for Husserl; B) ultimate subject, as for the nominalists Quinton, Price, Quine, Bambrough and Stout, or for the realists Armstrong, Ryle and van Cleve; C) individuating element, as for Strawson and Wiggling; D) what underlies change, as for Mellor, Q. Smith, McMullin, White, Furth and Anscombe; E) fundamental underlying object of reference, as for Campbell, Kim, Loux and Rosenkrantz (I omit further mention of names, although they are present in the text).¹⁵

¹² D. Parfit, *Later Selves and Moral Principles*, in A. Montefiore (ed.), *Philosophy and Personal Relations*, London, Routledge and Kegan Paul, 1973, pp. 149-150.

¹³ B. Williams, *Hylomorphism*, 'Oxford Studies in Ancient Philosophy', 4, 1986, pp. 188-199.

¹⁴ H. Putnam, *Words and Life*, Cambridge, Harvard University Press, 1994.

¹⁵ P. Simson, *Substance*, in J. Kim and E. Sosa (eds.), *A Companion to Metaphysics*, London, Blackwell, 1995.

Another eloquent example of the topicality of the debate on the substance of analytic philosophy is the article *Substance* by the aforementioned D. Wiggins in the volume *Philosophy: A Guide through the Subject*, edited by A.C. Grayling (1995), of which it constitutes, together with *Causation, Time, Universals* the *Metaphysics* section. Wiggins rightly refers to Aristotle as to the first who focalised the concept of substance and first of all takes into examination the criticisms that Hume addressed to the concept of substance, demonstrating that they start from a prejudicially hostile definition, which oscillates between the 'something unknown and invisible' (*Treatise*, I, IV, 4) of Lockian origin, and 'that which can exist by itself' (*Treatise*, I, IV, 5) of Cartesian origin.¹⁶ In any case, it has nothing to do with the famous definition of 'primary substance' given by Aristotle in the *Categories*, that is, 'that which is neither in a subject nor is the predicate of a subject', a definition that can be applied to all those particular concrete realities which can be qualified by other things but do not in themselves qualify other things. Primary substances, which are the basic constituents of the world, are also what survives certain types of change, that is – as Wiggins says with an expression taken from his aforementioned book *Sameness and Substance* (Oxford 1980) – the continuants, characterised by a certain function or activity. In *Metaphysics* – as is well-known – Aristotle further develops the issue, identifying the cause of substantiality in form, intended as principle of activity, of which the latter in living beings fundamentally is life.

The Lockian idea of substance as 'a certain je ne sais quoi', that is, something hidden, invisible and thus absurd – observes Wiggins – is the product of the separation of the subject from all of its properties, which has nothing to do with the subject (*hypokeimeon*) which Aristotle speaks of, a perfectly visible reality, which is palpable and possesses quality. The same can be said – I may add – of the Cartesian and Spinozian idea of substance as something that exists in itself, which has nothing to do with the sensible substance that Aristotle speaks of. But Wiggins also criticises some recent misunderstandings of the concept of substance, for example the one that is proper of the constructionalism of David Lewis, while he observes that the Aristotelian idea of substance has been recovered by Strawson and Quine. On the basis of this notion, concludes Wiggins, concrete realities such as

¹⁶ D. Wiggins, *Substance*, in A.C. Grayling (ed.), *Philosophy: A Guide through the Subject*, Oxford, Oxford University Press, 1995.

animals, human beings and other similar *continuants* are substances, about which one can rather pose the problem of how we can identify them or how they conserve their own identity.

Finally, the thesis inspired by Hume and supported by Parfit, who – echoing Hume – interprets the life of the person as a series of subsequent experiences, comparable to the history of nations, where there is an evident lack of a substantial subject that remains identical at different times, has also been subject to criticism. In particular, Bernard Williams, another exponent of the Oxford School who recently passed away, observed that there must be some kind of link between subsequent ‘selves’, which should be engendered by change, as proved by the fact that they all fail in the case of the physical death of their ‘progenitor’.¹⁷

A return to the classical notion of person is not only present in Anglo-American philosophy of analytic inspiration, but also in ‘continental’ philosophy of hermeneutic inspiration. Paul Ricoeur’s position is exemplary in this regard. In the article ‘Meurt le personnalisme, revient la personne’, which came out for the first time in the journal that had been the instrument of ‘personalism’, that is, *Esprit*, in 1983, the French philosopher, who had been close to Emmanuel Mounier, founder of this current in the years 1947-1950 and had collaborated with his journal, declares that personalism as a philosophical current is dead because ‘it was not competitive enough to win the battle of concept’, while person returns because ‘it had been the best candidate to sustain legal, political, economic and social battles’ in defence of human rights.¹⁸ I believe that both parts of this diagnosis must be shared, and that for this reason a philosophical foundation of person, more robust than the one previously offered by personalism, must be sought. Besides, Mounier did not consider himself a philosopher and was seeking a philosopher of personalism, after Nazi persecution had parted him from Paul Landsberg, who was the most appropriate to play this role in the *Esprit* group.

The ‘battle of concept’ lost by personalism, although Ricoeur does not say it explicitly, is in my opinion the criticism of the notion of person made by Anglo-American analytic philosophy, which Ricoeur too found himself up against and was able to deal with in his most recent writings. Indeed, we must recognise that not only French personalism but the

¹⁷ B. Williams, *Moral Luck*, Cambridge, Cambridge University Press, 1981.

¹⁸ P. Ricoeur, *Lectures 2. La contrée des philosophes*, Paris, Ed. du Seuil, 1992.

entire philosophy of Christian inspiration developed in the European continent in the second half of the 20th century almost completely neglected the comparison with the analytic philosophy tradition, in the conviction that it was too logical, too abstract to say something interesting on the person and on the person's life. Thus not only were the extremist criticisms of a neo-positivist such as Alfred Ayer ignored, so were the much more traditional ones of Derek Parfit.

Ricoeur himself, in his most recent writings, precisely in order to reply to Parfit's objections, tried to solve the problem of personal identity distinguishing identity as 'sameness' (*mêmeté*), on the basis of which each is simply 'the same' (*idem, same, gleich*), from identity as 'selfhood' (*ipséité*), on the basis of which on the contrary someone is 'himself' (*ipse, self, selbst*). The former, in his opinion, supposes the existence of a substance, but it is not important, because it belongs to the sphere, in Heideggerian language, of *Vor-handen* and of *Zu-handen*. The latter is the important one, belonging to the sphere of *Dasein*, that is, of authentic existence. But the latter identity, that is, selfhood, according to Ricoeur is only a 'narrative identity', resulting from the effective unity of an entire life, and is ensured by 'character', intended as a certain constancy in dispositions, but above all by that loyalty to oneself that one gives proof of by keeping promises. This 'loyalty to oneself' (*le maintien de soi*) is, for Ricoeur, the authentic personal identity.¹⁹

The latter solution may seem insufficient, because it offers a purely ethical, not ontological foundation of the person, which is applicable only to those who are responsible for their own actions, that is, those who possess a moral 'character', the capability of remaining loyal to themselves, a reliability from the point of view of the others. How could a similar concept of personal identity be valid for someone who is irresponsible, for instance a child, or for someone who is seriously ill, or for a dissociated person? Yet even in these cases there exist rights, such as for example the right to inherit, or the right to property, which suppose a personal identity. If it is true, as Ricoeur himself affirmed, that the person remains the best candidate to sustain the battles in defence of human rights, it is necessary to recur to a concept of person capable of playing this role. Besides, Ricoeur, in the above-mentioned article, had mentioned a similar concept, defining the person as 'the support of an attitude', which means the substrate, the substantial subject of the various activities, irreducible to the latter ones. And in his most

¹⁹ P. Ricoeur, *Soi-même comme un autre*, Paris, Ed. du Seuil, 1990.

recent book he points out that the Aristotelian doctrine of potency and of the act does not apply only to human praxis, but indicates 'a ground of being, at once potentiality and actuality',²⁰ which seems to allude to the presence of a substrate as the foundation of acting, equipped with those capabilities that Aristotle indicated with the expression 'primary act'.²¹

The fact that the person remains, as Ricoeur maintains, the best candidate to sustain the battles in defence of human rights is demonstrated, in my opinion, by the philosophical implications that the formulation of the latter entails. For instance, the right to equality, that is, the right of each to be treated by law in the same way as everyone else, presupposes something that makes all human beings the same, independently of their differences in origin, nationality, social class and culture. Well, this is what the classical notion of person expresses by means of the concept of 'nature'. Let us then take the right to freedom, freedom of thought, of speech, of press, of religion, of association: it supposes that man, although strongly conditioned by a series of material factors (physical constitution, economic condition, subconscious, education received, etc.) conserves a margin of freedom, that is, of self-determination, of capability of escaping material conditionings, that corresponds to what Boethius called 'rational nature'. Finally, the right to property, on the basis of which the owner of a good conserves its property despite any changes in his life, that is, irregardless of whether he changes civil status, citizenship, religion, etc., presupposes that the owner of said right always remains the same person, that is, is a subject that persists in becoming, which is the same as admitting that he is an individual substance in the sense meant by Boethius.

It is true that not all philosophers recognise human rights as founded, or foundable, on incontrovertible reasons, in fact some believe that they cannot even have an ultimate foundation. However, there is no doubt that they correspond to the way of thinking of the majority of people, i.e. they express 'public opinion', as proved by the fact that they have been solemnly proclaimed in universal declarations undersigned by most States, that they are present in many constitutions of democratic States and that even those governments that in actual fact do not respect them are not willing to admit it officially, because they know this would make them unpopular.

²⁰ P. Ricoeur, *Oneself as Another*, Chicago and London, The University of Chicago Press, 1992, p. 308.

²¹ Aristotle, *De Anima*, II, 1 412 a 27 f.

Besides, the notion of person that underlies the declarations of human rights has been adopted by some of the philosophers most committed, for instance, to the defence of the rights of women or of people belonging to different cultures than the Western one. I am thinking especially of the case of Martha C. Nussbaum, who, referring to the theory of economist Amartya K. Sen, according to which the most equitable distribution of wealth is the one based on the people's capability of using it, has drawn up an actual list of human capabilities, which outlines an anthropology that is not very distant from the classical notion of person. Besides, M. Nussbaum explicitly echoes the Aristotelic notion of happiness as the full realization of all human capabilities, although she criticises Aristotle for his discrimination of women, slaves and barbarians.²² All in all, we can say that today, despite the criticisms it has been subjected to by a part of modern philosophy, the classical notion of person proves to be still topical both in the contemporary philosophical debate and in the people's way of thinking.

²² M.C. Nussbaum, *Women and Human Development. The Capabilities Approach*, Cambridge University Press, Cambridge, 2000.

THE CLASSICAL NOTION OF PERSON
IN TODAY'S PHILOSOPHICAL DEBATE
A COMMENTARY ON THE PAPER BY ENRICO BERTI

VITTORIO POSSENTI

Introduction

My comment on the paper by Enrico Berti is larger than the paper it should comment. It includes two sections:

A) the first one refers to some aspects of Berti's paper, concerning the presence/absence of the classical notion of person in contemporary philosophical debate;

B) the second one is a development on person in political realm. Its method relies on political sciences and political philosophy which are fundamental field of application of the idea of person. We have to integrate the classical notion of person into to-day socio-political dialectics. With the focus on that my comment goes behind the face to face relationships or what I would name the 'short relationships'. As social scientists we are challenged by the present Plenary Session's subject to explore both the content of concept of person and its presence/absence in contemporary social sciences, sampling the notion of person prevailing in them. The ideas of man, human nature and person we at least implicitly form, influence deeply the development of social sciences and of the related policies; and reciprocally social sciences' researches shape our concept of man.

A. I willingly express my agreement with the paper by Prof. Berti. By exploring in depth the classic concept of the person, he brings out two aspects: the solidity of Boethius's conception of the person which combines a theological origin with recourse to truly philosophical notions such as nature, individual, substance, rationality; and the recovery of the idea of substance in various expressions of the recent analytic philosophy, which seems to go

beyond the analysis of language alone. Berti rightly underlines that an adequate grounding of idea of person requires an ontological approach and not only a moral one, and this implies that the idea of substance, deeply questioned in modern thought, is recovered and considered valid.

1. *Person and Substance*

Perhaps the recovery of the substance, underlined by Berti in respect of some currents, affects only a small part of present philosophical thinking, often marked in Continental philosophy by post-metaphysical disenchantment which considers the very idea of substance outdated and useless (and frequently also the concept of nature/essence).

I recall an expression of Kelsen and a sentence taken from a minority opinion in a document of the Italian National Bioethics Committee (NBC) on the embryo. The former, by dissolving the concept of substance and bringing it back to that of function, sought to undermine the substantiality of the person: 'The pure doctrine of law has recognized the concept of the person as a concept of substance, like the hypostatization of ethical-political postulates (e.g. freedom, property), and in this way has dissolved it. As in the spirit of Kant's philosophy, the substance is reduced to function'.¹ The term 'function' is highly revealing, as many present authors fix the concept of person as determined by the possession of some functions such as freedom, moral sense, memory, self-consciousness, and not by a basic ontological structure.

A statement drafted in 1996 by some members of the NBC, who dissented from the majority opinion with regard to the status of the human embryo and the idea of substance, claimed that the latter was superseded and that it belonged to an old and outmoded philosophy of nature, not to ontology.² Consequently they claimed that radically weak was the 'philosophical position when it claims to be based on such a high concept as the person on the basis of a philosophy of nature that is more than ever in crisis today' (p. 36). The assumption is that the crisis of the philosophy of nature involves that of the idea of substance and consequently the decline

¹ H. Kelsen, in H. Kelsen, R. Treves, *Formalismo giuridico e realtà sociale*, edited by Stanley L. Paulson, ESI, Naples 1992, p. 216.

² The text of the statement is inserted in the document *Identità e statuto dell'embrione umano*, Rome, June 1996.

of substance-based idea of person. Of course a post-metaphysical climate is not a favourable environment for the ontology of the person; this explains the frequent recourse to a 'reduced' idea of person as denoted not by its substantiality, but by its more or less significant operations.³

As a result, the idea of the person that today attracts most attention in the debate appears the 'moral' concept, peculiar to a personalism based not ontologically but axiologically, which understands the person as a free, rational subject, endowed with self-consciousness and responsibility. The question that then recurs is whether being a person can be related simply to the exercise of certain activities (such as freedom, consciousness, memory and so on), or primarily to the possession of a given nature/essence, from which stem specific operations peculiar to it. The former is an actualistic register (namely one relevant to actions and operations of the self); the other is ontological and is expressed in terms of being and substance. While it is possible to include the former in the latter, it appears difficult to include the ontological in the actualistic scheme.⁴

2. Gender Question

A second problem concerns the relationships between classical notion of person and *gender problems*. For all the basic notions that form the classical concept of person are gender-neutral, it seems that the Boethian

³ According to the classical philosophical tradition the human person is endowed with two main characteristics: it is an *in se* existing being and a *per se* existing one. The former attribute explains that person is a substantial reality, and the second that person is a purpose in himself. In Middle Ages Latin philosophical language created the nouns of *inseitas* and *perseitas*, in order to express the features of *in se* and of *per se*. It is not so difficult to show that the doctrine of person in modern philosophy has frequently evolved in the direction of cancelling the *in se* or personal substantiality, and to maintain in some sort the character of the *per se*, that is the end value of person. But how long can we maintain the axiological value of the person as an end, when its ontological nucleus is cancelled or overlooked? This is an unstable situation, as decisive recent problems, which deal with the question concerning the personality and substantiality of the embryo, recall.

⁴ With the progressive abandonment of ontological conceptualization in modern philosophy, the idea of the person is recovered not through the radical act of existence, but by means of the referral to 'second acts', in a way that is over-determined or under-determined depending on whether the accent falls on the noblest or on the poorest. Assuming that the person is denoted by self-consciousness and by cognitive acts, the question obviously arises if the person exists when these features are either suspended or gravely compromised, as in elderly sufferers from arteriosclerosis or Alzheimer's patients.

determination of person is free and independent from the gender: it is intrasparent to gender, with no polarization of masculine and feminine characters. A lot of questions are likely to arise, such as: how can we include feminine (and feminist) gender questions in that notion? How can we develop relationships between *ghenos*, *biological body* and *polis*, and eventually modulate basic human right with regard to gender questions? The paradox is that person is not a gender concept, but its application to human kind implies gender problems concerning politics, biopolitics and the core of many social sciences which necessarily deal with human beings who are masculine and feminine.

The 'Letter to the bishops of Catholic Church on co-operation between man and woman in the Church and in the world' (July 2004) criticises two significant positions: the harsh competition between man and woman, and the assumption that the biological basis is fully available to human choice. According to the former position woman, in order to be herself, builds up herself as antagonist of man, and she understands men as enemy to be won/overcome. The idea of difference here intended does not believe in the equality between man and woman, but it exalts the peculiar characteristics of both. In the latter position, with the purpose of avoiding every supremacy of either sex, one tends to cancel their differences, deemed as simple effects of historico-cultural conditionings. In this levelling out, bodily difference, named *sex*, is minimized, while the cultural dimension, named *gender*, is considered primary and leading. The darkening of the sex duality produces huge consequences such as human person attempt of freeing himself/herself from own biological conditionings with the intention of shaping themselves at will. In both positions but mainly in the second, there is a deconstruction of gender identity with a criticism of the new biopower and of the heterosexual norms.

3. *Substance, relation and action*

A criticism frequently raised against the classical notion of person sounds as follows: this notion is not well suited to include relations with others and give room to subjectivity. In other terms circulates the idea that the ontological status of a personal substance is not propitious to relation, while it is true just the opposite: only being a substantial person you can act, think, be free and open to relationships with others. The spiritual openness of the person towards others is inscribed in his substantiality; then the very idea of rationality/spirituality immanent in the Boethius determination of person is able to include relations of all kinds.

Substantial rationality necessarily implies 'relationality', for the life of the spirit is by itself relational in knowing, in loving, in acting: knowledge and love are intrinsically directed toward the *alter/autrui*, while a mere relation without substance has no centre and interiority.

If 'relationality' or 'being in relation' were the only intrinsic aspect of the person, the death will destroy him/her at all, as death is conceived as the end of any individual and social relation. With the death we go out of any form of relationships. The self who died, is disappeared. 'Disappeared' means that he/she has come out of the horizon of time and space, in which we as living beings are inserted and which permits reciprocal connections. 'Disappeared' means that no relation is possible with him/her. So the classical notion of person as bodily and spiritual substantial being is able to open the way to the question of immortality.

B. THE SOCIAL SCIENCES AND POLITICS

1. To avoid dispersal, I will deal with Politics, which I understand both as political philosophy and as empirical political science. Politics is the most ancient social science: the *episteme politiké* dates back to the Greeks, and the fundamental political concepts (society, people, community, common good, self-government, consensus, people sovereignty) presuppose a personal subject; they are like the word 'man' written large, even though man acts within society as citizen, worker, operator of social practices, voter, participant in public opinion. Moreover the fundamental meaning of Politics has not deeply changed since Greeks and Romans, while for other social sciences, such as economics, the transformation has been radical.

In principle Politics is not only or mainly a technique of negotiating with powers but an existential experience which requires a deep knowledge of human nature and human person: the optimistic, realistic and pessimistic ideas on man shape very deeply the structure of Politics, as many writers and philosophers have showed. Political thinkers of all kind deem that they personally know at the best the *real* human nature. Machiavelli, after having underlined the paramount importance of man knowledge, adds: 'Perché degli uomini si può dire questo generalmente: che sieno ingrati, volubili, simulatori e dissimulatori, fuggitori de' pericoli, cupidi di guadagno; e mentre fai loro bene, sono tutti tua, offerenti el sangue, la roba, la vita e' figlioli, quando il bisogno è discosto; ma, quando ti si appressa, e' si rivoltano. E quel principe, che si è tutto fondato in sulle parole loro, trovandosi nudo di

altre preparazioni, rovina' (*Il Principe*, cap. XVII). Some centuries after C. Schmitt observed: 'You could analyze all the state theories and political ideas on the ground of their anthropology, subdividing them according to their presupposition of a man "bad by nature" or "good by nature"'.⁵

2. *Personalism Versus Antipersonalism*

In political philosophy of the XX century we find both *personalistic* or *antipersonalistic* approach, which reflects itself in the fundamental political notions just mentioned, testifying the insights from which they are born. Especially in the first half of the past century, there was an intense attack on the person and at the same time the development of 'personalism' with its various significances and difficulties. I apply the term personalism to every doctrine that attributes a central role to the person, even though this is defined in very different terms, with the result that there are many types of personalism. Their plurality was pointed out in the mid-1940s by J. Maritain: 'Nothing could be more false than to speak of 'personalism' as a *single* school or a *single* doctrine. It is a reaction against two opposed errors [individualism and totalitarianism], and is inevitably a very mixed phenomenon. There is no personalistic doctrine, but there are personalistic aspirations, that at times have nothing in common except the word person... There are personalisms that are Nietzschean in tendency and personalisms that are Proudhonian in tendency, personalisms that tend towards dictatorship and personalisms that tend towards anarchy. One of the major concerns of Thomist personalism is to avoid both these excesses'.⁶

2.1. *Anti-Personalism in Politics in the Early Twentieth Century*

The political practice of the early twentieth century was frequently conducted on the ground of a *non-substantialistic intuition of man*, which ended up denying him the character of a person, as happened in totalitarisms. In other cases there was a nominal reference to the dignity of man, without however accepting the intellectual bases that justify the perspective, with the risk that the reference to dignity became nominal, almost a rhetorical formula. We would say, resorting to a term that has gained

⁵ C. Schmitt, *Le categorie del 'politico'*, Il Mulino, Bologna 1972, p. 143.

⁶ *La persona e il bene comune*, Morcelliana, Brescia 1963, p. 8.

ground subsequently, that an attempt to deconstruct the person emerged. In deconstruction it was intended to dismantle and even to destroy the concept of the person with a series of attitudes and criticisms that presupposed a clear anti-humanistic intent, like that performed by Foucault in *Les mots et les choses*: 'Man is an invention of which the archaeology of our thought easily shows the recent date. And perhaps the imminent end'.⁷ This was to be achieved in Post-Modern era, so that man, an invention of the European culture of the sixteenth century, will have walked on the earth's crust for a modest handful of centuries, no more than a few grains of sand in the infinite motion of the hourglass of becoming.

The renewal of the reference to the person has, therefore, to make its way within a culture of some outstanding anti-personalism, which goes beyond that openly totalitarian and takes various forms. I recall Weber's view, which brings out man's political action, inserting it in a field of forces and violence that the individual can hardly succeed in facing, when he is not a victim of it. Some brief evocations will illuminate it, starting from the well-known lecture *Politik als Beruf* (Munich, 1919), where Weber considers the state and politics under the aegis of dominion: a field of problems that can often be resolved only through recourse to force and violence. Also the ethics of responsibility, though it does not conceal an appeal to the self, is to be read in relation to the responsibility of the political man who can resort to violence. 'Whoever yearns for the health of his soul and the salvation of other people's souls, should not seek them through politics, which proposes quite different tasks and such that they can be resolved only with violence'.⁸

In general Weber's conception of man is apersonalistic, since he sees politics and the state as based on force, on the use of legitimate violence, on dominion, and not directed to the common good of human persons. After Weber a noteworthy example is the *Begriff des Politischen* by C. Schmitt, who saw politics as marked by the struggle to the death between friend and enemy: on the ground of this criterion centred on the clash, civic friendship vanishes and the apersonalistic tendency appears highly developed.

⁷ M. Foucault, *Le parole e le cose*, Rizzoli, Milan 1967, p. 414. Cf. also: 'To all those who still wish to talk about man, his realm, his liberation, to all those who still ask questions about what man is in his essence, to all those who want to start from him to gain access to the truth... to all these forms of clumsy and distorted reflections, we can only counter with philosophical laughter, namely in part silent'. (*ivi*, p. 368).

⁸ *La politica come professione*, in *Il lavoro intellettuale come professione*, Einaudi 1980, p. 117.

The antipersonalism of Marxism is explicit, seeing man only as a set of social relationships (Marx's sixth thesis on Feuerbach). Gramsci wrote that the great innovation introduced by the philosophy of praxis (i.e. Marxism) in the science of politics was the demonstration that an abstract human nature does not exist.

2.2. *Partial Recovery of Personalism*

With the collapse of the right-wing totalitarianisms the antipersonalistic climate, already opposed in the 1930s by the personalisms of the period, began to change. A first major signal was the Charter of the United Nations (1945), which in its Preamble speaks of the 'dignity and worth of the human person', and another is in the Universal Declaration of the Rights of Man (1948), where the vocabulary evokes often the person ('Everyone has the right to life, liberty and security of person'; also the term 'human beings' is used). Subsequently the world's political thinking took a step of greater or lesser significance towards the recovery of the idea of the person.

We will focus attention on certain authors, where many personalist positions are encountered, as well as only partially personalist assumptions, or else incomplete or 'reduced' degrees of personalism. In Ricoeur we should speak of a personalism of a relational type, where the identity of the self is reconstructed narratively and the conception of the person is accorded with the theory of action, of narration and of ethics. However, the centrality of the person is unquestioned: 'Person still remains today the most suitable term for giving an impulse to researches for which... the term conscience, or subject, or individual are not adequate'.⁹ While Maritain develops an ontological personalism, linked with Boethius and Thomas Aquinas, and based on the *cooperative* relationality of the person (*communitarian personalism*), in numerous authors there prevails the reference to 'man as agent', with numerous shades of meaning and variations in relation to the type of action that is given the greatest emphasis. In some of these authors (Habermas, Rawls) the social relationship is coordinated by means of rules. There is a difference between *cooperating* and *coordinating*: one can coordinate the action of *n* subjects by resorting to abstract rules of reciprocal interaction, while cooperation calls for a more direct and personal intervention on the part of individuals, who interact on the ground of common

⁹ P. Ricoeur, *La persona*, Morcelliana, Brescia 1997, p. 38.

values and shared purposes and who express mutually various degrees of civic friendship.

Rawls. In Rawls the treatment of justice as fairness introduces a conception of the person derived from and adapted to the idea that the society should be understood as a fair system of cooperation between generations, and that the subjects should accept the idea of tolerance reasonable in a democratic society. 'In both philosophy and law the concept of the person has been understood, since antiquity, as the concept of being capable of participating in the life of society... So we can say that a person is one who is able to be a citizen, that is to say a normal and fully cooperating member, through all his life, of society... Since we start from the tradition of democratic thought, we also conceive citizens as free and equal persons'.¹⁰ Rawls's position adopts a 'reduced' concept of the person: the person as citizen, the person as a member of the political community, not the person as such and in all his dimensions.

It has been objected to Rawls, especially by some feminist thinkers, that his theory of justice ignores the needs of caring, because the persons affected by such needs cannot be normal and fully cooperative members of a well-ordered society and do not form part of the social relationships based on a contractualistic theory. The liberal theory of justice and of the person needs to be extensively modified, setting at the centre precisely those relations of dependence and care that are neither symmetrical nor cooperative, and so excluded from Rawls's scheme. In this respect Martha Nussbaum observes: 'We should replace the Kantian image of the citizen with a more Aristotelian image, so as to conceive persons as animals endowed with needs that they are capable of converting into operations – including, but without limiting ourselves to this, the need to take care of others by establishing relations with them... This conception of the person, which embodies both growth and decline in the human lifespan, will enable us to reflect adequately on what society should provide'.¹¹ The limitation signalled is bound up in a certain way with the Kantian dualism between the world of the nature and the world of freedom, so that we as human beings are rational persons subject to morality rather than animals that inhabit the world of nature.

¹⁰ *Liberalismo politico*, p. 34, Comunità, Milan 1994.

¹¹ *Giustizia sociale e dignità umana*, Il Mulino, Bologna 2002, p. 40 and p. 120.

3. *Individualism and Liberal Democracy*

3.1. Personalism has to maintain a clear difference in respect of individualism. The centrality of the concept of the individual, strong in modern politics from the seventeenth century on and which remains a privileged reference of much of Politics, is embodied in three main variants: ontological, methodological and axiological. These have had a powerful influence on the conception of liberal democracy. There is perhaps no 'canonical' text on liberalism from the nineteenth and twentieth centuries that does not refer to the individual rather than the person, with far-reaching results on the conception of democracy, the rights of man, the limits on the exercise of the freedom. According to R. Dahrendorf, political theory has concentrated so extensively on freedom of choice as to lose sight of the importance of ties and relationships. The contemporary individual sees himself as a bearer of individual rights, as a free member of society who seeks to loose the bindings towards political society and its institutions, and towards the people of his community.

Often the emphasis on the individual entails an idea of freedom as the right or possibility to do anything provided it does not harm others. *But who are others?* The individualistic conception widespread in the West meets high difficulties in answering this decisive question, and when it seeks to answer it, it ignores the others who have no voice. Sometimes the other (*alter*) is nobody, sometimes the *alter* is the *alienus*, rarely the *alter* is the *frater*. We must be aware that the problem of human person in social sciences is strictly connected to the question concerning the other. The self-centred individual who decides by oneself the concept of the existence of himself and of the other, in principle he is not a relational person open to the other.

In this respect the concept of individual has substituted that of person as a substantial and relational reality open to community. We can trace back this upsetting transformation up to Rousseau, who in *Le contrat social* defends a kind of atomistic individualism, tersely expressed: 'Each individual is by himself a perfect and closed whole' (*Contrat social*, I, II, c. 7). Then political society is an artificial reality, created by the social contract and by legislator. A statement which cannot conceal the radically individualistic intuition which it bears: perhaps in Hobbes (and in Locke) we meet a similar anticommunitarian idea of person, as for Hobbes man is not a social animal.

On the contrary the person does not carry the idea of an isolated, self-sufficient and sovereign individual, but that of a man community based and

community oriented. In opposition to the above individualistic assumption stand several constitutional traditions as those German and Italian. The German Constitutional Court takes a relational view of personhood, as expressed in a 1954 decision stating: 'The image of man in the Basic Law is not that of an isolated, sovereign individual. [T]he tension between the individual and society [is resolved] in favour of coordination and interdependence with the community without touching the intrinsic value of the person'. (quoted by Mary Ann Glendon in her paper, p. 7). For the Italian case I can refer to the art. 2 of Constitutional Charter, which says: 'The Republic recognizes and guarantees man's inviolable rights both as single and in social formations where he develops his personality and it requires the fulfilment of binding duties of political, economic and social solidarity'.

3.2. In 'communitarian personalism' the stress is placed on the cooperative structure of action that can emerge from the interpersonal relationship. In this line of thought political society is made up of human persons, not of isolated individuals that stipulate their relationships contractually. The political society is valid as a community of destiny and of the common good that possesses a binding normative potential, which can go up to asking individual a willingness to sacrifice himself. This representation of the political society is remote from that which sees it as a free association of legal partners who see themselves as the managers of a social contract or as the protagonists of an auto-legislation in which they are the authors of laws to which they lend obedience as their consignees. Even more than by justice, the political society is held together by civic friendship, this great force that preserves all social life, which can render possible even solidarity between strangers, for which the contractual scheme is inadequate.¹²

3.3. Individualism rests on the liberal opinion that the actions and decisions of consenting adults, especially in the area of sexual life and marriage, concern themselves alone, even though there exists considerable empirical evidence of the effects on others of such forms of behaviour. It also leads to a divisive competition and conflict between generations to corner resources rather than an attitude of inter-generational solidarity. The awareness that opening up ever new freedoms and opportunities to adults risks severely penalizing future generations is still rare.

¹² Cf. *Politics* 1262 b7 and *Nicomachean Ethics* 1155 a23-25, 1166 b30s.

Almost absent in perspectives that centre on the individual is the *family*, even though it remains an indispensable school of humanization and socialization. Habermas's idea of democracy, projected towards the cosmopolitical area, seems based only on dialogue and communication between individual subjects, without making any reference to the groups, networks and communities they belong to. Other approaches, that are based on the triple values of 'individual, market and state', marginalize the family and the intermediate social formations of civil society. According to W. Kymlicka 'The tendency that has emerged was that of excluding domestic life from both the state and from civil society. Why is the family excluded from civil society? The answer can only be that it is excluded because it belongs to the private sphere'.¹³ Long-term solidarity between generations becomes difficult when the family is marginalized, with little political weight, and individualism is given a dominant role. In present situation civil law enters with force and many detailed prescriptions in the family daily life, looking at protecting freedom of the single rather than the life of the family as a group and community, and trying to adjust family to prevailing cultural models.

In social policies this produces an unrealistic emphasis on the self-sufficiency of the subject and a devaluation of the *real reciprocal dependence* in which human subjects find themselves, especially in the initial and final stages of life. The icon of the free individual, capable of full self-determination and self-sufficiency, exercises a strong attraction on the individual and social imagination, which tends to relegate to the margins the human condition of dependence: nevertheless human beings are, and remain, strongly dependent on one another, and a part of their virtues are developed in the consciousness of this and of the necessity of cooperating, of taking care of each other. In some versions of the Welfare State this limit is added to that of not estimating sufficiently the capacity of the subject to act on the basis of values and of his not being guided only by a calculation of his self-interest.

In its radical form individualism represents a dangerous principle for democracy since, by abandoning the concepts of relational person and of a people, it turns on the auto-centred inclination of the self. A weakness of democratic culture in the West is that it is often driven by radical theoreticians who focus on the individual, his rights, and the idea of the contract

¹³ *Introduzione alla filosofia politica contemporanea*, Feltrinelli, Milan 1996, p. 279s.

as an artificial fact on which to construct rules and sociality. The result is that the current liberal version of democracy has as its ultimate purpose almost solely freedom, rhetorically understood as a boundless and self-redeeming force, the only one capable by itself of generating progress, peace and the good society. Of course there is the concrete risk that freedom tends to become an end in itself, perhaps the supreme political end, without some restrictions operated by legal system and by social practices and norms. This position could draw on a crucial sentence by Spinoza: *Finis reipublicae libertas est (Tractatus theologico-politicus, chapter. 20)*. Then arises an important question: which is the final end of a political society, freedom or common good?

It remains decisive not to separate the person from the community or, as Ricoeur observes in the wake of Mounier, the 'personalist revolution' from the 'communitarian revolution'. The two great revolutions of 1789 and of 1917 were not 'personalist communitarian'. In the historical vicissitudes of peoples and of nations there is still lacking a 'personalist and communitarian' revolution.

3.4. *Digression on common good.* A great problem that we as Westerners encounter every day is the relationship between person and common good. The concept of common good is almost disappearing in many accounts of political philosophy in accordance to the huge importance attributed to the individual interest, while its concept is positively related to that of person. Consideration of common good as mere means in order to reach individual ends represents an assumption which destroys the common good and the social life. This disappears when men are not disposed, should that happen, to pay a part of the social burdens.

Church social doctrine introduces an original, personalistic determination of common good, related to the idea of human perfection. Resuming terms already present in Pius XII and in the encyclical *Mater et Magistra, Gaudium et Spes* defines common good as 'the set of those conditions of social life that allow groups as well as single members to reach their own perfection more fully and more quickly' (n. 26). We meet here an important determination which, rotating around the idea of perfection, establishes that single man as well as social groups can be defined by an end and a fulfilment. Now the present explosion of differences and the request of equal civil protection for all the living styles suggest the idea that there is not a human normality, and then that each living style benefit of the same legitimacy.

4. *Is man antiquated? Arguments Against the Colonization of the Person*

I have borrowed from G. Anders the expression 'man is antiquated', turning it into a question to indicate that perhaps the game is not yet played out. For Anders, however – who expresses a sort of 'despair principle' different from the 'hope principle' of Bloch and the 'responsibility principle' of Jonas – there is nothing more to be done, since man is victim of the industrial and technological revolutions. The subtitles of the two volumes titled 'Man is Antiquated', are: 'Observations on the soul in the age of the second industrial revolution' and 'On the destruction of life in the period of the third industrial revolution'. According to the author, the studies collected in *Man is Antiquated I* and *II* constitute 'a philosophical anthropology in the age of technocracy'.¹⁴

Conclusions

1. The concept of person plays a decisive role in theology, philosophy, politics, law, biology, medicine and sociology: we can say in all the human and social sciences, for which it represents a core of inexhaustible fertility. Up to a recent past common sense was more 'Boethian' than is generally believed.

2. Previous considerations are a temporary attempt to shape an initial response to the huge but vital problem laid down by the organizers of this Plenary Session. Of course a more developed treatment requires a much more elaborate and extensive dealing with the matter. This can suggest resuming the problem in a subsequent Plenary Meeting.

3. The Boethian determination of person establishes a deep revolution in the universal history of philosophy, a sort of turning point for it towards what I would name as 'principle-person'. This principle acts as a nucleus of permanent reform of politics and the real respect of person, opposing the enormous violations perpetrated during human history.

4. Despite the rather chequered picture traced, it is not necessarily true that personalism is losing the 'battle of the concept'. Ricoeur's unequivocal statement: 'Personalism has not been so competitive as to win the battle of the concept', seems referred to the personalism of *Esprit* and Mounier.¹⁵ The

¹⁴ *L'uomo è antiquato II*, Bollati Boringhieri, Turin 2003, p. 3.

¹⁵ *La persona*, Morcelliana, Brescia, p. 22.

ontological personalism that circulates in the Social Doctrine of the Church has valid opportunities in the battle of the concept, despite the difficulty raised by the widespread post-metaphysical or anti-metaphysical orientation of a considerable part of world philosophy, but also drawing on recoveries which are taking place.

ANNEX I – The new centrality of the anthropological theme

In recent years the ‘anthropological question’ has imposed itself on our attention, forcefully joining the usual public issues that for long time have been termed the ‘democratic institutional question’ and the ‘social question’: at least in the West, they have set the tone for two centuries. With respect to these issues, the anthropological question has more radical features and appears destined to become more pervasive. Man is being undermined in his biological and bodily basis as well as in the consciousness that he forms of himself/herself. And that not just abstractly, but practically, because the new biotechnologies affect the subject, transform it, they tend to make a change in the way we understand the central concepts of everyone’s experience: being generated or produced, being born, living, procreating, seeking health, aging, dying, etc. These are transformations of highly sensitive nuclei that affected thousands of generations and that constitute the fundamental fabric of the human experience in all places and times. The human generation risks passing from procreating to producing, going towards a subject serially designed, manufactured, with the risk of not having a face of its own.

One sign of the problematic situation in which the culture lies, are the widespread doubts about the person: man can change himself but also destroy itself. The more man’s power expands, the more his potential for good and evil increases, and perhaps in a way the risks increase more than the opportunities. Meanwhile, in culture the question echoes increasingly insistently: what remains of the traditional concept of the person? How will it be possible to restore a centre of gravity to man, a polymorphous being pulled in so many directions?

It seems, however, that the closer the sciences seek to press on the knowledge of man, the more man struggles free and escapes from the grasp of scientific-analytic knowledge, leaving behind him questions and tensions. The challenge had already unfolded before the searching eye of Pascal. ‘I had spent a long time on the study of the abstract sciences, but

the lack of communication that one has there with men had disgusted me with them. When I began the study of man, I realized that those abstract sciences were not suited to man, and that I strayed further from my own condition the more deeply I penetrated into the study of them than others by being unaware of them. I forgave others for knowing little of them, but I believed at least that I would find many companions in the study of man. I erred: they are even fewer than those that study mathematics' (*Pensées*, n. 144, ed. Brunschvicg).

With this thought Pascal asks the binding anthropological question a few years after the Cartesian separation between thought/mind and body/extension, according to which the self resides in thought, while the body – entrusted to contingency and the inessential – is ready to be turned over to science and enter the technical domain. The premise of many recent uses of the genetic and biological discoveries can be reliably identified in the Cartesian dualism, improbable like few other things, and against whose revival it is necessary to maintain a high level of intellectual vigilance. The simplistic division of tasks between science and philosophy – to science the *res extensa* and to philosophy thought – has become an obstacle to knowledge, especially to that which turns on life, which absolutely refuses to be reduced to mere extension.

ANNEX II – *Politics and transcendence*

Among the reductionisms I would place those incomplete forms of personalism that are silent on the relationship between person and transcendence, or that consider God an extra-political subject. The classic notion of person with its capacity for horizontal and vertical openness inserts the person in a network of relationships with otherness. A purely immanent conception of the person not only fails to do justice to its real condition, but lays heavy burdens on its shoulders.

Modernity has often understood the task of the politics as *alleviating suffering in the world and creating prosperity*, fostering actions of solidarity and helping the weak. On the whole it could be maintained that the intuition conveyed in the idea of the person has found a practical path in culture and in politics, oscillating, however, since certain aspects of the person have been selected and not others: for example, freedom of choice rather than the need for identity and recognition. Secularized humanism, which does not reject the idea of the person, though it offers a partial account of

it, nurses a justified indignation against injustice and oppression and urgently demands that they should be righted. The big question here is: is man *on his own* capable of bearing the heavy ethical burden that this position, aiming at the redemption of the common life, places on his shoulders? The ethics of human dignity and benevolence place on *real person's* moral burdens which it is unlikely can be honoured without openness to Transcendence and recourse to agape. Secularized idealism is sensitive to the impulse that stems from the idea of the dignity of the person, but tends to defend itself from its theistic root.

Perhaps completely secularized politics endangers the finest achievements of modernity, which will have difficulty in being maintained for long if all contact with Transcendence is cut off. Nothing can assure us that without it we will be capable of defending ourselves from the moral cynicism or from the inefficacy of the appeal to the person and to its value. A humanism proud of its secularism could easily be deceived about the man of flesh and blood: it knows neither its grandeur nor its mediocrity and could easily turn into its opposite, namely into contempt for man.

A REFLECTION ON THE EASTERN CONCEPT OF THE HUMAN PERSON – HIGHLIGHTING SOME ELEMENTS OF HINDU AND TAOIST WORLDVIEWS

MINA M. RAMIREZ

Some elements of the spiritual and cultural heritages from the East may enrich our self-understanding. These elements are being incorporated in different disciplines by several scientists who lead us to a shift of consciousness from a materialistic and mechanistic worldview to an organic and spiritual worldview.

1. THE DIVINE DIGNITY OF THE PERSON

The Indian when greeting another person devoutly bows to the other with joined hands and says 'Namaste' meaning, 'The God/Deity in me greets the God/Deity in you'. In 1996, the Ramon Magsaysay Awards Foundation (RMAF) granted a prize to an Indian guru, Pandurang Shastri Athavale, for community leadership in villages of Bombay. His community development was premised on the social behavioral imperatives of 'Namaste'. This greeting summarizes a whole ethical or organizing principle of life. It is a greeting that can be reconciled with our basic belief as a Christian that every person is called to live as a child of God.

According to Rabindranath Tagore, *We must know with absolute certainty that essentially we are spirit. (Sadhana, 1972 p. 30)*. To be conscious of the divine spark, of this divine energy in us, is to be able to relate well with others and with the world. *By understanding the Self, this entire universe is known. (McLaughlin, p. 18)* The Self here is capitalized because it underscores as it were the 'God-self' that should determine human behavior. To be conscious of the spirit-in-us according to Tagore is to win *mastery over self, by rising above all pride and greed and fear, by knowing that world-*

ly losses and physical death can take nothing away from the truth and greatness of our soul (*op. cit.*, p. 30). For the Hindu, the path to virtue is to be 'soul conscious', to be attentive to the inner reality as embodied spirit.

There is no mention of God or Deity as such in the Taoist worldview. And yet there is an allusion to the spirit in nature that needs to be understood by intuition and contemplation. It is the understanding of the workings of the spirit in nature that will lead us to the right path of action. The world-view of the Tao has been articulated by Lao Tzu (6th century BC). His classic wisdom is contained in his book, *Tao Tè Ching*, where *Tao* means *The Way* (the way the universe works, the way nature is). If we respect the way of nature, we shall become a person of wisdom, knowing the right path in different spheres, especially in the realm of politics, governance and leadership.

Evolved individuals hold to the Tao

And regard the world as their Pattern. (Wing, R.L., 1986, no. 86)

Joseph Petulla has attempted to convey the powerful conjunction of Christian and Taoist themes in his book titled, *The Tao Tè Ching and the Christian Way*. (1998)

The Taoist worldview like other wisdom writings is replete with paradoxes analogous to the workings in nature and alluded to by contemporary writers when speaking about social transformative processes from the inside out.

2. THE HARMONY BETWEEN PERSON, NATURE AND GOD

Bede Griffiths, a Benedictine monk who had immersed himself in the religious beliefs and practices of Hinduism, observed that in Western science there is a sharp distinction between the material, the psychological, and the spiritual. Not so is the thinking in the Vedas, the most ancient form of Hindu poetry in the world. Bede Griffiths explains, that for instance, 'both the physical and psychological were understood as manifestations of the one supreme Spirit'. (Griffiths 1989, p. 59)

He cites a beautiful verse in the Vedas which illustrates these three aspects of reality. *The fire which is the sun, the fire which is the earth, that fire is in my heart.* (*ibid.*, p. 60) In terms of images, heaven is the spiritual world, earth is the material world, and the human being is the psychological world which stands between the two. Thus the fire used for sacrifice brings the material goods to its source back to heaven. In the Vedic view if we live constantly returning things to their source, then we are living in the harmony, the rhythm, the *rita*, of the universe. (*ibid.*, 61)

That every reality is sacred is the foundation of the moral principle of respect for every human being and all of creation. The principle of respect for life and all life-forms will allow us and the earth to develop organically and spiritually. It will guarantee the sustainability of our planet earth, which is threatened by a too materialistic and mechanical world-view.

Tagore writes of the man-in-the-universe:

India having been in contact with the living growth of nature, his mind was free from the desire to extend his dominion by erecting boundary walls around his acquisitions. His aim was not to acquire but to realize, to enlarge his consciousness, that there is no such thing as absolute isolation in existence, and the only way of attaining truth is through the interpenetration of our being into all objects. (Tagore, 1972, p. 7)

Then again,

This fundamental unity of creation was not simply a philosophical speculation for India... With meditation and service, with a regulation of her life, she cultivated her consciousness in such a way that everything has a spiritual meaning to her... India intuitively felt that the essential fact of this world has a vital meaning for us; we have to be fully alive to it and establish a conscious relation with it not merely impelled by scientific curiosity or greed of material advantage, but realizing it in the spirit of sympathy, with a large feeling of joy and peace. (*ibid.*)

In the Hindu wisdom there appears no duality between oneself and the world, no division between animate and inanimate.

This view of harmony between the person, nature and God may be gleaned from the following passage from Lao Tzu in *Tao Te Ching*.

Attain the highest openness;
Maintain the deepest harmony.
Become a part of All things;
In this way, I perceive the cycles.
Indeed, things are numerous;
But each cycle merges with the source
Merging with the source is called harmonizing;

This is known as the cycle of destiny. (Tao Te Ching, no. 16 in Wing, R.L.)

The person is a body-mind-spirit unity. A consciousness of this unity in thought and in deed will bring about a sense of wholeness and holiness. This microcosm of the person reflects the interpenetration in the macrocosm of person, the world and God Who is immanent and transcendent.

The world in this context does not stand outside the person, not something that can be considered as just object to be manipulated and exploited; but is forming with the person an integral whole because it, too, is spiritual, sacred and has integrity.

3. LEVELS OF CONSCIOUSNESS IN THE ASCENT TO THE GODHEAD

According to Griffiths, the breakthrough in consciousness to the transcendent Reality called *Brahman* involves the search for the Self, called *Atman*, the inner reality of the human person.

Through the practice of the discipline of the senses and the mind through meditation, a person may reach consciousness in the more subtle realm, into the transpersonal realm. The level of consciousness is the person's ascent to the Godhead. (Griffiths, 1986, pp. 178-203) From the *intellect (buddhi)* to the *great self (mahat)* one reaches cosmic consciousness. Keeping this state in the self, when the still point is reached, is to be at peace. (*ibid.*, p. 176)

A Final Consideration

These elements of Hindu and Taoist worldviews that have been explored now by scientists like Fritzjof Capra (*The Turning Point*, 1982; *Uncommon Wisdom*, 1988) Ken Wilber (*The Eye of the Spirit*, 1998), Deepak Chopra (*The Seven Spiritual Laws of Leadership*, 1994), Braud, William and Rosemarie Anderson (*Transpersonal Research Methods for the Social Sciences*, 1998); Clive Hamilton (*The Mystic Economist*, 1994) and others. It seems that a new cosmic consciousness is leading to a science that is inclusive of the spiritual dimension of the person. Today, there is recognition not just of I.Q. (Intelligence Quotient), not just of E.Q. (Emotional Quotient) but also of S.Q. (Spiritual Quotient). (Wolman, 2001) In his theory of individuation, Jungian psychology was influenced by elements of the Hindu worldview. (Singer 1972, p. xx) Bio-spiritual exercises like Tai-Chi in China, Yoga in India, and Aikido in Japan are moving meditations which tend to integrate body, mind and spirit as well as make the person highly conscious of his/her interconnectivity with the environment and the whole cosmos. The way one breathes is the way to one's life, health and being.

Reflections on human and social development based on the philosophy of the East have come up with interdisciplinary discourses among scientists

– physicists, economists, transpersonal psychologists, theologians who are Hindu scholars, Buddhists and artists with regard to a holistic world-view in the context of the world that needs a new paradigm, a new consciousness of the development process that takes seriously the spiritual dimension of the person.

In 1994 Corinne McLaughlin and Gordon Davidson published their book, *Spiritual Politics, Changing the World from the Inside Out* which underscores the role of ageless wisdom in politics and government. While being open to the richness of the Asian religious traditions including Hinduism and Taoism, the reflection on ‘The Human Person in Southeast Asian Politics’ (Dr. Wilfrido Villacorta) may also have to be assessed from the perspective of his rootedness in this ‘inside-out’ organic and spiritual world-view, thus realizing the importance of the inner reality of the person of the politician.

Amidst the darkness of a materialistic and mechanical world-view that we are experiencing at the moment, we are given hope and light that there is the dawn of a mystical and spiritual age (Tuoti, 1997) that will make whole and holy what we have collectively fragmented in the past.

We hope that in and through our Christian Faith, we shall move even more so with trust in the Power of the God-Within-us and among us. I believe that the Infinite within our finite selves is the secret of our effectiveness for bringing about total well-being to humanity and our world.

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PART II

LAW AND POLITICAL SCIENCE

CONCEPTUALIZATION OF THE PERSON IN AMERICAN LAW

MARY ANN GLENDON

The Academy's decision to explore concepts and conceptualizations of personhood in the various social sciences challenges each one of us to look deeply into the implicit assumptions that shape our respective disciplines. Where law is concerned, that task is especially challenging because modern law touches nearly every aspect of human life, and different areas of the law typically emphasize different aspects of the person.

The close relationship between a country's law and its culture, moreover, leads one to expect variation among legal systems in the ways they conceptualize human personhood. And, as the papers prepared for this Plenary Session indicate, we do find interesting differences, even within families of legal systems that have much in common. Many of these differences are attributable to the fact that law – in addition to all the other things it does – is part of a society's 'distinctive manner of imagining the real'.¹ Like a nation's art, literature, songs, and poetry, law both reflects and helps to shape the stories we tell ourselves and our children about who we are as a people, where we came from and what we aspire to be.

Perhaps nowhere has law played a more prominent role in a nation's conception of itself than in the United States. The early Americans' peculiar attachment to the law was one of the first things Tocqueville noticed as he traveled about the new nation. 'The spirit of the law', he wrote, 'born within schools and courts ... infiltrates through society right down to the lowest ranks, till finally the whole people have contracted some of the ways and tastes of a magistrate'.² As the population has increased in size and diversity, the law has arguably become the principal carrier of the few values that

¹ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 175.

² Alexis de Tocqueville, *Democracy in America*, Vol I, Part 1, Chapter 8.

command broad allegiance among citizens of many different cultural backgrounds. In such a country, it was perhaps inevitable that political ideas originating in English power struggles between Crown and Parliament would sometimes acquire the status of myth and symbol when they were incorporated into American law at the time of the Founding. And in such a country, it was perhaps inevitable that legal images of personhood would exert an especially strong influence on the attitudes of the citizenry.

In this paper, I propose that one image of the human person has predominated in the U.S. legal system throughout the life of the republic: the image of a free, self-determining, and self-sufficient individual. That such a creature has never existed does not prevent it from having a hold on popular imaginations. Tocqueville testified to its prevalence among the inhabitants of early nineteenth century America. Today, comparative opinion studies tell us that Americans occupy one end of the world spectrum in three respects that are relevant here: in the proportion who say they value freedom over equality, in the proportion who say they believe that success in life is determined by individual efforts, and in the proportion who attach more importance to freedom from state interference than to state guarantees of minimum subsistence in cases of need. According to a 2002 survey, the percentages of Americans who expressed those views were more than double the European figures.³

In this essay, I attempt to trace – in a very preliminary way – how such a flawed idea about human nature migrated from early modern political theory into law and evolved into a leading cultural myth. I will begin with a brief discussion of the ideas about personhood that were held by the framers of the U.S. Constitution. The bulk of my discussion, however, will focus on how those notions underwent further transformations in U.S. Supreme Court decisions where they continue to hold their own among the ideas that are vying for influence in the legal narrative.

The American Founders' Concept of 'The Nature of Man'

The eighteenth century was a time when revolutionaries and, later, statesmen in France and America were open, to an unusual degree, to the ideas of philosophers. That, perhaps, explains why the writings of the

³ John Leland, 'Why Americans See the Silver Lining', *New York Times*, *Week in Review*, June 13, 2004, p. 1. See also, Pew Global Attitudes Project, *Views of a Changing World* (Washington, D.C., 2003).

American founders contain a good deal of discussion about human nature. There are, in fact, dozens of references to 'the nature of man' in *The Federalist Papers*, a series of newspaper articles written in 1787 and 1788 by Alexander Hamilton,⁴ James Madison⁵ and John Jay⁶ to explain the new Constitution to the American public.⁷ In those essays, one can see the influence of English political theorists who, in their efforts to de-legitimize monarchical claims of divine right, had painted vivid pictures of man as free and solitary in an imaginary 'state of nature'. The state of affairs that writers like John Locke presented as 'natural' bears little relation to what the social sciences tell us about human beings and simple societies. Family life and other forms of human sociability, not to mention women, are scarcely visible in their accounts. They had much to say about conflict among human beings, but little about cooperation.

With good reason, Cardinal Cottier, in his contribution to this conference, traced the roots of many contemporary threats facing human personhood to the early modern political philosophers. And with good reason he observed that many of these threats come disguised as progress. In the case of American legal thought, one might add that many of our dilemmas arise from the fact that we owe real progress in constitutional government to many of the same thinkers from whom we inherited flawed concepts of the person!

The authors of *The Federalist Papers* followed Locke and his forerunner Hobbes in placing greater emphasis on the dangers human beings pose to one another than on the human capacity for cooperative living. Though acknowledging that there are 'qualities in human nature which justify a certain portion of esteem and confidence', they asserted that 'men are much more disposed to vex and oppress each other than to cooperate for their common good'.⁸ In their view, it was the dangerous propensities of human beings that give rise to the need for government, and that pose a constant threat to governments once established. The U.S. Constitution was devised, accordingly, with structures to hold selfishness and ambition in check, and to channel potentially divisive energy into the pursuit of wealth, comfort, and security.

⁴ Member of the Constitutional Convention and first Secretary of the Treasury.

⁵ Member of the Constitutional Convention and fourth President.

⁶ First Chief Justice of the Supreme Court.

⁷ Mary Ann Glendon, 'Philosophical Foundations of the Federalist Papers: Nature of Man and Nature of Law', 16 *Harvard Journal of Law and Public Policy* 1301 (1993).

⁸ *The Federalist*, Nos. 10 and 55 (Madison).

Mistrust of human nature went hand in glove with mistrust of government, which, after all, is composed of men. In the most famous passage of *The Federalist*, Madison wrote:

It may be a reflection on human nature that such devices (as checks and balances) should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, no external or internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.⁹

A careful reading of *The Federalist*, however, discloses something puzzling about its vision of personhood. On the one hand, the authors took an exceedingly dim view of human nature, saying things like: 'If impulse and opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control'.¹⁰ Yet at the same time they recognized that the success of the democratic experiment would be crucially dependent on the support of virtuous and public-spirited citizens and statesmen. (Indeed, Madison specifically acknowledged that republican government required a higher degree of civic virtue than any other form.)¹¹

So the question naturally occurs: How can one explain the framers' apparent unconcern about where they would find citizens with the qualities of character which their innovative design for self-government demanded? The simplest and most probable explanation is that they relied on the small structures of civil society – families and tight-knit communities – to inculcate the republican virtues of self-restraint and care for the common good. The founding fathers must have thought they could take the necessary cultural conditions for granted. They had good reason to do so: The non-slave population of the thirteen states (about three million people) was mainly composed of farmers, merchants, and artisans who lived in self-governing townships bound together by widely shared moral and religious beliefs. Biblical religion was pervasive, as were habits of associating

⁹ *The Federalist*, No. 51.

¹⁰ *The Federalist*, No. 10.

¹¹ See *The Federalist*, No. 55.

for all sorts of cooperative ventures, from building a neighbor's barn to keeping the town roads and fences in repair.

The apparent contradiction between the ideas about man informing the Constitution and the sociable reality of life in the colonies diminishes, moreover, when one recalls that *the Constitution was constructed as a framework for a federal government. It specifically provides that all powers not specifically delegated to the federal government are reserved to the states.* The laws of the states, at the time of the founding and until the mid-20th century, were influenced in countless ways by biblical and classical understandings of human nature. Those local arrangements (which in some states even included established churches) were promoted and protected by the Constitution's federal structure. So, even though 'fraternity' (or, as we would say today, 'solidarity') was absent from the political vocabulary of the founders, habits of cooperative living were fostered in numerous ways by local laws and customs. Tocqueville, again, gave us memorable testimony to the penchant for associating that co-existed with a sturdy self-reliance in early American townships.

As the U.S. population expanded, however, common understandings grew fewer, and national law assumed more importance as a carrier of values. The stage was set for ideas that had served well enough for the purpose of establishing limited government to migrate from political theory into law where they acquired a life of their own. One of the first legal commentators to remark critically upon the unusual degree of individualism in U.S. law seems to have been the 20th century legal philosopher and comparatist Roscoe Pound. Pound noted that the idea of an 'isolated individual was at the center of many of our most significant legal doctrines'.¹² While all modern legal systems could be said to be individualistic in comparison to pre-modern law, Pound regarded American legal thought as distinguished by 'an ultra-individualism, an uncompromising insistence upon individual interests and individual property as a focal point of jurisprudence'.¹³ He speculated that this was due to a unique fusion of Puritanism with the pioneer spirit and with eighteenth-century ideas of natural right. These factors combined, he wrote, to give an 'added emphasis to individualist ideas in the formative period of our legal system that served to stamp them upon our

¹² Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991), pp. 37-75.

¹³ Roscoe Pound, *The Spirit of the Common Law* (Boston: Beacon Press, 1963), 37.

theory and practice and keep them alive and active' even after English legal thought had taken a different direction.

Concepts of the Person in Modern U.S. Constitutional Law

The view of man as naturally independent, together with the idea of government as involving a necessary but regrettable sacrifice of some, but not all, of our natural liberty fueled the mistrust of government that has long been characteristic of American constitutionalism. Even after the United States established its social security system in the 1930s, and even though the power of the federal government has vastly expanded, the U.S. legal system has never accepted the positive vision of an affirmatively acting state that informs many constitutions in the Romano-Germanic tradition.¹⁴ The U.S. rights tradition has long emphasized political and civil liberties, framed as 'negative rights' (i.e. restraints on government), but has not incorporated the post-World War II trend in many other liberal democracies to accord constitutional status to certain programmatic obligations on the part of the state toward citizens.¹⁵

The main points of contrast between the dignity-based constitutional tradition described so well in Professor Kirchhof's paper and the more 'libertarian' U.S. approach can be briefly summarized. The U.S. rights tradition confers its highest priority upon individual freedom from governmental constraints. Rights tend to be formulated without explicit mention of their limits, their relation to responsibilities, or to other rights. Personal freedom is protected by procedures, but lacks an explicit normative structure.

A more complex dialect of freedom and responsibility characterizes the dignitarian rights language that one finds in several post-World War II documents – such as the German 1949 Basic Law and the 1948 Universal Declaration of Human Rights, as well as in the social teachings of the Catholic Church as elaborated by Popes John XXIII and John Paul II. In these documents, rights are envisioned not only as protected by fair

¹⁴ See, e.g., German Grundgesetz, Art. 1: 'The dignity of man shall be inviolable. To respect and protect it shall be the highest duty of the state'.

¹⁵ Mary Ann Glendon, 'Rights in Twentieth Century Constitutions', 59 U. Chicago L. Rev. 519 (1992).

¹⁶ E.g., Universal Declaration of Human Rights, Art. 16 (3): 'The family is the natural and fundamental group unit of society and is entitled to the protection of society and the State'.

procedures, but as grounded and situated in a normative framework based on human dignity. Specific rights are typically formulated so as to make clear that they are related to one another, that certain groups as well as individuals have rights, and that political entities, as well as citizens, have responsibilities.¹⁶

Underlying these divergent concepts of rights are somewhat different notions about the person who is endowed with rights. While the rights-bearer in the U.S. constitutional tradition tends to be imagined as an independent, highly autonomous, self-determining being, the dignitarian systems tend to make explicit that each person is constituted in important ways by and through his relations with others. For example, U.S. judges and lawyers frequently quote former Justice Louis Brandeis' dictum that the 'most comprehensive of rights and the right most valued by civilized men' is 'the right to be let alone' (an idea that would sound rather strange in many parts of the world).¹⁷ The German Constitutional Court, by contrast, takes a more relational view of personhood, as expressed in its oft-cited 1954 decision stating: 'The image of man in the Basic Law is not that of an isolated, sovereign individual. [T]he tension between the individual and society [is resolved] in favor of coordination and interdependence with the community without touching the intrinsic value of the person'.¹⁸

A post-modern touch was added to the portrait of the lone rights-bearer in U.S. constitutional law in 1992 when a plurality of Supreme Court Justices advanced a vision of the self as invented and reinvented through the exercise of the individual's will, limited by nothing but subjective preference. Ruling on the constitutionality of a state abortion law, the Justices shifted the ground for abortion rights from privacy to liberty. To require a married woman to notify her husband of her intent to have an abortion, they held, would violate a woman's liberty. In so holding, they announced a theory that endows human personhood with the freedom 'to define one's own concept of existence, of the meaning of the universe, and of the mystery of human life'.¹⁹ That freedom, they said, 'lies at the heart of liberty' because 'beliefs in these matters could not define the attributes of personhood were they formed under compulsion of the State'.

In that passage, the Court came very close to adopting the concept of freedom that Pope John Paul II memorably described as follows in *Veritatis*

¹⁷ *Olmstead v. United States*, 277 U.S. 438, 478 (1928), Brandeis J., dissenting.

¹⁸ *Investment Aid Case I*, 4 BverfGE 7 (1954).

¹⁹ *Casey v. Planned Parenthood*, 505 U.S. 833, 851 (1992).

Splendor (46): 'This ultimately means making freedom self-defining and a phenomenon creative of itself and its values. Indeed, when all is said and done man would not even have a nature; he would be his own personal life-project. Man would be nothing more than his own freedom!'

Despite criticisms that such an unbounded definition of liberty, if taken seriously, would undermine the basis of all law, a majority of the Court reaffirmed it in 2003, *in haec verba*, in a decision invalidating penalties for homosexual sodomy.²⁰

The U.S. Court majority's current notion of freedom is thus quite distant from understandings of freedom that stress the dignity of the person as actualized through relations with others and through the development of one's ability to exercise freedom wisely and well.²¹ Compare, for example, the German Constitutional Court's statement in its *Life Imprisonment Case* that, 'freedom within the meaning of the Basic Law is not that of an isolated and self-regarding individual but rather that of a person related to and bound by the community'.²²

It may be noted that what is absent from both the U.S. and the German Court's formulations is the concept of the constitutive effect of choice: the way in which the exercise of our freedoms affects the kind of persons we become, and the way in which the choices of citizens collectively affect the kind of society that we are bringing into being. With awareness of those effects comes awareness of another matter on which the law is silent: the issue of responsibility for one's choices. Perhaps it is too much to expect that law can promote the responsible exercise of freedom. Nevertheless, in legalistic, pluralistic societies, there is no escape from the fact that the silences of the law speak and send messages.

The highly individualistic concept of personhood advanced by the current U.S. Supreme Court majority both reflects and legitimates attitudes that have gained ground in American culture – especially elite and media culture – in the late twentieth century. A latter-day Tocqueville might observe that the sturdy self-reliance and independence of mind he so admired have been eroded in many quarters by understandings of liberty as individual freedom from all forms of social and legal constraint.

²⁰ *Lawrence v. Texas*, 539 U.S. 558, 574 (2003).

²¹ See John Coughlin, 'The Human Being, Catholic Social Teaching and the Law', 1 *Journal of Catholic Social Thought* 313-333 (2004).

²² *Life Imprisonment Case*, 45 BverfGE 227 (1977).

The Isolated Individual in Various Fields of U.S. Law

At this point, I must emphasize there are many social and legal forces that serve to mitigate the effects of excessive individualism in American law. Nevertheless, there is reason to believe that the country's common stock of moral beliefs has been adversely affected – though to an unquantifiable degree – by legal concepts and images. In a legalistic and heterogeneous society, there is a certain tendency to regard the Supreme Court's pronouncements not merely as legal rulings but as moral teachings grounded in the country's most sacred civic document. Thus, when nine Justices in black robes solemnly announce that something is legally permissible – or constitutionally required – many people take such decisions as assurance that the behavior in question is morally acceptable as well. Manifestations of the 'ultra-individualistic' anthropology outlined above can be traced in numerous laws and policies relating to the family, schools, religion, and voluntary associations. American church-state law, for example, is so dominated by the notion of religion as a private affair 'between an individual and his God' that it has often failed to protect the associational and institutional dimensions of religious freedom.²³

In private law, the influence of the myth of the self-sufficient individual connected to others only by choice is strikingly illustrated by two doctrines that are quite widely at variance with common sense, one in family law and the other in tort law.

Modern, gender-neutral, American divorce law has accepted the principle that economic self-sufficiency should be the goal for both spouses after marriage comes to an end. This unrealistic principle leaves one large class of women, namely mothers, with fewer legal protections than they would have in most other countries at comparable levels of economic development.²⁴ In some countries, such as France and Germany, post-divorce dependency is addressed through vigorous enforcement of the support obligations of former providers, while in the Nordic countries a large part of the cost is borne by society at large through relatively generous public benefits for single parents. The United States, by contrast, is both more lax than the former in requiring former providers to fulfill

²³ Mary Ann Glendon and Raul F. Yanes, *Structural Free Exercise*, 90 *University of Michigan Law Review* 477 (1991).

²⁴ Mary Ann Glendon, *The Transformation of Family Law* (Chicago: University of Chicago Press, 1989), 237.

their support obligations and less generous than the latter where public assistance to single mothers is concerned.

My second example concerns the American tort law doctrine that a person has no legal duty to come to the aid of another person in peril, even if he can do so without harm to himself. The doctrine, as it exists in all but a handful of states, is usually introduced to American law students by asking them whether an Olympic swimmer has violated any law if he notices a child drowning in a swimming pool and stands by without coming to her aid. The absence of a legal duty to rescue in such a case is so profoundly at odds with ordinary moral intuitions that it comes as a shock to most students. Yet the doctrine, as described in a leading treatise, is clear: "The law has persistently refused to impose on a stranger the moral obligation of common humanity to go to the aid of another human being who is in danger, even if the other is in danger of losing his life".²⁵ The explicit distinction between law and morality is significant here, as is the use of the word 'stranger' as a technical legal term. (Unless persons have entered into a legally recognized relationship with one another, American tort law treats them as having no duty to one another except to avoid the active infliction of harm. The law regards them as 'strangers', rather than fellow citizens or fellow members of the human family.)

The law in the Romano-Germanic systems, by contrast, imposes both civil and criminal penalties for a failure to rescue where the deed could have been accomplished without undue risk of harm to the rescuer. The practical significance of this difference is small, in the sense that actual cases of failure to rescue rarely arise. But as a leading French scholar has pointed out, the chief importance of the legal duty to rescue is pedagogical: it is 'to serve as a reminder that we are members of society and ought to act responsibly'.²⁶ By the same token, one might speculate that the chief importance of legal silence on this point in the U.S. is that it represents a lost opportunity to reinforce the sense of being part of a community for which all share a common responsibility.

In U.S. public law, there is a precise parallel to the absence of a duty to rescue, as illustrated in a 1989 case where a little boy and his mother sued a state social services department for the brain damage he suffered after state agents failed to remove him from the home of his violent father in

²⁵ Prosser and Keeton on the Law of Torts, 5th ed. (St. Paul, MN: West, 1984), 375.

²⁶ André Tunc, 'The Volunteer and the Good Samaritan', in *The Good Samaritan and the Law* (Gloucester, Mass.: Peter Smith, 1981), 43.

whose custody they had placed him. The U.S. Supreme Court affirmed the denial of liability in that case, saying that the Constitution imposes no duty on government to protect the health and welfare of the citizens 'even where such aid may be necessary to secure life, liberty or property interests of which the government itself may not deprive the individual'.²⁷

In another such case, where police negligently failed to remove a man from a burning automobile, lawyers argued that the constitutional right not to be 'deprived of life, liberty or property without due process of law' included the right to receive basic services from the State. But that claim was rejected in an opinion that speaks volumes about the attitudes toward government that are ingrained in the U.S. legal system. 'The problem with this argument', a prominent federal judge wrote, 'is that the Constitution is a charter of negative rather than positive liberties... The men who wrote the Bill of Rights were not concerned that government might do too little *for* the people, but that it might do too much *to* them'.²⁸ It is difficult to imagine judges in continental European liberal democracies making such a statement. (To avoid misunderstandings, I must note that the absence of a *constitutional* right to protective services does not mean that the injured persons in the cases just mentioned had no remedies at all. The officials involved would have been subject to discipline, and the injured boy was entitled to limited compensation under a statute.)

The most significant countervailing example to the individualistic trends I have outlined here is probably that of the U.S. social assistance programs where the implicit concept of personhood seems at first glance to be completely opposite to that which I have described. Yet even in the social welfare area, an ingrained ideal of self-sufficiency shows its power by fostering a certain institutionalized disdain for adults who cannot be self-sufficient. That disdain for dependency may well explain why social assistance is so often offered grudgingly and administered disrespectfully. In recent years, proposals have emerged to encourage more of a sense of solidarity on the part of contributors, while respecting the dignity of the recipients. But the future of these proposals, which involve experiments with delivery of social services through the intermediate institutions of civil society, is uncertain.

²⁷ DeShaney v. Winnebago County Dept. of Social Services, 109 S.Ct. 998 (1989).

²⁸ Jackson v. City of Joliet, 715 F. 2d 1200, 1203 (7th Cir. 1983).

Concluding Observations

The foregoing survey represents an attempt to frame an initial response to the difficult challenge laid down by the organizers of this Plenary Meeting. A complete treatment of the subject would need further research, and no doubt would result in a more nuanced presentation than has been offered here. With that caveat, I will nevertheless submit a few tentative concluding observations.

The American framers' concept of the human person, while incomplete from a philosophical or anthropological point of view, was appropriate for the limited purpose of designing a federal framework within which civic life could flourish under conditions of ordered liberty. What needs to be kept in sight (but unfortunately is too-often forgotten) is that *the liberal principles enshrined in the U.S. founding documents were political principles that were never meant to serve as moral guides for all of social and private life*. Those principles, with their encoded image of the free self-determining individual, grounded important and lasting political achievements: the establishment of a republic with democratic elements, the protection of liberty, and the promotion of individual initiative. I believe a convincing case can be made that the U.S. Constitution contains implicit principles of subsidiarity that could have fostered the development of stronger moral and juridical foundations for the American version of the democratic experiment. But that concept is little understood in the United States, and the tendency to think in terms of individual, state and market without intermediaries is very strong.

The framers understood perfectly well that the success of the democratic experiment would depend on the habits and attitudes of the citizenry, but they relied on social, rather than legal, norms and institutions to inculcate the necessary qualities. Their vision for America was that of a people 'free by the laws, and restrained by the manners' (as Montesquieu once described the English). But as the population expanded and became more diverse and mobile, common understandings grew thinner, and national law assumed more importance as a repository of common values. With the expansion of federal power in the twentieth century and the corresponding limitation of the power of state and local governments, the ability of citizens to have a say in shaping those values has diminished. In the latter half of the twentieth century, the U.S. Supreme Court removed a great many issues from ordinary local, democratic, political processes. Initially, this was done to protect racial minori-

ties. But in later cases, such as those involving abortion, education, and religion, courts drastically restricted the rights of citizens in general, and parents in particular, to help establish, through legislation, the conditions under which they live, work, and raise their children.²⁹ This experience in the U.S. should serve as a cautionary example for other nations embarked on ambitious experiments with supra-national governance.

With the growing influence of legal, as distinct from social, norms, the flaws in legal concepts of personhood began to be more problematic – as did the founders' silence regarding matters they had taken for granted (the family, the common good, the responsibilities that are correlative with rights).³⁰ Ideas that had been useful for the purpose of establishing limited government began to pervade social discourse, to the detriment of the cultural supports on which a liberal democratic regime depends. Decreasingly tempered by social norms, legal structures designed to channel human energy into the pursuit of private satisfactions may have fostered materialism and personal alienation, discouraging active citizenship.

By embracing the notion of individual autonomy as fully as it has, and by ignoring or downgrading healthy forms of interdependence, the U.S. legal system may have rendered our society less hospitable to the weak, the vulnerable and the dependent – as well as to those who care for them. Certainly it has distanced legal norms from the lives that many Americans are struggling to live. There is often, as Charles Taylor has observed, 'a lack of fit between what people officially and consciously believe, even pride themselves on believing, on the one hand, and what they need in order to make sense of some of their moral reactions, on the other'.³¹

²⁹ See *Roe v. Wade*, 410 U.S. 113 (1973) (abortion); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (abortion); *Stenberg v. Carhart*, 530 U.S. 914 (2000) (partial birth abortion); *Engel v. Vitale*, 370 U.S. 421 (1962) (school prayer); *Abington School District v. Schempp*, 374 U.S. 203 (1963) (school prayer); *Stone v. Graham*, 449 U.S. 39 (1980) (Ten Commandments posting in school); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (voluntary moment of silence for prayer or meditation in school); *County of Allegheny v. ACLU*, 492 U.S. 573 (1989) (public nativity display); *Lee v. Weisman*, 505 U.S. 577 (1992) (school graduation prayer); *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (1999) (student prayers at high school football games); *Texas v. Johnson*, 491 U.S. 397 (1989) (flag-burning); *Stanley v. Georgia*, 394 U.S. 557 (1969) (pornography).

³⁰ Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991).

³¹ Charles Taylor, *Sources of the Self* 9 (Cambridge: Harvard University Press, 1989).

Now, to conclude, I wish to come back to the issue of the way in which law both reflects and shapes culture. The main concern I have expressed here is closely related to the study of democracy that our Academy has just completed. It is that ideas based on a flawed anthropology can undermine the very conditions are essential for the maintenance of a free republic. Moreover, if hyper-individualistic, ultra-libertarian ideas are spreading from one country to another through globalization, they also can wreak havoc on the more capacious notions of personhood that have informed dignitarian legal systems in other parts of the world.

The best hope for an eventual correction, I would suggest, resides in that aspect of human personhood to which John Paul II referred in the conclusion to his great encyclical *Fides et Ratio*:

I ask everyone to look more deeply at man, whom Christ has saved in the mystery of his love, and at the human being's unceasing search for truth and meaning. Different philosophical systems have lured people into believing that they are their own absolute master, able to decide their own destiny and future in complete autonomy, trusting only in themselves and their own powers. But this can never be the grandeur of the human being... (107)

The capacity of men and women to reflect upon their existence, to make judgments concerning the good life, to review those judgments in the light of reason and experience, and to take responsibility for their decisions, is one upon which all successful legal systems depend. That human capacity for reflection and responsible choice is what makes the difference between being carried along by events and being able to shift probabilities in a more favorable direction.

THE CONCEPT OF THE HUMAN PERSON IN ANGLO-AMERICAN LAW

NICHOLAS JOHN MCNALLY

English Law

Winston Churchill in his *History of the English-Speaking Peoples*, Vol. II, makes the point that the English and American legal systems diverged radically from each other in the 17th Century in the way in which they rejected (in large part) the Royal Prerogative.

The Royal Prerogative – the concept that the King can do no wrong, that he is above the law – was challenged in England by the Lord Chief Justice, Sir Edward Coke. He contended that conflicts between Prerogative and Statute should be resolved not by the Crown but by the Judges. The law was supreme. For his pains he was dismissed in 1616 by James I. Some years later he entered the House of Commons.

And it was through the House of Commons that the English defeated the Royal Prerogative by asserting the power of the people, as represented by their members of Parliament. They developed a Parliamentary democracy. But what crossed the ocean to New England with the 'Mayflower' was the more logical interpretation of Sir Edward Coke's idea. It was the law that was to be supreme in the New World. The Americans established a Constitutional democracy.

The English have always distrusted theories – much to the puzzlement of the French – and by the device of the Supremacy of Parliament no mere judge could overrule an Act of Parliament, and no written Constitution existed to limit the power of Parliament. There was thus a flexibility in English governance and a freedom from theories and concepts. The fact that the system worked well was its own justification. One sees even today the English nervousness at being governed from Brussels by 'people with theories'. The triumph of beaurocracy over democracy.

True to that English tradition, I will not follow Prof. Glendon into her discussion of the American Founders' Concept of the Nature of Man. The English Common Law developed long before Locke and Hobbes expounded their ideas. It was designed to ensure that each man's rights within the fabric of society as it then existed were protected.

Although the Common Law was already well established, there were many disputes with the King over specific rights. In consequence contentious parts of the Common Law were re-enumerated in the Great Charter (Magna Carta) of 1215. But Magna Carta was not a philosophical treatise. It was a list of sixty-three specific grievances, which the King undertook to put right. It was a document forced upon the King, which he never intended to observe. Indeed it was denounced, under pain of excommunication, by the Pope, Innocent III. But it chanced that the King died the following year. The rebel barons made peace with those representing his nine year old son, the future Henry III. By 1225, the Charter, slightly modified, became the basis for governance under the new regime. Lord Denning, in 1956, described it as 'the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot'.

Nevertheless, it was not a constitution. It was a list of demands ranging from the general –

39. No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined; nor will we go or send against him, except by the lawful judgement of his peers or by the law of the land.

40. To no-one will we sell, to no-one will we deny or delay right or justice.

to the very particular –

33. Henceforth all fish-weirs shall be completely removed from the Thames and the Medway, and throughout all England, except on the sea coast.

So, under the Common Law, wrongdoers were punished, regardless of rank, after a fair trial by their peers, i.e. their social equals and neighbours. The law was robust and pragmatic. The jury which decided on guilt consisted of men who knew the accused, had grown up with him and knew his family. They were not required to give reasons for their verdict. They would have agreed that every man (or woman) was entitled to a fair trial, but if you had asked them about the fundamental rights of men, or women, or foreigners, or homosexuals or lunatics or unborn children they would have

been taken aback. They did not think in that way. There were long-standing rules governing some of these situations, and others were introduced gradually over the years by legislation.

There were, of course, theories of legal personality. By that I mean concepts concerning the right of women, children and lunatics to sue, the age at which a minor child could inherit or marry, and things of that sort. But these were practical rules rather than concepts of the human person. The law was concerned on the one hand with protecting the structure of society, and on the other with protecting individuals from injustice within that structure. It had, I venture to suggest, no conscious concept of the human person as such.

I would agree that English Law, like American Law, has always seen the individual as its focus of concern, rather than 'the people' or 'the masses' or 'the proletariat'. And equally there is a mistrust of government, which finds its expression in a sturdy individualism among members of Parliament and a tradition, now dying out, of voting for the man rather than the party at election time.

But if one is to look at the concept of the human person in modern day law in the English speaking world, one has to look at the legislation passed by Parliament in each specific country. One may look for an underlying social theory as to the nature of man, and one may recognise the huge impact of the Universal Declaration of Human Rights, but in the final analysis – what does the statute say?

Thus abortion laws, and laws about stem cell research define for each country when a human person is deemed to come into existence. Euthanasia laws define when a person (personality?) may be deemed to have ceased to exist. A host of other laws relating inter alia to employment, discrimination, gender, sexual orientation and religious freedom define and protect rights of individuals which are perceived to be threatened.

One may perhaps say, in conclusion on this aspect that the trend in modern law, or more correctly, in modern legislation, is to reduce the Catholic definition of 'human person' at both ends, i.e. conception and death, and to expand it in the middle by, for instance, according more sympathy and recognition to homosexuality – the homosexual human person.

Law, Religion & Morality

In the English law, as in any other legal system, there has always been an interplay between law, religion and morality. People like to think that the three must be kept entirely separate. But this is not possible. Without

religion, there can be no morality; and without morality there can be no law (to quote Lord Denning again). In a famous dictum in 1932, dealing with the manufacturers' liability for damage to the ultimate purchaser, Lord Atkin said

The rule that you are to love your neighbour becomes in law 'you must not injure your neighbour'; and the lawyer's question, 'Who is my neighbour?' receives a restricted reply.

The refusal of Europe to include the 'invocatio Dei' in the new European Constitution's preamble may be an attempt to maintain the separation between Church and State, but to an outsider it seems more like an attempt to apologise for Europe's Christian cultural heritage. It is true that the preamble does refer to:

the universal values of the inviolable and inalienable rights of the human person, democracy, equality, freedom and the rule of law.

But these values themselves have been developed through Europe's Christian heritage.

Stoic Philosophy, Roman Law and Medieval Theology and Jurisprudence

I suppose it may be argued that these universal values in fact predate Christianity. The Stoics conceived of the fundamental equality of man, and this concept was readily accepted into the Roman Law and thence into mediaeval philosophy and jurisprudence. From there it became part of the Roman-Dutch Law of the Netherlands.

Roman Dutch law of Southern Africa

Since the Common Law of much of Southern Africa is the Roman-Dutch Law, it is worth considering briefly how that came about. The Dutch in 1652 established a settlement at the Cape of Good Hope in South Africa, essentially as a staging post for the Dutch East India Company's operations in what is now Indonesia.

The Law of the Cape Colony was the Roman-Dutch Law of Holland. The British then conquered the Cape, but maintained the legal system as they found it, subject only to English procedural law. Thus when Napoleon imposed the Napoleonic Code in the Netherlands, and abolished the Roman-Dutch Law, his action had no impact on the law of the Cape Colony. The Roman-Dutch Law then spread to the whole of South Africa, Zimbabwe, Namibia, Botswana, Lesotho and Swaziland.

Although the principle of the fundamental equality of man is at the heart of the Roman-Dutch Law, one has to recognise the basic contradiction that the legal system ran parallel with the political system of slavery in the early days and apartheid or separation between the races in more recent times. Where was 'the concept of the human person' in such a system?

One can only say that the judiciary, by and large, tried its best, within the confines of all-embracing discriminatory legislation, to treat all men as equal.

But there is in fact no avoiding the conclusion that the concept of race predominated. The Common Law was everywhere overridden by statute law or legislation. Group rights, and the rights of one group in particular, were predominant over individual human rights.

The Emergence of Bills of Rights

The solution, in the post-apartheid era, has been found, all over Southern Africa, in the acceptance of written constitutions, establishing and entrenching Bills of Rights. In these Bills of Rights, differently worded in the various countries, the concept of the human person and his/her individual human rights is spelled out. In South Africa there is a Constitutional Court to interpret and defend these rights. In other countries the Supreme Court acts as a Constitutional Court when questions of human rights arise.

The Courts thus have the power to strike down legislation which conflicts with the Bill of Rights. In a pragmatic sense one may say that the concept of the human person in any particular Southern African country will emerge from a study of the Bill of Rights of that country, and from the interpretation of that Bill by the Constitutional/Supreme Court of that country.

It is perhaps too early in the history of Southern African constitutional democracies to determine whether the criticisms of the US Supreme Court, so delicately expressed in Prof. Glendon's paper, are relevant also in Southern Africa. In human affairs, wherever a decision has to be made, there will be those who do not agree with the decision made. But by and large, one may say that the concept of the human person and that human person's fundamental human rights is well understood and accepted. What is increasingly in dispute is the definition of 'human person'. When does that person begin to exist? When does that person cease to exist? What recognition should be given to the sexual orientation of that person? What are the rights of the human person in relation to the indissolubility of marriage? These are the problem areas.

MENACES SUR LA PERSONNE

GEORGES M.M. COTTIER

Introduction

1. Il n'est pas facile de dresser un inventaire des menaces qui pèsent sur nous. Si certaines sont évidentes, d'autres sont plus difficiles à identifier. On court le risque de donner une énumération incomplète. Mais surtout comment établir l'ordre des menaces, détecter leur degré de gravité ou établir les connexions qui les lient entre elles? Sans compter que ce qui se présente comme une menace, peut en réalité cacher une chance à saisir.

C'est pourquoi j'ai pensé que je pouvais partir de l'hypothèse, que je crois fondée, qu'il existe une parenté, qui est de l'ordre de l'inspiration, entre les menaces auxquelles nous devons faire face. Remontant pour ainsi dire en-deçà, je me suis posé la question suivante: quelle idée de l'homme, de la signification de ses connaissances et de la nature de son pouvoir constitue l'horizon de pensée à partir duquel s'expliquent un certain nombre de menaces qui sollicitent notre vigilance? Remarquons qu'une des menaces majeures réside dans le fait que pour beaucoup de nos contemporains, ce que nous considérons comme une menace, est accepté comme une conquête positive. Il suffit de donner l'exemple de certaines manipulations génétiques. Ainsi il existe une sorte de menace principielle qui est précisément l'absence de la conscience de la menace.

En conséquence il m'a paru opportun de m'interroger sur la mentalité, philosophie et idéologie, qui semble s'imposer à un grand nombre de nos contemporains. Cette mentalité n'est sans doute pas totalement unifiée et homogène et ne va pas sans contradictions. Néanmoins nous pouvons en reconnaître les pôles qui sont le positivisme et le libéralisme.

Le premier concerne l'approche cognitive et technique de la réalité considérée dans sa totalité. Le second porte directement sur l'idée de l'homme. Il convient donc de soumettre à un examen critique l'un et l'autre de

ces deux pôles philosophico-idéologiques, marquer leurs différences, mais aussi les points de rapprochement.

Le programme est trop complexe pour une unique conférence. C'est la raison pour laquelle je m'en tiendrai à quelques réflexions sur le libéralisme.¹

I.

Libéralisme et christianisme

2. Dans une étude datée du 2 septembre 1935 et qui a pour titre *Les communautés totalitaires*, le futur Cardinal Journet parlant de la solution chrétienne du problème des rapports de l'homme et de la communauté politique, écrit: "Elle s'élève, comme un sommet difficile d'accès, entre deux erreurs opposées, qui semblent se disputer tour à tour les esprits des hommes. Ou bien ils ne voient plus le caractère sacré des droits de la communauté sur la personne individuelle: c'est l'erreur appelée individualisme. Je pense qu'elle a existé à l'état sporadique à toutes les époques, mais pour se développer un grand jour, elle devait attendre que l'immortalité de l'âme fût ouvertement proclamée par la philosophie et surtout par le christianisme; en sorte que l'individualisme, tel que nous venons de le définir, présuppose le christianisme, il est la corruption d'une vérité chrétienne. Ou bien, au contraire, les hommes ne voient plus le caractère sacré des droits de la personne individuelle sur la communauté; c'est l'erreur que, pour le plaisir, si l'on veut, d'inventer des mots barbares, nous appellerons communautisme ou totalitarisme. Le communautisme n'a pas eu besoin, pour sévir, d'attendre l'avènement du christianisme. C'est l'erreur la plus spontanée, la plus brutale, la plus répandue. Après une courte période d'individualisme, elle nous menace de nouveau. Mais sa forme moderne est distincte de sa forme antique".²

Quand ce diagnostic est proposé, il y a deux ans que Hitler a accédé au pouvoir. La Russie est sous le joug soviétique depuis près de trente ans, le fascisme italien a plus de dix ans. Qu'il soit de droite ou de gauche, le totalitarisme exerce une forte séduction sur beaucoup d'esprits. Après les

¹ Sur le positivisme, je me permets de renvoyer à mon article, *Le rôle de la philosophie dans le dialogue entre science et foi*, in *Nova et Vetera*, 2004/4, p. 19-28.

² Charles Journet, *Les communautés totalitaires*, dans *Exigences chrétiennes en politique*, 1990/2, Ed. St. Augustin, St. Maurice (Suisse), pp. 13-24.

tragiques expériences du XX^{ème} siècle, le balancier nous porte aujourd'hui à l'autre extrême: le libéralisme se présente comme une idéologie victorieuse et conquérante.

Le texte cité parle d'individualisme; nous verrons que le terme recouvre celui de libéralisme. Il met en évidence un aspect essentiel: entre individualisme et totalitarisme il n'y a pas de symétrie, parce que l'individualisme présume le christianisme, parce qu'il est une corruption du christianisme.

Cette relation au christianisme rend délicat le jugement que nous devons porter. Alors que la logique du totalitarisme conduit à la négation de la personne, le libéralisme repose sur une conception erronée et tronquée de la personne, c'est ce qu'exprime le terme d'individualisme.

Une idéologie

3. Le libéralisme est aujourd'hui l'idéologie dominante des pays occidentaux qui sont aussi des pays industriels. Par son dynamisme, l'idéologie tend à se répandre à une échelle planétaire. Nombreux sont ceux qui pensent qu'elle est indissociable du développement économique.

Par idéologie j'entends un ensemble d'idées-force, qui sont admises dans une société comme allant de soi, indiscutables, et qui agissent comme des principes d'action modelant les comportements et les jugements moraux. L'idéologie se distingue de la philosophie par plusieurs traits, bien que des écrits philosophiques puissent être à l'origine ou se présenter comme des justifications ou des apologies de l'idéologie. La philosophie représente un effort rationnel pour comprendre la réalité dans ses structures et ses dynamismes, et pour dégager les causes des processus et des activités qu'elle présente. Pour la question qui nous occupe, le champ de réalité considéré est avant tout celui de l'homme et de la société. La prise de conscience, la connaissance objective et le caractère délibéré et volontaire de l'action sont le propre de la démarche philosophique. L'idéologie se présente, à l'inverse, comme un phénomène social; elle peut se décrire comme l'imprégnation d'un groupe social par un certain nombre d'idées dont il n'y a pas lieu de rendre compte, parce qu'elles s'imposent comme si elles étaient évidentes ou souvent parce qu'elles agissent au niveau de l'inconscient. Ces idées se présentent comme indiscutables et indiscutées.

Elles s'imposent ou elles sont imposées. Ainsi le pouvoir totalitaire a toujours cherché, par la propagande, par l'intimidation ou la violence, à inculquer aux membres du corps social un certain nombre de convictions telles qu'il n'y ait pas lieu d'en chercher le motif ou le fondement. Bien plus,

rechercher publiquement ce fondement était considéré comme un délit; si quelqu'un se posait ce type de question, il était condamné à le faire en privé, privé qualifiant ici une pensée enfermée dans la conscience individuelle et privée, précisément, de son droit à l'expression. Le but, impossible à atteindre pleinement que visent, par l'action idéologique, les pouvoirs totalitaires est le divorce contre nature dans un même individu entre la conviction et la pensée et sa tendance naturelle à l'expression.

On dira, à juste titre, qu'avec cette dernière observation nous sommes très éloignés du libéralisme et de la liberté qui en est indissociable. Cela est exact. Mais la comparaison avec les idéologies totalitaires nous permet de prendre conscience de la difficulté de définir l'idéologie libérale comme ensemble de convictions motrices faisant l'économie de justifications et constituant ainsi une sorte de spontanéité d'origine culturelle.

En parlant d'idéologie totalitaire, c'est avant tout au communisme que je pensais. Or de l'une à l'autre idéologie les différences sont considérables: à l'origine du communisme, nous trouvons un système de pensée élaboré, la doctrine marxiste-léniniste, un projet révolutionnaire, la conquête du pouvoir politique en Russie d'abord puis en d'autres pays, l'établissement d'un régime totalitaire qui déploie des moyens considérables d'endoctrinement. Rien de tout cela ne s'applique au libéralisme.

Le communisme marxiste est né d'une critique du système capitaliste comme expression du libéralisme. Il se proposait sa destruction et sa substitution. Il dénonçait la liberté du libéralisme comme une pseudo-liberté, parce que la liberté d'une minorité avait pour rançon la servitude du grand nombre. Autrement dit la liberté du libéralisme était dénoncée comme une liberté à laquelle on sacrifiait l'égalité. La revendication de l'égalité a conduit Marx à rejeter la définition libérale de l'homme comme individu au profit d'une définition collectiviste.

L'échec retentissant du système soviétique, ainsi que les modifications radicales du système chinois, sont considérés par les défenseurs du libéralisme comme une preuve expérimentale de sa validité à la fois historique et éthique, la preuve qu'il possède en lui-même la force de relever les plus grands défis. Il se présente aujourd'hui comme une idéologie conquérante.

Ce détour par la référence à l'idéologie marxiste-léniniste permet aussi de mettre en évidence la fluidité du concept d'idéologie, cependant nécessaire pour exprimer le phénomène qui nous occupe.

Ajoutons une autre différence entre l'idéologie libérale et l'idéologie marxiste-léniniste. Cette dernière s'est construite en *Weltanschauung*, en vision générale du monde. Le libéralisme se présente dans des domaines distincts tels que la politique, l'économie et la théologie, comme en des domaines

relativement autonomes. Quel lien existe entre la théologie libérale et le libéralisme politique ou le libéralisme économique? Un tel lien doit sans doute exister, mais il n'est pas de premier abord évident. C'est pourquoi aussi les frontières du libéralisme sont floues et son intensité variable.

La conception chrétienne de la liberté

4. Pour porter un jugement philosophique sur le libéralisme, il convient de partir de la conception chrétienne de la liberté comme propriété de la personne. La notion de personne comprend d'abord l'affirmation de la transcendance de l'individu humain par rapport à ce monde et même par rapport à la société dont il est membre et à la vie de laquelle il a le devoir de participer, précisément parce que la société humaine est une société de personnes. La transcendance de la personne signifie encore que la personne a une destinée transtemporelle et transhistorique, c'est-à-dire que sa destinée ne s'épuise pas dans le temps mais débouche sur l'éternité. La destinée de la personne est, à proprement parler, une destinée *personnelle*, ce qui veut dire que chaque individu humain a une histoire qui lui est propre, irréductible à l'histoire de tout autre. Cette destinée singulière est exprimée par la notion de vocation. La vocation est l'appel par son nom de chacun, appel qui lui vient directement de Dieu et auquel, – tel est le sens de la singularité de son histoire – elle doit répondre: elle est *responsable*, et cette responsabilité se définit d'abord comme responsabilité devant Dieu. C'est dans sa relation propre à Dieu que chaque personne est appelée à exercer de la manière la plus radicale sa liberté. Chaque personne est un sujet libre, dont la liberté trouve sa réalisation la plus profonde dans la transcendance, c'est-à-dire dans une décision qui est déterminante pour sa destinée éternelle. Dans ce choix, le sujet singulier se trouve dans une relation de personne à personne avec Dieu.

Dans sa découverte des profondeurs de la liberté humaine, la pensée chrétienne est guidée par la révélation biblique sur la création: l'homme est créé à *l'image et à la ressemblance de Dieu*. De l'expression biblique se dégage un double message. La liberté humaine est une liberté créée. Si elle est une liberté qui se définit par sa relation à l'Absolu, elle n'est pas une liberté absolue. Son autonomie est une autonomie relative, en ce sens que la possession de soi par soi ne signifie pas son autofondation. L'"image et ressemblance", en deuxième lieu, indique un rapport de similitude et de mesure. L'exercice de la liberté humaine ne se donne pas à lui-même sa propre mesure, il est lui-même mesuré par la loi morale.

Ici apparaît la dimension dramatique de la liberté créée. Dans son choix la personne libre peut préférer aux injonctions de la loi morale que lui notifie sa conscience, la voie de la désobéissance. En désobéissant à la loi morale, la personne offense Dieu qui en est l'auteur. La conscience chrétienne de la liberté et de sa destinée transcendante, comporte le sens de la gravité du péché, puisque le péché est une injustice à l'égard de Dieu.

Cette dernière affirmation s'éclaire à la lumière de la création. En effet, à la racine de la relation entre la personne libre et Dieu, il y a l'initiative de Dieu, qui nous crée par bonté. En d'autres termes, cette relation est inscrite dans la personne créée comme un don. La personne créée est constitutivement, dans son être, don reçu. Quand donc le choix délibéré est celui du péché, une injustice, qui est une ingratitude et qui ne peut trouver de justification valable, est commise contre Dieu. Le pécheur est coupable et parce que l'offense atteint Dieu, il est un débiteur insolvable.

La révélation du mystère du salut jette une nouvelle lumière, à partir de la tragique gravité du péché, sur les profondeurs de la bonté divine et de sa gratuité. Cette révélation est révélation de l'amour miséricordieux de Dieu et du mystère de la grâce rédemptrice. Dieu nous a tant aimés qu'il a envoyé son Fils fait homme pour nous sauver. Le Christ, le Verbe incarné, est notre rédempteur. La liberté pécheresse n'est pas enfermée dans la prison de son péché. Elle est elle-même libérée du péché. Tel est le mystère de la grâce. Le péché est un esclavage. Ainsi se comprend dans toute sa force l'affirmation de Paul: "C'est pour que nous soyons vraiment libres que le Christ nous a libérés" (*Gal* 5, 1). Le face à face avec Dieu est face à face avec le Dieu de miséricorde dans son Fils Jésus-Christ. Et le double commandement de l'amour, amour de Dieu et amour du prochain comme soi-même, est "le plein accomplissement de la loi" (cf. *Rm* 13, 10).

Le récit de la création de l'homme "à l'image et ressemblance de Dieu" précise aussitôt: "il les créa homme et femme" (*Gen* 1, 27), ce que *Gaudium et spes* commente ainsi: "cette société de l'homme et de la femme est l'expression, première de la communion des personnes. Car l'homme, de par sa nature profonde, est un être social, et, sans relations avec autrui, il ne peut vivre ni épanouir ses qualités" (n. 12). Ce sont là des affirmations de première importance pour le thème qui nous occupe.

C'est, en effet, en prenant comme point de comparaison la conception chrétienne de la personne et de la liberté, que nous réussirons à nous faire une idée de la nature du libéralisme.

Plusieurs des éléments de doctrine que nous venons de rappeler succinctement sont empruntés à la révélation. Mais une philosophie d'inspiration chrétienne ne peut pas les ignorer.

II.

Multiplicité des formes

5. La première constatation qui s'impose est celle du caractère multi-forme du libéralisme. Libéralisme économique, libéralisme politique, libéralisme théologique: est-il sûr que ces formes se correspondent en tout point? Et pourtant ce n'est pas un hasard qu'on ait recouru, dans chaque cas, au même concept. Sa portée est d'abord anthropologique: l'homme se définit par sa liberté et le sujet de cette liberté est l'individu. Dans les formes les plus radicales, la liberté absorbe le sujet: l'individu *est* sa liberté.

D'une manière générale, on parle de conception libérale dès que l'agent auquel sont attribués comportements et actions est l'individu. Il arrive qu'on assigne une motivation dominante qui oriente les choix de l'individu: intérêt, amour-propre, etc.

On parlera de libéralisme théologique, pour autant qu'il est posé en principe qu'il appartient à la raison de l'individu de juger, en ultime instance, de la vérité et des valeurs religieuses. L'individu est juge suprême et souverain de la vérité, de ses limites et de son accessibilité. Ceci vaut également du libéralisme éthique. Ainsi il existe une affinité entre le libéralisme religieux et éthique et le rationalisme. Il faut cependant préciser que le libéralisme religieux a connu, au siècle des Lumières, deux formes qui sont l'une et l'autre à l'origine d'une large postérité. Dans un cas, la judicature suprême est exercée par la raison, dans l'autre par le sentiment. Le déisme de Locke et de Voltaire illustre la première forme, celui de Rousseau la seconde. La conception rousseauiste de l'éthique a fortement marqué la mentalité moderne. Quand il s'agit du jugement moral, Rousseau, qui n'aime pas les "philosophes", substitue à la raison la conscience, "instinct divin", caractérisé par sa spontanéité et son infailibilité.

Il m'a paru utile d'évoquer quelques formes majeures du libéralisme. Il est clair qu'elles ont permis et qu'elles permettent un nombre considérable de variations.

Les fondements de la doctrine libérale

6. Dans un remarquable essai où il retrace les grandes lignes du libéralisme, Pierre Manent³ a montré l'importance de Hobbes à qui sont dûs les

³ Pierre Manent, *Histoire intellectuelle du libéralisme*, Dix leçons, Hachette Littératures, Paris, 1997, p. 250. Sur Hobbes, cf. ch. III, pp. 51-88.

concepts de base de la doctrine libérale. Hobbes constate les conséquences dévastatrices de la guerre civile anglaise: les convictions qui étaient à la base de la vie de la cité ont été détruites. Tant que s'exerçait la tutelle de l'Église romaine, il existait un consensus sur ce qui constitue le bien de la cité et les fins que doivent poursuivre les citoyens. Cette référence transcendante a sombré, et d'une manière irréparable, avec les disputes religieuses dégénérées en guerre civile.

Il s'agira donc de construire la société sur de nouvelles bases. La situation désastreuse constatée par le philosophe n'est pas, à ses yeux, due à une simple conjoncture historique malheureuse; elle est révélatrice de la nature humaine. Il faut empêcher que l'homme, laissé à lui-même, n'aille vers son autodestruction. Car dans l'état de nature (*the natural condition of mankind*) règne la loi de la guerre de tous contre tous. La vie de l'homme est "solitaire, misérable, cruelle, animale et brève". Une passion la domine, la peur de la mort. Pour la conservation de sa propre vie, chacun peut faire tout ce qu'il juge bon. Tel est le *jus ad omnia*, qui s'étend même sur le corps des autres.

Prenant conscience de l'absurdité d'une telle condition, la raison se voit ainsi forcée de chercher les moyens de la paix. En posant ainsi le problème, Hobbes présuppose un certain nombre de concepts-clé de l'anthropologie libérale.

C'est en renonçant au *jus ad omnia* que les hommes réussiront à tarir les sources de la guerre et à vaincre la peur de la mort. Pour avoir un sens, un tel renoncement doit être le fait de tous. Tous renoncent à ce *jus* en faveur d'un seul – le Souverain – qui l'exercera au nom de tous. Tel est l'objet du contrat fondateur, contrat qui est garanti par la menace du châtiement, que seul peut infliger celui qui aura été choisi. Ainsi naît le Souverain, le Léviathan ou "dieu mortel" dont la souveraineté est absolue.

Dans cette conception, la société n'est pas "naturelle", elle est le résultat d'un contrat. Elle est une construction artificielle par laquelle l'homme échappe à l'état de nature.

Une telle théorie semblerait être la négation du libéralisme. Paradoxalement, elle le fonde. Hobbes ne propose pas une apologie de l'absolutisme. Celui-ci découle de la nécessité pour les individus de fuir le mal et la peur de la mort. Chez les Anciens à la base de la vie sociale il y avait la recherche du bien et la poursuite des fins de la cité. Maintenant, découlant de la nécessité de fuir le mal, le droit prend la place du bien. Ainsi apparaît ce qui constitue la pierre d'angle de l'édifice théorique du libéralisme: le droit de l'individu. Ce droit est illimité. Mais pour que son exercice ne soit pas un conflit mortel, l'individu transmet ce droit illimité au Souverain, de telle

sorte qu'il considère comme siennes les actions du Souverain, en qui il reconnaît son Représentant. Le thème des modalités de la représentation est un des thèmes majeurs dont il sera discuté dans les écoles libérales.

Il faut aussitôt apporter une précision capitale. Pour que le système fonctionne, il faut que tous les individus aient le même représentant. Ici se présente le second concept fondateur du libéralisme, avec l'individu, le concept d'égalité. Déjà dans l'état de nature, les hommes étaient égaux, leur égalité se ramenant au pouvoir de tuer, que tous possédaient. Comme nous l'avons déjà fait remarquer, le pouvoir politique, dans cette conception, est artificiel. Il n'a pas sa racine dans la nature humaine. Le pouvoir absolu se présente ainsi comme une invention des sans-pouvoir devant la menace de la mort, qui veulent la paix. Si on cherche cependant un facteur naturel, il est, note Pierre Manent, dans l'égalité des sans-pouvoir. Le même auteur ajoute que nous avons là *in nucleo* la distinction entre la société civile et l'Etat, l'Etat chez Hobbes ayant sa seule source dans la société civile sur laquelle il exerce un pouvoir absolu. La distinction entre société civile et Etat et leur jonction par l'idée de représentation provoquera une oscillation constante, qui a marqué l'histoire des derniers siècles, entre deux extrêmes: l'Etat étant absorbé par la société civile, ou, à l'inverse, cette dernière, par l'Etat.⁴

Il ressort de ce qui précède que la légitimité des institutions a son fondement dans le consentement de chacun. En ce sens, la démocratie n'est pas un régime parmi d'autres; elle est la seule organisation de la vie sociale qui soit légitime, parce qu'elle est voulue par les citoyens, qui en acceptent les règles de fonctionnement comme est la règle de la majorité. L'individu est tenu à obéir à la loi, parce que cette loi, qui exprime le pouvoir du souverain, provient de son consentement. Mais là où la loi n'intervient pas, l'individu reste libre.

C'est parce que Hobbes a élaboré l'interprétation libérale de la loi, qu'il peut être considéré comme le fondateur du libéralisme. La loi est un artifice extérieur aux individus.⁵

Nous touchons ici un point décisif qui explique pourquoi, sur des questions cruciales, comme sont les lois concernant la bioéthique, nous nous trouvons, devant deux conceptions contradictoires de la loi humaine. Ou bien celle-ci est, comme dans la doctrine de la loi naturelle, mesurée par cette dernière, qui a sa racine dans la sagesse ordinatrice de Dieu, ou elle

⁴ Cf. *op. cit.*, pp. 63-65.

⁵ Cf. *ibid.*, pp. 76-77.

est un produit d'une volonté humaine autonome qui par soi exclut toute référence à Dieu. On voit que l'opposition est plus radicale que celle qui oppose la conception sapientielle à la conception volontariste, en tant que cette dernière peut comporter une référence à la volonté divine. Le positivisme juridique lui-même a pour fondement la conception libérale de la loi.

Un aspect de la difficulté tient au fait que le débat se déroule rarement au niveau des principes, mais au fait que la théorie libérale est devenue une idéologie qui imprègne les mentalités.

L'état de nature

7. L'individu qui est le pivot de la nouvelle construction est en réalité une abstraction. En effet, il est conçu comme antérieur aux appartenances qui le qualifiaient dans la cité antique ou dans la chrétienté, là la vertu, la richesse, la liberté, ici l'identité chrétienne constitutive des membres de la cité temporelle. Telle est la signification de l'*état de nature*, état où les hommes sont égaux et libres, antérieurement à toute société profane ou religieuse.⁶

L'idée d'état de nature a pour fonction de mettre en évidence l'antériorité de l'individu sur la construction sociale. Cette idée passera à la postérité, mais les auteurs se diviseront sur son contenu. Locke et Rousseau, par exemple, ne retiendront pas la représentation que s'en fait Hobbes. Mais si cette idée qui tient du mythe est maintenue, c'est qu'elle a une fonction essentielle dans l'édifice. Je dirais que de l'idée d'origine, elle retient l'aspect de point de départ, tout en rejetant dans l'ombre l'aspect de principe. L'état de nature est l'état d'où l'on vient pour entrer dans un état, totalement nouveau, l'état social, qui est une création de l'homme. Cependant, il existe un motif pour lequel l'homme ressent la nécessité de quitter l'état de nature.

Dans l'élaboration de la théorie du libéralisme politique, la contribution de Locke est, elle aussi, essentielle. On retrouve chez cet auteur l'idée de *jus in omnia* et celle de l'hostilité de chacun contre chacun. Mais l'individu de l'état de nature est interprété de telle façon que lui soient attribués des droits intrinsèques, le rôle du pouvoir étant de protéger ces droits sans les attaquer. Ce qui sépare Locke de Hobbes, c'est que si tous deux voient dans l'individu un être dont la vie est menacée, alors que chez l'auteur du *Léviathan* la menace vient de l'hostilité de l'autre homme, chez Locke elle vient de la faim.⁷

⁶ Cf. *ibid.*, pp. 85-87.

⁷ Cf. *ibid.*, pp. 91-92.

C'est dans cette perspective que doit se comprendre le droit à la propriété, qui est un droit attaché à l'individu pressé par la nécessité de se nourrir ; ce n'est donc pas un droit "social", issu du contrat. Naturellement, l'homme n'est pas un animal politique; il est un homme naturellement propriétaire et travailleur, en ce sens que la propriété est d'abord propriété de la terre que l'homme cultive. Mais la terre produit beaucoup plus grâce au travail qu'elle n'aurait produit laissée à l'état de nature, qui est un état de pénurie. C'est donc le travail qui donne aux choses leur *valeur*.

En effet, par son travail l'homme produit plus que ce qui est nécessaire à la satisfaction de ses besoins. Que devient le surplus? Il y aurait gaspillage, à moins que l'on ne trouve un moyen incorruptible de conserver des produits par eux-mêmes corruptibles. Une convention entre les individus a permis d'établir ce moyen, qui est la monnaie. Celle-ci rend possible une accumulation sans limites des biens. Ainsi la propriété n'a pas de limites puisque, grâce à la monnaie, les biens corruptibles sont rendus incorruptibles et que la valeur des choses provient, non de la générosité de la nature, mais du travail.

Mais ici se produit un effet paradoxal: le droit de propriété qui a son origine dans le travail s'en détache naturellement, grâce à la monnaie, par laquelle sont conservées des quantités de travail. Grâce au libre échange, la propriété conserve sa valeur et est susceptible de s'accroître. Elle est devenue valeur représentée par la monnaie. Le droit du propriétaire, bien que la propriété soit issue du travail, est devenu ainsi indépendant du travailleur. Unifiés au début, le droit du travailleur et celui du propriétaire se sont scindés. Et c'est grâce à l'invention de la monnaie et à l'échange que le travail est devenu productif, en ce sens qu'il produit plus que ce qui est nécessaire à la consommation du producteur. Comme on le voit, le droit de propriété qui, au départ, avait une justification individualiste trouve sa justification finale dans son utilité économique.

Locke a ainsi décrit, à partir de la faim qui menace les individus, le développement de la vie économique. Celle-ci, comprenant l'échange, la productivité du travail, le droit de propriété, est investie du droit incontestable qu'a l'individu qui a faim de se nourrir. Dès lors, le droit de propriété et l'économie en général sont le fondement de la vie sociale et politique. Du rapport fondamental de l'individu qui travaille à la nature naît un monde distinct de celui des droits de l'individu: le monde de la valeur, de la productivité du travail, de l'utilité. De droit naturel fondamental de l'homme, le droit de propriété est changé en moyen de la production et de l'échange des valeurs.

Après Locke, le droit de propriété sera reconnu comme le droit naturel fondamental et l'accent sera mis sur un aspect différent de celui de l'indivi-

du solitaire affirmant son droit. Le monde économique sera considéré comme le système de la production et de l'échange des valeurs, "le système de l'économie politique", où la notion déterminante ne sera plus le droit absolu de l'individu, mais celle relative d'intérêt au d'utilité. Ainsi avec Locke la philosophie libérale du droit naturel, qui est le droit individuel de propriété, se transforme comme spontanément en économie politique, ce qui constitue un autre type de pensée.⁸

Mon propos n'est pas de tracer, même à grands traits, l'histoire de la pensée libérale, qui connaîtra d'ailleurs de nombreuses variations, corrections et développements. J'ai voulu dégager quelques-unes des notions qui constituent les piliers théoriques du système. Trois notions se sont détachées: l'individu, la liberté, l'égalité. Il faut ajouter un présupposé: l'individu se trouve à l'origine dans un environnement, les autres hommes ou la pénurie, qui est une menace permanente pour sa vie. Pour renverser la situation et trouver la paix et l'abondance, il ne doit compter que sur lui-même. Une construction artificielle lui procurera ce que la nature lui refuse.

III.

Contradictions

8. En tant qu'il met l'accent sur la liberté individuelle, sur la responsabilité et l'initiative et sur le travail, le libéralisme constitue un moteur du dynamisme social et historique d'une étonnante efficacité et ceci d'autant plus qu'il bénéficie du terrain chrétien dans lequel ces valeurs s'enracinent. Certes de ces valeurs, il n'est pas une traduction fidèle, il en constitue même une dérive préoccupante. Mais, au plan pratique les motivations peuvent facilement se recouvrir et se mêler.

Il en va différemment si nous nous situons au niveau des fondements théoriques, qui est celui que j'ai choisi. En effet, les notions de base sont loin d'entretenir entre elles des relations pacifiques. D'ailleurs l'histoire des sociétés libérales le montre: crises et conflits n'ont pas manqué, dont plusieurs traduisent une impuissance à résoudre certains problèmes; des réactions violentes sont suscitées par les déséquilibres introduits par lui. On est loin de l'histoire rêvée par les théoriciens, d'un développement homogène vers une prospérité sans cesse accrue. La difficulté majeure réside dans l'accord présumé entre liberté et égalité. En fait l'histoire de ces sociétés est

⁸ Cf. *ibid.*, pp. 97-103.

marquée par l'émergence périodique de nouvelles formes d'inégalité. Mais restons au plan théorique qui est le nôtre.

Pour comprendre la gravité du conflit latent entre liberté et égalité, propre à l'idéologie libérale, il convient de considérer la nature de l'individu et son caractère abstrait. J'entends par là que les individus, tels qu'ils existent, sont porteurs de multiples différences, qui sont autant de restrictions imposées à l'égalité. Par définition, un individu est distinct de tous les autres individus. Et dans le déploiement de l'existence son unicité va se révéler par des dons, à lui propres, dons reçus de la nature, de l'éducation, de la fortune. Toute différence s'oppose-t-elle à l'égalité? Dans la perspective libérale, la tendance est de répondre par l'affirmative. La raison en est que l'individu est considéré comme individu pur, pour ainsi dire antérieur aux qualifications propres qu'il possède dans l'existence. C'est pourquoi j'ai parlé d'abstraction. Et de la même abstraction participe la notion d'égalité. On pourrait aussi dire que l'individu est considéré antérieurement à tout le réseau de relations qui font la trame de son existence. Ou encore, si l'on préfère, que l'égalité est son unique relation, à supposer que l'on puisse parler de relation. De soi l'individu est "irrelaté".

La problématique liée au rapport entre liberté et égalité est révélatrice d'une première aporie. Une autre aporie tient au rapport entre l'activité de l'individu et l'unité de la société. Chez Hobbes, cette unité est imposée du dehors par la puissance du Souverain. Dans la perspective de Locke, où l'activité économique est à la base de la vie sociale et politique, la question devient celle de la prospérité générale, qui ne peut être la simple somme de l'utilité propre des individus.

La main invisible

A la question, les économistes libéraux répondront que les individus, recherchant chacun son bien propre, réalisent le bien commun, "automatiquement". Ainsi Bernard de Mandeville dans *The Fable of the Bees* écrira: "L'harmonie, dans un concert, résulte de la combinaison de sons qui sont directement opposés. Ainsi les membres de la société, en suivant des routes absolument contraires, s'aident comme par dépit". Et on connaît la célèbre formule d'Adam Smith: cherchant son propre gain, l'individu "est conduit par une main invisible à remplir une fin qui n'entre nullement dans ses intentions; et ce n'est pas toujours ce qu'il y a de plus mal pour la société que cette fin n'entre pour rien dans ses intentions. Tout en ne cherchant que son intérêt personnel, il travaille souvent d'une manière bien plus efficace pour l'intérêt de la société que si il avait réellement pour but d'y travailler".

Et un auteur plus récent, Louis Baudin, exprime bien ce qui est une conviction commune des penseurs libéraux: “Voici la structure du libéralisme: les hommes libres poursuivent leur intérêt personnel et agissent malgré eux dans l’intérêt général. Suivant l’expression de Bastiat ils réalisent sans cesse ce qu’ils évitent toujours. L’ordre social est totalement imprévu. Il est surhumain”.⁹

On expliquera que c’est par le jeu de la libre concurrence qu’agit *la main invisible*. N’empêche que cette notion exprime une conviction qui, bien qu’elle soit essentielle à l’architecture du système, n’a aucune justification rationnelle. L’unité des individus, assurée de l’extérieur par le Souverain chez Hobbes, l’est d’une manière analogue, au plan économique, par *la main invisible*.

La volonté générale

Revenons à la tension entre liberté individuelle et égalité. C’est à surmonter cette tension que s’attache avant tout Rousseau dans *Le contrat social* quand il explique le passage de l’état de nature à l’état civil. L’équation à résoudre est la suivante: trouver une forme d’association qui protège de toute la force commune “la personne et les biens de chaque associé et par laquelle chacun, s’unissant à tous, n’obéisse pourtant qu’à lui-même, et reste aussi libre qu’auparavant”. Pour que le contrat soit efficace, il est nécessaire que toutes les clauses en soient respectées mais celles-ci se réduisent à une seule: “à savoir l’aliénation totale de chaque associé avec tous ses droits à toute la communauté”; chacun se donnant tout entier, la condition est égale pour tous et nul n’a intérêt à la rendre onéreuse aux autres. “L’aliénation, se faisant sans réserve, l’union est aussi parfaite qu’elle peut l’être, et nul associé n’a plus rien à réclamer”. Rousseau précise encore que “chacun se donnant à tous ne se donne à personne; et comme il n’y a pas un associé sur lequel on n’acquière le même droit qu’on lui cède sur soi, on gagne l’équivalent de ce qu’on perd, et plus de force pour conserver ce qu’on a”. En bref, tels sont les termes du pacte social: “Chacun de nous met en commun sa personne et toute sa puissance sous la suprême direction de la volonté générale; et nous recevons encore chaque membre comme partie indivisible du tout”.

“A l’instant, poursuit Rousseau, au lieu de la personne particulière de chaque contractant, cet acte d’association produit un corps moral et col-

⁹ Textes cités par P.D. Dognin, *Initiation à Karl Marx*, Paris, Le Cerf, 1970, pp. 246-247.

lectif, composé d'autant de membres que l'assemblée a de voix, lequel reçoit de ce même acte son unité, son *moi* commun, sa vie et sa volonté".¹⁰

Le livre II énoncera les propriétés de cette volonté générale: la souveraineté qui est l'exercice de la volonté générale est inaliénable, indivisible. La volonté générale est toujours droite, elle ne peut errer, à condition qu'il n'y ait pas de société partielle dans l'Etat.

L'intention de Rousseau est claire: tenir ensemble l'autonomie de l'individu ("l'obéissance à la loi qu'on s'est prescrite est liberté")¹¹ et l'égalité. La "volonté générale" est censée assurer cette conjonction. Mais quelle est la signification de cette notion? Sur ce point essentiel, les opinions divergent.

La réponse, à mon avis, est à chercher dans la relation entre le *moi* du sujet individuel et le *moi* commun de la volonté générale. Si celle-ci est entendue comme une réalité substantielle, la porte est ouverte au totalitarisme et la transmutation qui devait assurer le passage de l'état de nature à l'état civil devient une absorption pure et simple où la liberté de l'individu est abolie. Retenons que le concept rousseauiste de volonté général est une fiction, un être de raison construit en vue de la cohérence du système. Comme tel elle est révélatrice des dérives possibles du libéralisme.

L'Unique

Une troisième illustration des apories du système libéral est donnée par un ouvrage paru en 1844 dans un contexte qui n'est ni celui de l'économie politique ni celui de la philosophie politique, *L'Unique et sa propriété* (*Der Einzige unde sein Eigentum*). Son auteur Max Stirner appartient à un groupe berlinois de la gauche hégélienne. Cet écrit brillant, paradoxal, provocateur entend aller jusqu'aux extrêmes conséquences du principe d'immanence hérité de Hegel, dans la perspective duquel s'inscrivait l'ouvrage de Feuerbach *L'Essence du christianisme* (1841) directement pris à partie. Feuerbach pose comme principe que c'est l'homme et non pas le Dieu transcendant, qui est le dieu de l'homme, *homo homini deus est*. La première loi qui s'impose donc est l'amour de l'homme. Mais qu'est-ce que l'homme? Ce n'est pas tel et tel individu, répond Feuerbach, mais l'homme comme être générique (*Gattungswesen*). Sur ce point intervient la critique de Stirner: si en moi, c'est l'homme comme entité générique que vous

¹⁰ Jean J. Rousseau, *Du contrat social*, L.U.F., Paris, 1946, *Livre premier*, ch. VI, pp. 55-sv.

¹¹ *Ibid.*, ch. VIII, p. 62.

aimez, vous introduisez une scission entre cet homme-ci, cet individu que je suis, et l'homme qui devient ainsi un être transcendant et donc aliénant par rapport à l'exigence d'immanence. Seul *Moi* (et non pas *le Moi* transcendantal) répond pleinement à cette exigence. A partir de là, Stirner va pourchasser tous les substituts d'une transcendance que personne n'a réussi à éliminer: Esprit, Raison, Etat, etc. C'est tout ce qui s'impose à Moi de l'extérieur qui est une idole aliénante: la société, la loi, la morale, la "volonté générale", la pensée et le langage, la vérité. Ce sont là des puissances qui s'opposent à ma propre puissance. Ainsi la conscience morale est pour chacun un indicateur de police qui surveille toutes ses pensées et ses actions.

Au terme d'"Unique" est associé celui de Propriété. C'est qu'il ne suffit pas de revendiquer la liberté: "je te souhaite plus que la liberté; tu ne devrais pas seulement être débarrassé de ce que tu ne veux pas, tu devrais aussi posséder ce que tu veux", n'être pas seulement un homme libre, mais également un propriétaire. Le critère de l'action sur lequel on prend appui est alors l'égoïsme, qui invite à jouir se soi.

La gauche hégélienne, d'où provient Stirner, est antilibérale. Elle dénonce en effet la contradiction entre l'égalité politique, conquête de la Révolution de 1789, et l'inégalité sociale. C'est cette dernière qu'il faut combattre. Tel est le but que se fixera le socialisme. Stirner, lui, prône des communautés informelles, spontanées, des associations dans lesquelles l'individu accepte de vivre parce qu'elles procurent plus de jouissance qu'isolement. Même l'amour est conçu à partir de l'égoïsme, l'être aimé étant regardé comme nourriture de ma passion: je jouis de toi, telle est son expression.

Ayant rejeté toute tyrannie, c'est-à-dire toute trace de transcendance, "je me possède et j'use de moi comme on fait de tout autre propriété. Je jouis de moi à ma guise. Je ne m'inquiète plus de ma vie, mais je la gaspille", affirme Stirner.

Nous sommes ici à la limite du langage, car ce qui est dit est un mot, une pensée, un concept, mais ce que veut dire Stirner n'est ni un mot ni une pensée, ni un concept, de sorte que ce qu'il dit n'est pas ce qu'il veut dire, parce que c'est indicible, impensable et inexprimable; le mot *Unique*, qui est ici indéfinissable, marque le terme du règne de la pensée et du langage.

Stirner aborde le problème de l'égalité. L'Unique affirme sa différence: "notre faiblesse, écrit-il, n'est pas d'être opposés à d'autres, mais de ne pas être radicalement opposés, c'est-à-dire de n'être pas entièrement *séparés* d'eux, ou de chercher une 'communauté', un 'lien', de considérer la communauté comme un idéal (...). En tant qu'Unique, tu n'as plus rien de

commun avec l'autre, et par là-même plus rien qui sépare ou oppose (...). L'opposition disparaît dans la séparation ou l'unicité absolue. Celle-ci, il est vrai, pourrait être considérée comme une nouvelle communauté ou une nouvelle égalité, mais l'égalité consiste précisément dans l'inégalité et n'est elle-même rien que de l'inégalité; une inégalité égale, qui n'existe, il est vrai, que pour celui qui établit une 'comparaison'".

La dernière phrase de l'ouvrage est "Je n'ai fondé Ma cause sur rien", elle figure déjà dans le titre des pages d'introduction.¹²

On pourrait objecter que la référence à un auteur qui représente l'individualisme anarchique est hors de propos dans des réflexions sur le libéralisme. Je ne le pense pas, car une idée poussée à l'extrême a le mérite de manifester les racines.

Selon l'idéologie libérale, par le moyen du contrat, l'individu est créateur de la société. Dans cette société, il acquiert une nouvelle existence, distincte de l'existence dans l'état de nature. L'Etat et ses lois, sa vie sociale, sont le fruit de sa liberté. L'individu est autonome. Pour que le contrat fondateur existe et fonctionne, il doit être dû au *consensus* de tous les individus. Là s'enracine l'exigence d'égalité.

C'est en tant qu'il est l'auteur du contrat fondateur que l'individu est considéré comme libre et autonome. Mais en général, on néglige de considérer l'individu lui-même dans sa singularité. D'où tient-il son pouvoir créateur par rapport à la société? C'est cette question que, par le biais de l'exigence d'immanence, affronte Stirner. Dépouillé de tout ce dont il dépend, l'individu est conduit à sa singularité propre, à son unicité. Rousseau, dans le prologue des *Confessions*, notait que s'il ne valait pas mieux que les autres hommes, "au moins", il était autre. C'est l'altérité propre de l'Unique dont Stirner entend découvrir les racines et c'est au rien que le conduit son enquête. Débusquant les idoles qui se sont substituées au Dieu transcendant chez des penseurs athées, il débouche sur le nihilisme.

Cet aboutissement est dans la logique du libéralisme poussé à l'extrême.

¹² Max Stirner, *Oeuvres Complètes*, l'Age d'Homme, Lausanne, 1972, 439 p. Pour les citations voir *Max Stirner ou l'expérience du néant*, Présentation, choix des textes, biographie, par Henri Arvon, Paris, 1973, Philosophes de tous les temps, Ed. Seghers, 128 p. Les citations sont empruntées à cette présentation.

IV.

Conclusions

9. Le fil conducteur des réflexions que je vous propose est l'idée que les menaces qui pèsent immédiatement sur nous ont leur racine dans les contradictions dont est porteuse l'idéologie libérale. Ces contradictions, dans la mesure où elles demeurent occultées, ont pour effet de nous priver de défenses. C'est pourquoi il est nécessaire de porter la confrontation et le débat à leur niveau.

La revendication du mariage de la part des homosexuels, pour prendre un exemple, s'inscrit dans la dialectique non résolue de la singularité de l'individu et de l'égalité: ici l'individu revendique l'égalité au nom de la différence.

Au début, nous avons noté que deux courants idéologiques sont particulièrement puissants à notre époque: le libéralisme et le positivisme. Et c'est sans doute de ce dernier que proviennent les menaces les plus graves pour la société moderne façonnée par le libéralisme. En effet, ce dernier en mettant l'accent sur le travail et sur l'exploitation de la nature, a été un des facteurs qui ont favorisé le développement des sciences naturelles. Le positivisme pose comme principe que seul le type de connaissance propre aux sciences expérimentales a valeur de savoir proprement dit. Il en découle une anthropologie purement empirique et, à la limite, matérialiste. La place privilégiée reconnue à la liberté de l'individu, qui constitue pour le libéralisme comme une sorte de transcendance par rapport au monde, en est ébranlée.

En effet, à partir de l'approche positiviste l'individu, de principe de la société, qu'il était, est considéré comme individu de l'espèce animale la plus parfaite. Or du point de vue zoologique, l'individu est subordonné au bien de l'espèce et entre les individus règne l'inégalité. A cela s'ajoute que le positivisme invite à poser des critères d'évaluation pragmatiques et utilitaristes.

C'est ainsi qu'en bioéthique, certains étendront la qualité de personne aux primates supérieurs pour la refuser à l'embryon humain, tandis que d'autres refuseront cette qualité à certains membres de l'espèce humaine. Ce sont là évidemment des menaces majeures.

Quant à la liberté, elle change de signification: elle devient l'affirmation de la puissance illimitée de l'homme sur une nature à laquelle lui-même appartient. La technique devient l'expression de la "volonté de puissance" de l'espèce humaine, à travers ceux des individus qui détiennent le pouvoir et le savoir.

Ce que j'ai voulu suggérer dans mon intervention, c'est que les menaces auxquelles nous devons faire face, ont leur racine dans l'anthropologie et que ce n'est qu'en saisissant le problème à ce niveau, que l'on trouvera les parades indispensables.

DIE IDEE DER MENSCHENWÜRDE ALS MITTE DER MODERNEN VERFASSUNGSSTAATEN

PAUL KIRCHHOF

I. DIE BASISNORM MODERNER VERFASSUNGSSTAATEN

I.1. *Vorgefundene Würde und rechtlicher Schutzauftrag*

Wenn eine Verfassungsordnung das Zusammenleben, die Begegnungen und Konflikte von Menschen regeln will, braucht es ein klares Bild vom Menschen, seiner Existenz, seinen Bedürfnissen, seinen Hoffnungen und Zielen.

Moderne Verfassungen bauen auf die Vorstellung eines Menschen, der mit Würde begabt, zur Freiheit bestimmt und zur Verantwortlichkeit fähig ist. Jeder Mensch beansprucht in dieser Würde Achtung und Schutz. Er ist, weil er existiert und wie er existiert, in der Rechtsgemeinschaft willkommen, gehört ihr als zur Freiheit befähigte, seine eigenen Angelegenheiten selbst gestaltende Person an, entwickelt als verantwortliche Persönlichkeit Selbstbewusstsein, Urteilskraft und Gemeinsinn. Der Tatbestand „Mensch“ begründet einen Gleichheitssatz und fordert für jeden Menschen als Individuum die Sicherung seiner Existenz und eine Chance zur Entfaltung. Die „Person“ beansprucht Teilhabe in Gesellschaft und Rechtsverkehr, bestimmt sich selbst vor anderen durch die Maske – *prosopon*, *persona* –, in der ein Schauspieler seine Rolle vor dem Publikum darstellt.¹ Die „Persönlichkeit“ ist der zur Sittlichkeit und verantwortlichen Selbstbestimmung fähige Mensch,² der die individuelle Selbstbestimmung in der Mitverantwortung für andere wahrnimmt.

¹ Vgl. *Michael Welker*, Person, Menschenwürde und Gottebenbildlichkeit, JBTh 15 (2000), S. 247 (251).

² *Immanuel Kant*, Kritik der praktischen Vernunft, in: Kants Werke, herausgegeben von der königlich-preußischen Akademie der Wissenschaften, Bd. V, 1913, S. 1, 3 (71 ff.); *Otto von Gierke*, Deutsches Privatrecht, Bd. I, 1895, S. 702.

Die Garantie der Menschenwürde wird in den geltenden Rechtstexten zunächst festgestellt, als vorgefunden anerkannt.³ Das Recht bekräftigt den „Glauben“ an Würde und Wert der menschlichen Persönlichkeit,⁴ versteht die Achtung der Menschenwürde als einen der „Werte, auf die sich die Union gründet“,⁵ „bekennt sich“ zu den aus der Würde folgenden unverletzlichen und unveräußerlichen Menschenrechten.⁶

Wenn diese auf Rationalität, Vorausssehbarkeit und Kontrolle angelegten Rechtstexte mit einem Bekenntnis beginnen, macht diese Gewährleistung bewusst, dass die Menschenwürde vorgegebene Ausgangsnorm, gleichsam juristisches Axiom eines Verfassungskonzeptes ist, das letztlich nicht begründet oder widerlegt, sondern nur in der Kontinuität philosophischer, ethischer und rechtlicher Überlieferungen⁷ verstanden und gehandhabt werden kann.

Diese Anerkennung von Vorgegebenem, dieses Bekenntnis zu einer Wertetradition wirkt als Basis eines Rechtssatzes. Aus dem realen Ist folgt ein Soll: Die Rechtsgemeinschaft findet den Menschen in seiner Würde und Freiheit vor, soll ihn deshalb in seinem Dasein und Sosein willkommen heißen, ihn in seiner Würde und den daraus folgenden unverletzlichen und unveräußerlichen Menschenrechten achten und schützen.⁸

Die Erfolgsgeschichte der Menschenrechte wurde weniger durch ein allgemeines Menschenbild befördert. Sie ist vom Kampf um konkrete Rechtsverbesserungen für einzelne Gruppen getragen. Die Magna Charta Libertatum ist das Ergebnis königlicher Zugeständnisse, die geistige und weltliche Feudalherren König Johann von England abgetrotzt hatten. John Locke be-

³ Vgl. Präambel der Allgemeinen Erklärung der Menschenrechte vom 10. Dezember 1948; Präambel des Internationalen Pakts über bürgerliche und politische Rechte vom 19. Dezember 1966.

⁴ Präambel der Charta der Vereinten Nationen vom 26. Juni 1945.

⁵ Art. 1 Abs. 1, Teil I des Entwurfs des Verfassungsvertrages für die Europäische Union, vgl. auch Präambel des Teiles II, daselbst.

⁶ Art. 1 Abs. 2 des Deutschen Grundgesetzes vom 23. Mai 1949.

⁷ Vgl. im einzelnen *Christian Starck* in: Hermann von Mangoldt/Friedrich Klein/Christian Starck (Hrsg.), *Das Bonner Grundgesetz, Kommentar*, Bd. 1, 4. Aufl., 1999, S. 58 ff.; *Peter Häberle*, *Die Menschenwürde als Grundlage der staatlichen Gemeinschaft* in: Josef Isensee/Paul Kirchhof (Hrsg.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Bd. II, 3. Aufl., 2004, § 22, Rn. 5 f., 84 f.; *Horst Dreier*, in: ders., *Grundgesetz, Kommentar*, Bd. I, 2. Aufl., 2004, Art. 1 Abs. 1, Rn. 2 f.

⁸ Für eine Übersicht über die nationalen Verfassungen vgl. *Christian Starck*, a.a.O., S. 30; *Peter Häberle*, a.a.O., § 22 Rn. 1 f.; *Horst Dreier*, in: ders., *Grundgesetz, Kommentar*, Bd. I, 2. Aufl., 2004, Art. 1 Abs. 1, Rn. 26 f.

mühte die Lehre von der natürlichen Freiheit des Menschen und der vertraglichen Begründung jeder Herrschaft, um gegen den Absolutismus der Stuarts kämpfen und eine konstitutionelle Fassung der Königsmacht begründen zu können.⁹ Auch die Virginia Bill of Rights¹⁰ vom 12. Juni 1776 folgten konkreten politischen Anliegen und beantworteten Gefährdungslagen menschlicher Freiheit.¹¹ In dieser Perspektive wird verständlich, dass die Verkünder dieser Menschenrechte zugleich Sklavenhalter sein konnten: Die Sklaven waren zwar Menschen, aber keine Bürger.

Die bürgerliche Revolution Frankreichs führte zwar zu der „Erklärung der Rechte des Menschen und des Bürgers“ vom 26. August 1789, konnte aber die Benachteiligung der Frauen, die Judenemanzipation und die Lage der Farbigen in den französischen Kolonien zunächst kaum verbessern.¹² Die Erklärung der Menschenrechte beendete die ständische Sozialstruktur, betonte die Gleichheit und die gleiche Freiheit aller Franzosen, hat aber mit dieser staatsbürgerlichen Gleichheit das Gemeinwesen nur langfristig erneuert.

I.2. Die Menschenwürde als Gegenstand einer Rechtsgarantie

Sobald die Menschenwürde Gegenstand einer Rechtsgarantie ist, wird sie in der Begegnung des Berechtigten mit anderen Menschen geschützt. Recht handelt nicht von dem allein auf einer Insel lebenden Robinson Crusoe, sondern regelt die Ordnung unter Menschen, die sich begegnen, Konflikte austragen und schlichten, Berechtigte und Verpflichtete sind.

Die Verfassungsstaaten sehen den Menschen deshalb in der Zugehörigkeit zu einer Rechtsgemeinschaft, in der jeder Mensch in diese Gemeinschaft eingebettet ist, auch auf die Gemeinschaft hin lebt. Dieses Menschenbild ist nicht das eines isolierten souveränen Individuums, sondern das der gemeinschaftsbezogenen und gemeinschaftsgebundenen Person.¹³ Aus der Menschenwürde folgt deshalb nicht die Freiheit, sondern das Freiheitsrecht, das

⁹ John Locke, in: *Two treatises of government* (1690), in: Peter Laslett (Hrsg.), *A critical edition with an introduction and apparatus criticus*, 2. Ausg., 1967.

¹⁰ Abgedruckt in: Herbert Schambeck/Helmut Widder/Marcus Bergmann (Hrsg.), *Dokumente zur Geschichte der Vereinigten Staaten von Amerika*, 1993.

¹¹ *Horst Dreier*, in: ders., *Grundgesetz, Kommentar*, Bd. I, 2. Aufl., 2004, Vorbem. vor Art. 1 GG Rn. 7; *Hasso Hofmann*, *Die Entdeckung der Menschenrechte*, 1999, S. 8.

¹² *Hasso Hofmann*, a.a.O.

¹³ Bundesverfassungsgericht der Bundesrepublik Deutschland, *Amtliche Entscheidungssammlung* (im folgenden BVerfGE), Bd. 4, S. 7 (15 f.).

die individuelle Freiheit als Teil der Gesamtrechtsordnung versteht und die freiheitliche Demokratie als Staatsform der Zugehörigen ausgestaltet.¹⁴

Allerdings haben die Menschenrechte historische Bedeutung vor allem als Freiheit vom Staat gewonnen, wenn der Mensch sich aus einer bisherigen Gemeinschaft löst oder Distanz zu ihr sucht. Nach der Glaubensspaltung in Europa, der Erfahrung übermäßiger Steuerlast, willkürlicher Verhaftung und Zwangsrekrutierung war es das Anliegen der Menschen, die bisherige Gemeinschaft und die bestehenden Abhängigkeiten zu verlassen und in der Emigration Dienst- und Vasallenpflichten zu entfliehen.¹⁵ Von diesem Ausgangspunkt aus wurde das Recht einer Person „die der einzelnen Person zustehende Macht: Ein Gebiet, worin ihr Wille herrscht“.¹⁶ Der Mensch beansprucht Freiheit von der ihn bindenden Macht. So entwickelt sich der rechtlich freie, in seiner Ausgangschance gleiche Mensch, der erwerbstätig ist, sich selbst ernährt und Eigentum bildet. Leitbild dieses Rechts ist das selbstbestimmte Individuum, dessen Rechte allerdings wiederum definiert, deshalb begrenzt sind.

II. DIE RECHTLICHE GARANTIE DER MENSCHENWÜRDE ALS FENSTER ZUR ETHIK

Das Menschenbild der Person mit Würde, Freiheit und Verantwortlichkeit ist das des weltanschaulich neutralen, säkularen Staates. Die Menschenrechte werden in die konkrete Ordnung einer nationalen Verfassung eingefügt und dort als Grundrechte gewährleistet,¹⁷ bewahren aber den Anspruch, für jeden Menschen in allen Teilen der Welt rechtlich wirksam zu werden. Dieser universale Ausgangsbefund moderner Verfassungen ist in seinen kulturellen Wurzeln zu verstehen und zu deuten. Diese Verfassungsvoraussetzungen¹⁸ werden von den Verfassungstexten nicht als Entscheidung für

¹⁴ Paul Kirchhof, Der demokratische Rechtsstaat – die Staatsform der Zugehörigen, in: Josef Isensee/ders., Handbuch des Staatsrechts der Bundesrepublik Deutschland, Bd. IX, 1997, § 221.

¹⁵ Georg Jellinek, Die Erklärung der Menschen – und Bürgerrechte, 4. Aufl., 1927, S. 46 ff.; Ernst-Wolfgang Böckenförde, Vom Wandel des Menschenbildes im Recht, 2001, S. 8.

¹⁶ Friedrich Carl von Savigny, System des heutigen römischen Rechts, Bd. 1, 1840, § 4 S. 7.

¹⁷ Zur Unterscheidung zwischen Grund – und Menschenrechten vgl. Klaus Stern, Die Idee der Menschenrechte und Positivität der Grundrechte, in: Josef Isensee/Paul Kirchhof (Hrsg.), Handbuch des Staatsrechts der Bundesrepublik Deutschland, Bd. V, 1. Aufl. 1992, § 108, Rn. 3 f.; Gerhard Ritter, Ursprung und Wesen der Menschenrechte, in: Roman Schnur (Hrsg.), Zur Geschichte der Erklärung der Menschenrechte, 1964, S. 202 f.

¹⁸ Zur Unterscheidung zwischen Verfassungsinhalten und Verfassungsvoraussetzungen vgl. Herbert Krüger, Verfassungsvoraussetzungen und Verfassungserwartungen, in:

eine philosophische, religiöse oder historische Idee aufgenommen, bauen aber auf gesellschaftliche Kräfte, die diese Wurzeln lebendig halten und damit den Humus bereitstellen, aus dem der Verfassungsbaum erwächst und ähnliche Bäume entstehen können. Die moderne Gesellschaft ist auf von ihr unterschiedene Legitimationsinstanzen, insbesondere die Kirchen als „Überlebensbedingung“ angewiesen.¹⁹ Keine Verfassung garantiert sich selbst.²⁰ Die Würde des Menschen und seine Freiheit nehmen den staatlichen Ordnungsanspruch zurück, machen den Staat konstitutionell schwach. Der Wille zur Würde und die Kraft zur Freiheit erwächst und verbreitet sich aus der freiheitsberechtigten Gesellschaft und ihren Institutionen.

II.1. *Der christliche Gehalt des Menschenbildes*

Die griechische Antike kennt keinen allgemeinen Würdebegriff, anerkennt vielmehr Verdienst, Ruhm, persönliche Ehre und Ansehen, die erworben werden mussten.²¹ Auch das Römische Reich begegnet eher dem Würdenträger als der Würde; „dignitas“ meint eine nach Amt, Rang und persönlicher Bedeutung erworbene Stellung im öffentlichen Leben. Nur die Stoa spricht schon von der „menschlichen Würde“, die allen Menschen zusteht.²²

II.1.a. *Ebenbild Gottes und Menschwerdung*

Doch erst das Christentum lehrt ein Bild des Menschen, der durch Geist, Verstand und freien Willen eine einzigartige Sonderstellung einnimmt und einen eigenen Auftrag empfängt: Der Mensch ist zwar auch ein Vernunftwesen – animal rationale –, wird aber wesentlich durch seine Eigenschaft

Horst Ehmke/Josef H. Kaiser/Wilhelm A. Kewing/Karl Matthias Meessen/Wolfgang Rübner, Festschrift für Ulrich Scheuner, 1973, S. 285 f.; *Ernst-Wolfgang Böckenförde*, Der Staat als sittlicher Staat, 1978, S. 37; *Josef Isensee*, Grundrechtsvoraussetzung und Verfassungserwartungen, in: ders./Paul Kirchhof, Handbuch des Staatsrechts der Bundesrepublik Deutschland, Bd. V, 1992, § 115; *Paul Kirchhof*, Grundrechtsinhalte und Grundrechtsvoraussetzungen, in: Detlef Merten, Hans-Jürgen Papier (Hrsg.), Handbuch der Grundrechte, Bd. I, 2004, § 21, Rn. 7 f.

¹⁹ *Walter Kasper*, a.a.O.

²⁰ *Joseph von Eichendorff*, Preußen und die Konstitutionen, in: Jost Perfahl, Werke Band V: Politische und historische Schriften, Streitschriften, 1988, S. 129.

²¹ *Victor Pöschl*, Artikel Würde (I), in: Otto Brunner/Werner Conze/Reinhard Koselleck, Geschichtliche Grundbegriffe, Bd. 7, 1992, S. 637 f.

²² Marcus Tullius Cicero, De Officiis, in: Michael Winterbottom, M. Tulli Ciceronis De Officiis, 1994, S. 105 f., 106.

als Geschöpf und Ebenbild Gottes bestimmt.²³ Der Mensch hat – als Gottes Ebenbild und Gleichnis erschaffen – eine unsterbliche Seele, und führt ein Dasein um seines Heils willen. In dieser Lehre von der Würde des Menschen liegt ein radikaler Gleichheits – und ein ebenso entschiedener Freiheitssatz. Zugleich wird dem Menschen in seiner Gottebenbildlichkeit die Natur anvertraut; der Mensch steht zwar innerhalb einer gegliederten, in sich gestuften Schöpfung Gottes (Ordo-Gedanke), kann aber von der Natur Besitz ergreifen, sie zur Entfaltung seiner Würde und Freiheit nutzen.²⁴ Diese Lehre bestimmt bis heute die freiheitliche Verfassungsordnung, in der ein Mensch niemals Objekt sondern stets selbstbestimmtes Subjekt in jeder Rechts- und Herrschaftsordnung ist: „Jeder Mensch ist Mensch kraft seines Geistes, der ihn abhebt von der unpersönlichen Natur und ihn aus eigener Entscheidung dazu befähigt, seiner selbst bewusst zu werden, sich selbst zu bestimmen und sich die Umwelt zu gestalten“.²⁵

Die Ebenbildlichkeit des Menschen wird existentiell verdeutlicht, wenn Gott Mensch geworden ist, das Menschenbild also auch das Bild des Mensch gewordenen Gottes bestimmt. Dieses Christentum, die – wie die Theologie sagt – „größte Liebeserklärung Gottes an die Welt“, gibt dem Menschen im Wort Gottes und im Gespräch über Gott Anknüpfungspunkte in der je eigenen Existenz, befähigt den Menschen, etwas Unsägliches in Analogien dennoch zu sagen, in Anlehnung an unsere zwischenmenschlichen und innerweltlichen Erfahrungen von Gott Vater, Gott Sohn oder der Mutter Gottes zu sprechen. Diese „unüberbietbare Antwort“ des Christentums auf die Sinnfrage des Menschen bringt den Menschen zum Aufatmen, gibt dem Einzelnen in seiner Unzulänglichkeit und Bedrohtheit eine Antwort auf die Sinnfrage, drängt den Menschen in die Freiheit, erwartet nicht Gehorsam sondern Verstehen, weniger Bekenntnis als Erfahrung, weniger Leistung und mehr Verantwortung.

II.1.b. *Bedeutung für Kirche und Staat*

Dieses Verständnis von Gott und dem Menschen, das in der Einzigkeit und Würde der Person seine Mitte findet, das eine Religion der inneren Er-

²³ Genesis I, 26 und 27; *Ernst-Wolfgang Böckenförde*, *Geschichte der Rechts- und Staatsphilosophie*, 2002, S. 164 f.

²⁴ Genesis I, 28; *Ernst-Wolfgang Böckenförde*, a.a.O., S. 176.

²⁵ *Günter Dürig*, in: Theodor Maunz/ders. (Hrsg.), *Grundgesetz, Kommentar*, 29. Aufl. 1993, Art. 1 Abs. 1 Rn. 18.

fahrung mit anderen Menschen teilt, gewinnt Bedeutung für die menschliche Gemeinschaft, damit für Kirche und Staat. Das Christentum, das immer noch auf dem Weg zu sich selbst ist, „noch in den Kinderschuhen“ steckt, weist der Kirche nicht eine Autorität des Machthabers zu, der einen Herrn vertritt, sondern eine Autorität des Lehrers, der seine Erfahrung, sein Wissen und seine Wirklichkeitssicht an seine Schüler weitergibt, dabei nicht nur lehrend den Verstand der Menschen anspricht, sondern sein Erleben in Bildern und Vorbildern, in Begegnung und Austausch vermittelt. Die Kirche ersetzt die Gottesangst durch Gottvertrauen, Staat und Kirche stützen sich weniger auf Dekret und mehr auf Dialog, führen in eine Welt des Verstehens, der Erfahrung und der Verantwortlichkeit.

II.2. *Der Einfluss des Christentums auf die Entwicklung der Rechtsordnung*

Das christliche Menschenbild hat die Welt des Staates und des Rechts prinzipiell verändert.²⁶ Die Lehre von einem Gott, dessen Verheißungen sich an jeden Menschen, an die Menschheit als Ganzes wenden, beschränke sich nicht – wie bei den Griechen, Römern und Juden – auf ein bestimmtes Land, eine bestimmte Stadt, ein auserwähltes Volk. Der universale Anspruch des Christentums bestärkt und verklärt nicht einen bestimmten Herrscher oder eine Herrschaftsform, relativiert das Recht vielmehr als eine vorletzte Ordnung, betont die Verantwortung des Menschen in seinem Gewissen, leitet eine Entwicklung ein, in der Staat und Kirche sich voneinander trennen. Für viele Jahrhunderte geraten sie in einen Konkurrenzkampf, finden schließlich zu einem friedlichen Nebeneinander, in dem Religions- und Gewissensfreiheit vom Staat herrscht und der Staat sich auf diesseitige Aufgaben beschränkt.

Das auf den einzelnen Menschen und sein Seelenheil ausgerichtete Christentum öffnet das Recht für die Anliegen der einzelnen Person, hat eine „prinzipielle Verinnerlichung und Moralisierung des Rechtsdenkens“ zur Folge,²⁷ das dem allgemeinen und gleichen Recht den Gedanken der Billigkeit gegenüberstellt.²⁸ Die Rechtsbegriffe des Gewissens, des guten Glaubens, der Ehrbarkeit, der Nächstenliebe und Barmherzigkeit, der Vorwurf

²⁶ Axel Freiherr von Campenhausen, *Christentum und Recht*, in: Peter Antes (Hrsg.), *Christentum und europäische Kultur*, 2002, S. 96 f.

²⁷ Axel Freiherr von Campenhausen, *Christentum und Recht*, in: Peter Antes (Hrsg.), *Christentum und europäische Kultur*, 2002, S. 108.

²⁸ Alexander Hollerbach, *Artikel Billigkeit*, in: Görres-Gesellschaft zur Pflege der Wissenschaft (Hrsg.), *Staatslexikon*, Bd. 1, 7. Aufl., 1985, S. 810 f.

des unsozialen Verhaltens, damit das dritte Ideal der modernen Demokratie, die Brüderlichkeit, und die moderne Sozialstaatlichkeit haben in dieser christlich geprägten Rechtsordnung ihre Wurzeln.

Die christliche Vorstellung von der unentziehbaren²⁹ Gleichheit aller Menschen in Würde und Freiheit, ebenso die Hinwendung zu Armen, Schwachen, Unfreien hinterlässt deutliche Spuren auch in den Institutionen, die Würde und Freiheit des Einzelnen stützen und umfassen.³⁰ Die Ehe wandelt sich von einem Übereinkommen des Bräutigams mit der Sippe der Braut (Muntehe) zu einer auch vom Willen der Braut abhängigen Konsensehe.³¹ Das Strafrecht entwickelt sich von einer Sanktion und Rache für die Verbrechenstat zu einem Recht von Schuld und Sühne, die eine Strafe je nach Zurechenbarkeit und Schuld beurteilt.³² Neben den Gedanken der Vergeltung tritt der der Besserung.³³ Das Christentum lehnt seit bald tausend Jahren die Todesstrafe ab, weil sie dem Verbrecher die Chance der Besserung nimmt.

Auch die in der urchristlichen Gleichheit aller Menschen angelegte Gegenwehr gegen eine Versklavung und später gegen die Leibeigenschaft hat sich nach langen Phasen des Zögerns und der Rückschläge letztlich durchgesetzt.³⁴

Christliche Individualisierungstendenzen sind auch im Recht von Eigentum und Erbrecht, im Prozessrecht und im gesamten Familienrecht³⁵ nachweisbar. Stets sieht das Recht den Menschen als selbstständiges und eigenverantwortliches Individuum; der einzelne Mensch ist – aus Familienverband, Sippe, Berufsstand und Nation gelöst – zur Ehe mündig, zur Verfügung berechtigt, zur Wahrnehmung eigener Rechte befugt.

²⁹ *Herbert Schambeck*, Grundrechte in der Lehre der katholischen Kirche, in: Detlef Merten/Hans-Jürgen Papier, Handbuch der Grundrechte in Deutschland und Europa, Bd. 1, 2004, § 8, Rn. 11.

³⁰ *Hans Maier*, Die ältere deutsche Staats- und Verwaltungslehre, 2. Aufl., 1980.

³¹ *Hans-Wolfgang Strätz*, Artikel Kebsehe, in: Adalbert Erler (Hrsg.), Handwörterbuch zur deutschen Rechtsgeschichte, Bd. 2, 1978, Spalte 695 f.

³² *Gerald Göbel*, Der Beitrag des kanonischen Rechts zur europäischen Rechtskultur, Archiv für katholisches Kirchenrecht, 159 (1990), S. 19 f.

³³ *Gerald Göbel*, a.a.O., S. 30.

³⁴ *Axel Freiherr von Campenhausen*, a.a.O., S. 111 f.

³⁵ *Josef Isensee*, Keine Freiheit für den Irrtum, Die Kritik der katholischen Kirche des 19. Jahrhunderts an den Menschenrechten als staatsphilosophisches Paradigma, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, 104 (1987), S. 296 (301 f.).

III. DIE INDIVIDUALISIERUNG DES RECHTS

III.1. *Individualrecht im Staats- und im Völkerrecht*

Die Garantie der Menschenwürde ist ein verfassungsdirigierender Programmsatz,³⁶ der den Einzelnen berechtigt und in neueren Verfassungen durch Verfassungsbeschwerde vor Gericht geltend gemacht werden kann.³⁷ Die Verpflichtung des Staates, die Würde jedes Menschen zu achten und zu schützen, bewahrt den Einzelnen vor Verachtung und Erniedrigung, schützt seine körperliche Integrität, sichert ihm menschengerechte Lebensgrundlagen, wahrt seine personale Identität und Ehre, bietet die Mindestgrundlagen zur Entfaltung seiner Freiheit, gewährleistet elementare Rechtsgleichheit. Der einzelne Mensch wird zur Mitte und zum Maß des Verfassungsstaates.

Der Schutz der Menschenrechte ist inzwischen auch in das Völkerrecht übernommen worden und erreicht damit Universalität. Nach herkömmlichem Völkerrechtsverständnis konnten nur Staaten und allenfalls internationale Organisationen eigene Rechte geltend machen. Seitdem sich die Staatengemeinschaft im Jahre 1948 in einer Deklaration der UN-Generalversammlung zur Achtung der Menschenrechte bekannt hat, bilden die Menschenrechte jedoch einen wesentlichen Bestandteil der Völkerrechtsordnung, die in vielen Bereichen die Rechte des einzelnen Menschen bestätigt. Das Völkerrecht erkennt erstmals dem Einzelnen das Recht zu, vor völkerrechtlichen Instanzen und Gerichten die Verletzung seiner Rechte, auch gegen den eigenen Staat, geltend zu machen.³⁸ Die internationale Gemeinschaft, verkörpert durch die UNO oder regionale Organisationen, nimmt ein Recht auf humanitäre Intervention in Anspruch, um massiven Menschenrechtsverletzungen eines Staates in seinem eigenen Hoheitsgebiet zu begegnen; damit wird die Souveränität eines einzelnen Staates wesentlich geöffnet, die Verbreitung der Menschenrechte erleichtert, aber auch ein Krieg im Namen der Freiheit möglich. Das Recht, über die Einreise und den Aufenthalt von Ausländern und deren Aufnahme im eigenen Staat zu ent-

³⁶ *Brun-Otto Bryde*, Programmatik und Normativität der Grundrechte, in: Detlev Merten/Hans-Jürgen Papier (Hrsg.), *Handbuch der Grundrechte in Deutschland und Europa*, Bd. I, 2004, § 17 Rn. 26.

³⁷ *Victor Pöschl*, Artikel Würde (I), in: Otto Brunner/Werner Conze/Reinhard Koselleck, *Geschichtliche Grundbegriffe*, Bd. 7, 1992, S. 637 f.

³⁸ *Kay Hailbronner*, Der Staat und der Einzelne als Völkerrechtssubjekte, in: Michael Bothe/Rudolf Dolzer/ders./Eckard Klein/Philip Kunig/Meinhard Schröder/Wolfgang Graf Vitzthum, *Völkerrecht*, 3. Aufl., 2004, S. 230 f.

scheiden, ist traditionell Ausdruck staatlicher Souveränität, heute in zunehmendem Maße menschenrechtlich beeinflusst. Neuestens wird der Einzelne auch unmittelbar Träger von völkerrechtlichen Pflichten; bei schwerwiegenden Menschenrechtsverletzungen kann er insbesondere vor internationalen Strafgerichten auf der Grundlage völkerrechtlicher Strafnormen zur Verantwortung gezogen werden.

III.2. *Drei Gruppen von Rechten*

Die universellen Menschenrechtsverträge gewährleisten individuelle Freiheits- und Abwehrrechte des Einzelnen, wie das Recht auf Leben oder auf persönliche Freiheit. Jeder einzelne Mensch kann mit Hilfe der Gerichte Eingriffe der Staatsgewalt abwehren. In einer zweiten Gruppe regeln die Verträge wirtschaftliche, soziale und kulturelle Rechte wie das Recht auf Arbeit oder auf angemessenes und gleiches Arbeitsentgelt bei gleicher Leistung. Diese Rechte sind in der Regel programmatische Direktiven, die der Einzelne nicht durchsetzen kann, denen gelegentlich auch die rechtsförmliche Verbindlichkeit fehlt. Die staatlichen Verfassungen vermeiden deshalb soziale Grundrechte, beauftragen aber den Sozialstaat, die soziale und materielle Grundlage des individuellen Lebens zu sichern. Insoweit übernehmen die Grundrechte wie das Sozialstaatsprinzip die Idee der Menschenwürde: Die Grundrechte befähigen den Menschen, im Rechtsstaat seine Rechte wirksam verteidigen zu können, um den Menschen nicht zum Objekt staatlichen Handelns zu machen. Das Sozialstaatsprinzip sichert die materiellen Grundlagen des individuellen Lebens und verhindert, dass der Mensch zum Objekt der Verhältnisse wird.

In einer dritten Gruppe gewährt das Völkerrecht überindividuelle Rechte, wie das Recht auf Entwicklung, auf lebenswerte Umwelt, auf Frieden, Solidarität und Abrüstung, auf Teilhabe am gemeinsamen Erbe der Menschheit, auf das Recht, über natürliche Ressourcen zu verfügen.³⁹ Diese Rechte bleiben Berechtigungen oder auch nur programmatische Erwartungen von Staaten, die im Gefälle unterschiedlicher Entwicklungsstandards eine Angleichung der Entfaltungschancen aller Staaten in ähnlichen Ausgangsbedingungen verlangen. Diese Grundrechte der dritten Generation verfolgen mit gutem Recht eine Menschenrechtspolitik, die dem einzelnen Menschen dient, gewähren aber keine individuellen Menschenrechte.

³⁹ Kay Hailbronner, a.a.O., S. 214.

III.3. *Berechtigung des Einzelnen, nicht der Gruppe*

Die menschen- und staatsrechtliche Grundsatzfrage, ob der rechtliche Schutz einer Gruppe – der Familie, der Sippe, eines Berufsstandes, einer Nation – oder aber dem einzelnen Menschen zugesprochen wird, ist nach dem Menschenbild der Verfassungsstaaten entschieden: Berechtigter ist der einzelne Mensch, der mit seinen Grundrechten Verletzungen durch den Staat, neuerdings aber zunehmend auch durch gesellschaftliche Gruppen und andere Menschen abwehrt.⁴⁰ Ideengeschichtliche Entwicklungslinien und praktische Rechtsbedürfnisse weisen auf Schutz und Entfaltung des einzelnen Menschen: Das Christentum, die „Religion der Freiheit“,⁴¹ versteht jeden einzelnen Menschen als Ebenbild Gottes, begegnet ihm als einem Geschöpf, in dem Gott Heimat hätte finden können. Die Philosophie der Neuzeit versteht den Menschen als Zweck an sich selbst, der mit autonomem Willen Schöpfer seiner eigenen Gesetze ist.⁴² Auf dieser Grundlage antworten die staatlichen Verfassungen und auch völkerrechtliche Verträge auf erlebte Menschenrechtsverletzungen mit Grundrechtsgarantien für den einzelnen Menschen, die individuell vor Gericht durchsetzbar sind.

III.4. *Individualisierung in der Dichtung: das Genie*

Das Begreifen des Menschen als autonome Person schlägt sich nicht nur in der Nüchternheit des Rechts nieder, sondern auch in Übersteigerungen und Abflachungen anderer Lebensbereiche. Die Lebenskraft des Religiösen verhilft dem Dichter zum Höhenflug der Phantasie und zu Gedankenkühnheit. Gefordert sind „Genie“ und „Herz“, Genie als die rätselhafte Kraft, mit der man an das Erhabene rührt, Herz das Subjektive, daran „alle Bilder der Einbildungskraft erwachen“, „alle Gedanken größer denken“.⁴³ Ein Genie findet nicht, sondern erfindet, bringt etwas Neues, „Originelles“ ans Licht der Welt. Shakespeare habe sich, so sagt Johann Wolfgang Goethe,⁴⁴ nicht

⁴⁰ *Josef Isensee*, Staat und Verfassung, in: ders./Paul Kirchhof (Hrsg.), Handbuch des Staatsrechts der Bundesrepublik Deutschland, Band II, 3. Aufl., 2004, § 15 Rn. 90 f.

⁴¹ *Georg Wilhelm Friedrich Hegel*, Philosophie der Religion, Bd. II, 1986, S. 207 f.

⁴² *Immanuel Kant*, Grundlegung zur Metaphysik der Sitten (1785), in: ders., Gesammelte Schriften, Bd. IV, 1973, S. 434 f., 439 f.

⁴³ *Friedrich Gottlob Klopstock* (1755), in: Karl-August Schleiden (Hrsg.), Ausgewählte Werke, 3. Aufl., 1969, S. 997, 1004.

⁴⁴ *Johann Wolfgang Goethe*, in: Karl Richter u.a. (Hrsg.), Sämtliche Werke nach Epochen seines Schaffens, Band I, 1985, S. 414.

an Regeln gehalten, sondern Regeln gegeben, die der eigenen schöpferischen Natur entstammen.⁴⁵ Eine junge Generation, die dem freien, schönen Geist zugetan war, formuliert im Selbstbildnis des Genies ein neu erwachtes Selbstbewusstsein gegen die hierarchische, starre und beschränkte Welt des Herkommens, gegen kleinbürgerliche Unterwerfungsbereitschaft, Anpassung an Konventionen, Verengung auf Beruf, Amt und Erwerb, auch gegen einen trockenen Rationalismus, der kein Geheimnis übrig lassen wollte.⁴⁶ Diese Freiheit will nicht „von etwas“ frei sein, sondern bedeutet ein freies Hervorbringen, das sich von der Enge der Kausalität und Vorhersehbarkeit löst und schöpferisch wirkt.⁴⁷ In dieser Genialität allerdings hebt sich nicht der Dichter von anderen Menschen ab; vielmehr steckt in jedem Menschen ein Genie, dessen individuellen Lebenskeim die Gesellschaft entfalten muss. In der Regel allerdings erstickt sie das Genie und macht aus ihm eine „Fabrikware Mensch“.⁴⁸

Friedrich Schiller fordert in seiner Zeit des Sturm und Drang, dass jedes wahre Genie naiv sein müsse, von einem Instinkt fürs Gelingen geführt werde, „bloß von der Natur oder dem Instinkt, seinem schützenden Engel, geleitet, geht das Genie ruhig und sicher durch alle Schlingen des falschen Geschmacks“.⁴⁹ Dieses Genie findet die Quelle seiner Tätigkeit in sich selbst, flieht die Welt, meidet die Begegnung, sehnt sich nach Einsamkeit. Freiheit misstraut dem Denken, entzieht sich der empirischen Erfahrung, erhöht das sinnliche Erleben ins Ideal. Der Mensch gewinnt Freiheit, indem er nicht zurück, sondern nach vorne blickt, nicht auf den Stein vor seinen Füßen, sondern in die Sterne schaut.

Doch der Mensch werde immer mehr in die Erfahrungen der Naturwissenschaften, in das Bewusstsein seiner körperlichen Triebe, in die Härte des Kampfes aller gegen alle, in die Nüchternheit von Rationalität und Mechanik geführt, drohe damit kausal, mechanisch, körperlich zum Objekt gemacht zu werden. Er kämpfe um seine Würde, wenn er im „Audienzsaal des Geistes“ throne,⁵⁰ in dem die Sinneseindrücke vorsprächen, sich mit ih-

⁴⁵ Vgl. auch *Immanuel Kant*, Kritik an der Urteilskraft und Schriften zur naturphilosophie, in: Wilhelm Weischedel (Hrsg.), Werke, Bd. V, 1957, S. 242: Im Genie gibt „die Natur der Kunst die Regel.“

⁴⁶ *Rüdiger Safranski*, Schiller oder die Erfindung des deutschen Idealismus, 2004, S. 48.

⁴⁷ *Johann Gottfried Herder*, in: Wolfgang Pross (Hrsg.), Werke, Bd. I, 1984, S. 359 f.

⁴⁸ *Arthur Schopenhauer*, zitiert nach Rüdiger Safranski, a.a.O., S. 51.

⁴⁹ *Friedrich von Schiller*, Über naive und sentimentalische Dichtung, in: Peter-André Alt/Albert Meyer/Wolfgang Riedel, Sämtliche Werke, Bd. 5, 2004, S. 704.

⁵⁰ *John Locke*, Versuch über den menschlichen Verstand, 1690, Bd. I, 4. Aufl., 1981, S. 130.

ren Botschaften aber unwillkürlich, machtvoll aufdrängen und den Spielraum der Freiheit verengen. Doch ehe sich die Freiheit in einer Trennung zwischen Denken und Erleben, zwischen Erfahren und Empfinden, zwischen Mensch und seiner Welt rettet, verbindet das Gefühl den Menschen mit der Welt, erlebt der Mensch seine Identität im Selbstgefühl, entdeckt im Mitgefühl, im Gemeinsinn die Zugehörigkeit der Menschen zu Gesellschaft und Natur als einheitsstiftendes Prinzip. Denken, Glauben, Wollen und Empfinden kehrt mit Shaftesbury, Rousseau und Herder in das Ich, in den Menschen zurück.⁵¹ Es gibt nichts Allgemeines mehr, nur noch Individuelles. Der Mensch folgt nicht allein einer privatnützigen Freiheit, sondern der Idee eines Gemeinsinns, eines Geselligkeitstrieb, in der Selbsterhaltung und Zugehörigkeit zusammenfallen. Er gewinnt Selbstachtung, weil es andere gibt, die ihm Achtung erweisen oder verweigern, erfährt sich also als Einzelner und als Gemeinschaftswesen, ist in seinem Egoismus ein „Raubtier“, zugleich aber „in höchsten Graden gesellig“, also ein geselliges Raubtier.⁵²

III.5. *Rechtsfolgen des Menschenbildes*

In diesem Kampf um die Freiheit, von Natur und Kausalität, von Konvention und Erfahrung, von Sinnlichkeit und Trieb, von religiöser und moralischer Bindung, zieht sich das Recht auf die Garantie einer Freiheit von äußeren Einwirkungen durch andere Menschen zurück. Gegenstand des aus der Menschenwürde abgeleiteten Freiheitsrechts ist der Anspruch der einzelnen Person, in seiner Autonomie vom Staat, von gesellschaftlichen Mächten, von anderen Menschen nicht verletzt zu werden. Thema dieser Freiheit ist die Freiheit von Sklaverei, von Inhaftierung, von Tötung und Körperverletzung, von Enteignung und Berufsverbot, von Ausweisung und Einreiseverbot, von Bevormundung in Religion, Meinungsäußerung und Publikation, Kunst und Wissenschaft. Hinzu tritt das Recht, in Freiheit anderen Menschen zu begegnen und mit ihnen zu leben, in Ehe und Familie, in Kirche und Weltanschauungsgemeinschaften, in Versammlungen, Vereinigungen und Parteien. Verstärkt wird diese äußerliche Freiheit durch den eigenen, gegen andere abgeschirmten räumlichen und ökonomischen Lebensbereich, die eigene Wohnung, den eigenen Erwerbsbetrieb, das eigene Ver-

⁵¹ Rüdiger Safranski, a.a.O., S. 70 f. m.N.

⁵² Adam Ferguson, Grundsätze der Moralphilosophie, übersetzt von Christian Garve, 1787, S. 12.

mögen, das selbst hervorgebrachte Gut, insbesondere das Eigentum an geistigen Schöpfungen.

Dieses Rechtsverständnis von Menschenwürde und Freiheitsrechten wurzelt in der Idee des würdebegabten Menschen, der autonom handelnden Person, der zur Sittlichkeit fähigen Persönlichkeit, nimmt die daraus sich ergebenden Rechtsfolgen aber auf die Achtung und den Schutz jedes Menschen in der staatlichen Gemeinschaft und gesellschaftlichen Zugehörigkeit zurück. Eine solche Verfassungsordnung ist nicht nach Inhalten einer Religion, einer Philosophie oder Dichtung zu interpretieren, braucht aber diese Verfassungsvoraussetzungen als Humus für einen Verfassungsbaum, der ohne diese Wirkungs- und Erneuerungsquellen nicht wachsen und seine Samen für neue Bäume nicht aussäen könnte.

III.6. *Individualität in Wirtschaft und Demokratie*

III.6.a. *Der wirtschaftende Mensch*

Die individuelle Freiheit hat in der Garantie von Eigentümer- und Berufsfreiheit eine Ausprägung erfahren, die im privatnützigen Erwerbsstreben Markt und Wettbewerb organisiert, darin einen Antrieb für individuellen Wohlstand und allgemeine Prosperität organisiert, in der Begegnung von Angebot und Nachfrage Bedürfnisse erkundet, Produktverbesserungen entdeckt, Güter und Dienstleistungen sachgerecht zuordnet.

Dieses individualisierende Wirtschaftssystem folgt dem Prinzip der Gewinnmaximierung, pflegt keine Kultur des Maßes. Während die Lehren vom Privateigentum im Liberalismus des 19. Jahrhunderts noch eine „Höhenlinie“ für die erwünschten Eigentumskumulierungen definierten,⁵³ ein Wettbewerbs- und Kartellrecht eine Individualisierung von Kapital und Marktmacht zu bewahren hoffte, lehrt die Realität moderner Großkapitalgesellschaften und Kapitalfonds, dass Eigentümermacht auch in die Anonymität, in die schwindende Verantwortlichkeit für den Einsatz von Kapitalmacht führen kann.

Darüber hinaus bedroht eine Verallgemeinerung des ökonomischen Prinzips des Wettbewerbs die Menschenrechte substantiell. Wenn die Staa-

⁵³ *Carl von Rotteck*, in: Carl von Rotteck/Carl Welcker (Hrsg.), *Das Staats-Lexikon*, Enzyklopädie der sämtlichen Staatswissenschaften für alle Stände, 4. Band, 1846 (Nachdruck 1990), S. 215 f.

ten in einen Leistungswettbewerb – das Angebot von Subventionen, Steuerergünstigungen und Strukturhilfen an den Meistbietenden – getrieben werden, müssen sie den sozial Schwachen und Bedürftigen vernachlässigen, verlieren also ihr Gesicht als Sozialstaat und vielfach auch als gleichheitsorientierte Demokratie. Wenn die Medien, die Kunst und auch die wissenschaftliche Lehre wettbewerblich um die Gunst von Nachfragern buhlen müssen, droht der Drang zur Quantität die Qualität zu verderben; Massenfernsehprogramme und Massenmedien steigern ihre Quote durch Kulturverzicht und Stilverlust. Zuwendung und Erziehung für das Kind, eheliche Treue, religiöse Gemeinschaft, wissenschaftliche Offenheit, der Schutz der Privatsphäre, Gemeinnützigkeit, insbesondere auch der Gleichheitssatz dürfen nicht in den Sog eines Wettbewerbs geraten, soll nicht das Recht auf Stille, Nachdenklichkeit, Zusammengehörigkeit, Begegnung und Selbstlosigkeit zerstört werden.

III.6.b. *Der demokratische Bürger*

Die Garantie der Menschenwürde und die Freiheitsrechte regeln Beziehungen unter den Menschen, verstehen den Menschen also als ein auf den anderen Menschen angewiesenes Wesen. Er übt seine Freiheitsrechte in mitmenschlicher Begegnung in einer arbeitsteiligen Wirtschaft, in einer offenen Mediengesellschaft aus, erwartet inneren und äußeren Frieden, setzt in der sozialen Zugehörigkeit zu einer Rechtsgemeinschaft auf Beistand in der Not und Hilfe zu ökonomischer, kultureller und rechtlicher Normalität. Diese Zugehörigkeit des freien Menschen zum Staat hat zur Folge, dass der Mensch als Bürger (Staatsangehöriger) in Wahlen und Abstimmungen die Geschicke seines Staates mitbestimmt.

Der Zeitgenosse der westlichen Welt versteht sich jedoch oft weniger als mitverantwortlicher Bürger und mehr als freies Mitglied einer Gesellschaft, entfaltet eine zivilgesellschaftliche Selbstgewissheit, die die Bindungen an den Staat lockert – möglichst die Steuer vermeidet und Wahlen fernbleibt. Dieser Mensch ohne Bürgersinn übersteigert die Erwartungen an den Staat – auf gutes Recht und gutes Geld –, überfordert den Staat und wendet sich sodann enttäuscht vom Staat ab.

Die Zivilgesellschaft selbst ist politisch-moralisch überfordert. Sie scheut die langfristige Bindung, verharrt in den kurzfristigen Gegenwartsfreiheiten und verfehlt oft die Freiheitsräume der Ehe und Familie, der Verantwortlichkeit für eine Firma, der langfristigen wissenschaftlichen Forschung, künstlerischen Stilbildung, religiösen Zugehörigkeit. Diese Gesellschaft

scheut die Institutionen und sucht ihre Gegenwart in spontaner Sinngebung zu managen. Sie pflegt den Diskurs und flieht die Wertebindung. Sie tanzt zwischen Konfliktbereitschaft und Solidarität, globaler Offenheit und heimatlicher Sicherheit, verlässlicher Erwerbsquelle und tagesaktuellem Genuss. Demgegenüber zielen Würde und Freiheit auf die langfristige Zugehörigkeit, Mitverantwortlichkeit, freiheitliche Bindung, insbesondere in einer unkündbaren und unscheidbaren Elternschaft, in einer beruflichen Verantwortlichkeit für andere, in dem demokratisch stetig wahrgenommenen Status des Bürgers, in Kircheng Zugehörigkeit, in Wertegebundenheit.

IV. UNANTASTBARE MENSCHENWÜRDE UND ABWÄGUNGSFÄHIGE FREIHEITSRECHTE

IV.1. *Ehernes Gesetz und konfliktreiche Begegnung*

Die unantastbare Würde eines jeden Menschen erwartet für die Begegnung unter Menschen, dass jeder den anderen in seinem Dasein und Sosein achtet und schützt. Würde dieser Grundsatz im Verhältnis von staatlichem Hoheitsorgan und Gewaltunterworfenem, gesellschaftlich Mächtigen und Abhängigen, Wettbewerbern und Konkurrenten, Familien, Nachbarn und Sippen beachtet, hätte das Recht seine Aufgabe der Friedenssicherung und Entfaltungshilfe erfüllt. Doch die Menschen werden von Ehrgeiz, Neugierde, Machtstreben, Gewinnsucht, Sexualität getrieben, suchen das Maximum, auch wenn das Maß geboten ist. Ernährung, Fortpflanzung, Selbstbehauptung, Ansehen, Herrschaft und Eigentum sind Ziele, die Menschen mit gleicher Würde und Freiheit in Konflikt bringen, Streit und Kampf provozieren.

Die Absolutheit des Würdeanspruchs trifft so auf die Relativität der Freiheitsrechte: Freiheitsrechte können gegenläufig ausgeübt werden, müssen deshalb schonend gegeneinander ausgeglichen, also relativiert werden. Die Forschungsfreiheit des Arztes wird durch den Gesundheitsanspruch des Patienten begrenzt, die Eigentümerfreiheit des Unternehmers muss auf die Berufsfreiheit seiner Arbeitnehmer abgestimmt werden, die Wahrnehmung des Elternrechts hat dem Wohl des Kindes zu dienen, die Kunstfreiheit des Dichters die persönliche Ehre des von ihm beschriebenen Menschen zu achten.

Der einzelne Mensch hat Konflikte zwischen dem Menschenbild und seinem individuellen Willen zu lösen. Darf er seine vorgefundene Normalität verändern, sein altersbedingt nachlassendes Gehör durch ein medizinisches Implantat verbessern, eine Schönheitsoperation vornehmen, die Leistungsfähigkeit durch Doping steigern, die Erlebniszufähigkeit durch Droge vermeh-

ren? Darf der Suizidwillige an der Selbsttötung gehindert, der Patient entgegen seinem Willen zu medizinisch notwendigen Eingriffen gezwungen, die Heilungschance nach seinem Willen durch einen genetischen Eingriff verbessert werden? Das Menschenbild entscheidet über den Schutz des menschlichen Lebens beim Ungeborenen, über die Hilfe beim Sterben des Schwerkranken, über die Grenzen des wissenschaftlichen Humanexperiments.

IV.2. Absolutheit des Würdeschutzes und Relativität des Lebensschutzes in der Praxis der Verfassungsrechtsprechung

Der Würdeschutz ist absolut, seine konkrete Ausprägung in Einzelgrundrechten relativ. Das zeigt sich insbesondere beim Recht des Einzelnen auf Leben. Theoretisch wird die Rechtsordnung das Leben, ohne das der Mensch nicht existiert und weitere Rechte nicht in Anspruch nehmen kann, absolut schützen wollen. In der Wirklichkeit einer konfliktreichen Welt muss das Recht anerkennen, dass das Leben eines Angreifers bei Notwehr und Nothilfe nicht unbedingt geschützt ist, das Leben eines Feuerwehrmannes oder Rettungssanitäters zum Schutz anderer bewusst gefährdet wird, das Leben von Soldaten in einem Krieg planmäßig aufs Spiel gesetzt wird. Das Leitprinzip der Menschenwürdegarantie will diese Konfliktlagen vermeiden, das Grund- und Menschenrecht auf Leben muss sich im dennoch real werdenden Konfliktfall soweit als möglich – relativiert – durchsetzen.

Die Verfassungsrechtsprechung bewahrt deshalb die Menschenwürde als unantastbare Regel, löst den konkreten Konflikt aber erst im schonenden Ausgleich, in praktischer Konkordanz der besonderen Grundrechte. Diese Abstufung, die das Prinzip bei der Lösung des individuellen Falles sichtbar macht, es aber nicht in die Abwägung gegenläufiger Rechte einbezieht, wird in der Rechtsprechung des deutschen Bundesverfassungsgerichts ständig praktiziert.

Der Schutz von Privat – und Intimsphäre,⁵⁴ das strafrechtliche Schuldprinzip,⁵⁵ die Unschuldsvermutung⁵⁶ und das Verbot eines Zwangs zur Selbst-

⁵⁴ BVerfGE 6, 32 (41) – Elfes –; 38, 312 (320) – berufsbezogenes Zeugnisverweigerungsrecht –.

⁵⁵ BVerfGE 20, 323 (331) – nulla poena sine culpa –; 45, 187 (259 f.) – Lebenslange Freiheitsstrafe –.

⁵⁶ BVerfGE 74, 358 (370 ff.) – Unschuldsvermutung –; 82, 106 (114 f.) – Unschuldsvermutung II –.

bezeichnung,⁵⁷ der Anspruch des Straftäters auf Resozialisierung,⁵⁸ das Recht auf Kenntnis der eigenen Abstammung,⁵⁹ das Recht am eigenen Namen,⁶⁰ Bild⁶¹ und Wort,⁶² das Grundrecht auf Datenschutz,⁶³ der Schutz der persönlichen Ehre,⁶⁴ das Recht auf schuldenfreien Eintritt in die Volljährigkeit,⁶⁵ die Gewährleistung einer menschenwürdigen Existenz,⁶⁶ auch der körperlichen wie geistig-seelischen Identität und Integrität⁶⁷ haben ihre Wurzel jeweils in Art. 1 GG, finden ihre Verdeutlichung und ihre Anwendungsbedingungen im Einzelnen aber in einem besonderen Freiheitsrecht.

Früher galt die künstliche Insemination als ein zur Wachsamkeit (zur „ethischen Unruhe“) mahndes Beispiel für einen Entpersönlichungsvorgang, der „den Menschen zum Objekt entwürdigt“.⁶⁸ Die Insemination bei einem anonymen Samenspender mache die Naturwidrigkeit zu einem System: Der Samenspender werde zu einer „vertretbaren Größe“ degradiert, die Mutter nehme den Spender als „austauschbar hin und überlasse es der Retorte, von wem ihr Kind stammt“.

Heute haben sich Medizin und Rechtsordnung auf eine Befruchtung *in vitro* eingestellt, bei der zumindest die Mutter sich durch eine strapaziöse Behandlung auf die elterliche Beziehung des Hoffens und Bangens eingelassen hat, die weitere Entwicklung des Embryos aber von einer willentlich vollzogenen Einnistung abhängt. In diesem Frühstadium von Leben und Familie fordert die Würdegarantie alle rechtliche Vorsorge, damit sich die Entwicklung des Menschen im natürlichen Ablauf wie im willentlichen Handeln möglichst parallel vollzieht.

⁵⁷ BVerfGE 38, 105 (114 f.) – Rechtsbeistand –; 56, 37 (41 ff.) – Bremer Modell –; 95, 220 (241) – Aufzeichnungspflicht –.

⁵⁸ BVerfGE 35, 202 (235 f.) – Lebach –.

⁵⁹ BVerfGE 90, 263 (270 f.) – Ehelichkeitsanfechtung –; 96, 56 (63) – Vaterschaftsauskunft –.

⁶⁰ BVerfGE 78, 38 (49) – Gemeinsamer Familienname –.

⁶¹ BVerfGE 35, 202 (220) – Lebach –; BVerfG 101, 361 (392) – Caroline von Monaco II –.

⁶² BVerfGE 54, 148 (155) – Eppler –.

⁶³ BVerfGE 65, 1 (42 ff.) – Volkszählung –.

⁶⁴ BVerfGE 54, 208 (217 f.) – Böll –.

⁶⁵ BVerfGE 72, 155 (170 ff.) – ererbtes Handelsgeschäft –.

⁶⁶ BVerfGE 82, 60 (85) – Steuerfreies Existenzminimum –; 99, 246 (259 ff.) – Kindereistenzminimum –.

⁶⁷ BVerfGE 56, 54 (75) – Fluglärm –.

⁶⁸ *Günter Dürig*, in: Theodor Maunz/ders. (Hrsg.), Grundgesetz, Kommentar, 29. Aufl., 1993, Art. 1 Abs. 1 Rn. 39.

IV.3. *Neue Anfragen, kontinuierliche Antworten?*

Dabei hat der demokratische Gesetzgeber als Erstinterpret der Verfassung die Garantie von Menschenwürde, Freiheit und Gleichheit gegenwartsgerecht zu deuten und zur Wirkung zu bringen. Dieser anspruchsvolle Auftrag wird aber vielfach so verstanden, als könne eine demokratische Mehrheit von der in der Verfassung garantierten Wirklichkeitssicht und Kulturerfahrung abweichen. Diese Autorisierung des politischen Willens sucht in drei methodischen Überlegungen ihre Rechtfertigung: Die Bürger eines weltanschaulich neutralen Staates fänden nur in einer Rechtsvorstellung ihre Basisnorm, die von religiösen, philosophischen und weltanschaulichen Traditionen gelöst sei⁶⁹ und deshalb auch den unreligiösen, den philosophiefernen und den das Recht vor allem als Grundlage ihres ökonomischen Handelns nutzenden Menschen eine Heimat biete (vermeintlich wertfreier Positivismus). Sodann wird die Menschenwürdegarantie zum Programm erklärt und so die gerichtliche Durchsetzbarkeit dieses Schutzes zurückgenommen, der demokratische Gesetzgeber damit zur alleinigen Ausgestaltung dieses Prinzips ermächtigt.⁷⁰ Schließlich wird der Anspruch einer entschiedenen Verfassungsaussage dadurch zurückgenommen, dass er nach den völker- und europarechtlich erreichten Mindeststandards gedeutet, also im Sinne des dort erreichbaren Mindestniveaus verstanden wird.⁷¹ Demgegenüber gewinnt die Garantie der Unantastbarkeit der Menschenwürde, die Achtungs- und Schutzpflicht normative Stärke in einem klaren Gegenstand.⁷²

Die Gegenwartsfragen an das Menschenbild sind dramatisch: Erlaubt die Realität von Kriegen und Terrorismus, ehemalige Selbstverständlichkeiten zur Bekämpfung von Menschenrechtsverletzungen und zur Abwehr eines Drohpotentials in Frage zu stellen (Verbot von Folter und erniedrigender Behandlung, militärische Intervention zur Einführung von Demokratie und Menschenrechten)?

⁶⁹ Horst Dreier, in: ders., Grundgesetz, Kommentar, Bd. I, 2. Aufl. 2004, Art. 1 Abs. 1, Rn. 5 f.

⁷⁰ Zur Entwicklung vgl. Brun-Otto Bryde, a.a.O., § 17 Rn. 2 f., 12 f.

⁷¹ Matthias Herdegen (Zweitbearbeitung 2004), in: Maunz/Dürig, a.a.O., Art. 1 Abs. 1 Rn. 13 f. und pass. im Gegensatz zur dortigen Erstkommentierung von Günter Dürig, Art. 1 (Erstbearbeitung 1958), Rn. 4 f.

⁷² Christian Starck, in: Hermann von Mangoldt/Friedrich Klein/ders. (Hrsg.), Das Bonner Grundgesetz, Kommentar, Bd. 1, 4. Aufl., 1999, Art. 1 Rn. 29 f.; Wolfram Höfling, in: Michael Sachs (Hrsg.), Grundgesetz, 3. Aufl., 2003, Art. 1 Rn. 19.

Welche Bedeutung hat der Wille des Menschen für seine eigene Würde (der Wille des Menschen zum Suizid, des Kranken zum Sterben; die Selbstentwürdigung eines Menschen durch demütigende Selbstdarstellung; die Pflicht zur Selbstbeichtigung im Strafprozess)? Bestimmt er auch im Rahmen moderner Informations – und Erkenntnistechiken über sich selbst (Datenschutz, kriminalistisches Abhören, willensbeugende Maßnahmen wie Lügendetektor und Brechmittel bei Drogenkurieren, Schutz der verletzten und toten Opfer einer Flutkatastrophe gegen Medienbilder)?

Welche Rechtsfolgen gewinnt die Absolutheit der Würdegarantie bei kollidierenden Interessen mehrerer Menschen (Lebensanspruch des Patienten und Körperintegrität des potentiellen Organspenders in der Transplantationsmedizin, Würde der schwangeren Frau und Lebensrecht des noch nicht geborenen Lebens bei kriminologischer Indikation)?

Inwieweit dürfen der Staat oder gesellschaftliche Mächte (Arbeitgeber, Banken, Versicherungen) Persönlichkeitsmerkmale technisch ausforschen (genetischer Fingerabdruck), eine die Persönlichkeit darstellende Datenbank errichten (Kriminalregister, Pressearchive, Dokumentationen wirtschaftlicher Leistungsfähigkeit)?

Inwieweit darf der Mensch, der auf Gemeinschaft und Begegnung angelegt ist, durch Haft von anderen isoliert werden, durch eine demokratische Wahlpflicht, durch Schul – und Fortbildungspflichten, durch Hilfeleistungspflichten in Notfällen in Verantwortlichkeit und Rechtsgemeinschaft zurückgeführt werden?

Inwieweit prägt die Garantie der Menschenwürde, die zu achten und zu schützen, also auf mitmenschliche Begegnung angelegt ist, auch schon den insoweit noch nicht begegnungsfähigen Embryo? Darf er durch künstliche Befruchtung erzeugt, also der natürliche Lauf der Dinge teilweise in die willentlich gesteuerte Hand des Menschen gegeben werden? Darf der Samenspender in der Anonymität bleiben? Darf ein Embryo auch für die therapeutische Behandlung eines Menschen, auch für den Erkenntnisgewinn erzeugt werden? Darf die Zuordnung des Embryos zur Mutter durch Leihmutterschaft gelockert, in der Anonymität embryonaler Stammzellen gänzlich aufgehoben und damit die Widmung zum menschlichen Leben, zur Geburt, verhindert werden; ist das Klonen strikt verboten oder kommt es auf den Zweck (Therapie, Herstellung eines Menschen) an?

Menschenwürde ist etwas Unverfügbares.⁷³ Doch wie hat die Rechtsordnung mit „überzähligen“ Embryonen umzugehen, die bei der künstlichen

⁷³ BVerfGE 45, 187 (229) – Lebenslange Freiheitsstrafe –.

Befruchtung nicht implantiert worden, durch – auch rechtswidrige – Forschung entstanden, aus ungewisser Quelle importiert worden sind: Sie dürfen nicht implantiert, nicht vernichtet, nicht jahrzehntelang in Kühlschränken für einen ungewissen Zweck aufbewahrt werden. Stehen diese Embryonen, wenn eine Entwicklung zum Menschen ausgeschlossen ist, für Therapie oder Forschung zur Verfügung?

Inwieweit darf die präventive Vermeidung von Fehlanreizen und Missbrauchsgefahren den gegenwärtigen Umgang mit dem Embryo beeinflussen? Inwieweit geht von einer Präimplantationsdiagnostik ein „Selektionsdruck“ aus, der diese Form des Wissens und der Wissensvermittlung rechtlich ausschließt? Im Übrigen: Schwächt und verflüchtigt sich der Bezug zur Menschenwürde bei lange bestehenden Stammzelllinien?

Wann darf durch gezielte Eingriffe in das Erbgut die vorgefundene „natürliche“ Entwicklung des Menschen verändert werden: Gesichert ist, dass die Medizin Krankheiten heilen, Schmerzen lindern, auch alterungsbedingte Funktionsstörungen erneuern darf, dass Erbkrankheiten medizinisch bekämpft werden, dass andererseits Menschen genetisch nicht veredelt oder sonst „gezüchtet“ werden dürfen. Doch die im Menschenbild vorgefundene natürliche Unvollkommenheit orientiert sich an einer normativ definierten Normalität, nicht an der individuell vorgefundenen.

Damit stellt sich auch die Frage, inwieweit die Garantie von Menschenwürde und Menschenbild durch die Entwicklung der Kultur und die jeweils wirksame konkrete Ordnung bestimmt wird. Die Sicherung des Menschen in seiner Würde mag in manchen Ländern dem Einzelnen den Anspruch auf eine Hand voll Reis geben; in Hochkulturen gewährt der Sozialstaat dem Einzelnen auch ein Telefon und ein Fernsehgerät. In einigen Kulturen erscheint die Todesstrafe als Verstoß gegen die Menschenwürde, die lebenslängliche Freiheitsstrafe aber mit ihr vereinbar, während andere Kulturen diese Wertung gerade umgekehrt treffen.

V. ENTSTEHENS – UND ERKENNTNISQUELLEN FÜR RECHT: WISSEN, WILLEN, WIRKLICHKEIT

Das Menschenbild bestimmt im Ergebnis das Entstehen und das Erkennen von Recht: Es fordert zunächst die Achtung der vorgefundenen Wirklichkeit. Hier liegt die Wurzel des Freiheits – und Gleichheitsverständnisses. Grundsätzlich hat die staatliche Ordnung den Menschen so anzuerkennen, wie er existiert, in seinem Dasein und Sosein zu achten und zu

schützen. Ähnliches gilt für sein Leben in Ehe und Familie, in Wohnen und Wirtschaften, in Denken und Meinen, in Religion und Weltanschauung.

Die zweite Entstehens – und Erkenntnisquelle für Recht ist das Wissen. Je mehr die Naturwissenschaften über den Menschen und die Gesetzmäßigkeiten der Natur lehren, Geschichte und Staatswissenschaften Kulturereignisse an die Gegenwart weitergeben, Wirtschafts – und Politikwissenschaften die Struktur des Erwerbslebens und der politischen Macht zu verstehen suchen, desto mehr muss der Gesetzgeber und der Gesetzesinterpret sich auf dieses Wissen stützen. Die modernen Verfassungen sind das Gedächtnis der Demokratie, das dieses Wissen von Mensch und Kultur rechtsverbindlich an die nächste Generation weitergibt.

Erst wenn die Achtung vor der Wirklichkeit und eine verstehende Offenheit für das Wissen gewährleistet sind, eröffnet sich der Handlungsraum für den Willen, in einer Demokratie für die Entscheidungskompetenz von Parlament und Mehrheit. Hier wird über die Aufteilung von Mächtigkeiten und Kompetenzen, die Zuordnung von Eigentum und Geldströmen, die Erwerbsmöglichkeiten am Markt und beim Sozialstaat, die Einschätzungen von Gefahrenvorsorge und Friedenspolitik entschieden. In einer Verfassungsordnung, die vom Bild des würdebegabten Menschen geprägt ist, wird die Mehrheit aber niemals die Minderheit unterwerfen. Die demokratische Willensbildung achtet stets die vorgefundene und deshalb rechtlich vorgegebene Würde jedes Menschen, seine Gleichheit in der Freiheit, und macht sich kontinuierlich und nachhaltig das Wissen von erprobten Werten, bewährten Institutionen und verlässlicher politischer Erfahrung zu eigen. Auch die demokratische Mehrheit malt das Bild des Menschen nicht neu, sondern zeichnet es im Stil der Gegenwart nach.

HUMAN DIGNITY IN THE SOCIAL DOCTRINE OF THE CHURCH AND THE CONTEXT OF INTERNATIONAL LAW

KRZYSZTOF SKUBISZEWSKI

The purpose of these comments is to recall some pronouncements of the Church relating to human rights and to make some observations on the role of international law in the context of Professor Kirchhof's paper.

1. Human dignity depends predominantly on the respect of human rights and fundamental freedoms. The intrinsic and inherent link between human dignity and human rights has been emphasized by the Second Vatican Ecumenical Council.¹ According to its social doctrine, the 'Church sees in these rights the extraordinary opportunity that our modern times offer, through the affirmation of these rights, for more effectively recognizing human dignity and universally promoting it as a characteristic inscribed by God the Creator in his creature'.² For 'all people have the same dignity as creatures made in [God's] image and likeness'.³ 'In fact, the roots of human rights are to be found in the dignity that belongs to each human being'.⁴ '[T]he inalienable dignity of the human person' is one of the 'foundations of Christian anthropology'.⁵ Thus, in the Church's social doctrine, human dignity, together with the commandment to love one another, is central and, therefore, more than a specific human right, no matter how basic and important.⁶

¹ Declaration *Dignitatis Humanae*, Pastoral Constitution *Gaudium et Spes*, paragraph 41.

² Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana 2004, paragraph 152 (cited below as *Compendium*).

³ *Catechism of the Catholic Church*, No. 1934.

⁴ *Compendium*, paragraph 153.

⁵ *Ibid.*, paragraph 36.

⁶ One reason for making this point is the view of some writers who speak of the dignity of the human person as a human right. They usually point out that it is a *fundamental* right.

2. By the Encyclical *Pacem in Terris* Pope John XXIII inaugurated a long series of contemporaneous papal pronouncements on human rights. In his teachings, John Paul II indefatigably spoke for human rights, strove for their application and promoted them systematically. Indeed, as early as 1979 this 'Pope of human rights' emphasized the importance of the human person in the Encyclical *Redemptor Hominis*. Theological anthropology constitutes the foundation of human rights in the social doctrine of the Church; these rights belong to an objective order created by God. Nonetheless, the relevant secular instrumentalities, including those of positive law, are not absent from the numerous statements, addresses and messages on human rights by Popes. One such instrumentality is a State constitution which guarantees human dignity, the subject Professor Kirchhof dealt with.

3. The preamble of the Charter of the United Nations of 1945 reaffirms faith 'in the dignity and worth of the human person'. The preamble to the Universal Declaration of Human Rights⁷ starts by recognising 'the inherent dignity' and the 'equal and inalienable rights of all members of the human family'. Article 1 of the Declaration states that '[a]ll human beings are born free and equal in dignity and rights'. UN Covenants on Human Rights (1966) recall in their preambles the 'recognition of the inherent dignity [...] of all members of the human family'. While other treaties on human rights, both those that embrace all such rights or some of their categories, are usually less explicit, there can be no doubt that several human rights they list serve human dignity.⁸

'The Church's Magisterium has not failed to note the positive value of the Universal Declaration of Human Rights'.⁹ Pope John Paul II defined the Universal Declaration as 'a true milestone on the part of humanity's moral progress';¹⁰ the Declaration 'remains one of the highest expressions of the human conscience of our time'.¹¹

4. Corresponding to 'the demands of human dignity' human rights 'entail, in the first place, the fulfilment of the essential needs of the person

⁷ Proclaimed by the General Assembly of the United Nations by resolution 217 (III) on 10 December 1948 'as a common standard of achievement for all peoples and nations'.

⁸ 'Several', of course, does not mean 'all'. For a critique of certain UN instruments and policies in the field of human rights, see M. Schooyans, *La face cachée de l'ONU*, Le Sarmant, Paris 2000.

⁹ *Compendium*, paragraph 152.

¹⁰ Address to the UN General Assembly, 34th session, 2 October 1979.

¹¹ Address to the UN General Assembly, 50th session, 5 October 1995.

in the material and spiritual spheres'.¹² Human rights 'apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole directed unambiguously at the promotion of every aspect of the good of both the person and the society'.¹³

The Encyclical *Pacem in Terris* by Pope John XXIII (1963), the Pastoral Constitution *Gaudium et Spes* of the Second Vatican Ecumenical Council, the teachings of Popes Paul VI and John Paul II, in particular the latter's Encyclical *Centesimus Annus* (1991), have specified various human rights. They include the right to life; the right to establish a family and to live in a united family: 'the right to develop one's intelligence and freedom in seeking and knowing the truth'; the right to work; and the right to religious freedom.¹⁴ In his address to the Diplomatic Corps on 12 May 2005, Pope Benedict XVI recalled that the Church

oeuvre afin que soient reconnus les droits de toute personne humaine à la vie, à la nourriture, à un toit, au travail, à l'assistance sanitaire, à la protection de la famille et à la promotion du développement social, dans le respect de la dignité de l'homme et de la femme, créées à l'image de Dieu. Soyez assurés que l'Église catholique continuera, dans le cadre et avec les moyens qui lui sont propres, à offrir sa collaboration pour la sauvegarde de la dignité de tout homme et le service du bien commun.

The Church's Magisterium emphasizes that economic rights aim at satisfying men's material needs and thereby promote their dignity.¹⁵ In particular, '[t]he right to the common use of goods is "the first principle of the whole ethical and social order" and "the characteristic principle of Christian social doctrine"'.¹⁶ 'It is first of all a *natural right* and it is an 'inherent' right.¹⁷

5. In light of these statements there is room for recognizing the integrity of regulation by both United Nations Covenants on Human Rights of 1966, *i.e.*, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

¹² *Compendium*, paragraph 154.

¹³ *Ibid.*; John Paul II, Message for the 1999 World Day of Peace, paragraph 3.

¹⁴ *Compendium*, paragraph 155.

¹⁵ *Cf.* The Encyclical *Mater et Magistra* by Pope John XXIII (1961) and *Compendium*, paragraph 94.

¹⁶ The quotations in single quotation marks are from the Encyclicals by John Paul II *Laborem Exercens* (1981), para. 19 and *Sollicitudo Rei Socialis* (1988), para. 42, respectively.

¹⁷ *Compendium*, paragraph 172.

6. Professor Kirchhof states that '[m]odern constitutions are based upon the concept of man as being endowed with dignity, destined to be free, and capable of responsibility' (section I, para. 1). This view obviously applies to *democratic* constitutions and practice that is concordant with them. It may be added that in several countries the constitutional guarantee of human dignity, 'preexisting' as it is,¹⁸ has an international origin in the sense that that guarantee has found its way into constitutional law through international law.¹⁹

7. Thus, in the authoritarian or totalitarian States defeated in World War II democratic constitutions were adopted as a result of international arrangements and, in some instances, in a framework based on the functioning of an administration of an international character. Democratization of those States took place, *inter alia*, as a consequence of international concern for human rights generated by World War II. It was expressed in particular in the Atlantic Charter of 1941 and the Charter of the United Nations of 1945, which was soon followed by the Universal Declaration of Human Rights of 1948. The Peace Treaties of 1947 and 1951 and certain other equivalent instruments provided for respect of human rights in the territories of former enemies of the United Nations alliance. War experience also induced some of the victorious democratic States to strengthen the legal fabric of respect for human dignity and human rights. France, for instance, reenacted a declaration of human rights in connection with her post-war constitutional reform.

What should also be noted in connection with the end of World War II is the development of international criminal law and the beginnings of an international jurisdiction covering war crimes, crimes against peace and crimes against humanity, which includes the concept of genocide.

8. Decolonization was another stage where international law was expected to have some bearing on State constitutions in the field of human rights. The Universal Declaration of Human Rights is a case in point.²⁰ An

¹⁸ Kirchhof, section I, para. 1.

¹⁹ The role of that law grew as a result of the system and policies of non-democratic States, especially in the thirties, and their occupation régimes. In those States, municipal law ceased to exercise its protective function with regard to human dignity and rights. For the role of international law as a substitute or support for municipal law in recreating that function, see the pioneering writings of H. Lauterpacht, in particular his Hague Lectures 'The International Protection of Human Rights', Hague Academy of International Law, *Collected Courses - Recueil des Cours*, vol. 70, 1947-I.

²⁰ E. Schwelb, *The Influence of the Universal Declaration of Human Rights on International and National Law*, *Proceedings of the American Society of International Law*, 1959, pp. 222-226.

endorsement of that Declaration was to be found in the constitutions of twelve new African States that were formerly part of the French colonial empire: Chad, Congo (Brazzaville), Guinea, Ivory Coast, Dahomey, Gabon, Madagascar, Mali, Mauritania, Niger, Senegal and Upper Volta. The constitutions of Togo and the Camerouns proclaimed in 1961 their peoples attachment to the Declaration. The Declaration is also mentioned in Burundi's 1962 constitution.²¹ The domestic legal effect of such references to the Declaration may vary. All depends on the positions taken by courts and executive organs. They can use the constitutional endorsement or affirmation of the Declaration as a starting point when interpreting and applying municipal law in conformity with the Declaration. Whether the general references to the Declaration appearing in the various constitutions are either meaningless or helpful in securing compliance with the Declaration depends on the practice of domestic organs. The record of non-compliance with the Declaration by some of those and also some other States speaks for itself. The appalling human catastrophes resulting from such non-compliance – *e.g.*, the genocide in some parts of the former Yugoslavia, Rwanda²² and Darfur – raise the issue of the relevance of law and its regulatory function in certain States. Here we touch upon the problem of failed States. Thus '[t]he solemn proclamation of human rights is contradicted by a painful reality of violations'; 'there is a gap between the "letter" and the "spirit" of human rights'.²³

9. Most recently, the constitution-makers in the newly-democratic States which in or after 1989 rejected communism were guided by both general and regional international treaties on human rights, especially by the two United Nations Covenants of 1966 and the earlier European Convention of 1950. In his paper, Professor Herbert Schambeck draws the attention of our Academy to the role of the third basket of the Helsinki Conference and its

²¹ As to similar endorsement see also the constitutions of Haiti (1950), San Salvador (1950), Libya (1951), Eritrea (1951), Egypt (1956) and South Vietnam (1956).

²² Against the background of the genocide in Rwanda in 1994 that country's constitution of 1962 has a tragically unreal undertone. For this constitution provides that the 'fundamental freedoms as defined by the Universal Declaration of Human Rights are guaranteed to all citizens'. At face value and in its formal sense such a provision would be expected to bring about the incorporation of the Declaration into the constitutional law of the country, thus giving it the rank of that law.

²³ *Compendium*, paragraph 158. But the problem has a universal dimension. 'Even in countries with democratic forms of government, these rights are not always fully respected', *ibid.*, John Paul II, Encyclical Letter *Centesimus Annus*, para. 47.

Final Act on Security and Cooperation in Europe; these provisions supported the peaceful fight of many in the Soviet Bloc and the Soviet Union itself for human dignity and rights. Professor Schambeck also recalls the part Pope John Paul II had played in this respect. Indeed, during his first pilgrimage to Poland in 1979 Pope John Paul II addressed millions of people. His message of 'courage mitigated by moderation' started a national renewal which led to the birth of the 'Solidarity' movement for peaceful change; in this movement, the idea of human dignity was fundamental.

10. Furthermore, a brief comment on what Professor Kirchhof says about litigation on human rights before international bodies (Section III, para. 1) seems to be in place. In this respect, the most advanced system has been developed on the regional level, namely, under the European Convention on Human Rights and Fundamental Freedoms signed in Rome in 1950. That system was perfected by the revision of the Convention in 1994 by virtue of the Eleventh Protocol to the Convention. Thus, the Convention now provides for the European Court to resolve disputes on violations of human rights not only between States that are parties to it but also between individuals and any of those States. Today, any person subject to the jurisdiction of such a State, having first exhausted local (*i.e.*, national) remedies, can bring a case before the European Court alleging that a decision or measure by a State organ conflicts with the obligations arising from the European Convention. If the State is found in breach of one or more such obligations, it is internationally bound to make reparation. Whenever that is impossible under domestic law, the European Court itself affords satisfaction to the injured person, usually by determining an amount of money to be paid by the respondent State. As one commentator observed, '[d]espite indisputable organizational problems, the huge backlog, and the slowness in bringing about changes in the legal systems of the various member States', the Court is successful in promoting human rights and ensuring respect for them in different European countries. It has thus contributed 'to the creation of an extensive region in Europe where arbitrary and discriminatory action by governments is being strongly curtailed'.²⁴

The accomplishments of the system established within the framework of the Organization of American States are also noteworthy. Here the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights apply the American Convention on Human

²⁴ A. Cassese, *International Law*, Oxford University Press, 2001, p. 367.

Rights of 1969. While individuals can petition the Commission, their cases can reach the Court only by action of the former or of a State party to the Convention. Incidentally, that was the European system before its reform. The Inter-American Commission and Court are important factors in improving the situation with regard to human rights in the relevant part of the Western Hemisphere.²⁵

As to the universal level, there is no court of law comparable to the European or Inter-American Courts. On the other hand, the International Criminal Court has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression,²⁶ all of which involve grave violations of human rights. The Court's *raison d'être* is to protect victims of those violations.²⁷ The United Nations has at its disposal multifarious mechanisms monitoring compliance with human rights, including the the UN High Commissioner for Human Rights. One of the proposed reforms of the United Nations, now under consideration, is the replacement of the Commission on Human Rights by a smaller Human Rights Council whose members 'should undertake to abide by the highest human rights standards'.

11. Professor Kirchhof admits that the minimal standards of international law, including European law, influence national constitutions and the jurisprudence of constitutional courts (Section IV , paragraph 3). Yet, the governing role of international law has its limits. All the pertinent questions Professor Kirchhof raises (*ibid.*) also confront the international law-maker. Does the cultural diversity of nations and peoples influence the answers to those questions?²⁸ To some extent, the answer is linked to the issue of universality and indivisibility of human rights.

12. The Church takes 'different cultural and social contexts' into consideration²⁹ and it does not close its eyes to various traditions in the histor-

²⁵ Canada and the United States are not parties to this Convention.

²⁶ Exercise of jurisdiction over the crime of aggression has been suspended until the fulfilment of the conditions stipulated in Article 5, paragraph 2, of the Court's Statute. For the text of the Statute, see UN Document A/CONF. 183/9; *International Legal Materials*, vol. 37, 1998, p. 999. The Statute was adopted on 17 July 1998 in Rome.

²⁷ *Cf.*, Ph. Kirsch and J.T. Holmes, *The Rome Conference on an International Criminal Court: The Negotiating Process*, *American Journal of International Law*, vol. 93, 1999, p. 12.

²⁸ Kirchhof, section IV, paragraph 3, *in fine*.

²⁹ *Compendium*, paragraph 173. *Cf.* also the address by John Paul II to the Diplomatic Corps on 20 October 1978.

ical evolution of countries and regions. Yet the social doctrine of the Church leaves no doubt that '[u]niversality and indivisibility are distinctive characteristics of human rights',³⁰ Pope John Paul II described those characteristics as 'two guiding principles which at the same time demand that human rights be rooted in each culture and that their juridical profile be strengthened so as to ensure that they are fully observed'.³¹

³⁰ *Compendium*, paragraph 154.

³¹ Message for the 1998 World Day of Peace, paragraph 2. In this respect (as in various other) the Church's stance is concordant with the interpretation of international law on human rights. The Vienna Declaration and Programme of Action adopted in 1993 by the United Nations World Conference on Human Rights (*International Legal Materials*, vol. 32, 1993, p. 1661) states that the 'universal nature' of human rights and fundamental freedoms 'is beyond question' (part I, para. 1). The Declaration also affirms that '[w]hile 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' (part I, para. 5).

THE GREAT HUMAN RIGHTS SPECTACLE:
ON POLITICIZED LAW
AND JURIDIFIED POLITICS IN EUROPE

JANNE HAALAND MATLARY

Prof. Kirchhof's paper is an overview of the legal literature on the concept of human dignity and anthropology as it relates to international human rights and to the German constitution.¹

It is a rich and very interesting *Ideengeschichte* about European legal philosophy and meta-legal concepts, and the author makes it very clear that the concept of human dignity has a specific, objective meaning. This dignity, which is the basis on which rights is founded; is above the law and pre-existing to it. This is e.g. expressed in the preamble to the Universal Declaration, which expressedly states that the rights therein are 'inherent' and 'inalienable' because they are founded on human dignity.

Kirchhof notes that all declarations about rights contain preambles that provide warranty that human dignity, as a predetermined starting point, is at the same time a legal axiom of a constitutional concept. Ultimately, this concept cannot be proven or refuted... (p. 3-4).

He further notes how the suppressed have used the 'rights' concept to argue for freedom and political entitlement, and that human dignity has been the universal starting point for this: rights based on dignity are not Englishmens' rights, as the Americans argued, and prior to this, they were not the rights of the lords, but of all free men in the Magna Charta.

The paper then moves on to discuss the impact of Christian anthropology on European law. Dignity to the ancient Greeks and to the Romans,

¹ The English translation of the paper (it was obviously written in German) is not good; I had considerable difficulty in making out the precise meaning in many places. There may therefore be some errors on my part in this commentary.

argues Kirchof, was equal to fame, reputation, and honour: 'The ancient Greeks had no general conception of dignity' (*Ibid.*, p. 6). Here I would venture to object: Socrates, as we know him through the Platonic dialogues, certainly speaks about a common human dignity which enables the person to become virtuous – he or she can choose between virtues and vices, and has a free choice. This anthropology is very similar to the Christian one – free will, striving for human virtue, *askesis* to that end, etc. The Christian 'addition' to this are the so-called cardinal virtues of 'faith, hope and charity'. But the dignity that Plato presents is far from outwardly or superficial – Socrates takes the hemlock precisely because he is a just man who does not compromise for personal advantage. In Aristotle's *Politics* we find the same view of the just and noble man, evident in the classification criteria of good and bad regimes. The Roman law makers also have a concept of *dignitas* in the Stoa, as Kirchof remarks.

The contribution of Christianity to the concept of human dignity is connected with the novelty in this religion that man is created in the image of God, which implies a radical equality. The doctrine of redemption also implies that the weak and the 'non-performers' in terms of virtue share in the very same dignity as the rest, and that the weak and sick are God's special 'children'. Charity regardless of 'deservedness' is the new element. Law also becomes universal through Christianity – there is 'neither Greek nor Jew.' But from the very beginning of political philosophy the city of God and the city of man are separated – politics and law have their own autonomy, and the state is separate from religion. The gods of the state were the state's own in ancient times; no longer so.

Empirically this influence can be traced; take the 'hard' case of my own country, where the pagan Viking king Olav Haraldsson became a Christian (approx. 1012-15) and later introduced Christianity as the state's religion in Norway. The legal system, well developed by the Vikings, was changed in terms of marriage laws, laws about 'utbur' – the abandonment of sick children to die in the woods, and in terms of the same procedure for the old and sick. Human and animal sacrifices were outlawed, and the legal changes were so substantial that the legal system was renamed 'Kristen-retten' (the Christian Law). As the sagas of Snorre Sturlason relate, these changes were so unpopular that they had to be enforced by might.²

² J. Haaland Matlary, 'Restaurer les racines chretiennes de la politique europeenne', *Sedes sapientiae*, 90., Societe Saint-Thomas-D'Aquin, Chemere-le-Roi, December 2004, pp. 77-99.

There is no doubt, then, about the empirical influence of both Roman law and Christian concepts on European jurisprudence, but the problem today which Kirchhof goes on to address after his historical expose, is that *human dignity and human rights today mean a variety of things to a variety of people*. There is no agreement on how to define these concepts.

I remember discussing the concept of human dignity with Norwegian radical feminists prior to the Womens' Conference in Beijing in 1995. They wanted to delete the concept from the concluding text, thinking that it meant some kind of *bourgeois* complacency for women – 'you can get dignity and sit at home and be nobly quiet'. I pointed out that the concept is a standard one in all human rights documents, and then they said: 'What does it mean?' Well, that is not easy to explain; it is a little like the term 'cultivated': we recognize someone as a cultivated person, but it is not easy to put in word when perhaps the other person does not know what it means already. The Norwegian feminists had a point: what in fact does it mean in a culture that is radically pluralist and certainly post-Christian? And it is important in today's politisation of human rights when they are redefined anyway?

Politics and Law: Variations on a Theme

Kirchhof spends the latter part of his paper in a critique of modern Western anthropology, and he is undoubtedly right in pointing out that there are strong tendencies of greed, egoism, decadence, etc. at hand. In terms of respect for life, the latest development in the direction of euthanasia as a 'human right' is disturbing indeed. But it does not do to invoke legal definitions to answer the questions posed – of which there are many in the paper. If human dignity is nothing and everything to most people, it is because there is no experience of human nature and the human condition that is common to all any more. Kirchhof asserts that

'In a constitutional system characterized by the idea that man is endowed with dignity, the majority will never oppress the minority. The democratic development of man's will continually respects the pre-existing, and for this reason legally pre-determined, dignity of each person... (p. 23)'.

This quotation betrays wishful thinking rather than reality. The current reality is that even lawyers state that human rights instruments are 'political statements', as Norwegian Constitutional Court Judge Karen Bruzelius said at a recent seminar.³ The 'legal method' for their interpretation is called

³ Intervention, Conference on Legal Integration in Europe, Sept 16-17, 2005, Faculty of Law, Oslo University.

'the dynamic method' which essentially means that political changes in the definition of human rights will be reflected in the case law of the courts, be it in Strasbourg or Luxembourg, Oslo or Karlsruhe. Bruzelius, herself a lawyer, hastens to add that 'we judges do not do policy-making'. But this is dangerously close to a semantic exercise.

Kirchhof laments the 'decline' in human standards, if we can call them that, and the implications this has for the *Rechtsstaat*. However, his leaves off where the analysis becomes very interesting, viz. in the present period. There is in fact a logic at work in the relationship between human rights and democracy: If we opt for total freedom to define and redefine human rights, we undermine the very concept of human rights, and also the idea of a *Rechtsstaat* because parliamentary majority will decide everything. There will be nothing left for the constitutional court to stand on, as it were – judicial review becomes impossible. The *Rechtsstaat* presupposes that human rights can be defined objectively, or at least that there is a distinctly legal way of reviewing redefinitions of them. It is clear that human rights 'evolve' with time – new rights are discovered that were not in the original declaration, but these cannot contradict the fundamental human rights. What is law and what is politics in this highly important 'cocktail' is deeply contested, but my point is simply that the logical connection between upholding human rights and democracy at the same time – in fact, upholding the *Rechtsstaat* – presupposes that human rights are not products of the ongoing political process, but that they are objective standards against which political majority decisions may be tested.⁴ Human rights are to act as the guarantee of fundamental rights for the person against state power, not as the instrument of the state against the citizen.

Human rights, emanating from the concept of human dignity, are today what we call 'essentially contested' in all Western states. The law in most of them follows the evolution of politics, even if there are states like Germany where the power of the constitutional court is great. The strongest *Rechtsstaat*-tradition in Europe is found in Germany precisely because of the experience of democratic politics 'gone wild' in the Hitler years. But this court-politics balance is also a political choice in the end. There is no recipe for the 'best of all possible worlds', to paraphrase Voltaire. In the US judges are elected, not named; and the Supreme Court decides the value questions

⁴ I publish a book on this topic in early 2006, *When Might Becomes Human Right*, St. Ulrich Verlag, Augsburg.

that are the most controversial in the polity. Most Europeans would say that this system represents a severe degree of politicization of law, and we find the idea of an elected judge highly improper, a 'mesalliance' between politics and law. How can the political impartiality of judges be upheld in such a system?

My point is that the law and legal system always reflects the religious, political, and cultural setting of a given polity. This is complicated enough, but today the law is increasingly supra-national: the paradox is really in the Bruzelius quotation above: Judges, often in supra-national courts, adjudicate in human rights cases based on more or less political trends, but nominally present them as law – they *become* law by virtue of this procure – and these cases are then transposed into national law, setting precedent legally and politically. Most European states, regardless of whether they have a monist or dualist system, accept the ECHR and the European Court of Justice (now also adjudicating in human rights cases to an increasing extent in connection with the large internal market portfolio) as law that is above their own. The irony is that this law may be a largely political product that is not only made by judges, but also by foreign judges.

Supra-National Juridification: Double Democratic Deficit?

In my institute we directed and conducted a five year study (1997-2002) entitled *Maktutredningen* (the Norwegian Power Study)⁵ assigned by the government, investigating how has which kind of power in society. We found ample evidence of the trend towards 'juridification' of politics and also that this took place internationally to a growing extent. Human rights is the name of the game for all politics these days, and entails an almost complete relativism in changing human rights. Kirchhof's hope that there can be one understanding of human dignity and the specific human rights is therefore not likely to be fulfilled. The problem is rather that there is a pluralist view – an essential contestation – of all these rights.

Specifically, we found that Norwegian use the *concept of human rights in a general sense in order to promote their political claims*; not referring to any specific human right in any specific convention or declaration, but rather in the sense of a 'good thing' – it is my human right and it is my dig-

⁵ NOU (Norwegian Public Investigations) 1999:19, 'Domstolene i samfunnet', Ø. Østerud, F. Engelstad and P. Selle, i *Makten og Demokratiet: En sluttbok fra Makt – og Demokratiutredningen*, Oslo 2003.

nity that demands this – here we also have the concept of human dignity invoked in the political discourse. Increasingly this concept is used to justify ever new claims to new rights, such as right to more pension, work, more parental leave when a child is born, better medical treatment for handicapped, elderly, the sick in general, improved conditions for women, improved rights to children – ‘it is undignified for them to have to labour with home work when adults can decide on how to spend their off-work hours’, etc. Undoubtedly many of these claims are really questions of dignity – can there ever be good enough care for the sick and old? If we accept that equality is the basic democratic norm, the answer is that human dignity is only fulfilled when all citizens have absolutely top quality health care all their lives, regardless of income and social status. Thus, we cannot easily dismiss the everyday usage of the terms human dignity and human rights for pressing issues politically. Everyone agrees on the importance of human rights – again undoubtedly a good thing – and it is also true that they can almost always be improved upon. The medical care given old people, as an example, was much worse before than now, when medical improvements are enormous. The issue is where to say stop; not that there are valid claims based on human dignity.

Second, we found that Norwegians invoke specific legal claims to human rights under the ECHR increasingly when they disagree with Norwegian authorities or courts. The Norwegian state has been sentenced in the Strasbourg court several times over the last years, and has complied each time, changing national legislation. Now citizens are familiar with the convention and the court, and use the threat of bringing a case to Strasbourg as leverage in highly medialised political processes. They can concern issues such as the mandatory teaching of Christianity in public schools – a contravention of the human right to religious freedom? Or the state church, a violation of the same right? Right to medical treatment outside the state if such treatment is not possible in Norway; etc. The threat of using the court system, including the national courts, is growing in importance. The usual process is one in which the media portray a case of say, alleged discrimination – a state church pastor is denied a job because he lives with a homosexual partner, which is allowed in the ‘partnership law’ – can the state force the state church to accept this or not? The Norwegian state then has to calibrate its standpoints to international human rights standards, anticipating the outcome of a prospective court ruling, and argue in human rights terms. The whole political process becomes ‘juridified’ as well as ‘internationalised’.

Another source of supra-national legislation in also the human rights field is the ECJ (European Court of Justice) in Luxembourg. As ECJ judge and scholar Allan Rosas, professors Hjalte Rasmussen and Joseph Weiler have shown,⁶ this court not only engages strongly in judicial activism which as also teleological, as the court is treaty-bound to aim at integration ('an ever closer union'), but it also sentences more and more human rights cases. Rosas documents how the court has started to refer to the ECHR and to human rights as early as in 1969 when it referred to 'the fundamental human rights enshrined in the general principles of Community law and protected by the court' and stated that these belong to the basis on which the court adjudicates.⁷ Throughout the years the ECJ has expanded greatly in its human rights 'portfolio', interpreting its mandate in internal market treaty rules as also a matter of human rights. For instance, an affirmative action policy proposed by the University of Oslo in order to increase the number of female professors by instituting professorships for women only, was struck down by the ECJ as discriminatory of men, and was therefore abandoned.⁸

The relevance of these two examples to our theme is the following: European states are developing more and more of a supra-national court system for the adjudication of human rights. As these rights are universal, this is a positive development, as the problem is often that human rights are not enforced and therefore have no teeth. But there are problem with this development as well: If judges are more policy-makers than they like to admit; we have a system of *supra-national and unelected policy-makers* that define our human rights standards.

Returning to the Bruzelius quote; she said that 'human rights paragraphs are really policy statements', meaning that there are few indications of how a lawyer should interpret them.⁹ Even if one uses a positivist defi-

⁶ Hjalte Rasmussen, *On Law and Policy in the European Court of Justice*, Dorrecht, Boston, 1986, and Joseph Weiler, *The Constitution of Europe*, Cambridge Univ. Press, Cambridge, 1999.

⁷ Case 29/69 *Stauder vs City of Ulm*-ECR 419 and Case 11/70 *Internationale Handelsgesellschaft*-ECR 1125.

⁸ Norway is not in the EU, but is bound by ECJ adjudication through an agreement with the EU which obliges Norway to accept all EU directives and which has its own intermediate court. In practice, the ECJ decides.

⁹ Intervention at the conference 'European Legal Integration: Contemporary Challenges', Faculty of Law, University of Oslo, September 16 and 17, 2005.

nition of law and says that 'law is what lawyers do', there is a problem of legal method here. Norwegian lawyers are in fact very worried about the internationalization trend for this very reason: which legal sources and methods should they employ? Professor Hans-Petter Graver characterizes the present situation as one of 'liquid law':

The main argument ... is that in a situation where legislators, judges and subjects of the law have to cope with a law that is increasingly polycentric, with an abundance of sources and higher degree of instability and change than within the traditional national legal order, no fixed points of reference exist for drawing lines between 'activism' and 'restraints' in judicial decision-making.¹⁰

He adds that Robert Bork's¹¹ argument that judges engage in judicial activism globally now seems borne out by the trends in Europe, and points out that the terms has several meanings (and that none of them is an agreed-upon definition). His concern is mainly that Norwegian judges, accustomed to a pragmatic view of law which is very faithful to precedent and national sources; now are introduced to a pluralist setting in Europe where the question of method and legislating from the bench are wide-open: 'Failure to use the established "tools of the trade" is another form of "judicial activism"'¹² and this happens because 'Norwegian courts are forced to ... engage in a formalist approach based on foreign rules and legal principles'.¹³

This situation eventually leads to a blurring of legality and politics, of what is legal and what is political. Graver's disconcerting conclusion is worth quoting in full, the more so because it comes from an eminent expert on EU law:

Maybe the relations between different legislators and courts in the European legal order may be described by the metaphor 'liquid law' where the law is fluent, unable to hold its shape for long, undergoing a continuous change in shape when subjected to stress. Legal rules based on national legislation will prevail for a time, but change when subjected to challenges from European law. Doctrines based on precedents are abandoned or adapted when subjected to pres-

¹⁰ H-P. Graver, 'Community Law, Judicial Activism and Liquid Rules - an EEA Perspective', paper presented at the conference 'European Legal Integration: Contemporary Challenges', *op. cit.*

¹¹ R. Bork, *Coercing Virtue: The Worldwide View of Judges*, Washington D.C., 2003.

¹² Graver, *op. cit.*, p. 9.

¹³ *Ibid.*, p. 10.

asures from other courts, political bodies or articulated social interests. Judges are increasingly emancipated from rules, codes, and practices and faced with conflicting demands from a polycentric web of legal authorities. One can no longer distinguish sharply between the political function of legislation and the judicial function of interpretation and application (my emphasis, *Ibid.* p. 20).

The field where this is most evident is human rights. If we continue to use the Norwegian case as an example, the political process of 'judicialisation' of human rights 'politics' is clearly a development in the American direction. Several other indicators of such a general change include the end of Keynesianism and the strong dominance of New Public Management ideology, whereby the citizen is seen more as a consumer, client and right-holder than as a citizen in a polity where what is political is well defined. With the end of the Cold War, the nation-state in Europe has become less important, and empirically we find that 'human rights activism has proceeded after (this time), and during the 1990s the ECHR became incorporated as domestic law by most member states'.¹⁴

In the human rights area, international courts have acquired sovereignty that is now much more important than before because citizens invoke the rights in a transnational manner. Østerud notes, very importantly, that 'the background to the strong law-making role of transnational courts is that there is no political law-makers at the transnational level. International law, and indeed human rights, is developing from treaties with *wide and imprecise clauses*' (My emphasis, *Ibid.*, p. 11). Thus, we have a complex law-politics situation in Europe today:

Judges perform 'semi-politics' when they adjudicate in human rights; but they are not politicians. These judgments bind national courts: 'Fluid' law is imposed on nation-states. But also politics becomes 'juridified' when citizens not only use the courts instead of the parliamentary channel, but insist on defining political issues as human rights issues. This endangers the model of the *Rechtsstaat* from two sides, in a 'pincer-movement': From above, in the imposition of 'fluid' law; and from below, in the constant invocation of human rights in the political process.

Moreover, we see that the drivers behind this development are global and probably irreversible. The discourse on human rights is universal, and

¹⁴ Ø. Østerud, 'Power, Judicialisation and Parliamentary Democracy', p. 6, paper presented at Stiftung Wissenschaft u. Politik, 2-4 June 2005.

the West exports human rights everywhere, as discussed below. The loss of political power inside the nation-state continues, as economic globalization imposes a global logic on states. National economic solutions are no longer possible. Likewise, the citizen knows and compares what services the 'service-state' created by New Public Management can provide: Is there a better cure for cancer in Australia? Then I demand that my state pays for it. The scope of human rights demands will only be determined by global possibilities and ones' own power. By creating binding international human rights instruments, states have placed themselves under the constant scrutiny of the newly empowered global citizen, who will take his claims to the supra-national level of adjudication if he has the resources to do so.

The conclusion to this 'opening-up' or perhaps 'end of the nation-state' is that human rights and human dignity have moved to center stage of world politics. This is no small cause for celebration. But the concomitant development is that the *Rechtsstaat* at the national level cannot function as the balancing mechanism between human rights and majority politics any longer, and further, that there is no consensus on what human dignity and human rights mean. As we have seen, law and politics *are* already very blurred, and that across the national-international divide. Thus, prof. Kirchhof's regrets about the dysfunctionality of the national system may be correct, but they do not capture the complexity of the present situation in Europe, which spans the nation-international divide as well as the law-politics distinction.

Is there any way out of this labyrinth? Let's assume that we want to ensure a functioning *Rechtsstaat* at the supra-national level in some form or other – which I think is the only realistic way given the severe changes away from the nation-state – the most pressing question is not one of organization, ie. of how still national parliaments will interact with such a court – but it is the question of agreement on fundamental norms. Is it possible to agree what human dignity and fundamental human rights mean in a post-modern, post-national, and post-Christian era? If law is 'liquid', as prof. Graver calls it, paraphrasing Zygmunt Baumann's concept of 'liquid modernity' where everything 'individualised, privatized, without given or self-evident rules, codes and patterns to conform to'?¹⁵

To sum up; Europe has become the major exponent of human rights, democracy, and the rule of law all over the world. This modern 'trinity' of val-

¹⁵ Graver, *op. cit.*, p. 20.

ues has become the universal standard for good government and humane politics. While democracy entails a basic equality as the main norm; it is in human rights that we today find the values about the human being expressed in the form of so-called fundamental human rights. Rule-of-law means that there is a separation of powers with an independent judiciary. There can be no real democracy and rule-of-law unless it is based on human rights.

No one today questions the legitimacy of human rights as the basis for democracy; the procedure whereby the people decide. Rule of law ideally reflects the same human rights, and constrains the majority when it deviates from these standards. Human rights hang logically together with democracy and rule of law: these legal and political institutions cannot exist without the founding, which is a certain and very specific view of the human person – an anthropology. Conversely, human rights require democracy and rule of law – these rights are not respected under tyranny, oligarchy or any kind of one-party system.

Legal and Political Rationality: The Logic of Universals

Josef Cardinal Ratzinger has written much on the problem of relativism versus pluralism. In his book *Werte in Zeiten des Umbruchs* (Herder Bucherei, Freiburg, 2005) he states that while relativism is a precondition for democracy, there is nonetheless a fundamental difference between pluralism and nihilism:

Auf die einen Seite finden wir die radikal relativistische Position, die den Begriff des Guten (und damit erst recht den des Wahren) aus der Politik ganz ausscheiden will, weil freiheitsgefährdend. Naturrecht wird als metaphysikverdächtig abgelehnt ... es gibt danach letztlich kein anderes Prinzip des Politischen als die Entscheidung der Mehrheit. ... Dieser Auffassung steht die andere These gegenüber, dass die Wahrheit nicht Produkt der Politik (die Mehrheit) ist, sondern ihr vorangeht und sie erleuchtet: Nicht die Praxis schafft die Wahrheit, sondern die Wahrheit ermöglicht rechte Praxis. Politik ist dann gerecht und freiheitsfördernd, wenn sie einen Gefüge von Werten und Rechten dient, dass von der Vernunft gezeigt wird ... (hier) finden wir also ein Grundvertrauen in die Vernunft, die Wahrheit zeigen kann (*Ibid.*, p. 52).

The point of the second position is simply that the human being is able to use his reason to arrive at political and moral axioms, what we call justice in the tradition from Socrates onwards. Through reason and man's

ability to evaluate arguments about right and wrong goes the way to politics and law. To the ancients the difference was obvious; one could distinguish between a good ruler and a tyrant; between a usurper of power who uses it for his private interests, and a statesman. Whenever we use these distinctions, we automatically provide evidence of this moral sense that is inherent in the human being (but not in animals). Why, then, is it so hard to admit that politics is intimately connected to morals, and that human beings can reason about right and wrong in a fairly consistent manner? It seems that the opposite norm is the main one today; that of nihilism: there is only my view of things and your view of things, and no common objective standard other than in some few areas.

Human rights have become the new political 'Bible' in two ways – as the only common point of reference in a relativist political community – but also as the source of legitimacy in political debates: no actor can 'afford' to be seen to violate human rights. It is extremely important to be seen to act in accordance with human rights in modern European politics; they thus carry very much power in themselves. Yet there is often a denial that they can be objectively defined, something which undermines the authority of these rights in the long run.

There are thus at least *two paradoxes* at work here: While Europe and the West extols the rest of the world to follow human rights and in fact uses this as conditions for aid and cooperation; European politicians simultaneously refuse to define, in an objective manner, what these rights really mean. Secondly, while these rights are appealed to more and more, they are undermined as sources of authority in the erosion of the belief that they can be defined in a clear and objective way.

These two processes are intertwined, and are symptoms of a deeper crisis in European politics: that of an ever greater irrationality, I would argue.

Human rights were codified as a response to the moral relativism of Hitler's Germany and World War II; which put in a nutshell the relativist problem of obeying orders from the legal ruler of the realm – in this case Hitler – when these orders were contrary to morality. The Nuremberg trials laid down that it is wrong to obey such orders; that there is in fact a 'higher law' – a natural law if you will – that not only forbids compliance, but which also makes it a crime to follow such orders. In the wake of this revolutionary conclusion in international affairs – it was the first time in history where a court had adjudicated in such a way – there was a growing movement to specify what this 'natural law' for the human being entailed. This resulted in the Universal Declaration of Human Rights only three

years later – a supra-national set of inherent and inalienable rights for every human being. It is very clear that the statement of human rights was to be a ‘common standard for all mankind’, as states in the preamble, and not something that could be changed at will by political actors. Yet this is exactly what happens in Europe today.

This placing of human rights *above* national law and politics is of extreme importance in international politics: For the first time a tribunal judged according the natural law of what a human being can demand and expect. The Universal Declaration of Human Rights in 1948 is the authoritative document in the world on this topic.

The rights defined in this document are parts of a whole, making up a fullness of rights which reflect a very specific anthropology, as Mary Ann Glendon has shown.¹⁶ The rights are clear and concise, and the underlying anthropology is equally clear. The intention of the authors of the declaration was to put into a solemn document the insight about human dignity that could be gleaned from an honest examination, through reason and experience, of what the human being is. Therefore they wrote explicitly that ‘these rights are inviolable and *inherent*’. *In other words, these rights could not be changed* by politicians or others, because they were inborn, belonging to every human being as a birth-right, by virtue of being a human being. The declaration is a natural law document which was put into paragraphs by representatives from all the world, from all regions and religions. Human rights are *pre-political* in the sense that they are not given or granted by any politicians to their citizens, but are ‘discovered’ through human reasoning as being constitutive of the human being itself. They are also therefore *apolitical* because they are not political constructs, but anthropological – consequences of our human nature. As one of the key drafters of the declaration, Charles Malik, said; ‘When we disagree about what human rights mean, we disagree about what human nature is’. The very concept of human rights is therefore only meaningful if we agree that there is one common human nature which can be known through the discovery of reason.

This last statement is however at great odds with contemporary mentality, which is relativist and subjectivist, scorning the idea that human nature as such exists and even more so that it can be known through reason. But if this is denied, and we regard human rights as something that

¹⁶ M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration*, Alfred Knopf, N.Y., 2003.

mere political processes can change, how can we uphold human rights as a standard for others, if not for ourselves? European foreign policy today is firmly based on human rights observation in all regions of the world, and entry into organizations such as the EU or NATO; the OSCE or the Council of Europe – the four major ones in Europe – are based on meeting human rights standards. Thus, to know what human rights objectively mean is more than a matter for the philosophically inclined.

But even more important is European politics itself: we are moving away from the nation-state based on 'nation', one common ethnic, religious, and cultural identity in a country; towards a European polity based on human rights. We are developing several identities in the post-modern period; and the traditional state based on the forging of one 'nation' – Frenchmen, Englishmen, Spaniards – will disappear. Instead we live in multi-ethnic, multi-religious, and above all, secular, society. Our only basis for common values resides in the concept of human rights. If these cannot be defined in a clear manner, we are in a state of ethical anarchy.

A further very important issue is that are undermining the very concept of human rights through 'politising' it at both the national and the international level. There is a continuous process of redefining individual human rights in areas of contention, such as the family, childrens' rights, womens' rights, and so on. The many UN conferences in the 90s were arenas for such redefinition, and at national level in Europe now we see that this activity has center stage. But when e.g. marriage and family are redefined in national laws, this seems to be a contravention of the supra-national human rights standards. Again, since human rights are 'above' politics, they are also above the nation-state. They are truly supra-national; many of them also so in a legally binding form, as treaties and conventions. Each time national politics makes its own definition of a human right, it not only redefines it, but also undermines its international commitment. This in turn undermines the whole human rights edifice. This is truly a paradox for those states which uphold the 'sanctity' of human rights to other states; often rouge or failed states. They in turn can say: 'If European states can define human rights at will, why can't we?'

Examples of this often well-intended subjectivism abound: Recently the Norwegian papers reported that an Islamic web-site in Oslo argued for polygamy, which is forbidden in Norway. The religious congregation behind this web-site received state subsidies, as do most churches as well, from the Norwegian state. But instead of condemning polygamy and withdrawing the subsidy, the minister of culture stated that 'in a democracy we have freedom

of expression'.¹⁷ What ought she to have done? Polygamy contradicts the human right to marry as defined in the Universal Declaration of Human Rights. Thus, it ought to be easy to reject polygamy. But why are we so unsure about what is right and what is wrong; what is condemnable and what is not? Recently the 'poly-amourous' movement has gained press attention in Norway, and in Sweden there is a feminist political party¹⁸ which advocates the abolition of marriage in its traditional heterosexual form – called hetero-doxy – and the introduction of 'group-marriage', which is nothing but polygamy open to various mixtures of sexes. One might, tongue-in-cheek, ask why one should not be able to marry one's dog as well.¹⁹

There are really only two positions on this question if there are no moral, legal or common-sensical reference points: One either sticks to the original wording of the UDHR which defined marriage heterosexually; or one agrees that human rights means just what they mean to the majority at any one time in a national legislature. In the latter case, polygamy is as logical as any other marriage definition if that is the outcome of the political process.

The anthropological crisis in Europe, if we call it that, coincides with the greatest transformation of the European state since its inception at Westphalia in 1648. We are at the same time transforming the legitimacy basis of the state to human rights while claiming that these human rights cannot be defined objectively. This is a 'liquid' situation which where 'normative anarchy' threatens. It is a commonplace that no state can exist without a set of common values held by all citizens.

Legal and Political Rationality: The Logic of Universals

The trend towards nihilism, a hundred years after Friedrich Nietzsche wrote 'Beyond good and evil',²⁰ aptly sub-titled 'Precursor to a philosophy for the future', is manifested in the lack of belief in human ability, through reasoned debate and thinking, to arrive at standards about human nature and

¹⁷ Aftenposten, 12.1.2004, front page.

¹⁸ Feministisk Initiative, led by Gudrun Schyman.

¹⁹ At a family conference in Holland some years ago I recall that López Cardinal Alfonso Trujillo, President of the Pontifical Council for the Family, said jokingly, 'I and my dog are a family, too', something which in all earnest was broadcast on the prime-time TV news that day. The Cardinal today stated that he and his dog also make up a family'.

²⁰ *Jenseits von Gut und Böse: Vorspiel einer Philosophie der Zukunft*, Wilhelm Goldmann Verlag, München, 1885.

human virtue and vice. This stance is pronounced and implicit in European politics today. The very concept of truth itself is not only contested; as it has always been, but seen as fundamentalist and repressive; as something undemocratic.

This strange aversion to the concept of truth is intimately linked to the concept of 'political correctness' (PC). It is perhaps the most powerful concept we have in our modern Western democracies, and is a wholly immaterial one. The power of being PC or not has been felt by most people: one senses that something which used to be 'comme il faut', suddenly is not. The media no doubt play a key role in this process of 'shaming' and 'praising'. To think that one can discover objectively valid moral truths is certainly the most 'un-PC' position possible.

The strength of PC derives precisely from the lack of belief in the result of rational debate, viz. firm and convincing conclusions. If debate is not aimed at the discovery of truth as a possibility, then there is no point in the debate other than propaganda for own interests and values. PC today is very much about tolerance, but tolerance is an empty concept unless there is a standard for judging what is to be tolerated and what not. Should polygamy be tolerated, even if I do not like it? Clearly the minister of culture was unsure of this. Being herself a Christian-Democrat, perhaps she thought that it would be very un-PC for someone profiled as a Christian to be critical of Muslims. This is the kind of dynamism I am concerned about: the lack of standard for judgment makes tolerance a PC concept in the end: one tolerates what the majority likes of that which is promoted by strong interest groups; as one is afraid of being charged with intolerance. But one does not tolerate what PC sanctions, because PC has the power to marginalize effectively.

Perhaps one 'key' to resolving the subjectivist problem lies in a rediscovery of universals: political and legal reasoning necessarily must concern universals; i.e. the common good. It cannot be 'self-referential', because then it is not about law or politics. If I say that the law should punish stealing, it is because I argue that stealing as such is wrong, for *everyone and everywhere* and therefore should be punished. *It is about a universal, and the law condemns it as a universal.* But if I say that it is wrong to have a sailboat and that having one should be condemned, I am speaking nonsense. It simply does not make sense. This is because there is nothing universally valid about having a sailboat. It belongs in the category of private interests, and is a totally private affair.

The language we use indicates to us immediately that we speak about universals in the first case, of law and politics; but only about particulars,

i.e. about the sailboat as a private pursuit, in the second instance. This Aristotelian language is as relevant today as it was in his time, for it shows the way to the distinction between private and political, between morally relevant and irrelevant.

'Res publica' – the 'political thing' – was the polity itself, the republic or the state, as a modern rendering would translate it. The political is that which concerns the *polis*, human society. To the ancient Greek masters of political thought, political activity was the most important and noble human activity after philosophy, which crowned human endeavour because it concerned the very soul of man itself.

The reason why politics is key to human happiness and subsistence is anthropological: it is because the human being is a *zoon politikon*, a political being; a social being. Man naturally lives in society; is naturally social – in the family, but also beyond it. He is also naturally *rational*; indeed, the rational ability distinguishes him from animals, according to Plato, Aristotle, and later Thomas Aquinas and the mainstream of our European political philosophy. *Because any man can reason about basic facts, including basic facts about right and wrong; he is different from animals, who also have language, but who cannot reason.* This observation is the basis for the natural law tradition which has formed European democracy.

As Aristotle and Plato pointed out; man has an ability for creating good or bad societies. The human propensity for evil lies at the root of tyranny, while the best and most virtuous thought results in what they termed aristocracy. While we prefer democracy to aristocracy today as the form of government, it is important to realize at the outset that human nature and the quality of society hang together: it can go both ways – we can have bad societies or good ones. The science of politics, founded by these ancient thinkers, was both normative and empirical: The question they asked, was this: What is the best society? Then they analysed various types of societies that they observed – Aristotle inductively and empirically, comparing known city-states; Plato deductively, through the reasoning of Socrates. Both were however informed by the over-arching question: what is *good* society? Which is the *best* society?

The point here is simply that *anthropology and politics are connected: society is a reflection of the 'goodness' or 'badness' of its inhabitants*, or to put it in more traditional terms; it is a function of virtue and vice. In a democracy the voters are themselves the decision-makers; thus it is incumbent on them to be virtuous. In a monarchy, aristocracy, oligarchy or tyranny – ancient forms of the polity – the key to society was the virtue or vice of a

few persons. A good monarchy could decline into a tyranny, and a good aristocracy could decline into an oligarchy, which was morally speaking a bad form of government.

Today this rather obvious and also substantial link between the moral qualities of the decision-makers and the ensuing political society is not reflected much on. To say that politics is about moral issues seems strange, as one would rather be inclined to agree that politics is amoral or even immoral. But even when people say that 'Politics is a dirty business', they are in fact affirming that it is supposed to be something very different: they mean that it is wrong that politics is not better, more morally sound; when they say this with regret and disdain. They are not describing what politics per se is, like money laundering or murder. They do not mean that politics is defined as a 'dirty business' as such, but that a particular political society they happen to know, is 'dirty'.

This may seem startling, even absurd: Isn't democracy about unlimited freedom and pluralism, about free choice, without authority? Isn't it the final liberation from imposition? The answer is yes and no; yes in most things political, where there are many options to choose from; but no in the sphere of fundamental virtues and vices. If one is a moral relativist, one would have to agree with Douglas and not Lincoln that slavery is OK when a majority votes in favour of it; or that Hitler must be let to rule since he was democratically elected. In our own day we would have to agree that not only is abortion and euthanasia acceptable as long as the majority wants to legislate in favour; but we would also have to accept ethnic cleansing or genocide in the same manner. Most people however would object to at least some of these propositions – I would guess that most would say that ethnic cleansing and genocide are evil, and also that Hitler was a tyrant who should be deposed.

There is something very illogical here: On the one hand we have a 'feeling' of right and wrong, but we think that it is a mere feeling because we lack the ability to justify or explain why we 'feel' like this. We do not know how to reason about these matters. On the other hand we are uncomfortable with the proposition that there can be moral laws underlying politics and that democracy is intended to promote good morals in society, that it fundamentally is about values, not about procedures. We would like to say something like this: 'Morals belongs to one's private life and has nothing to do with the freedom of democracy, which is about following rules and accepting difference'.

For many centuries European democracies have shared approximately the same moral norms, derived from the ancient and Christian legacy. The

ten commandments were more or less acceptable to all. These moral rules were also reflected in law and politics. There was no essential contestation of what should be taught in school or punished in the criminal code. The family was a given and natural institution; the right to life was not an issue in politics, and there was a basic agreement on what belonged to the private and the public sphere. True, different political ideologies had different views on the latter, and also on the role of the family in the economic and societal structure, but these were debates about the role of the state, of the relationship between economic and politics, and when it came down to the anthropological issues, it was a debate over the existence of the soul – of whether man was simply material or not.

Today there is no overt, systemic ideological debate. The political is fragmented and un-ideological because the discussion is no longer about man and society, about what the good society is based on what man is. It is rather the situation that Friedrich Nietzsche diagnosed about a century ago in his book 'Beyond Good and Evil'.

Like Kirchhof, I have no solution to the problem of lack of common norms in European society. But the only way to determine the validity of a political or legal statement is the 'universality' test. I believe, with Socrates, that most things political and legal can be subjected to rational scrutiny and determined through human reasoning. Indeed, if this is not correct, what remains is simply that might is right.

DAL DIRITTO ROMANO AL DIRITTO EUROPEO

FRANCESCO PAOLO CASAVOLA

1. Il tema, così indicato, vuole avere nei nostri giorni un significato diverso di quanto non abbia avuto in passato.

Nel secolo scorso si intendeva collocare, in questa delineazione di percorso, almeno due mete. La prima era quella di ricostruire la seconda vita del diritto romano, dopo la scomparsa della società e dello Stato dei romani, dall'Europa medievale a quella delle codificazioni moderne;¹ la seconda di valutare quanto del diritto romano fosse ulteriormente sopravvissuto nei codici e nella scienza giuridica contemporanea, tanto da giustificare lo studio ai fini della educazione odierna dei giuristi.²

2. Per restare per ora nel quadro temporale del Novecento, occorre specificare che a seconda dell'una o dell'altra finalità venivano in gioco due diverse metodologie. Una storiografica, e una dogmatica. Entrambe si contendevano il campo nello studio del diritto romano antico in funzione delle due diagnosi contrapposte, essere cioè il diritto romano un diritto morto, e dunque destinato ad essere oggetto di una scienza storica, o un diritto ancora attuale, e perciò materia di una scienza giuridica.³

¹ v. P. Vinogradoff, *Roman Law in medieval Europe*, 2nd ed. by F. De Zuletta, 1929 (trad. it. S. Riccobono, Milano, Giuffrè, 1950).

² v. S. Di Marzo, *Le basi romanistiche del Codice civile*, Torino, UTET, 1950; F.P. Casavola, *Francesco Calasso: diritto romano e diritto comune*, in *Index. Quaderni camerti di studi romanistici*, 28 (2000), pp. 79-88 (= *Sententia Legum tra mondo antico e moderno*, vol. II, Napoli, Jovene Editore, 2004, pp. 487-496).

³ v. F. Casavola, *Storiografia o dogmatica?*, in *Labeo*, 3, Napoli, Jovene Editore, 1956, pp. 336-340 [= F.P. Casavola, *Sententia Legum cit.*, vol. II, 2001, pp. 51-55; F. Casavola, *Diritto romano, scienza giuridica e formazione del giurista*, in *Panorami. Riflessioni, discussioni e proposte sul diritto e l'amministrazione*, Edis-Calabria, 1 (1989), pp. 3-12 (= F.P. Casavola, *Sententia Legum cit.*, vol. II, pp. 221-230)]. È utile richiamare qui, dei miei studi, *La ricerca delle interpolazioni*, in *Archivio giuridico*, 144 (1953), pp. 145-149 (= *Sententia Legum cit.*, II, pp. 71-91); *Jhering su Savigny*, in *Quaderni fiorentini per la storia del pen-*

3. Quanto al diritto romano, proveniente dall'antichità ed entrato nella storia europea, lo studio è stato condotto in una prima fase da medievalisti e in tempi relativamente recenti da modernisti. L'interesse dominante è andato su una storia cosiddetta esterna, delle fonti, dei giuristi, delle dottrine. Salvo che per i lineamenti degli istituti fondamentali del diritto civile, il diritto romano come corpo di norme non ha avuto osservatori che ne cogliessero i mutamenti, richiedendo questa attitudine la competenza propria dei romanisti. Sicché l'immensa biblioteca lasciata dagli scrittori del diritto comune non è stata esplorata dall'interno della esperienza giuridica delle società europee ma dall'approccio esterno delle questioni dottrinali.

4. La critica dei riformatori illuministi, che deploravano di essere circondati da libri, ma senza leggi, perché il controversismo dei dottori aveva eliminato la certezza del diritto, fu la prima causa del passaggio dal diritto comune alle codificazioni.⁴ La seconda, non meno potente, fu la formazione degli Stati nazionali nel clima della civiltà liberale. In questi si voleva realizzato lo Stato di diritto nel modello di Montesquieu, con i tre poteri indipendenti, legislativo, esecutivo e giudiziario. Il sovrano assoluto di *ancien régime* doveva cedere dinanzi al nuovo luogo della sovranità, cioè alla legge. E legge non poteva essere la massa caotica del diritto romano comune. Il *Codice Frederic* del 1750 restò un esperimento della nuova istanza. Il *Code Napoléon* del 1804, dopo una lunga gestazione, fu il primo corpo organico di norme che, cancellando la stratificazione storificata del diritto comune, richiamava a sue fonti la natura e la ragione. Mentre i codici francesi entravano in vigore, oltre che in Francia, nei paesi d'Europa egemonizzati dai francesi, altri Stati si davano propri codici. La eccezione al generale impianto della codificazione fu rappresentata dalla Germania. Qui Federico Carlo di Savigny difese il diritto romano dalla tendenza alla codificazione propugnata dal Thibaut. Ma era

siero giuridico moderno, 9 (1980), pp. 507-514 (= *Sententia Legum* cit., II, pp. 153-160); *Breve appunto ragionato su profili romanistici italiani*, in *Sodalitas. Scritti in onore di Antonio Guarino*, 8 (1984), pp. 4133-4148 (= *Sententia Legum* cit., II, pp. 181-196); *I diritti antichi*, in *La cultura storica italiana tra Otto e Novecento*, Napoli, Morano, 1990, pp. 51-73 (= *Sententia Legum* cit., II, pp. 249-271); *Il diritto romano nella scuola liceale*, in *Il latino nella scuola secondaria*, Brescia, Editrice La Scuola, 1990, pp. 275-286; *L'insegnamento romanistico nel Novecento*, in *Index*, 22 (1994), pp. 585-589 (= *Sententia Legum* cit., II, pp. 361-365); *Storia del diritto romano come insegnamento e come genere letterario*, in *Index*, 23 (1995), pp. 341-345 (= *Sententia Legum* cit., II, pp. 397-401); *La romanistica a Napoli dall'Unità alla Guerra*, in *Index*, 29 (2001), pp. 1-18; (= *Sententia Legum* cit., II, pp. 543-560).

⁴ v. F.P. Casavola, *L'educazione del giurista tra memoria e ragione*, in *Index*, 19 (1991), pp. 319-381 (= *Sententia Legum* cit., II, pp. 299-311).

il diritto romano elaborato nel *System des heutigen römischen Rechts*, il prodotto di una *Rechtswissenschaft*, di una scienza giuridica moderna che usava materiali della compilazione di Giustiniano.

Il *Pandektenrecht* tenne il campo in Germania fino a che il 1° gennaio del 1900 non entrò in vigore il Codice Civile dell'Impero tedesco, il *BGB*.

5. Da allora il diritto romano è sparito dalla scena legislativa e giudiziaria in Europa, guadagnandosi uno spazio soltanto accademico. Gli studiosi di diritto comparato classificano romano-germanico il sistema di *civil law* continentale, e anglosassone o anglo-normanno quello di *common law* esistente nelle isole britanniche e in Nord America. Ma se si vuole inseguire lo spirito del diritto romano, esso è più rintracciabile nel *common law* che nel *civil law*. Quanto al *corpus* normativo giustiniano non si può non constatare che esso appare essersi dissolto nelle costruzioni dei codici. Il termine *tradizione romanistica* sul confine dell'età dei codici si scioglie in due frange: una è quella della formazione culturale dei giuristi nella quale la conoscenza del diritto romano, nei due composti, del diritto comune e della pandettistica, ha certo un grande spazio; l'altra è l'utilizzazione di materiali normativi che rivelano il loro conio nelle fonti romane.

6. Va, ai nostri fini, ribadito il carattere *nazionale* dei codici, in consapevole voluto contrasto con l'applicazione transnazionale del *ius commune*. Lo Stato nazione vuole segnare una cesura rispetto ad una fase storica, che aveva esaltato una comune identità giuridica dei popoli europei, in cui sovrani, tribunali e giuristi ricevevano e applicavano il diritto romano a sostituzione o integrazione dei diritti locali, considerandolo manifestazione di una civiltà superiore e universale, rispetto a quelle autoctone.

A mano a mano che i sovrani furono riconosciuti come fonti e interpreti del diritto, la rappresentazione culturale, nelle due forme della storicità e della razionalità, andò arretrando dinanzi ad una concezione politica e statutale del diritto. Nella raggiunta fusione di statualità e nazionalità la esclusione dell'orizzonte europeo divenne il dogma del diritto codificato. Non a caso la *Juristenzeitung* salutò l'entrata in vigore del *BGB* con il motto "Ein Staat, ein Volk, ein Recht" (uno Stato, un popolo, un diritto).

Se si vuole misurare la portata di questa rivoluzione concettuale, oltre che ordinamentale, si ricordi lo scandalizzato stupore di una professore dell'Imperialregia Facoltà giuridico-politica di Padova, nel precedente secolo XIX, dinanzi alla ipotesi che potessero darsi tanti diritti quanti sono gli Stati.

7. Nel XVII secolo il cardinale Giambattista De Luca guardava da giurista l'Europa chiamandola il nostro mondo, *orbis civilis nostrae Europae communicationis*.

Ancora nel successivo XVIII secolo Edmund Burke poteva affermare che in qualunque parte d'Europa si viaggiasse non ci si sentiva mai del tutto fuori della propria patria. Nel XIX secolo la diffusione della codificazione napoleonica insieme con la lingua e la cultura dei francesi dava un ultimo colore omogeneo all'Europa continentale.⁵

Nel XX secolo, il binomio "razza e diritto", come ricorda Paul Koschaker, soprattutto nell'uso politico che ne fece il nazionalsocialismo, frantumò quel che restava di un comune passato europeo. Germanesimo e romanesimo diventavano gli antagonisti ideologici del diritto nuovo rispetto a quello della vecchia Europa. Con gli esiti paradossali che Koschaker descrive: da un lato una "inaudita fioritura" dello studio accademico del diritto romano, dall'altro la germanizzazione universale del diritto privato anche nell'area anglo-americana e in quella francese. Quanto all'Italia, il codice fascista del 1942 "che voleva rappresentare la romanità, è in qualche punto più germanico del diritto privato dei tedeschi, alfieri del germanesimo".⁶

8. L'Europa comincia a riapparire negli ultimi anni della transizione tra ventesimo e ventunesimo secolo su due quadranti: quello accademico dello studio dei fondamenti del diritto europeo e quello di un diritto prodotto da organi dell'Unione Europea.

Peter Stein e John Shand,⁷ uno storico ed un pratico, muovendo dall'esperienza del *common law* e affacciandosi da essa sulla cosiddetta "civiltà occidentale" danno conto di "valori" come legge e ordine, giustizia, legge giusta e decisione giusta, individualismo e responsabilità, libertà personale, il valore della vita, il diritto alla riservatezza, la proprietà, il contratto, concorrenza e conflitti d'interesse economico. Per "fondamenti" Stein intende istituti consolidati, processuali e sostanziali, che attraversano diritto romano e diritto moderno, *common law* e *civil law*, società senza Stato e società assorbite nello Stato. Da questo ultimo punto di vista, interessante è notare la non equivalenza di *Rechtsstaat* e *rule of law*, espressioni comunemente intese come Stato di diritto. La prima vale ad indicare quella fase moderna dello Stato costituzionale che si sottomette al diritto, la seconda è l'emblema di una società senza Stato che crea il suo diritto limitando il potere corrispondente dello Stato di produrre diritto.

⁵ v. F. Casavola, *La parabola della comparazione giuridica nell'Italia del Risorgimento*, prefazione a M.T. Napoli, *La cultura giuridica europea in Italia*, Napoli, Jovene Editore, 1987, pp. V-XIII (= *Sententia Legum* cit., II, pp. 207-217).

⁶ P. Koschaker, *L'Europa e il diritto romano*, Sansoni, Firenze, 1962, p. 244.

⁷ P. Stein, J. Shand, *I valori giuridici della civiltà occidentale*, Giuffrè, Milano, 1981; P. Stein, *I fondamenti del diritto europeo*, Giuffrè, Milano, 1995.

Che cosa significhino le opere di questi due studiosi ai fini della fondazione di una educazione accademica al diritto europeo è difficile dire. La tradizione inglese della *jurisprudence*, che abbraccia filosofia, sociologia, etnologia, comparazione e storia giuridica può servire ad una introduzione enciclopedica agli studi di diritto, ma certo non a presentare esperienze storiografiche o dogmatiche utili ad intendere e guidare il compito attuale dei giuristi in Europa.

Del resto l'incontro di studio tenutosi nell'Università di Ferrara il 27 febbraio dello scorso anno 2004 su "Fondamenti del diritto europeo", insegnamento introdotto in Italia nelle Scuole di specializzazione per le professioni legali nel 1999 e collocato nell'area disciplinare del Diritto romano e dei diritti dell'Antichità, ha dimostrato, qualora ce ne fosse stato bisogno, l'eterogeneità e l'incertezza delle opinioni dei romanisti intervenuti, sui metodi, gli obiettivi, i temi di una tale materia di studio.⁸

La attribuzione sua al settore romanistico e antichistico postula quel salto acrobatico cui si obbligavano i romanisti per trasvolare dal VI secolo di Giustiniano al XX secolo dei codici di pretesa ispirazione romanistica.⁹

9. Il carattere ideologico di una siffatta impostazione è evidente. A meno che non si voglia cadere nella ingenua cavalcata di millenni dei programmi universitari francesi, che tendono un unico filo tra il *Codice di Hammurabi* e il *Code Napoléon*, l'idea che il diritto europeo abbia radici che possano essere esplorate da romanisti e antichisti prescinde del tutto dall'accertamento di che cosa si intenda oggi per diritto europeo.

Se si vuole superare la nozione puramente geografica dell'Europa è utile interrogare la sequenza Impero Romano, Sacro Romano Impero, Repubblica Christiana, Ius Commune, République des Lettrés. Politica, religione, diritto e cultura intellettuale sono stati con dominanze successive forze di unificazione dell'Europa. Con i nazionalismi del XIX e XX secolo la identità europea si è sgretolata. L'Europa che nasce dopo il secondo conflitto mondiale, per impedire guerre tra Stati europei, non è in continuità con nessuna delle fasi di tendenziale unità europea susseguitesi nella storia del continente. Dunque è improprio usare chiavi interpretative di ripristino o

⁸ Cfr. L. Piro, *Sui fondamenti del diritto europeo*, in *Index*, 32 (2004), pp. 652-655; L. Capogrossi-Colognesi, *I fondamenti storici di un diritto comune europeo*, in *Index*, 30 (2002), pp. 163-182; Id., *Riflessioni su "I fondamenti del diritto europeo": una occasione da non sprecare*, in *IVRA*, 51 (2003), pp. 1-27.

⁹ F. Casavola, *Diritto romano e diritto europeo*, in *Labeo*, 40 (1994), pp. 161-169 (= *Sententia Legum cit.*, II, pp. 367-377).

di evoluzione di valori provenienti dal passato. La costruzione dell'Europa odierna è dettata dalla esigenza di comporre interessi economici perché non nascano da squilibrate risorse cause di conflitti interstatali. L'ordinamento comunitario è geneticamente una *lex mercatoria* prodotta e monitorata da organi che ripetono la loro investitura da accordi intergovernativi. Dunque il diritto che possiamo chiamare europeo è per la logica e le categorie concettuali impiegate un diritto internazionale e non ancora costituzionale in senso pieno, malgrado il trattato costituente del giugno 2004. È un diritto il più estraneo possibile alla tradizione romanistica così come ai sistemi delle codificazioni nazionali. Non a caso il diritto comunitario è stata materia di competenza degli internazionalisti.

L'uscita dalla logica internazionalistica si intravede ora con il trattato costituente che avvia un processo di unificazione costituzionale di un soggetto-Europa, tuttavia anomalo rispetto al modello dello Stato-nazionale. Quanto al diritto europeo che nascerà, dopo la Costituzione del 2004, finalmente da leggi-quadro e leggi ordinarie del potere legislativo del Parlamento e del Consiglio, e non consterà più soltanto, come è stato finora, di regolamenti e direttive, esso, entrando nei diritti nazionali, presumibilmente e auspicabilmente senza meccanismi di recezione, modificherà i sistemi delle fonti entro gli ordinamenti degli Stati membri. Inoltre, a seconda dei principî e delle norme e delle materie regolate, si porrà la questione dell'armonizzazione o della uniformazione dei diritti interni. Quello sarà il momento in cui reagiranno le particolarità delle tradizioni degli ordinamenti nazionali. Cessioni di sovranità dei singoli Stati verso l'Unione appartengono alla strategia di calcolo degli interessi politici, ma unificare o armonizzare diritti di famiglia, di successione, di proprietà, di obbligazioni, sistemi processuali e quant'altro riguardi la vita di una società prodotta dalla storia e non da un atto di volontà, richiederà una lunga e travagliata elaborazione. Preparare giuristi per questo avvenire significa educarli al compito di fondatori di un nuovo diritto che sarà europeo se corrisponderà ad una società europea e ad una soggettività costituzionale europea.

10. Se nella formazione accademica di questi giuristi entrerà il diritto romano, occorrerà tenere ben distinto il diritto dei romani dalla tradizione romanistica, così come gioverà comparare *civil law* e *common law* per il diverso gioco che hanno avuto nell'uno e nell'altro società e Stato. Grammatica e vocabolario potranno echeggiare il lascito romano ma non varranno a fare del futuro diritto europeo una ennesima metempsicosi romanistica. E le ragioni sono almeno le seguenti.

Il diritto romano antico nasce in una società di padri che hanno in loro potere mogli, figli, schiavi, animali, terra. Malgrado l'analisi dei giuristi del principato sugli *status*, che conduce a distinguere nella condizione delle persone libertà e schiavitù, cittadinanza e posizione familiare, malgrado l'influenza dello stoicismo e poi del cristianesimo nella ricerca della individualità umana e che Ermogeniano, in età diocleziana, scriva *omne ius hominum causa constitutum* (D. 1.5.2), per il diritto romano il soggetto giuridico resta il *pater dominus*. La tradizione romanistica accentua l'attributo della proprietà, trasmettendola alle codificazioni. La proprietà *droit sacré* nel *Code Napoléon* sta a indicare il nesso che la stessa civiltà liberale convalida tra libertà e proprietà. Tradizione romanistica e dottrine giusnaturalistiche confluiscono nel costruire l'immagine dell'uomo che trasferendosi dallo stato di natura allo stato di società porta con sé libertà della persona e proprietà di beni, chiedendone garanzia al potere pubblico. Oggi, dopo la *Dichiarazione universale* del 1968¹⁰ e l'art. 1 c. 1 della *Grundgesetz* della Germania Federale del 1949, è la dignità dell'uomo l'essenziale identità dell'essere della persona. Come tale intangibile. La dignità dell'uomo non si manifesta in posizioni sociali od economiche, consistendo nella dotazione di ragione e coscienza di cui è fornito ogni vivente della specie umana.

11. La famiglia romana è stata interpretata come organismo o politico o economico, un piccolo Stato precittadino o un'azienda. È una comunità di sudditi sotto il potere assoluto del padre. La struttura potestativa della famiglia romana ha avuto una lunga sopravvivenza in Europa, ma oggi è del tutto scomparsa. La famiglia del nostro tempo è una comunità paritaria, cui la costituzione italiana riconosce diritti "come società naturale fondata sul matrimonio" (art. 29 c. 1).¹¹

Se un problema grava sulla famiglia odierna è quello che il suo involucro giuridico conservi e garantisca la società naturale e non rivesta società artificiali, non fondate sul matrimonio e non preordinate alla procreazione e umanizzazione delle generazioni.¹²

¹⁰ F.P. Casavola, *La dichiarazione universale: piccoli diritti, grandi parole*, in *Iter, Scuola cultura società*, II, 4 (1999), pp. 19-27 (= *Sententia Legum* cit., III, pp. 493-497).

¹¹ F.P. Casavola, *La famiglia dalla identificazione nel 'pater familias' alla società naturale*, in *Atti del "VII Colloquio giuridico"*, Pontificia Università Lateranense 1986, Roma 1987, pp. 27-37 (= *Sententia Legum* cit., III, p. 43 e ss).

¹² F.P. Casavola, *Tecniche di riproduzione artificiale. Proposte legislative e valori costituzionali*, in *Materiali per una storia della cultura giuridica fondati da Giovanni Tarello*, XXVI, 1, Bologna, Il Mulino, 1996, pp. 167-179 (= *Sententia Legum* cit., III, pp. 309-321).

Il carattere di comunità di persone legate dal coniugio, dalla genitorialità, filialità, fraternità e più latamente da parentela e affinità, ha esaltato nel mondo moderno i vincoli affettivi al punto che alla famiglia del sangue si affianca la famiglia degli affetti, come nell'adozione legittimante.

Ma soprattutto le funzioni economiche della famiglia connesse alla produzione preindustriale, di azienda agraria, artigiana, mercantile, o alla trasmissione di patrimonio avito o acquisito, sono marginali rispetto ai valori personali delle relazioni endofamiliari. Queste peraltro non possono essere lasciate alle determinazioni spontanee e arbitrarie dei singoli membri della famiglia. Il principio ancora ribadito da A.C. Jemolo che la famiglia è un'isola appena lambita dal mare del diritto, se mai ha rappresentato un modello reale, e non un'aspirazione ideale, non corrisponde affatto alla condizione attuale caratterizzata da norme e decisioni giudiziarie che entrano nella vita quotidiana della comunità familiare, adeguandola alle persuasioni dominanti nella società, tendenti a tutelare gli spazi di libertà delle singole persone piuttosto che il gruppo, gli interessi dei più deboli, dei minori, della donna se senza mezzi adeguati, dettando regole che correggono comportamenti del gruppo.

Il diritto romano antico riconduceva proprietà e obbligazioni alla struttura della famiglia perché l'universo economico, come il termine greco esprime eloquentemente, congiungendo *oikos* e *nomos*, è l'ordinamento domestico. Il mondo moderno, sempre più rapidamente evolvendosi in opposta direzione, dopo la rivoluzione industriale, ha una economia pubblica i cui protagonisti sono individui, imprese, Stati in uno scenario globalizzato i cui mercati valutano flussi finanziari più che lavoro e merci. Nascono forme nuove di appartenenza e di relazioni contrattuali costruite su prassi convenienti da professionisti consulenti di imprese, e ricevute da fori elettivi internazionali, come ordinamento mercatorio universale.

È difficile immaginare che l'Europa si sottragga a queste tensioni e tendenze per proporre agli Stati membri la composizione di codici europei comuni. L'idea stessa di codice appartiene al passato di un legislatore capace, allo stesso tempo *imperio rationis* e *ratione imperii*, di ordinare una società soggetta alla propria sovranità e racchiusa entro le frontiere politiche dello Stato-nazione. L'ordinamento codificato era un sistema di norme, ispirato a coerenza logica e a certezza del diritto, da applicare ai cittadini-sudditi di uno Stato sovrano. In qualche modo era un fotogramma del rapporto tra una società e il suo Stato. La evoluzione dei rapporti sociali, soprattutto per i movimenti di emancipazione delle donne e dei giovani, la evoluzione dell'organizzazione del lavoro e della produzione, la diffusione

e poi le mutazioni del *welfare-State*, la internazionalizzazione e poi la finanziarizzazione dell'economia hanno vulnerato le grandi geometrie dei codici. Crisi del codice significa non solo la integrazione-sostituzione sua con sottosistemi di leggi speciali, ma crescita di un diritto prodotto dalla interpretazione dei giudici e di una dottrina, che all'alba delle codificazioni ambiva di fare l'esegesi del codice in Francia, o la esplicitazione dogmatica del codice in Germania e in Italia, e che nel tramonto delle codificazioni tenta di guidare un diritto sempre più tendente a complicarsi nelle anomalie del *case-law*, che non a semplificarsi nelle fattispecie ipotetiche e generali della legge. Verso quali forme si muove il diritto contemporaneo? Da un canto, gli organi chiamati alla produzione normativa, dai governi e parlamenti alle autorità amministrative, danno luogo a quantità sterminate di precetti, sanzioni, regole procedurali. Dall'altro, queste norme anziché essere obbedite vengono impugnate dinanzi alle giurisdizioni, costituzionale, di nomofilachia, amministrativa. Sicché nasce un diritto giurisprudenziale ancora più incontenente di quello legiferato. E d'altra parte che il diritto interpretato abbia maggior valore di quello dettato dal legislatore è reso manifesto dalla categoria del cosiddetto "diritto vivente", che la Corte Costituzionale italiana identifica nelle pronunce delle supreme giurisdizioni ordinaria e amministrativa. E dato che può verificarsi e si è verificato dissenso tra l'una e l'altra, la Corte Costituzionale ha dovuto far cadere la presunzione di conoscenza della legge penale da parte del cittadino espressa nel brocardo *ignorantia legis non excusat*.

Le forme storiche del *civil-law* legiferato e del *common law* giudiziale si vanno avvicinando: la prima, come si è visto, assumendo aspetti di *case-law* giurisprudenziale, la seconda affiancando al *judge made law* un crescente e invasivo *statute-law*. Il futuro riproporrà l'esigenza ciclica di un riordino, se non di una diversa fondazione razionale del diritto.

Il romanista può allineare le esperienze della codificazione decemvirale, dei progetti codificatori di Pompeo e di Cesare, della codificazione teodosiana e giustiniana.¹³

Gli storici dei diritti nazionali ricorderanno l'età dei codici in ognuno degli Stati europei. Ma il futuro propone un contesto non confrontabile con

¹³ Alcuni richiami nei miei studi: *Cicerone e Giulio Cesare tra democrazia e diritto*, in *Questioni di giurisprudenza tardo-repubblicana*, Milano, Giuffrè, 1985, pp. 281-292 (= *Sententia Legum* cit., I, p. 201-212); *Verso la codificazione attraverso la Compilazione*, in *La codificazione del diritto dall'antico al moderno*, Napoli, Editoriale scientifica, 1998, pp. 303-311 (= *Sententia Legum* cit., I, p. 237-245).

le esperienze del passato. Se andrà proseguendo il processo di unificazione costituzionale dell'Europa, si ragionerà sempre meno in termini di diritti nazionali e più in termini di diritto europeo.

12. L'Europa ha incorporato nella parte II del *Trattato costituente* del 2004 la *Carta dei diritti fondamentali* proclamata a Nizza nel 2000. Sarà inevitabile che per una esigenza di eguale tutela dei diritti per tutti i cittadini europei si imporrà un coordinamento tra le giurisdizioni costituzionali nazionali e le due corti europee di Strasburgo e del Lussemburgo sia per la legittimazione all'accesso sia per le regole processuali.

E parimenti i giudici comuni chiamati a conoscere un contenzioso in materia di diritti fondamentali non potranno non risalire dalle carte nazionali alla carta costituzionale europea.

Sui diritti fondamentali sarà edificato il nuovo diritto europeo.¹⁴ Ognuno dei cinque titoli della carta dei diritti, dignità, libertà, uguaglianza, solidarietà, cittadinanza, giustizia, offre nell'articolazione dei suoi contenuti quadri di settore dell'ordinamento europeo che tagliano trasversalmente le partizioni sistematiche ereditate dal diritto romano e dai codici nazionali.

Le stesse distinzioni classiche di diritto privato e diritto pubblico si confondono in una visione costituzionalistica che assume come sistema l'ordine gerarchico dei diritti fondamentali. La rappresentazione olistica del diritto di origine romana, l'*omne ius* gaiano, che si conservava stabile per una indefinita durata temporale, organizzando al suo interno *personae*, *res*, *actiones*, vale a dire persona e famiglia, proprietà e diritti reali, obbligazioni e contratti, successioni *mortis causa* e donazioni, processo privato, secondo uno schema che si sarebbe tramandato nel diritto giustiniano, in quello canonico, nel *ius commune*, nella pandettistica e nei codici moderni, non ha più il suo perimetro. La realtà sociale ed economica muta e il diritto muta con essa in un intreccio di interessi pubblici e privati quale non si è mai verificato nei due millenni trascorsi.

La civiltà liberale si illudeva ancora all'alba del *Code Napoléon* che il diritto si dividesse in due sfere: al sovrano l'impero, al cittadino la proprietà. I codici stanno tramontando anche perché tra quei territori del diritto dello Stato e del diritto dei privati la storia ha rimosso i segnali di confine.

¹⁴ Sui diritti v. tra i miei studi: *Fondamento giuridico dei diritti umani*, in *Orientamenti sociali*, 1989, pp. 28-88 (= *Sententia Legum* cit., II, p. 79-89); *Eredità rivoluzionaria e fede cristiana: l'impegno per i diritti dell'uomo*, in *Giornata internazionale dei diritti umani*, Padova 10 dic. 1992, pp. 3-17 (= *Sententia Legum* cit., III, pp. 143-157); *Garanzie costituzionali e diritti fondamentali: la lezione del passato*, in *Garanzie costituzionali e diritti fondamentali*, Roma, Ist. Enc. Ital., 1997, pp. 3-6 (= *Sententia Legum* cit., III, pp. 259-262); *I diritti umani*, in *Univ. di Padova, Centro di studi e di formazione sui diritti dell'uomo e dei popoli*, 12, Padova, Cedam, 1997, pp. 1-48 (= *Sententia Legum* cit., III, p. 347-382).

Il diritto europeo non è il diritto dei privati unico per il continente europeo, quale è stato il *ius commune*. È il diritto prodotto dagli organi dell'Unione europea e che passa negli ordinamenti nazionali. Esso è per il contenuto normativo una *lex mercatoria* che oggi sale dal mondo dell'economia a quello dei diritti fondamentali. Dunque ha tal forza da pervadere i più tradizionali sistemi degli ordinamenti degli Stati membri, che stanno già per processi endogeni e sulla base delle proprie carte costituzionali controllando e adeguando leggi e codici non più sul criterio della logica formale di sistema, cioè sulla dogmatica, ma sui parametri costituzionali.

La convergenza delle linee evolutive, di regole e di valori, degli ordinamenti nazionali, con il nascente e crescente diritto dell'Unione sarà l'appuntamento storico della nuova Europa.

COMMENTO ALLA RELAZIONE DEL PROF. CASAVOLA

OMBRETTA FUMAGALLI CARULLI

Il Prof. Casavola, oltre ad essere illustre Maestro del diritto romano prestatore felicemente per lungo tempo alla Corte costituzionale italiana, è intellettuale di cultura poliedrica, come dimostrano i suoi innumerevoli saggi, tanto da presiedere oggi l'Istituto della Enciclopedia Italiana.

Sono molte le riflessioni che la sua relazione suscita in me, studiosa del diritto canonico ed ecclesiastico prestata per vent'anni alle istituzioni dello Stato italiano (prima al Consiglio Superiore della Magistratura e poi in Parlamento e al Governo italiano).

La storia ha voluto che romanisti e canonisti compissero molta strada insieme nella costruzione di quello *ius commune*, che ha consentito di governare per secoli l'Europa, costituendone l'ossatura normativa. È pertanto una felice occasione che a noi sia affidato il compito di guardare con gli occhiali delle nostre esperienze alla Costituzione europea, oggi oggetto di ratifica nei vari Paesi.

1. *I mutamenti dello spirito giuridico europeo*

Dalla storia vorrei anch'io iniziare per ricordare come lo spirito giuridico in Europa abbia avuto cambiamenti radicali in conseguenza della affermazione della sovranità dei singoli Stati già nel passaggio tra sei e settecento, ma soprattutto nell'ottocento.

A partire dal sec. XIX gli ordinamenti del continente europeo passano, infatti, dal regime pluralistico del diritto comune, fortemente caratterizzato in senso giurisprudenziale, a quello unitario e "legale" di diritto codificato. *L'utrumque ius*, che attraverso il diritto canonico conserva un riferimento al diritto naturale cristiano, è per sempre abbandonato come disciplina giuridica delle genti europee.

Prende insomma il sopravvento la fiducia in una codificazione come orizzonte definito e chiuso di una organizzazione giuridica, che rompe defi-

nitivamente ogni legame con il trascendente. Il *Code civil* napoleonico del 1804, richiamando a sue fonti la natura e la ragione, diviene il modello di altre codificazioni (del Codice austriaco del 1811, italiano del 1865, tedesco del 1900, svizzero del 1907).

La relazione di Casavola mette bene in evidenza che, se ancora nel secolo XIX la diffusione della codificazione napoleonica e della lingua e cultura francese forniscono l'ultimo colore omogeneo all'Europa continentale, nel XX secolo il binomio razza e diritto frantuma ogni residuo di un comune passato con la germanizzazione universale del diritto privato. Lo spirito giuridico, insomma, muta profondamente.

Proseguendo sul cammino di questo mutamento, a me pare significativo ricordare come, con l'avvento degli Stati democratici del XX secolo, gli orrori prodotti dalla seconda guerra mondiale abbiano provocato ulteriori mutamenti dello spirito giuridico europeo, indirizzando le riflessioni intorno ad una duplice esigenza: porre i diritti inviolabili della persona come prioritari rispetto a qualunque potere statale ed abbandonare il dogma che solo l'ordinamento dello Stato debba disciplinare la vita dei rispettivi cittadini. Di qui l'impostazione personalistica e pluralistica delle Costituzioni nate dalle ceneri del conflitto bellico, che non solo ripudiano il formalismo positivistico, proprio all'età delle codificazioni, ma riconducono l'ordinamento giuridico ad una fondazione ultima di ordine etico: la dignità della persona.

In questo scenario operano politici cristiani per una nuova Europa: Adenauer, Schumann, De Gasperi. Essi sottolineano l'apporto della civiltà cristiana, ma in senso non confessionale. Parlano "di un retaggio europeo comune, della morale unitaria che esalta la figura e la responsabilità della persona umana, con il suo fermento di fraternità evangelica, con la sua volontà di verità e giustizia acuita da una esperienza millenaria" (sono parole di De Gasperi alla Conferenza parlamentare europea del 21 aprile 1954).

Non è dunque più la *Respublica Christiana* ad essere auspicata. Ma è comunque sempre una società ispirata a quei valori della persona, della libertà, del pluralismo che sono apporto laico del pensiero cristiano.

A porre la prima pietra fondativa della nuova Europa sono 6 Paesi (Italia, Belgio, Francia, Germania, Lussemburgo, Olanda) con la firma il 25 marzo 1957 a Roma dei Trattati istitutivi della Comunità economica europea (CEE) e della Comunità europea per l'energia atomica (Euratom). Passeranno anni perché il percorso di integrazione vada oltre la realizzazione di un mercato o di una moneta unici per creare una comunità di diritto basata sul rispetto dei diritti fondamentali. Si giunge solo nel 2000 alla tappa più significativa in vista di "un futuro di pace fondato su valori comuni":

la Carta dei Diritti Fondamentali della Unione Europea, tra i quali primeggia la dignità umana (“La dignità umana è inviolabile. Essa deve essere rispettata e tutelata”, afferma l’art. 1).

Lo spirito politico cambia: l’ampio processo di secolarizzazione porta ad accentuare la radice laica dei diritti umani ed a porre in ombra quella cristiana.

Cambia anche lo spirito giuridico, che accompagna negli anni a noi più vicini il processo di integrazione europea, dal Trattato di Maastricht (1992), a quello di Amsterdam (1997), alla Carta dei diritti (2000), al Trattato di Roma (29 ottobre 2004) “che istituisce una Costituzione per l’Europa” (comunemente indicato come Costituzione europea).

Al nuovo spirito europeo romanisti e canonisti guardano con interesse: non tanto perché essi considerino il nuovo diritto europeo una riedizione del vecchio diritto comune, ma perché da un lato la cessione di sovranità statale, che esso comporta, dall’altro il ruolo della giurisprudenza, dall’altro ancora l’impianto personalistico evocano alcune particolarità dell’antico sistema di diritto comune, pur non potendo essere qualificate una riedizione di esso.

2. Le radici romane e cristiane della Costituzione europea

Nel contesto ora tratteggiato va inserita la recente Costituzione europea: è frutto maturo del matrimonio tra il diritto internazionale ed il vecchio costituzionalismo o è inizio di un nuovo percorso? A me pare ci sia un poco dell’uno ed un poco dell’altro.

Per comprendere la dimensione personalista della Costituzione europea – così da rispondere alla tematica della nostra Sessione, cioè alla concettualizzazione della persona umana – è utile partire dal richiamo del Preambolo alle comuni “eredità culturali religiose ed umanistiche”.

Non starò ora a riprendere le molte polemiche da esso suscitate. Mi limito invece a ricordare che un testo preparatorio (poi non accolto), nel motivare il richiamo all’eredità dell’Europa, specificava che essa è “alimentata innanzitutto dalla civiltà greco-romana, poi dalla filosofia dei lumi, che hanno ancorato nella società la percezione del ruolo centrale della persona umana e del rispetto del diritto”. Non riportava invece alcun riferimento al cristianesimo, cioè all’asse portante spirituale, sul quale l’Europa si è sviluppata. Sollevava pertanto le proteste delle Chiese cristiane, non meno vibranti di quelle precedentemente elevate da esse quanto al generico richiamo al “patrimonio spirituale e morale”, contenuto nel Preambolo della Carta dei diritti fondamentali dell’Unione europea del 2000.

Il testo definitivo ha cercato di rimediare, ma la mediazione politica ha giocato per così dire al ribasso. Ha tolto il riferimento esclusivo ai soli due apporti dati dalla civiltà greco-romana e dalla filosofia dei lumi ed ha citato genericamente le “eredità culturali, religiose ed umanistiche”, includendo dunque il riferimento all'eredità religiosa del tutto assente nel testo precedente.

Spetta oggi all'interprete passare dalla dizione generica a quella più specifica. Se alle eredità culturali ed umanistiche sono riconducibili l'eredità greco-romana e quella illuministica, all'eredità religiosa è riconducibile l'eredità cristiana. Un fatto storico, che nessun pregiudizio ideologico può negare, si impone di per sé. Né può essere reso sterile dal mancato accoglimento nel testo definitivo di emendamenti esplicitamente qualificanti l'eredità religiosa come cristiana o giudaico-cristiana (l'ultimo dei quali, presentato nella discussione immediatamente precedente il Consiglio europeo di Salonicco, proponeva di inserire, subito dopo il richiamo alle “eredità religiose”, l'espressione “specialmente cristiane”).

Sul piano più propriamente giuridico il collegamento tra le radici culturali e religiose ed il patrimonio di principi giuridici concretizzatisi sul continente europeo conduce sia alla tradizione romanistica che alla tradizione canonistica.

Se il diritto romano oggi non è più applicato, mentre il diritto canonico lo continua ad essere e per giunta in tutto il mondo, lo spirito di entrambi è sempre operante. A differenza dei tempi storici dello *ius commune*, diritto romano e diritto canonico, in parte convergono ed in parte divergono nella influenza sul nuovo spirito europeo.

Le convergenze riguardano più gli schemi consolidati della tecnica giuridica che i singoli istituti nei loro contenuti sostanziali, i quali, del resto, corrispondono agli specifici valori fondativi e finalistici propri ad ogni ordinamento.

L'esempio del concetto di famiglia, fatto dal Prof. Casavola, lo dimostra. Dalle stesse categorie giuridico-formali nascono modelli assai differenti tra loro, che presuppongono una diversa dialettica tra l'istituto e la persona e perciò una diversa priorità nella tutela dell'uno o dell'altra.

Dalla famiglia romana dell'età antica a quella della età classica a quella del diritto giustiniano, a quella della “Respublica christiana”, a quella disciplinata dalle varie codificazioni degli Stati occidentali, a quella che le nostre Costituzioni fondano sul matrimonio, a quella che interpretazioni secolarizzate impongono in singoli paesi in netta contrapposizione con la famiglia che nasce dal matrimonio, vi è una continuità-discontinuità tale da rendere difficile la ricognizione di tracce della comune eredità e che tut-

tavia consente sempre di parlare di modelli occidentali tra loro connessi.

Sono d'accordo con il Prof. Casavola: filo comune non è certamente la strutturazione interna della famiglia, fortemente gerarchica nel diritto romano e paritaria nei diritti degli Stati contemporanei, come – mi permetto di aggiungere – nel diritto della Chiesa.

Ma mi domando se un filo comune non possa comunque essere rinvenuto. Personalmente lo riscontro nel ruolo sociale della famiglia, a sua volta proiezione della dimensione sociale della persona, che diritto romano e diritto canonico portano come contributo di civiltà, sia pure partendo da premesse e ricavando conseguenze diverse. Sotto questo profilo a non essere in linea è l'altra radice del diritto europeo, quella illuministica, che muove da presupposti solo individualistici.

Un ruolo sociale, per giunta, risponde a quella sussidiarietà che il diritto europeo sembra volere garantire.

3. *Influenze romanistiche e canonistiche sul ruolo della giurisprudenza*

Altro comune effetto della radice romana e di quella cristiana sull'albero del diritto europeo è quello di innestarlo nel dato giurisprudenziale.

In più passaggi della sua relazione il Prof. Casavola ricorda l'importanza della giurisprudenza nella evoluzione del diritto romano. Mi permetto aggiungere che il mito della codificazione che, per gli ordinamenti degli Stati europei continentali, ha trovato nel *Code Napoléon* il modello storico, non ha avuto applicazione nell'ordinamento canonico, se non nella impostazione sistematica del primo *Codex iuris canonici*, che, essendo stato pubblicato nel 1917, ha risentito del clima proprio alla età delle codificazioni.

Nonostante, infatti, la legge della Chiesa sia imperniata su una codificazione (la prima di impostazione romanistica del 1917 e la seconda, oggi vigente, del 1983 ripartita su una sistematica attenta al “mistero della Chiesa”), la “probata doctrina” e la “giurisprudenza e prassi della Curia Romana” sono per antica tradizione fonti integrative dell'ordinamento. Lo sono non perché – come avviene nei sistemi di codificazione rigida – l'interprete o il giudice usurpino in modo illecito funzioni di legislatore, ma perché è la legge ad affidare loro questo compito evolutivo. Supremo criterio interpretativo, inoltre, è l'*aequitas canonica*, dove l'aggettivo denota le caratteristiche di misericordia proprie alla natura della Chiesa e della sua disciplina giuridica, contro il *rigor iuris*. La differenza con l'*aequitas romana*, come con l'equità inglese, sta nei differenti fini metagiuridici, la Chiesa dovendo tendere in ogni suo aspetto, diritto compreso, alla *salus animarum*. Ma

entrambe le forme di equità – romana e canonica – realizzano la giustizia del caso concreto, scostandosi dalla legalità codificata; si avvicinano dunque alla equità inglese, conferendo al principio della certezza del diritto un significato ed un ruolo del tutto diversi da quelli propri agli ordinamenti degli Stati continentali.

La dialettica tra dimensione legale e dimensione giurisprudenziale nell'esperienza del diritto sarà probabilmente l'eredità insieme romanistica e canonistica più influente, anche se oggi poco avvertita dagli studiosi, sulla costruzione del diritto europeo.

Via via che si allarga l'area dell'integrazione europea, da *lex mercatoria* – come sinora è stato – a tutela dei diritti fondamentali della persona, alla unificazione costituzionale del soggetto-Europa, il diritto europeo si consolida grazie alla giurisprudenza delle due Corti di Strasburgo e di Lussemburgo, come grazie a prassi affermate in fori elettivi internazionali o grazie alla influenza ed applicazione di Convenzioni internazionali. La globalizzazione alla fine detta le regole, aprendo lo stesso ordinamento europeo al confronto con altri ordinamenti e determinando, se mai non fosse già così per altri fattori, il definitivo tramonto del mito della codificazione.

Tutto è rimesso in discussione, compresi gli schemi che vedevano i due grandi sistemi, continentale ed anglosassone, seguire vie divaricate. Su ciò concordo con la relazione di Casavola: i sistemi di *civil law* si stanno avvicinando a quelli di *common law* (caratterizzanti in Europa le isole britanniche), grazie alla crescente importanza assunta anche nei sistemi continentali dal diritto giurisprudenziale, con un ruolo forte delle Corti costituzionali e delle loro sentenze "additive"; d'altro canto i sistemi di *common law* affiancano al *judge made law* uno *statute law* una volta del tutto marginale.

Il diritto europeo può essere l'occasione per fare di questo avvicinamento un nuovo modo di impostare le relazioni giuridiche nell'interesse della persona umana. La duttilità che la giurisprudenza presenta rispetto al testo scritto sarà preziosa.

4. I diritti fondamentali della persona: la sfida con la tradizione islamica

Se il ruolo della giurisprudenza è stato sinora importante, esso continuerà ad esserlo anche nella materia dei diritti fondamentali della persona, garantiti in modo generale nella Carta dei diritti.

Essi attendono di essere oggi dettagliati con una opera interpretativa molto complessa: che non solo deve coniugare insieme il dettato costituzionale europeo con le tradizioni costituzionali dei Paesi membri, ma, nel

fare ciò, deve pure tenere presenti le tre radici, culturali, religiose ed umanistiche menzionate nel Preambolo della Costituzione.

È questa una indicazione testuale dello stesso Preambolo, così formulato: "Ispirandosi alle eredità culturali, religiose e umanistiche dell'Europa, i cui valori, sempre presenti nel suo patrimonio, hanno ancorato nella vita della società la percezione del ruolo centrale della persona, dei suoi diritti inviolabili e inalienabili e del rispetto del diritto".

Sono dunque i valori delle tre eredità che non solo conducono alla centralità della persona e dei suoi diritti, come cuore dei diritti fondamentali della Unione europea, ma impongono anche di definirne meglio la sua concettualizzazione, conferendo più specifici significati alle cinque categorie generali indicate dalla Carta del 2000 (oggi parte seconda della Costituzione): dignità, libertà, uguaglianza, solidarietà, cittadinanza. Mutuando una categoria dogmatica usata dal diritto internazionale, si potrebbe parlare al proposito di ordine pubblico europeo.

Valori culturali, religiosi e umanistici insomma segnano un perimetro intorno alla possibile area di tutela costituzionale di dignità, libertà, uguaglianza, solidarietà e cittadinanza, all'interno del quale non sembra possano rientrare visioni della comunità politica in contrasto con quei valori.

Si inserisce qui uno dei temi più delicati del processo di unificazione europea: il confronto con altre tradizioni ed il ruolo di esse, a cominciare dall'Islam.

Anche a prescindere dalla effettiva consistenza di una radice islamica d'Europa, i valori di certe tradizioni islamiche ben difficilmente si conciliano con quelli fondanti l'Unione Europa: si pensi ad esempio alla concezione teocratica dello Stato, contrastante con lo Stato di diritto, alla negazione dei diritti delle donne, ai diritti umani.

Lo stesso recepimento della Carta dei Diritti all'interno della Costituzione europea, come sua parte seconda, significa una riaffermazione della priorità della persona umana rispetto alla comunità, che consente di rimarcare la prospettiva differente rispetto alle impostazioni politico-culturali, per le quali la comunità è prioritaria rispetto alla persona (come avviene nella visione islamica): prospettiva personalistica della quale è parte integrante l'umanesimo cristiano, risalente per giunta alla tradizione mosaica, non meno dell'umanesimo laico ripreso dall'illuminismo e dalla rivoluzione francese.

Il che peraltro non significa affatto negare diritti di libertà a culture lontane dalla storia europea. La concezione personalistica europea dei diritti dell'uomo – al cuore della quale è la concezione dello straniero come fratello – proprio perché è parametro di riconoscimento per i cittadini di Paesi terzi

dello statuto personale che li caratterizza, comporta che i diritti attribuiti alle persone siano da considerarsi in linea di principio estesi a tutti i residenti degli Stati membri, stranieri compresi. Tuttavia questa estensione ha una limitazione o per meglio dire condizione: che lo statuto personale previsto nei Paesi terzi non contrasti con i principi europei fissati nella Carta dei Diritti e prima ancora nella Convenzione Europea dei Diritti dell'Uomo.

Due esempi possono chiarire quanto detto.

Se la visione personalistica europea vuole che sia assicurata completa eguaglianza tra uomo e donna, è evidente che il riconoscimento dello statuto personale di cittadini di paesi islamici non potrà operare riguardo ad uno straniero islamico, unito da un primo matrimonio celebrato nel suo Paese d'origine, che voglia concludere nell'Unione un secondo matrimonio. Un riconoscimento così esteso, infatti, concretizzerebbe una situazione matrimoniale di tipo poligamico contrastante con i principi dell'Unione. Ciò però non significa che un matrimonio islamico non possa essere posto in essere nell'Unione, ma solo che esso può essere contratto a condizione che costituisca il primo matrimonio.

La libertà di osservare le proprie regole religiose – questo il secondo esempio – significa certamente consentire ai lavoratori provenienti da Paesi terzi di scegliere il giorno di riposo settimanale, esentandoli in quel giorno dallo svolgimento di prove concorsuali; ma nessun padre potrà chiedere alle istituzioni europee l'assistenza sanitaria per praticare l'infibulazione della figlia minorenni, essendo questa contrastante con la concezione europea dei diritti dell'uomo.

5. Osservazioni finali

Il rapporto tra le istituzioni e le garanzie dei diritti fondamentali della persona è il punto più critico e delicato del moderno costituzionalismo.

In Europa oggi sia la sovranità degli Stati nazionali sia la sovranità della famiglia, di fatto e di diritto, sono in gran parte destrutturate. Il futuro riposa sulla persona.

La Costituzione europea, nel porre la dignità della persona come prioritaria rispetto alla comunità politica, è certamente la Carta più moderna. Lo dimostra la procedura di "allarme precoce": essa consente ad una minoranza di bloccare al suo sorgere l'iniziativa legislativa, quando vi sia pericolo di lesione dei diritti fondamentali. I Parlamenti nazionali insomma non sono più onnipotenti. Non potrà dunque più ripetersi la tragica vicenda del passato, quando (come afferma Giovanni Paolo II in una pagina di

“Memoria ed identità”) “fu un Parlamento eletto ad acconsentire alla chiamata di Hitler al potere nella Germania degli anni Trenta; fu poi lo stesso Reichstag, che con la delega dei pieni poteri a Hitler, gli aprì la strada...”.

Costruire intorno alla persona condizioni di sicurezza dei suoi diritti fondamentali è la scommessa dell'odierna Europa.

Sarà un cammino non semplice. Esso avrà come parametri giuridici le cinque categorie adottate dalla Costituzione europea, più volte sopra ricordate: dignità, libertà, eguaglianza, solidarietà, cittadinanza. Le radici culturali, religiose e umanistiche avranno influenza nel precisare il contenuto concreto di ognuna di esse. Il dialogo con le Chiese – una delle novità della Costituzione Europea, prevista dall'art. I-53 – spingerà a riempire i diritti fondamentali della persona di contenuti di socialità, solidarietà e pace. Nello stesso tempo tentazioni vetero-illuministiche – agevolate anche dalla discutibile equiparazione delle confessioni religiose con le associazioni filosofiche (art. I-53) – potranno spingere verso interpretazioni soggettivistiche.

La speranza è che *civil law* e *case law* convergano non solo in garanzie di tipo individualistico (come pare avvenga in U.S.A.), ma piuttosto in garanzie della persona come soggetto sociale, quali la tradizione romana e quella canonica hanno immesso nella cultura europea.

THE HUMAN PERSON IN THERAVADA BUDDHISM AND ISLAM: IMPLICATIONS FOR GOVERNANCE IN SOUTHEAST ASIA

WILFRIDO V. VILLACORTA

Introduction

It is only appropriate that the theme of this year's conference is the Conceptualization of the Human Person in the Social Sciences. In his lifetime, the Holy Father, John Paul II, had made the human person the center of his apostolic mission. He championed human dignity, human rights, social justice and the right to life.

This paper aims at examining the perspectives of two major religions in Southeast Asia – Theravada Buddhism and Islam – on the nature of the human person, and how such perspectives influence governance and politics in the region. In writing this paper, I find inspiration in the inaugural sermon of our newly installed Holy Father, Benedict XVI, who assured followers of other religions that 'the Church wants to continue to weave an open and sincere dialogue with them, in the search for the true good of the human being and of society'.

First of all, it is necessary for us to clarify the use of the term 'religion' as used in this paper. We are not adopting the strict definition of religion provided by Emile Durkheim: 'a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden – beliefs and practices which unite into one single moral community called a Church, all those who adhere to them (Durkheim, 1965: 62)'.

Siddhartha Gautama Buddha proffered a philosophy and a way of life, and did not found a Church as such. Islam, for its part, does not have a single 'Church' that interprets its textual as well as its contextual doctrines. But to the extent that both Buddhism and Islam have 'a unified system of beliefs and practices relative to sacred things', we shall, for the purpose of this paper, refer to them as religions.

The scope of our study includes the Southeast Asian countries that are predominantly Theravada Buddhist and Muslim. The region of Southeast Asia is composed of eleven countries: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor Leste and Vietnam. All these countries, except Timor Leste, are members of the Association of Southeast Asian Nations (ASEAN).

Four countries are predominantly Theravada Buddhist: Cambodia, Laos, Myanmar and Thailand. Theravada (*Thera*: Elders; *Vada*: Doctrine) Buddhism subscribes to the original teachings of the Buddha, which are recorded in the Pali scriptures. Theravada Buddhism originated in India, and its seat was Sri Lanka, formerly called Ceylon, which is located in South Asia. It is also known as Southern Buddhism.

Mahayana or Northern Buddhism arose out of a schism within the ranks of Buddhist monastic leaders in the first century A.D. Mahayana Buddhists refer to Theravada Buddhism as Hinayana (lesser vehicle) Buddhism. The adherents of Mahayana (greater vehicle) Buddhism abound in China, Japan, Korea, Mongolia, Nepal, Bhutan, Vietnam and Singapore and among ethnic Chinese minorities in Southeast Asia.

Three countries in Southeast Asia are predominantly Muslim: Brunei Darussalam, Indonesia and Malaysia. Confucianism has a dominant influence in Vietnam and Singapore. It is only the Philippines and Timor Leste that have a Christian majority. Christian minorities are found in other Southeast Asian countries, the most sizeable of whom are in Indonesia. There are Muslim minorities in Singapore, the Philippines, Thailand, Cambodia, Laos and Myanmar, and Hindu minorities in Malaysia, Indonesia and Myanmar.

Recent events have focused attention on the rise of 'political Islam' in the region. Developments in Southern Thailand, Indonesia and Southern Philippines have aroused interest in the role religious differences play in domestic as well as cross-border politics. There have also arisen a few incidents involving territorial disputes as well as political tensions among neighboring countries. But the countries concerned have managed to contain conflict situations.

Their being members of ASEAN is not a coincidence. A culture of peace has prevailed in the ASEAN region, which has not witnessed an internecine war since the end of the Vietnam War thirty years ago. Even when the issue was bilateral in nature, ASEAN instruments for peaceful resolution of conflict, such as the Treaty of Amity and Cooperation in Southeast Asia, the Declaration on the Conduct of Parties in the South China Sea, the Treaty on the Southeast Asian Nuclear Weapons-Free Zone, and the Zone of

Peace, Freedom and Neutrality Declaration have put in place international norms and practices that have maintained peace and stability in the region.

The culturalist framework of analysis used in studying East Asian politics (Pye, 1985; Neher and Marlay, 1995; Vatikiotis, 1996; Jones, 1997) asserts the dominance of traditional cultural values – which, in large measure, are derived from religious principles – in determining patterns of political behavior and the structure of political institutions. Such patterns are characterized as rigidly paternalistic, hierarchical and personalistic – qualities that have a bearing on the pace and character of democratization and the development of civil society.

Samuel Huntington claims that ‘virtually no tradition of human rights against the state exists in East Asia; to the extent that individual rights are recognized, they are viewed as rights created by the state (Huntington, 1993: 38-39)’. He finds that the maintenance of order and respect for hierarchy are central values in the political culture, with harmony and cooperation preferred over disagreement and competition.

Kishore Mahbubani (2004: 86) believes that there is no unified Asian view on human rights: ‘Predictably, there is a whole range of reactions, ranging from those who subscribe to these concepts in toto to those who reject them completely... But in most Asian societies there is little awareness, let alone understanding, of these concepts. The truth is that the vast continent of Asia, preoccupied with more immediate challenges, has not had the time or energy to address these issues squarely (*Ibid.*)’.

This paper does not agree with Huntington that East Asia has no tradition of human rights. Our discussion of Theravada Buddhism and Islam will show that these two religions respect life, the value and dignity of human persons, their individual rights as well as their universal equality.

1. THERAVADA BUDDHIST CONCEPT OF MAN

The primary reference for this section is Bhikkhu Kondaniya of the Vajirarama Monastery in Sri Lanka. He was this author’s mentor on Theravada Buddhism way back in 1969 and his explanations of its teachings was this author’s main source material for his work on the social and political prescriptions of Theravada Buddhism (Villacorta, 1973).

One must examine the Theravada Buddhist concept of the human person in the context of its cosmology. Buddhism starts with the premise that life is tied to *samsara*, the continuous and inescapable cycle of birth, death

and rebirth. Cosmic order is an intricate pattern of eternal alteration between change and sameness, progression and regression. Every occurrence or being, therefore, is only a flash, an illusion. We must detach ourselves from this illusory world (*loka*) because it is that which causes suffering. The *Dhammapada* quotes the Buddha as saying: 'Come, look at this world, glittering like a royal chariot; The foolish are immersed in it, but the wise do not touch it'.

In Buddhism, there is no concept of the origin of life. Proceeding from impermanence is the absence of the 'self' or non-egoity (*anatta*). In his momentary state of existence, man is composed of five unreal elements (*pancakkhanda*): body, feelings, perceptions, impulses and emotions, and acts of consciousness (Nyanaponika Thera, 1981). There is no 'I' as such, identity being only a product of a succession of causes, a complex compound of fleeting mental states. 'Being' is always 'becoming'. Dependent origination (*patticasamuppada*) is governed by the law of *kamma*, which is the totality of one's actions in successive states of existence that determine his fate in the next (Bhikkhu Bodhi, 1992).

The egalitarian orientation of Theravada Buddhism proceeds from its concept of non-egoity. The Buddha was quoted in the *Sutta Nipata* as saying:

By birth is not one an outcast,
By birth is not one a Brahmin,
By deeds is one an outcast,
By deeds is one a Brahmin (Narada Thera, 1964: 307).

Men and women are not judged based on their status but based on individual merit. The Buddha welcomed representatives of all castes and genders into his fold: Upali, the barber; Sunita, the scavenger; Sati, the fisherman's son; Ambapali, the courtesan; Rajjumala and Puna, the slave girls. All of them were admitted to the monastic community (*Sangha*) with equal reverence and later, were given the honor of becoming chief disciples (*arahat*).

2. ISLAMIC CONCEPT OF MAN

Let us now discuss the Islamic view of the human person. The Qur'an states that Allah is the only Creator and is, therefore, the Master of everyone's destiny. He created every being for a definite purpose and his worshippers ask Him only to guide them onto the right path (Doi, 1998: 65).

Al Hijr (15): 28-29 describes the creation of Adam, the first human being:

Behold! Thy Lord said to the angels: 'I am about to create man from sounding clay from mud moulded into shape; When I have fash-

ioned him (in due proportion) and breathed into him of My spirit, fall ye down in obeisance unto him’.

This passage, which is the first direct revelation to Prophet Muhammad, demonstrates the omnipotence of God and attributes mortality to man (because God made him out of clay) as well as a supreme status of man among all his creatures (because God has breathed His spirit into him).

Ordered by God to fall down in obeisance to man, the angels prostrated before Adam, except for the head of the angels, Iblis. He argued that he could not prostrate himself to one who was merely ‘from mud moulded into shape’ (*Al Hijr* (15): 30-33). Thereupon, God turned Iblis away and cast a curse on him. But the latter succeeded in asking for reprieve till the Day of Judgment. In the meantime, Iblis, who became the embodiment of evil, has been spending his time seducing humans into committing sin (*Al Hijr* (15): 34-44; *Al Baqarah* (2): 30-39). Man’s God-given power to think and reason conveys Islam’s message of the basic unity of mankind and repudiates the idea of the multiple ancestry of man. *Al Nisa’* (4): 1 expresses this concept of the equality of men and oneness of humanity: ‘O mankind! Reverence your Guardian-Lord, Who created you from a single person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women; – reverence God, through Whom ye demand mutual (rights), and (reverence) the wombs (that bore you): for God ever watches over you’.

The *Qur’an* states that God has created man ‘in the best of moulds (*taqwim*)’ such that angels had to make obeisance to him. *Al Tin* (95): 4-6 affirms that the constitution of man is perfect but one’s nature can be debased if he loses his faith and does not lead a good life: ‘We have indeed created man in the best of moulds, Then do We abase him (to be) the lowest of the low, Except such as believe and do righteous deeds: for they shall have a reward unailing’.

The process of man’s creation has symbolic meaning for Muslims. Even if man is intelligent and rational because God breathed His spirit on him, he is also innocent and vulnerable, having been created out of clay. Man’s vulnerability was demonstrated when Adam succumbed to temptation. The *Qur’an* describes God’s mercy when He took pity on Adam and gave guidance to him and his descendants (*Al Baqarah* (2): 35-39; *Sarah* (20): 122-123). Man’s shield against evil deeds and eternal damnation is total submission to God, which is the meaning of the word ‘Islam’.

The question of whether man has free will or is completely bound by predestination was the subject of debate since the first centuries of Islam.

A group called the Qadariyya, which was influenced by the theologian al-Hasan al-Basri (d. 728), posited that man was essentially free to choose between either faith in and obedience to God or rebellion and infidelity to God (Riddell, 2003: 24). The Qadariyya cited such passages from the Qur'an as *Ibrahim* (14): 27: '... but God will leave, to stray, those who do wrong'. On the other hand, those who opposed them averred that man is under the absolute control of God and is subject to His predetermined order. They referred to such Qur'anic statements as *Al Ra'd* (13): 27: 'Truly God leaveth, to stray, whom He will (*Ibid.*: 25)'.

In the 10th century, the reformist thinker al-Ash'ari offered a middle course: man can choose between options provided by God, with God knowing beforehand what options would be chosen (*Ibid.*: 27). The debate on predestination versus free will continues to this day. Many contemporary Muslim scholars endeavor to provide a balanced standpoint that comes close to the explanation given by al-Ash'ari (*Ibid.*: 28-29).

Professor Abdur Al-Rahman I. Doi describes the test that man undergoes: 'Allah has created man of the best stature and in the best mould. But, in spite of all this, when a man makes the wrong use of his opportunity and misuses his free-will, Allah causes him to return to the lowest of the low (*Ibid.*: 73)'.

Divine justice is meted out in this world and finally, on the Day of Judgment. Resurrection after death is part of Islamic doctrine. The Qur'an mandates that the goal of man on earth is the assimilation of divine attributes. These attributes consist of goodness, truthfulness, justice, forgiveness, virtuous personal conduct and decent social behavior. Man's duties include his obligations not only towards his Creator but also towards himself and his fellow human beings (Doi, 1998: 113). In order to achieve this, Islam does not require renunciation of this world. Instead, it prescribes coordination of the spiritual and material aspects of life. *Al Qasas* (28): 77 admonishes: 'But seek, with the (wealth) which God has bestowed on thee, the Home of the Hereafter, nor forget thy portion in this world; do thou good, as God has been good to thee, and seek not (occasions for) mischief in the land; for God loves not those who do mischief'.

Forgiveness and compassion for one's fellowmen are deeply rooted in Islam: 'Those who spend (freely), whether in prosperity, or in adversity; who restrain anger, and pardon (all) men; - for God loves those who do good (*Ali 'Imran* (3): 134)'. 'Kind words and the covering of faults are better than charity followed by injury. God is free of all wants, and He is most Forbearing (*Al Baqarah* (2): 263)'.

Islam requires regular charity for the poor (*Al Baqarah* (2): 43, 110, 177, 277; *Al Nisa* (4): 162; *Al Ma'idah* I(5): 55). A worshipper who 'repulses the orphan (with harshness) and encourages not the feeding of the indigent' is censured (*Al Ma'un* (107): 1-7).

Muslims are expected to set the highest standard in uprightness, piety and decency for the world. They must follow the example of Muhammad, the Holy Prophet of Allah and the epitome of the perfect man by whose standard the rest of mankind will be measured on the Day of Judgment (Doi, 1998: 148). *Al Hajj* (22): 78 highlights the role of Muslims: 'And strive in His cause as ye ought to strive, (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He Who has named you Muslims, but before and in (Revelation); that the Messenger be a witness for you, and that ye be witnesses for mankind! So establish regular prayer, give regular charity, and hold fast to God! He is your Protector – the Best to protect and the Best to help'.

3. THERAVADA BUDDHIST AND ISLAMIC TEACHINGS ON HUMAN GOVERNANCE

Having examined the conceptualization of the human person in the two religions, we shall proceed to discuss the scriptural teachings on human governance. Concepts of the ideal state proceed from fundamental premises on the human person.

For Theravada Buddhism, the ideal state is one which creates conditions for men and women to over-ride their *kamma* of the past and ensure the accumulation of merit that would improve their *kamma* for their next lives, thus bringing them closer to *Nibbana*. For Islam, the goal of governance is facilitating the realization of God's design for every human person, enabling him to fulfill his obligations to God and supporting him in treading the moral path. Both religions regard the state as having an escathological function: that of helping mankind achieve salvation.

3.1 *The Buddha-Raja and the Cakkavati*

The Buddhist text, *Cakkavatti-Sihanada-sutta*, describes the deterioration of society due to rulers' disregard for public welfare. Economic deprivation spread and led to evil and vice, which eventually gave way to destruction. Men lost their reason and selfishness prevailed. Boundary lines were

set; food was stored; many stole their neighbor's share. Stealing caused violence, lying, foul speech, and immorality. In the midst of this chaos, men began to seek stability (Jayatille, 1967: 524). They decided to select among themselves a wise and virtuous ruler, to whose authority they would submit themselves in return for order and justice in society.

This Buddhist contribution to political theory antedated the social contract theory of Locke and Rosseau. It implies the obligation of rulers to serve the good of their citizens and of mankind. The only limitation is the requirement that the collective will must conform to the universal law of righteousness (*Dhamma*). The *Digha-nikaya* sets as the primary aim of the welfare state the care and protection of every inhabitant, man or animal. The *Anguttara-nikaya* gives an account of the Buddha's discourse with the Licchavis on the Vijjian confederacy. The Vijjian state recognized due process, public assembly, equal justice and other basic human rights. The government also held traditional respect for ancient statutes and institutions, and protected the aged, women, holy men and religious establishments. Showing his appreciation for the way their affairs of state were conducted, the Buddha said that as long as the Vijjians continued to uphold their social and political traditions, they will not suffer decline (*Ibid.*: 85).

The state must ensure that crime is abated by removing the causes of social evil – avarice and poverty. This move must be supplemented by the training of the populace in the right values. There is a need for an organized distribution of wealth (*dana-samibhaga*). This can be implemented, for instance, through a taxation policy in which the king, during bad harvests, reduces taxes or helps the farmers to pay them. The last duty of the state is that its laws and policies must be based on the *Dhamma*. The *Digha-nikaya* prescribes that the ruler must consult religious teachers and philosophers, to ensure that the creation of favorable social and political conditions would provide opportunities for *Nibbana* for everyone. The ruler must uphold the *Dhamma* by providing the example of righteousness to his subjects and guiding them toward the path of righteousness and salvation.

In dealing with other countries, the value of peace and tolerance is intrinsic in the social philosophy of Theravada Buddhism. It derives itself from the Buddha's compassion for all beings and his recognition of universal equality which are contained in the Buddhist texts – *Dhammapada*, *Samyutta-nikaya*, *Anguttara-nikaya* and *Majjima-nikaya*.

Like Prophet Muhammad, the Buddha had experience in actually mediating a dispute involving states. Not having been contented with merely preaching peace and non-violence, he went to the battlefield to personally

reconcile the Sakyas and Koliyas, who were feuding over the Rahini River. He admonished them to give more regard for human life than for such an insignificant matter as the ownership of the river waters.

The Buddha never found wars of aggression favorable whether culminating in victory or in defeat. The *Samyutta-nikaya* recounts the Buddha's admonition to King Kosala, who was defeated by his nephew King Ajatasattu:

Conquest engenders hate; the conquered live
In misery. But whoso is at peace
And passionless, happily doth he live;
Conquest hath he abandoned and defeat! (*Ibid.*: 200-201)

Theravada Buddhism maintains that both the cause and result of aggressive war are immorality and social decadence. *Avihimsa* (non-violence) springs from *akrodaya* (non-ill will). The *Majjhima-nikaya* says that no man is justified in killing even while fighting as a dutiful citizen for his country or for a noble cause. Instead of gaining salvation for himself after death, the *Samyutta-nikaya* quoted the Buddha as saying that the combatant will find himself reborn in a miserable condition.

The first ruler to consciously apply *Dhamma* to actual political practice was Asoka Maurya, the great emperor of India (Anuradha Seneviratna, 1994). After his conversion to Buddhism, he established the first welfare state in the world which recognized the equality of everyone under the common brotherhood of the *Dhamma*. He ordered the inscription of a series of edicts which embodied his rule of righteousness and justice. The edicts were read aloud to his subjects to spread the message of the *Dhamma*. He ordered 'for the enjoyment of man and beast' the erection of hospitals, rest house, and watering places, the planting of shade trees and the digging of wells. To ensure the spiritual well-being of his realm, he was said to have built numerous monasteries and some 80,000 stupas and supported 64,000 monks.

Asoka formed groups called *Dhamma Mahammatras* which were delegated the special function of promoting morality. Reporters were posted everywhere to regularly report to him the problems of his people. His ideal society was said to have been pervaded with mutual love, not only between him and his subjects, but also between elders and children, masters and slaves, monks and followers. The social philosophy of love and brotherhood was not confined to his realm. Asoka was the first monarch recorded in history ever to renounce war (Soma Thera, 1962: 20). He enjoined the neighboring kingdoms to abandon artificial barriers which separated men and states. It was because of the example of his virtuous and benevolent socie-

ty that Buddhism found favor among the many countries which were converted during his reign.

Asoka became the exemplar of Buddhist governance. The earliest Buddhist chronicle of Sri Lanka (Ceylon), the *Mahavamsa*, describes virtuous monarchs as '... men of good understanding, who have conquered pride and indolence, and have freed themselves from the attachment of lust, when they have attained to great power, without working harm to the people, delighting in deeds or merit, rejoicing in faith, do many and various pious works (Geiger, 1960: 245)'.

The contractual and paternalistic basis of kingship later assumed the more exalted concept of the universal ruler (*cakkavati samkha*) which was to transform the idea of the king as a father into one who identified his rule with the will of the heavens.

This concept of the universal ruler was influenced by the Hindu idea of the *mahapurusa cakravartin*, the celestial monarch who turns the Wheel of the Law and reigns universally. It is mentioned in the *Cakkavati-Sihanada-sutta*, the *Maha-sudassana-sutta*, and the *Ambattha-suttanta* of the *Digha-nikaya* (Rhys Davids, 1921: Part II, 192-199; Part IV, 59-71). Gautama Buddha was pictured in the *Lakkhasa-sutta* as one who was given the choice between universal kingship and supreme Buddhahood (*Ibid.*: Part III, 137). He chose the latter, but after his death, he prepared for his future role as the ideal world monarch.

The original meaning of *Bodhisatta* as one about to reach enlightenment was to acquire another significance, i.e., one who is to become the Savior – *Buddha-Metteyya*. According to Buddhist messianic thought, the world will reach its peak of disillusionment and moral decay 4,000 years after Buddha's death. The Buddha will then reappear as *Metteyya* (Sanskrit: *Maitreya*), the deity residing in heaven. The latter will come down to earth, 'abounding in wisdom and goodness, happy, with knowledge of the worlds, unsurpassed as a guide to mortals willing to be led, a teacher for gods and men, and Exalted One, a Buddha, even as I am now (*Ibid.*: Part III, 73)'.

Assuming the role of a *cakkavati samkha*, he 'turns the Wheel of the Law', in the sense of placing the world under the unifying moral influence of the universal law of righteousness, the *Dhamma*. He is to rule justly and mercifully; unequalled generosity will be demonstrated by him by renouncing his wealth and power, distributing his treasures to the poor, homeless and destitute. The *Anguttara-nikaya* adds that the universal emperor will establish a 'kingless authority' (*arajaka cakka*), with the *Dhamma* reigning supreme (Jayatilleke, 1967: 539).

The *Cakkavati-Bodhisatta-Metteyya* tradition was not only associated with Gautama Buddha, but was later to apply to subsequent rulers of the Theravada countries. Before the concept of *Buddha-rajā* came to Southeast Asia, it was developed in Ceylon around 6 A.D., when the *cakkavati* ideal was incorporated into the kingship (Nicholas and Paranavitana, 1961: 171). After 12 A.D., this ideal was further propagated in later inscriptions and writings of royal patronage (Arasaratnam, 1964: 54). In pre-Buddhistic South and Southeast Asia, kings, who were then within the pale of Hinduism, were already considered of divine nature. The introduction of Buddhism gave them an added attribute: that of the living *Bodhisatta* (an enlightened being who postpones *Nibbana* in order to guide humanity towards the right path). These rulers used the concept to its fullest advantage either in legitimizing and preserving their power. The realization of the ideal Buddhist society became the aspiration of Theravada Buddhist kings who expected to become the *Metteyya* in their future lives.

3.2. Interpretations of the Islamic Approach to Governance

I am especially grateful to my former student at Ohio University, Professor Bahtiar Effendy of the University of Indonesia (UI) and the Islamic State University (UIN), for his elucidation on political Islam. His book, *Islam and the State in Indonesia* (2003), is one of the most authoritative sources on the subject.

Effendy analyzes the 'polyinterpretability' of Islam as applied to political theory:

Religion, as some have argued, may be seen as a divine instrument to understand the world. Islam – in comparison with other religions – is conceivably the one with the least difficulty in accepting such a premise. An obvious reason lies in one of Islam's most conspicuous characteristics: its 'omnipresence'. This is a notion which recognizes that 'everywhere' the presence of Islam should provide 'the right moral attitude for human action'. This notion has led many adherents to believe that Islam is a total way of life. The embodiment of this is expressed in the *shari'a* (Islamic Law). A sizeable group of Muslims even push it further, asserting that 'Islam is an integrated totality that offers a solution to all problems of life' (Effendy, 2003: 34).

However, Effendy thinks that different intellectual inclinations in understanding the *shari'a* may lead to different interpretations of that doctrine: 'The emergence of a number of different schools of thought in

Islamic jurisprudence or various theological and philosophical streams, for instance, shows that Islamic teachings are polyinterpretable. The interpretive nature of Islam has functioned as the basis of Islamic flexibility in history. In addition, it also confirms the necessity of pluralism in Islamic tradition. Therefore, as many have argued, Islam could not and should not be perceived as monolithic (*Ibid.*: 5).

Peter Riddell (2003) describes the tendency to adhere to the unity of faith and practice in Islamic thinking: 'The life of a Muslim is traditionally governed by the twin science of Theology and Law. Theology provides a framework for religious belief, while Law provides a framework for actions. Law plays the primary role, and the Islamic sacred law, the *shari'a*, differs greatly from western ideas of law. First and primarily, it is much wider in its application, for it includes all human action in its scope: public and private actions, national and international situations, as well as the details of religious ritual and the ethics of social conduct. Second, the *shari'a* differs fundamentally from western law in that it is not man-made, according to Muslim belief, but is considered by Muslims to be grounded on divine revelation as revealed to the prophet Muhammad (Riddell, 2003: 50)'.

In the 10th century, the leading four schools of law were consolidated and have survived in Sunni Islam (*Ibid.*: 54-55):

1. Hanafi school: originated in Iraq and has the most numerous followings found in Iraq, Syria, Afghanistan, India and Turkish Central Asia.. Position: the use of analogical reasoning (*qiyas*) has priority. Founded by Imam Abu Hanifa (699-765).
2. Maliki school: developed in Medina and popular in North and West Africa and Upper Egypt. Position: there is no overriding authority from the *Hadith* accounts (narrations about the life of the Prophet). Founded by Imam Malik Ibn Anas (714-796).
3. Shafi'i school: strong presence in Lower Egypt, Hijaz, South Arabia, East Africa, coastal parts of India, Malaysia and Indonesia. Position: any authentic tradition of the proven practices of Prophet Muhammad, including the *sunna*, is authoritative and is a valid source of the *fiqh* (legal rulings of the Muslim scholars). Founded by Imam Shafi (767-820).
4. Hanbali school: prevalent in Saudi Arabia. Position: Tradition has priority over *qiyas* (analogical reasoning). Founded by Imam Ahmed Ibn Hanbal (780-855).

In the contemporary world, there have emerged four categories of Muslim responses to the pressures and demands of modernity:

1. Traditionalists: maintain a continuum between the past and the present, with the past serving as guide to deal with present issues.
2. Radical Islamists: call for a reinterpretation of the present through a recreation of the past, a return to a model Medina-type community such as that established by Prophet Muhammad, with the *Qur'an* and the *Sunna* as the central points of reference.
3. Modernists: advocate the unity of religion and politics but balanced by drawing on elements of Western culture and lifestyle that could facilitate this overall goal.
4. Secularists: assert the separation of religion and politics and making Islam primarily a major element of cultural identity rather than the essence of one's being (*Ibid.*: 82).

Chandra Muzaffar describes the resurgence of Islam as 'the espousal of an Islamic alternative as a challenge to the dominant social systems (Muzaffar, 1986: 5)'. It is more that mere 're-assertion' which connotes insistence upon one's position or 'revivalism', which carries the idea of 'returning to the past and a desire to revive what is antiquated (*Ibid.*)'.

Muzaffar lists down the main characteristics of the Islamic resurgence which began in the Middle East and South Asia, and has won adherents in Malaysia and Indonesia:

1. A fervent belief that society should be organized on the basis of the *Qur'an* and the *Sunnah* (the way of the Prophet);
2. An explicit recognition that the *Qur'an* and the *Sunnah* lay out a complete way of life whose sanctity and purity should not be tarnished by new interpretations influenced by time and circumstances.
3. The establishment of an educational system directed towards the creation of ethical human beings as an alternative to the functional, utilitarian type of education available in most Muslim countries.
4. The rejection of Western civilization because the secularization of life, the subversion of eternal values, and the pervasive growth of materialism are all indications that Western civilization which has long been in a state of crisis is on the verge of collapse.
5. The dethronement of the West as a civilization because its models of growth and social change negate man, subordinating the human being to materialistic goals and desires (*Ibid.*: 9-11).

Muzaffar believes that the Islamic resurgence can make a substantial impact in helping to 'nurture "God consciousness" among secular elites both in the West and the East (*Ibid.*: 29)'. He refers to the shaping of a new human person: 'The Islamic conception of God is particularly suited to the

task of making modern man, with his emphasis upon rationality, aware of the importance of believing in a transcendental reality because it is so intimately linked to reason. For it is not mere faith which is expected to convince man of the existence of God but his own observations of the workings of nature, the process involved in the biological conception of the human being, the physiological structure of man, the specificity and variety in animal and plant life, and the pattern of growth, decay and death in all life-forms (*Ibid.*: 29)'.

Muzaffar states that God's message for mankind is contained in the rise and fall of human civilization which coincides with either the consolidation or erosion of social values: 'The *Qur'an* argues that all these phenomena are the signs of God. The whole of creation with all its complexities and the entire gamut of human activity manifest the power of God. Thus, to understand God one has to study man, nature and society. This helps to establish a link between God and scientific investigation (*Ibid.*: 29-20)'.

The sentiment that society should be organized on the basis of the *Qur'an* and the *Sunnah* (the way of the Prophet) is manifested in greater consciousness of proper Islamic attire, rejection of night clubs, gambling and consumption of alcohol, faithful observance of daily prayers, and restrained attitude towards the opposite sex (*Ibid.*: 8-10).

Amid the wave of Islamic fervor is a voice of moderation in the person of Nurcolish Madjid, an Indonesian Muslim scholar and political leader. He underscores the link between the principle of brotherhood of Muslims (*Ukhuwwah Islamiyyah*) and the principle that all mankind are brothers. He believes that the division of mankind into races and religions 'must be borne in a broader humanitarian environment with an attitude of absolute mutual respect (Madjid, 2004: 74). He lays stress on the admonition of the *Qur'an* that "God alone has the right to measure and determine someone's worth, whereas a man must appraise other men in the spirit of equality (*Ibid.*: 74-75)".

4. RELIGIOUS INFLUENCES ON POLITICS AND STATE PRACTICE

4.1. *The Buddhist Countries*

In the four predominantly Theravada Buddhist countries – Cambodia, Laos, Myanmar and Thailand, Buddhism plays an important role in daily life and statecraft. For the majority population, being a Buddhist is part

and parcel of their ethnic identity. To be Khmer, to be Lao, to be Burmese and to be Thai is to be Buddhist. But it is Thailand's constitutional monarchy that comes closest to a traditional Buddhist state (Suksamran, 1993: 107-137). Buddhist monks continue to play an active role in Thai society. The most recent display of their involvement was when they demonstrated against the registration of a beer company in the stock market.

The Thai Buddhist text, *Traiphuum Phra Ruang*, has had an enduring influence on Thai political thought (Jackson, 1993: 67-68). It includes references to the *Buddha-rajā* and idealizes Sukkhotai, which was the first Thai kingdom under benevolent Buddhist monarch, Ram Khamhaeng. Peter Jackson believes that the *Traiphuum Phra Ruang* continues to have political significance even after King Mongkut (Rama IV) initiated a rationalist interpretation of traditional Buddhist teachings. He points out that since the late fifties, there have been attempts by political conservatives to reaffirm the link between the *Traiphuum* and the exercise of political authority (*Ibid.*: 77).

Since the mid-1970s, the reformists have provided their own progressive, rationalist interpretations in order to counter the conservatives. In their goal to promote democratization in governance, they have highlighted the egalitarian qualities of the Sukhotai kingdom of Ram Khamheng, the first Thai monarch who applied Buddhist principles (Suksamran, 1993: 110). They have also de-emphasized the role of *khamma* and have stressed the promise of *Nibbana* (Jackson, 1993: 80-86).

Buddhism plays a legitimating function to the present day. In his speeches, Prime Minister Thaksin Shinawatra has always referred to Bhikkhu Buddhadasa, an advocate for a more politically engaged form of Buddhist practice (Phongpaichit and Baker, 2004: 85, 136-138, 214). Buddhadasa, who passed away in 1993, asserted that Buddhists have the duty to improve the present world, rather than merely accumulating merit for the next life. He presented the idea of 'dhammic socialism' that would cleanse society. He believed that such a political system must be ruled by those who had detached themselves from ego and materialism (*Ibid.*: 136-137).

Prime Minister Thaksin favors *kan mueang ning* or quiet politics (*Ibid.*: 139), over contentious political debate. In his thinking, 'calm politics' conforms more to the Buddhist notion of moral leadership: 'Buddhadasa saw that politics is *thamma* and *thamma* is politics. Politics is a duty. Politics is organizing the mass of people in society to live together, without crime. Politics which has *thamma* is the politics of men of moral integrity (*satthaburut*). He (Buddhadasa) said that parliament should be an assem-

bly of men of moral integrity, or an assembly of politicians who have *thamma*. But if parliamentarians argue, exchange abuse, and attack one another, just protecting their own interests, it should not be called a parliament in Buddhadasa's sense (quoted in *Ibid.*: 137).

4.2. *The Muslim Countries*

The Constitution of Brunei Darussalam declares Islam as the state religion and provides that 'the Head of the religion of Brunei Darussalam shall be His Majesty the Sultan and *Yang Di-Pertuan* (Head of State)'. Since the 14th century, the title of the Sultan of Brunei has passed within the same dynasty. The present Sultan, His Majesty Hassanal Bolkiah, is both the head of state and head of government. There is a Religious Council that advises the Sultan on religious matters. While Brunei's legal system is based on English common law, Shari'a law, which applies to Muslims, supersedes civil law in family matters and a number of other areas.

In Malaysia, almost 60% of the population are Muslim. According to its Constitution, the official religion is Islam, 'but other religions may be practiced in peace and harmony in any part of the Federation'. It is also provided that 'in every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observance or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion of Islam authorize the Yang di-pertuan Agong to represent him'.

The character of governance in Malaysia has largely been shaped by Dr. Mahathir Mohamad, who, as Prime Minister of Malaysia for 22 years (1981-2003), adopted an open-minded approach to the application of Islam. In his book, *Islam and the Muslim Ummah* (2003), he deplores the practice of politicians to interpret the Qur'an and to casually label other Muslims as 'infidels' for not supporting their political parties or their politically motivated interpretations of Islam (Mahathir Mohamad, 2003: 173). He criticizes the misuse of Islamic concepts like *jihad* by certain extremist groups: 'Their way will only lead to more and deeper schism amongst the Muslims, retarding their progress and perpetuating their oppression by others. True jihad is the struggle for Muslim unity, acquisition of Muslim

statecraft, knowledge and skills so that the Muslims will be freed of oppression and be able to take their place as successful members of a regenerated Muslim civilization (*Ibid.*: 62)'.

Dr. Mahathir refers to three passages from the Qur'an as proofs of Islam's spirit of tolerance and forgiveness: 'Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just (*Al Mumtahinah* (60): 8)'. 'It is part of the Mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee: so pass over (their faults), and ask for (Allah's) forgiveness for them; and consult them in affairs (of moment). Then, when thou has taken a decision put thy trust in Allah. For Allah loves those who put their trust (in Him) (*Ali 'Imran* (3): 159). To you your religion, and to me my religion (*Al Kafirun* (109): 6)'.

Dr. Mahathir emphasizes that the Constitution of Medina was way ahead of its time, encouraging cooperation and solidarity among Muslims, Christians, Jews and adherents of other faiths. 'It ensured freedom, including freedom of worship as well as equality and justice for all (*Ibid.*: 107)'.

In 2001, his announcement that Malaysia was in fact an Islamic state precipitated a national political discourse (Martinez, 2004: 29-48). It did serve the purpose of neutralizing the rival Parti Islam Se-Malaysia (PAS), which sought the support of the Muslim majority.

The PAS was originally established by members of the Religion Department (*Biro Agama*) of the United Muslim Nationalist Organization (UMNO) who were disenchanted with the secularism of that party in the early 1950's. PAS was the ruling party in two provinces on the east coast of the Malaysian Peninsula – Terengganu Province from 1959 to 1961 and Kelantan Province from 1959 to 1977. In the general elections of 1990 and 1995, it formed a coalition with the Spiritual Party Year 46 (later renamed the Malay Spiritual Party Year 46) and controlled several provincial governments.

The ultimate goal of the party is to build an Islamic state that governs through *shari'ah* or Islamic law. In the general elections of 2004, PAS garnered only seven parliamentary seats, a significant decrease from the 27 parliamentary seats that it had in 1999. It lost control of Terengganu, but retained its dominance in Kelantan, with a slim majority of 24 out of 45 seats.

Let us now proceed to examine the situation in Indonesia, the Muslim country in Southeast Asia that has been in the limelight in recent years. It has the world's largest Muslim population (almost 90% of its population of 215,960,000). But because the country has sizeable non-

Muslim minorities, it has a secular constitution that did not adopt Islam as the official religion.

Bahtiar Effendy provides his analysis of the perception of *shari'a* among the Muslim majority in his country: 'Being Muslim, they accept the significance of *shari'a* and are obliged to implement Islamic teachings in all aspects of life. Yet they differ greatly with regard to how *shari'a* is to be understood, interpreted, and implemented. They do not believe that Islamic *shari'a* should be adopted in its entirety and serve as the positive law of the land. Instead, they share the idea that certain elements of Islamic *shari'a* can be formulated into legally binding law, such as on issues related to marriage and divorce, inheritance and endowment, *zakat* collection and distribution, the pilgrimage, and the like. The fact that many Muslims feel that the state's accommodation of Islamic law is still limited has not stopped them from struggling within the bounds of the existing system, laws, and regulations (Effendy, 2003: 223-224)'.

The largest Muslim organization in the country is Nahdlatul Ulama (NU), which was founded by traditional religious scholars (*ulama*) in East Java in 1926. In its active involvement in the building of civil society in Indonesia, the NU has championed the idea of *rahmatan lil'alamin* (mercy on the universe), which is a principle of the *Shariah* and is the basis of the NU's advocacy for human rights (Falaakh, 2001: 34). The organization believes that implementing Islamic teachings in Indonesian society requires *pribumisasi* or nativization of Islam (*Ibid.*: 35). Muhamad Fajrul Falaakh, who was chairperson of the executive board of Nahdlatul Ulama, *pribumisasi* entails harmonization with the prevailing social and cultural conditions.

In the struggle for Indonesia's independence in 1945, the NU was affiliated with the Masyumi, the Islamic political party. From 1952 to 1973, it functioned as an independent political party (*Ibid.*: 33). It became part of the United Development Party (PPP) in 1973-1983. It established its own political party, the National Awakening Party (PKB). NU now adopts the vision of the 'three brotherhoods': *akhuwawah Islamiyah*, *ukhuwwah wathaniyyah* and *ukhuwwah basyariyah* – brotherhood among Muslims, among fellow citizens and among human beings (*Ibid.*: 37). It has advocated tolerance towards all ethnic and religious minorities in Indonesia.

Abdurrahman Wahid, who headed NU, became the second President after the fall of President Suharto. He formed the National Awakening Party, PKB., following the dramatic fall of President Suharto. During his

short presidency, Wahid did not favor the Islamization of his country and consistently maintained that one's faith should not be imposed on others.

The other major organization is Muhammadiyah, which was founded in 1912. Its main concern and target has been community development. It is committed to a program of social and religious education within Muslim communities (*dakwah jemaah*), peaceful family life (*keluarga sakinah*), and peaceful and prosperous village life (*qaryah thayyibah*). The organization has been unwilling to change its social and cultural orientation to a political one.

The Islamic values of justice, equality, diligence, honesty and entrepreneurship comprise the Muhammadiyah's ethos. The organization has played a vital role in promoting and enhancing the idea of civil society (*masyarakat madani*) from its early existence to the present time (Abdullah, 2001: 44-46). It belongs to the modernist school which believes in the twin pillars of reason and revelation. According to M. Amin Abdullah, who is one of the vice-chairpersons of the central leadership board of the Muhammadiyah, 'the traditional type of charismatic and paternalistic leadership has been slowly, but surely, relegated and substituted by the modern type of democratic leadership (*Ibid.*: 46)'.

The General Chairman of the Muhammadiyah from 1995 to 1999 was Amien Rais. In the 2004 presidential elections, he ran under the banner of the National Mandate Party, an open political party which had Muslim as well as non-Muslim candidates. He was unsuccessful in his bid for the presidency but remains a respected political leader.

According to Effendy, political Islam in Indonesia is not aspiring for the establishment of an Islamic state. Cognizant of the heterogeneity of the country, its proponents 'are working for the development of a socio-political system which reflects, or is in tune with, the general principles of Islamic political values, including justice, consultation, egalitarianism, and participation (Effendy, 2003: 195)'.

Effendy observes that political Islam no longer focuses its efforts to partisan politics but now broadens its activities in partnership with various non-governmental organizations, particularly the NU and Muhammadiyah. He believes that this more integrative approach has shown signs of success: 'Political Islam seems to have found ways to integrate itself into the discourse of Indonesia's national politics. In addition, there are also a number of indications which suggest that the state is beginning to see political Islam not as a threat, but as a complementary force in the country's national development (*Ibid.*)'.

Conclusions

In our study of the fundamental teachings of Theravada Buddhism and Islam, we can arrive at the following conclusions:

1. Theravada Buddhism is premised on non-egoity. It does not have a counterpart of Christianity's Genesis. Instead, *kamma* is the governing force that determines the circumstances of one's past, present and future forms and quality of existence. Theravada Buddhism offers an ethical system that teaches that life is all suffering and that the cycle of birth, death and rebirth can be ended through the obliteration of desire. Through pure thoughts and good conduct, one frees himself from *kamma* and *samsara*, and eventually achieves *Nibbana*.
2. Islam presents a doctrine of Creation, in which an Almighty God called Allah, created man from clay, signifying mankind's mortality. Allah breathed life into His creation, bestowing upon him His Divine qualities and embodying man's perfectibility. In contrast to Buddhism, every individual created by Allah has an identity. He is accountable to Allah who dispenses justice, which is the end-purpose of Creation.
3. The destiny and character of the human person in both religions are largely predetermined. In Theravada Buddhism, it is one's *kamma*, which is generated by his past deeds, that shapes what he is now and coupled with what he does now, what he will progressively become in this life as well as in the next. The more liberal Theravada Buddhists tend to emphasize the promise of *Nibbana* over the burden of *kamma*.
4. Islam teaches that God has designed the fate of every human being. There are schools of thought in Islam, which assert that man has free will to balance his predestination, but they still believe that Allah in His omniscience, knows what choices his human creations will make.
5. The worthlessness of life, the illusory nature of all reality, and the insignificance of individual existence may give the wrong impression that Theravada Buddhism does not accord value to human rights. They could lend credence to claims that since one's suffering in this present life is a product of his *kamma*, respect for his individual rights cannot alleviate his misfortune. On the contrary, human rights are intrinsic in Theravada Buddhism. It teaches the equality of and compassion for every being and abhors violence and any form of

abuse. The Theravada scriptures also make references to the importance that the Buddha gave to democratic practices.

6. Like Theravada Buddhism, Islam also subscribes to human rights, tolerance, good governance and peace. While Islam requires complete submission to Allah and acceptance of His omnipotence and His predetermined design for everyone, it recognizes the equality and dignity of every person. Respect for the individual and compassion for the poor proceed from the premise that men and women have been accorded by Allah the highest status and the most perfect form among His creatures.
7. Concepts of the ideal state in the two religions are derived from their fundamental doctrines. The ideal ruler for Theravada Buddhism is one who brings about conditions that will enable the people to abide by the *Dhamma* so that they will have greater opportunity to reach *Nibbana*.
8. Among Buddhist societies in contemporary Southeast Asia, it is only in Thailand where religion is institutionalized in the political system, in the person of the constitutional monarch. Being the symbol of both Buddhism and the nation, the King is the object of reverence by his people.
9. Conservative Muslims uphold the orthodox model of the Islamic state, in which the Islamic law, *shari'a*, encompasses every sphere of life – political, social, economic and cultural. Secularist and modernist Muslims, for their part, are open to adaptation to the requirements of contemporary society and the creative incorporation of Western principles of governance.
10. Among the predominantly Muslim countries in Southeast Asia, it is the state practice of Brunei Darussalam that comes closest to Islam. The political institutions and political dynamics of Indonesia and Malaysia have also been significantly influenced by Islam.
11. All Southeast Asian countries, except Timor Leste, are members of the Association of Southeast Asian Nations (ASEAN). The Association indirectly serves as a bridge among the civilizations and religions of a region. ASEAN countries have enriched their indigenous cultures with influences from China, India as well as the Arabic and Western worlds. ASEAN has also provided an enduring framework for peacefully resolving conflicts among member-countries and with extra-regional countries. The declarations and treaties of the organization have developed the international practice of member countries, having accustomed them to the culture of peace.

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DIE MENSCHENWÜRDE IM ÖFFENTLICHEN RECHT UND IN DER POLITISCHEN WISSENSCHAFT

HERBERT SCHAMBECK

DER MENSCH ALS AUFTRAG FÜR RECHT UND POLITIK

Die Rechtsordnung stellt die Beziehung von Normsetzer und Normadressaten und die Politik den sie vermittelten Willen dar. Die Kodifikation der Politik drückt sich im Verfassungsrecht eines Staates aus. Die Wissenschaft vom Recht und der Politik gibt mehr oder weniger gekonnt seismographisch die Darstellung deren Entwicklung wieder. Geschichtsverständnis, Gegenwartserkenntnis und Zukunftserwartung können sich dabei verbinden. *Der Mensch* selbst steht dabei zu verschiedenen Zeiten in seiner Wertigkeit, deutlich und öfters auch unterschiedlich vom Recht und der Politik erfasst, im Mittelpunkt. Wie aktuell diese Fragestellungen sind, verdeutlichte sich vor einigen Jahren als im Einvernehmen mit Papst Johannes Paul II. in Wien, von polnischen Gelehrten ausgehend, mit internationaler Beteiligung ein „Institut von den Wissenschaften vom Menschen“ geschaffen wurde, das regelmäßig auch im Sommer in Castelgandolfo mit Papst Johannes Paul II. Tagungen abhielt.

I.

1. *Der Mensch als Individuum und Person*

Die Menschen sind als *Subjekte* Handelnde auf verschiedenen Gebieten und gleichzeitig Objekte in diesen Sachbereichen. Je intensiver dies mit der Entwicklung der Zeit der Fall ist, desto mehr stellt sich für den Menschen selbst die Frage nach ihm selbst und seiner Wertigkeit. Franz Kardinal König, der langjährige Erzbischof von Wien, der einen Großteil seines langen, fast hundertjährigen Lebens mit vielen Wissenschaftlern verschiede-

ner Disziplinen in Kontakt stand, hat geradezu mahndend an seinem Lebensabend oft gemeint, der Mensch sollte sich fragen: „Woher komme ich? Wohin gehe ich? Und welchen Sinn hat mein Leben?“¹ Diese *Grundfrage* begleitet, unterschiedlich auch bewusst, die Frage *nach der Menschenwürde* im öffentlichen Recht und in der Wissenschaft von der Politik. Die Antwort fällt in ihrer Begründung je nach dem Kulturkreis bei aller Anerkennung der Bedeutung des Menschen und seinem Schutz durch das öffentliche Recht verschieden aus.

Diese *Verschiedenheit* zeigt sich schon *im Wortgebrauch für den Menschen*, ob ich ihn als Individuum oder als Person bezeichne. Unter Individuum versteht man ein einzelnes Lebewesen, als Person wird der Mensch in seiner Wertigkeit betont und durch ihn tritt ein höherer Anspruch in die Wirklichkeit.² Das abendländische Rechtsdenken³ drückte dies im Begriff der Personhaftigkeit des Menschen aus, wobei das von den Etruskern vermittelte griechische Wort „prosopon“ als Bezeichnung für die Göttermaske im archaischen Kult und das lateinische Wort „personare“, was soviel wie hindurchtönen heißt,⁴ wegweisend waren.

2. Die Würde des Menschen

Diese *Personhaftigkeit des Menschen* erhielt ihren werthaftern Inhalt durch die Lehre von der *Würde des Menschen*. Sie hat *erste Ansätze* ihrer Idee in der Lehre der griechischen Stoa vom menschlichen Logos, der am Logos der Weltvernunft Anteil hat und so mit dieser kosmopolitischen

¹ Franz Kardinal König, Schlussansprache zum „Fest der Vielfalt“ und zum 95. Geburtstag von Franz Kardinal König am 24. September 2000 im Dom zu St. Stephan in Wien, zitiert nach Requiem für Franz Kardinal König am 27. März 2004 im Dom zu St. Stephan in Wien, S. 19.

² Siehe Herbert Schambeck, Die Grundrechte im demokratischen Verfassungsstaat, in: Ordnung im sozialen Wandel, Festschrift für Johannes Messner, hrsg. von Alfred Klose, Herbert Schambeck, Rudolf Weiler, Valentin Zsifkovits, Berlin 1976, S. 458 ff.

³ Beachte Alfred Verdross, Abendländische Rechtsphilosophie, ihre Grundlagen und Hauptprobleme in geschichtlicher Schau, 2. Aufl., Wien 1963.

⁴ Beachte Siegmund Schlossmann, Persona und proposita in Recht und im christlichen Dogma, Dissertation Kiel 1906, Harry Westermann, Person und Persönlichkeit als Wert im Zivilrecht, Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen, Heft 47, Köln und Opladen 1957 und Gustav Naß, Person, Persönlichkeit und juristische Person, Berlin 1964 sowie Robert Spaemann, Personen. Versuche über den Unterschied zwischen „etwas“ und „jemand“, 2. Aufl., Stuttgart 1998, bes. S. 25 ff. und S. 252 ff.

Weltbetrachtung die Enge der Polis sprengte. Diese Lehre der Stoa war aber nur auf den geistigen Bereich beschränkt und nicht auf die Politik und das Recht bezogen; die Lehre der Stoa blieb daher auf die Stellung des Menschen im Staat ohne Einfluss. Anders wurde dies durch *das Christentum*, es begründete die Würde des Menschen dadurch *metaphysisch*, dass es die Gottesebenbildlichkeit der Menschen lehrte und in dieser die Würde des Menschen *begründete*.⁵

Diese *Lehre von der dignitas humana* fand ihre Ausführung besonders durch die Kirchenväter,⁶ wobei vor allem der Beitrag hiezu in der Schrift Gregors von Nyssa „De hominis opificio“ hervorgehoben sei. In der Folge sei auch auf die Lehre vom Eigenwert des Menschen bei Augustinus⁷ und bei Thomas von Aquin⁸ verwiesen und später auch die Spanischen Moraltheologen des 15. und 16. Jahrhunderts, besonders die Schule von Salamanca⁹ mit Francisco de Vitoria und Francisco Suárez – auch mit ihrem Hinweis auf das *bonum commune humanitatis* – genannt. Wir finden bei ihnen zwar noch keine vollständige Liste der Menschenrechte, wohl ist aber der innere Gehalt jener Grundrechte bereits entwickelt worden, die spätere Verfassungsurkunden prägten.¹⁰

Mit dieser Lehre von der Teilnahme des Menschen am Reich Gottes¹¹ hat nämlich das Christentum dem Menschen bestimmte Rechte begründet, „die ihm“, wie der Völkerrechtler und Rechtsphilosoph Alfred Verdross es schon erklärte, „keine irdische Gemeinschaft entziehen kann“,¹² dies trug dazu bei, dass sie später zu Grundrechten wurden.¹³

⁵ Gen 1,26 f., 5,3 und 9,6.

⁶ Siehe *Felix Flückiger*, *Geschichte des Naturrechts*, Zürich 1954, S. 284 ff.

⁷ Beachte *Joseph Mausbach*; *Die Ethik des heiligen Augustinus*, Bd. I, Freiburg i.Br. 1929, S. 155 ff.

⁸ Vgl. *Arthur Fridolin Utz*, *Recht und Gerechtigkeit*, Deutsche Thomas-Ausgabe, Bd. 18, Heidelberg-Graz 1953, S. 494 ff.

⁹ Dazu *Verdross*, *Abendländische Rechtsphilosophie*, S. 92 ff.

¹⁰ Siehe *Heribert Franz Köck*, *Der Beitrag der Schule von Salamanca zur Entwicklung der Lehre von den Grundrechten*, Berlin 1987.

¹¹ Näher *Hugo Rahner*, *Kirche und Staat im frühen Christentum*, München 1961.

¹² *Alfred Verdross*, *Die Würde des Menschen in der abendländischen Rechtsphilosophie*, in: *Naturordnung in Gesellschaft, Staat, Wirtschaft*, Festschrift für Johannes Messner zum 70. Geburtstag, hrsg. von Joseph Höffner, Alfred Verdross und Francesco Vita, Innsbruck-Wien-München 1961, S. 353.

¹³ Näher *Herbert Schambeck*, *Grundrechte in der Lehre der katholischen Kirche*, in: *Handbuch der Grundrechte in Deutschland und Europa*, Bd. I, hrsg. von Detlef Merten und Hans-Jürgen Papier, Heidelberg 2004, s. 349 ff.

In diesem Zusammenhang betonte auch Joseph Kardinal Ratzinger „die Unbedingtheit, mit der Menschenwürde und Menschenrechte als Werte erscheinen müssen, die jeder staatlichen Rechtssetzung vorangehen.“¹⁴

3. Die Grundrechte gegenüber dem Staat

In der Folge wurden die *Grundrechte* in der Entwicklung des Staatsrechts zu *Rechtsansprüchen gegen die Staaten*, die in einem Prozess von Jahrhunderten¹⁵ mit der Demokratisierung und Konstitutionalisierung der Staatsformen und politischen Systeme von dem Recht einzelner privilegierter Stände sich zu Rechten der Bürger und hernach auch aller Menschen gegenüber dem Staat und der Völkergemeinschaft¹⁶ entwickelten. Auf diese Weise wurden *aus Standesrechten Menschenrechte*.¹⁷

Als bekanntestes Beispiel für ein solches Standesrecht wird die Magna Charta Libertatum 1215 König Johann ohne Land genannt, es sei aber auch beachtet, dass sich schon 1188 die Cortes von Leon, die ständische Versammlung der Bischöfe, Magnaten und Bürger dieses spanischen Teilkönigreiches von König Alfons IX. bestimmte Rechte, wie die der drei Stände auf Beratung und Mitsprache in allen wichtigen Fragen, die Krieg, Frieden, Verträge sowie Unverletzlichkeit des Lebens und der Ehre, des Hauses und Eigentums sowie aller Einwohner auf Wahrung anerkannter Gewohnheitsrechte zusichern ließen.¹⁸

Mit diesem verbrieften Recht auf Eigentum, das damals im 12. Jahrhundert in Spanien noch ein Standesrecht war, war ein bemerkenswerter Ansatz zu dem gegeben, was 1690 John Locke in seinen „Two Treatises of Civil Government“ im Begriff „property“ mit dem Eigentum auch das Leben und die Freiheit als jeden Einzelnen angeborenes Recht bezeichnete. Damit eröffnete er den *Weg zum individuellen*, nämlich jedem Menschen zustehenden *Recht*.

¹⁴ Joseph Kardinal Ratzinger, Werte in Zeiten des Umbruchs. Die Herausforderungen der Zukunft bestehen, Freiburg im Breisgau 2005, S. 85.

¹⁵ Schambeck, Die Grundrechte im demokratischen Verfassungsstaat, S. 452 ff.

¹⁶ Näher Felix Ermacora, Menschenrechte in der sich wandelnden Welt, Wien 1974.

¹⁷ Siehe Gerhard Oestreich, Die Entwicklung der Menschenrechte und Grundfreiheiten, in: Die Grundrechte I/1, Berlin 1966, S. 19.

¹⁸ Oestreich, a.a.O. S. 19 f. und derselbe, Die Idee der Menschenrechte, 5. Aufl., Berlin 1974, s. 13 ff.

Der Begriff Menschenrechte selbst scheint *erstmal*s von dem aus der Schule von Salamanca hervorgegangenen Fernando Vasquez de Menchaca in der praefatio seiner 1559 erschienenen Ausgabe der „Controversiae illustres“ gebraucht; in ihr erklärt er, dass jeder Mensch „jura naturalia, quasi immutabilia“ besitzt; er lehnte deshalb auch schon damals die Sklaverei als naturrechtswidrig ab.¹⁹

II.

1. Die Grundrechte als Individualrechte

Es ist ein beachtenswerter Lauf der Geschichte, dass die Fortsetzung der Entwicklung dieser *Grundrechte als Individualrechte* im Staat und gegenüber dem Staat nicht von England auf den Kontinent übergriff, sondern vielmehr der Weg europäischer Grundrechtsordnung im Verfassungsstaat über die damaligen Kronkolonien Englands in Amerika und den späteren USA nahm.²⁰ Dabei weist Mary Ann Glendon²¹ darauf hin, dass John Locke von „life, liberty and property“ gesprochen hatte, die amerikanischen Revolutionaries in der Declaration of Independence 1776 hingegen von „Leben, Freiheit und Streben nach Glückseligkeit“²² sprachen. Der Begriff *Fraternité*, wie ihn später die Französische Revolution gebrauchte und was wir heute als Solidarität verstehen, mag zwar in bestimmter Weise der gelebten Realität der damaligen Amerikaner entsprochen haben, aber nicht deren Vokabular. Die Gleichheit, welche die Unabhängigkeitserklärung forderte, war erst nach dem Bürgerkrieg und der Befreiung der Sklaven erreicht.

Da die Rechte der Menschen am Beginn der USA nicht auf alle Einwohner, sondern nur auf die mit Bürgerrecht bezogen waren, hat Paul Kirchhof zu Recht festgestellt, „dass die Verkünder dieser Menschenrechte zugleich Sklavenhalter sein konnten“.²³

¹⁹ Näher *Verdroß*, *Abendländische Rechtsphilosophie*, S. 108 ff.

²⁰ Siehe näher Herbert Schambeck, Helmut Widder, Marcus Bermann (Hrsg), *Dokumente zur Geschichte der Vereinigten Staaten von Amerika*, Berlin 1992.

²¹ *Mary Ann Glendon*, *Concepts of the Person in American Law*, in dieser Publikation, Vatikan 2006, S. 2 f.

²² *Dokumente*, S. 114.

²³ *Paul Kirchhof*, *Die Idee der Menschenwürde als Mitte der modernen Verfassungsstaaten*, in dieser Publikation, Vatikan 2006, S. 5.

Auch die USA und ihre Bevölkerung haben einen *eigenen Bewusstseinsprozess* in Bezug auf die Menschenwürde, deren Erkenntnisse, Weite und deren Schutz durchgemacht. Man denke an die Rassenfrage, die auch in anderen Erdteilen, wie in Afrika, besonders in Südafrika, bis in unsere Zeit reicht, wo doch der Einfluss, wie Nicholas McNally unterstreicht, des Römischen Rechts und später des Roman-Dutch Law gegeben war.²⁴

Wenn auch die USA nicht in der Weite an Anerkennung und Rechtsschutz der Menschenwürde in ihrer Geschichte wegweisend waren, obgleich ihre Gründer aus Familien stammten, welche vor der von Ungleichheit geprägten Ständegesellschaft europäischer Monarchien geflüchtet waren, so haben die USA dadurch doch einen bleibenden Beitrag zur Entwicklung der demokratischen Verfassungsstaatlichkeit und damit auch zum Schutz der Grundrechte geleistet, dass die nordamerikanischen Kolonien der englischen Krone sich allmählich im 17. und 18. Jahrhundert in souveräne Staaten wandelten,²⁵ aus ihren Charters Constitutions wurden und diese eine Zweiteilung in *frame of government*, also eine Regelung der Staatsorganisation, und eine *bill of declaration of rights*, einen Grundrechtsteil, beinhalteten.²⁶

Am Beginn der Verfassungsentwicklung der USA stand eine später beispielgebend gewordene *Verbundenheit von Politik, Ethik und Rechtsüberzeugung*; von ihr schrieb Georg Jelinek: „Nicht hochverräterischen Aufruhr, sondern Rechtsverteidigung glauben sie zu üben, als sie sich der englischen Herrschaft entledigen“.²⁷

2. Die Grundrechte im demokratischen Verfassungsstaat

Diese amerikanische Grundhaltung und das Beispiel der Verfassung der USA von 1787²⁸ sind später wegweisend für die Staaten, vor allem Europas und darüber hinaus geworden. So regte schon die virginische Bill of rights 1776²⁹ Joseph de Motier Lafayette zu jener Initiative in der französischen

²⁴ Nicholas J. McNally, *The Concept of the Human Person*, in: *Anglo-American Law*, in dieser Publikation, Vatikan 2006, S. 4.

²⁵ Dokumente, S. 30 ff.

²⁶ Siehe Herbert Schambeck, *Der Verfassungsbegriff und seine Entwicklung*, in: derselbe, *Der Staat und seine Ordnung*, ausgewählte Beiträge zur Staatslehre und zum Staatsrecht, hrsg. von Johannes Hengstschläger, Wien 2002, S. 45 ff., bes. S. 51 f.

²⁷ Georg Jelinek, *Allgemeine Staatslehre*, 3. Aufl., 6. Neudruck, Darmstadt 1959, S. 416.

²⁸ Dokumente, S. 166 ff.

²⁹ Dokumente, S. 110 ff.

verfassungsgebenden Nationalversammlung in Paris an, welche am 26. August 1789 zur Erklärung der Menschen – und Bürgerrechte³⁰ führte. Paul Kirchhof weist im Anschluss an Hasso Hofmann³¹ in diesem Zusammenhang darauf hin, dass diese „Erklärung der Rechte des Menschen und des Bürgers“ Frankreichs „die Benachteiligung der Frauen, die Judenemanzipation und die Lage der Farbigen in den französischen Kolonien zunächst kaum verbessern“³² konnte.

Gleichzeitig möge man nicht übersehen, welche *wegweisender Einfluss von den USA* zunächst auf Frankreich, hernach im 19. Jahrhundert von Frankreich auf Belgien, Deutschland, Österreich sowie andere *Staaten in Europa und darüber hinaus* ausging. Waren es anfangs die Grundrechte der Menschen, insbesondere auch deren Selbstbestimmungsrecht, welche für die Politik einzelner Staaten bestimmend wurden, so waren es dann auch die Ideen der Verfassungsstaatlichkeit, der Demokratie und des Föderalismus.³³ Bei vielen verfassungsrechtlichen Neukodifikationen dienten die USA damals als *Vorbild*, dem zu verschiedenen Zeiten in unterschiedlicher Form mehr oder weniger entsprochen wurde, wie in den letzten mehr als eineinhalb Jahrzehnten nach dem Ende des Kommunismus und der Teilung Europas auch *das Bonner Grundgesetz 1949* für die neuen Verfassungen der *postkommunistischen Staaten Mittel- und Osteuropas Vorbildcharakter hatte*; bei ihnen erwies sich aber der Föderalismus, wie Russland, Jugoslawien und die Tschechoslowakei zeigten, nicht als erfolgreich und wegweisend.³⁴ Dazwischen liegen die Erschütterung des öffentlichen und privaten Lebens mit Niederschlag in der jeweiligen Staatsordnung durch

³⁰ Alfred Voigt, *Geschichte der Grundrechte*, Stuttgart 1948, S. 195 ff.

³¹ Hasso Hofmann, *Die Entdeckung der Menschenrechte*, Schriftenreihe der Juristischen Gesellschaft zu Berlin, Heft 161, Berlin 1999, S. 8.

³² Kirchhof, a.a.O., S. 5.

³³ Dazu Klaus Stern, *Grundideen europäisch-amerikanischer Verfassungsstaatlichkeit*, Schriftenreihe der Juristischen Gesellschaft zu Berlin, Heft 91, Berlin New York 1984 und *derselbe*, *Das Grundgesetz im europäischen Verfassungsvergleich*, Schriftenreihe der Juristischen Gesellschaft zu Berlin, Heft 164, Berlin 2000.

³⁴ Näher Herbert Schambeck, *Politik und Verfassungsordnung postkommunistischer Staaten Mittel – und Osteuropas*, in: *derselbe*, *Zu Politik und Recht, Ansprachen, Reden, Vorlesungen und Vorträge*, hrsg. von den Präsidenten des Nationalrates und des Bundesrates, Wien 1999, S. 121 ff., bes. S. 126 ff.; vgl. auch Klaus Stern, *Ausstrahlungswirkung des Grundgesetzes auf ausländische Verfassungen*, in: *Bundesministerium des Inneren, Bewährung und Herausforderung – Die Verfassung vor der Zukunft, Dokumentation zum Verfassungskongress 50 Jahre Grundgesetz/50 Jahre Bundesrepublik Deutschland*, Opladen 1999, S. 249 ff.

Ideologien, wie den Kommunismus und den Nationalsozialismus; für erstere Ideologie waren die Grundrechte nicht Rechte des Einzelnen, sondern der Klasse³⁵ und für die letztgenannte Ideologie waren die Grundrechte ein Aufstand des Egoismus gegen die Volksgemeinschaft.³⁶

3. *Das Rechtsdenken der U.S.A.*

Wenn wir den Blick von den politischen Konzepten und Rechtsvorstellungen der Gründungsväter der amerikanischen Verfassung, wie sie so eindrucksvoll etwa auch in den Artikeln der *Federalist Papers* zum Ausdruck kommen, in die Gegenwart lenken, sehen wir freilich auch immer wieder neue Herausforderungen für „Concepts of the Reason in American Law“ oder wie man aus allgemeiner Sicht von der „Natur des Menschen“ und der „Menschenwürde“ sprechen könnte.

Mary Ann Glendon hat in Ihrem Beitrag klar die sehr spezifischen Anfangsbedingungen herausgearbeitet, die am Beginn der amerikanischen politischen Praxis und des Verfassungsrechts standen, aber auch gleichzeitig auf wichtige Weiterentwicklungen von Grundrechtsthemen durch die politische Praxis und die Judikatur des U.S. Supreme Court verwiesen. Wichtige Entscheidungen des U.S. Supreme Court zur Rassenfrage, wonach die Rassentrennung in der Schule als „inherently unequal“ gebrandmarkt wurde und „with all deliberate speed“ die Segregation aufzuheben sei,³⁷ sowie das Bürgerrechtsgesetz aus 1964 waren Wegmarken in dieser Entwicklung.

Auch die Frage der Todesstrafe beschäftigte immer wieder die amerikanische Politik und ihr (Verfassung-)Recht, kommen doch darin auch besonders heikle Aspekte der menschlichen Natur und des Konzepts der Person im amerikanischen Recht zum Ausdruck.³⁸

Die unterschiedliche Todesstrafenpraxis in den einzelnen Bundesstaaten sowie neuere Entscheidungen des Supreme Court über die Unzulässig-

³⁵ Beachte *Herbert Schambeck*, *Von der Last der Freiheit im Recht und Staat des Westens und Ostens, Wesen – Wirklichkeit – Widerstände*, hrsg. von Otto B. Roegele, Graz 1967, S. 483 ff.

³⁶ Dazu *Manfred Friedrich*, *Geschichte der deutschen Staatsrechtswissenschaft*, Berlin 1997, S. 399 ff.

³⁷ Siehe Dokumente, S. 530 ff. und S. 580 ff.

³⁸ Siehe Rede von Gouverneur *George H. Ryan* an der Juristischen Fakultät der Northwestern University of Chicago und die Erklärung von Gouverneurin *Jodi Rell* vom 7.12.2004 über ihre Entscheidung Michael Ross keinen Aufschub zu gewähren.

keit der Todesstrafe an Geisteskranken einerseits und an Jugendlichen andererseits lassen hier allerdings neue Bemühungen erkennen, auch in diesen höchst sensiblen und in der Bevölkerungsmeinung oft hoch emotionalisierten Thematiken zu Lösungen zu kommen, die den Eigenwert der Person – auch des sündigen Menschen im christlichen Sinne – anerkennt und rechtlich absichert.

Dass sich schließlich aufgrund neuester Entwicklungen eines weltweit operierenden *Terrorismus* auch vielfältige neue Herausforderungen für den demokratischen Verfassungsstaat im Allgemeinen und seine Freiheiten und Menschenrechtssicherungen im Besonderen ergeben, soll schon hier erwähnt werden. Es ist dies aber nicht mehr nur ein Problem, das sich der amerikanischen Menschenrechtspraxis und Judikatur stellt, sondern das auch zu gemeinsamen Lösungsanstrengungen in allen Staaten, aber auch auf der Ebene des internationalen Rechtes führen muss.

4. *Naturrecht und Rechtspositivismus*

Die Reaktionen auf Entwicklungen von Recht und Staat in autoritären und totalitären politischen Regimen, welche die Menschenwürde verletzen und Millionen Menschen die Freiheit sowie das Leben gekostet haben,³⁹ führten zu einer *Erneuerung des Rechtsdenkens mit einer Renaissance des Naturrechts*⁴⁰ und einer weltweiten Anerkennung und einem Schutz der Freiheit und Würde des Menschen,⁴¹ die in den Verfassungen der einzelnen Staaten in verschiedener Formulierung und Textierung Niederschlag gefunden haben. Meist sind Freiheit und Würde des Menschen in Verfassungen, die von einem materialen Rechtsdenken geprägt sind,⁴² in einem Grundrechtekatalog festgehalten, der sich am Beginn, der Mitte oder am Schluss eines Verfassungsgesetzes befindet.

Eine solche Wertigkeit ist *dann nicht gegeben, wenn eine Staatsrechtsordnung, wie zum Beispiel die Österreichs von einem Rechtspositivismus*

³⁹ Siehe *Stephane Courtois, Nicolas Werth, Jean-Louis Panne, Andrzej Paszkowski, Karel Bartosek und Jean-Louis Margolin*, Das Schwarzbuch des Kommunismus, Unterdrückung, Verbrechen und Terror, 2. Aufl., München Zürich 1998 und *Raul Hilberg*, Die Vernichtung der europäischen Juden, Frankfurt a.M. 1990.

⁴⁰ Beachte *Heinrich Rommen*, Die ewige Wiederkehr des Naturrechts, 2. Aufl., München 1947.

⁴¹ Näher *Menschenrechte – Ihr internationaler Schutz*, 4. Aufl., München 1998.

⁴² Dazu *Verdroß*, Abendländische Rechtsphilosophie, S. 215 ff.

gekennzeichnet ist, in dem zwar die Rechtswege angegeben, aber keine Werteaussagen getroffen werden. So enthält das österreichische Bundes-Verfassungsgesetz 1920 keinen eigenen Grundrechtekatalog, der wurde aus der Dezemberverfassung 1867 aus dem Staatsrecht der Monarchie in das der Republik übernommen; es verwendet nicht den Begriff Grundrecht und auch nicht den der Würde des Menschen. Der Verfassungsgerichtshof und der Oberste Gerichtshof in Österreich gehen aber davon aus, wie auch Walter Berka⁴³ hervorhebt, dass die Menschenwürde einen ungeschriebenen „allgemeinen Wertungsgrundsatz“ der österreichischen Rechtsordnung darstellt.⁴⁴

Anders als in Österreich, wo im *Rechtsdenken* der Rechtspositivismus der *Reinen Rechtslehre* Hans Kelsens⁴⁵ prägend war und ist, hat die Bundesrepublik Deutschland – nach den Erfahrungen mit den nationalsozialistischen Unrechtsregime – „Die Würde des Menschen“ bereits am Beginn des Art 1 gesetzt; er lautet „Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlicher Gewalt“. Diese Bestimmung zählt nach Art. 79 (3) GG auch zu den Grundsätzen, deren Änderung unzulässig ist.

In einer weiteren Weise gibt *das deutsche Verfassungsrecht ein Vorbild*, nämlich mit dem Text seiner Präambel, sie enthält nämlich eine *Invocatio Dei* mit den Worten: „Im Bewusstsein seiner Verantwortung vor Gott und den Menschen ...“.

III.

1. *Präambel mit Gottesbezug*

Eine solche *Präambel mit Gottesbezug*,⁴⁶ die in Deutschland als Reaktion auf das NS-Regime entstanden ist, drückt eine besondere Verantwortung aus, beschränkt die politische Willensbildung einer Demokratie

⁴³ Walter Berka, Lehrbuch Grundrechte, Wien New York 2000, S. 80, siehe dazu auch Klaus Burger, Das Verfassungsprinzip der Menschenwürde in Österreich, Frankfurt am Main 2002.

⁴⁴ VfSlg 13.635/1993; OGH 14.4.1994, 10 Ob 501/94, Juristische Blätter 1995, Heft 1, S. 46 ff.

⁴⁵ Siehe Hans Kelsen, Reine Rechtslehre, Einleitung in die rechtswissenschaftliche Problematik, Leipzig und Wien 1934, 2. Aufl. 1960, Nachdruck Wien 1992, dazu Herbert Schambeck, Möglichkeiten und Grenzen der Rechtslehre Hans Kelsens, Juristische Blätter 1984, Heft 5/6, S. 126 ff.

⁴⁶ Siehe Herbert Schambeck, Gott und das Verfassungsrecht, L'Osservatore Romano, Wochenzeitung in deutscher Sprache, 16. Januar 2004, Nr. 3, S. 12.

und nimmt einen präpositiven Bezug in das Verfassungsrecht auf, ohne, wie es Alexander Hollerbach feststellte, „daß die Bürger verpflichtet sind, an Gott zu glauben“.⁴⁷

Eine ähnliche Offenheit, die mit einem wertorientierten Grundsatzdenken verbunden ist, drückt sich in der *Präambel der Verfassung Polens* 1997 aus; sie nimmt Bezug auf „diejenigen, die an Gott glauben, welcher Quelle der Wahrheit, der Gerechtigkeit, des Guten und des Schönen ist, wie auch diejenigen, die diesen Glauben nicht teilen und diese universellen Werte aus anderen Quellen ableiten“.⁴⁸

Mit dieser letztgenannten Formulierung eines Präambeltextes will Polen der Pluralität der gegenwärtigen Gesellschaft gerecht werden. Die erforderliche Offenheit des Verfassungsrechts für alle im Staat verlangt dies; sie setzt einen Minimalkonsens an Grundwerten in einem Staat voraus und sollte sich auch in den Grundrechten ausdrücken. Da weltweit gesehen nach den *Constitutions of Countries of the World*, Stand Januar 2004 von 191 Staatsverfassungen 143 auch eine Präambel und von diesen 65 Gottesbezüge haben, bietet sich hier ein weites Gesichtsfeld.

Die Geschichte zeigt, Präambeln⁴⁹ beginnend mit dem Gesetzeswerk des Königs von Babylon Hammurabi und reicht über die Verfassung der USA 1787 und die französische Menschenrechtserklärung 1789 bis zu den zwei Präambeln in dem Verfassungsvertrag der EU unserer Tage. Eine Präambel soll in einem Staat möglichst alle zur Sozialverantwortung hinführen und auch einleitend die Wertigkeit der Staatsorganisation erklären, ohne in ihrer Allgemeinheit an Formulierung ein Maß an Normativität erlangen zu können, die zu einem einklagbaren Rechtsanspruch führt.

Ist eine Präambel mit einem Gottesbezug verbunden, nimmt sie einen präpositiven Bezug in das Verfassungsrecht auf, der die politische Willensbildung besonders verpflichtet, ja in bestimmter Weise auch beschränkt.⁵⁰

⁴⁷ Alexander Hollerbach, Grundlagen des Staatskirchenrechts, in: Handbuch des Staatsrechts der Bundesrepublik Deutschland, hrsg. von Josef Isensee und Paul Kirchhof, Band VI, Heidelberg 1989, S. 518.

⁴⁸ Die Verfassungen Mittel- und Osteuropas, hrsg. von Herwig Roggemann, Berlin 1999, S. 675 und dazu *Boguslaw Banaszak*, Einführung in das polnische Verfassungsrecht, Wrocław 2003.

⁴⁹ Näher *Peter Häberle*, Präambeln in Text und Kontext von Verfassungen, in: Demokratie in Anfechtung und Bewährung, Festschrift für Johannes Broermann, hrsg. von Joseph Listl und Herbert Schambeck, Berlin 1982, S. 211 ff.

⁵⁰ Siehe *Helmut Goerlich*, *Wolfgang Huber*, *Karl Lehmann*, Verfassung ohne Gottesbezug? Zu einer aktuellen europäischen Kontroverse, Leipzig 2004 und *Christian Konrath*,

Im Zusammenhang mit der in einem Verfassungstext anerkannten Menschenwürde, wie dies im Art. 1 der Deutschen Verfassung im Grundgesetz gegeben ist, stellt der Gottesbezug, also die *Invocatio Dei*, eine Begründung für die *dignitas humana* dar. Transzendenz und Immanenz, aber auch Glaube und Politik verbinden sich.

Je nach der Religionszugehörigkeit wird es ebenso verschiedene Gottesverständnisse wie nach dem politischen Bewusstsein und der kulturellen Entwicklung auch verschieden geprägte Verfassungssysteme geben.

Mit der Normierung der Menschenwürde im Verfassungsrecht⁵¹ wird ein präpositiver Bezug hergestellt, dessen Wahrnehmung sich als Aufgabe auch der politischen Wissenschaft stellt. Diesen präpositiven Bezug zeigt auch das Zeitwort „anerkennen“ zur Menschenwürde. Anerkennen kann man ja nur etwas als bereits vorhanden Angenommenes!⁵²

2. Die Begründung der Menschenrechte

Die *Einsicht* in diesen präpositiven Bezug der Menschenwürde und ihrer Begründung der Menschenrechte war zu verschiedenen Zeiten *unterschiedlich*. Nach zwei Weltkriegen, die im 20. Jahrhundert von Europa ausgingen, hat Europa gegenüber der Welt eine besondere Bringschuld. Die Tradition des Rechts, vor allem auch die Wirkkraft des römischen Rechts, das zeigt sich auch in den Ausführungen von Nicholas McNally und von Francesco P. Casavola, führen zu einer viele Nationen und ihre Rechtsordnung beeinflussenden Entwicklung, die sich im europäischen Recht dokumentiert. Treffend hat schon vor Jahren Helmut Coing seinen publizierten Vortrag über die Europäischen Gemeinsamkeiten in Vergangenheit, Gegenwart und Zukunft betitelt „Von Bologna bis Brüssel“.⁵³

Auf diesem *Weg europäischer Rechtsentwicklung* ereignete sich in Bezug auf Begriffe des öffentlichen Rechts und der politischen Wissenschaft eine *Säkularisierung und Profanierung alten christlichen Gedankengutes*; besonders

Vermittlung und Erinnerung, Anmerkungen zu den Präambeldiskussionen in der EU und in Österreich, *österreich. Archiv für recht und religion* 2004, S. 189 ff.

⁵¹ Beachte *Klaus Stern*, *Das Staatsrecht der Bundesrepublik Deutschland*, Band IV/1, § 97 Die Würde des Menschen, München 2006, S. 3 ff.

⁵² Dazu *Gottfried Dietze*, *Über die Formulierung der Menschenrechte*, Berlin 1956.

⁵³ *Helmut Coing*, *Von Bologna bis Brüssel, Europäische Gemeinsamkeiten in Vergangenheit, Gegenwart und Zukunft*, Kölner Juristische Gesellschaft, Band 9, Bergisch Gladbach-Köln 1989, dazu auch *Herbert Schambeck*, *Rechtsbewusstsein und Rechtssicherheit im integrierten Europa*, in *derselbe*, *Zu Politik und Recht*, S. 213 ff.

zeigte sich dies in den Forderungen der französischen Revolution nach Freiheit, Gleichheit und Brüderlichkeit.

Welcher ideengeschichtlicher und welcher normativer *Niederschlag der Menschenwürde im Verfassungsrecht der einzelnen Staaten* auch immer zu eigen sein mag, stets zeigt sich, wie es Ernst-Wolfgang Böckenförde schon formulierte, dass der freiheitliche säkularisierte Staat von Voraussetzungen lebt, „die er selbst nicht garantieren kann“.⁵⁴ Dazu zählt die Identität des Menschen, von der Paul Kirchhof in seinem eben erschienenen Buch „Die Erneuerung des Staates – eine lösbare Aufgabe“ feststellte: „Wäre die Identität des Menschen nunmehr biologisch-medizinisch nicht mehr gleich bleibend vorgegeben, verlöre der Verfassungsstaat ein Axiom, auf das der freiheitliche Rechtsstaat und die Demokratie aufbauen“.⁵⁵

Der freiheitliche Rechtsstaat und mit ihm auch die demokratische Verfassungsstaatlichkeit müssen sich dabei verschiedenen Aufgaben und Problemen stellen, welche den Bereich des normativen Rechts betreffen, wie etwa dem, in welchen Rechtsformen die Menschenwürde in Grundrechten geschützt werden; es bieten sich neben der klassischen Form des subjektiv öffentlichen Rechts, die Einrichtungsgarantie, der Programmsatz und die Organisationsvorschrift an. Mit diesen möglichen Rechtsformen der Grundrechte sind auch unterschiedliche Konsequenzen für den Einzelnen und den Staat verbunden, wie etwa bei einem subjektiven öffentlichen Recht der bei einem Verfassungsgerichtshof einklagbare Rechtsanspruch des Einzelnen oder eine bloße Sozialgestaltungsempfehlung an den Gesetzgeber.

3. Der Schutz der Menschenrechte

Als besonderen Fortschritt kann es angesehen werden, dass es einen Schutz der Menschenwürde und der Grundfreiheiten gibt, welcher vom Einzelnen sowohl gegenüber dem Staat als auch in der internationalen Gemeinschaft geltend gemacht werden kann. Beginnend mit der UNO-Menschenrechtsdeklaration 1948, für die René Cassin prägend war, der übrigens gegenüber Jean Monnet in der Krypta des Pantheon seine letzte Ruhestätte gefunden hat, wurde die Menschenwürde teil der Völkerrechtsordnung und erhielt der Einzelne in der Folge einen Rechtsschutz. Die

⁵⁴ Ernst Wolfgang Böckenförde, *Staat, Gesellschaft, Freiheit, Studien zur Staatstheorie und zum Verfassungsrecht*, Frankfurt a. M. 1976, S. 60.

⁵⁵ Paul Kirchhof, *Die Erneuerung des Staates – eine lösbare Aufgabe*, Freiburg im Breisgau 2006, S. 23 f.

Wahrung bestimmter Grundfreiheiten war nicht bloß eine inner-, sondern auch zwischenstaatliche Angelegenheit geworden. Das begann schon im 19. Jahrhundert mit dem ethnischen Minderheitenschutz und wurde in der Folge auch auf andere Rechtsgebiete übertragen und so erweitert.

In diesem Zusammenhang sei auch an die Konferenz, heute Organisation für Sicherheit und Zusammenarbeit in Europa (KSZE, OSZE) mit ihren Schlussakte vom 1. August 1975, in Helsinki unter Vorsitz von Agostino Casaroli unterzeichnet, erinnert, in denen die Menschenrechte und Grundfreiheiten, einschließlich der Gedanken -, Gewissens -, Religions - und Überzeugungsfreiheit als Prinzip anerkannt wurden und seit der eine Intervention aus humanitären Gründen, die ein Teilnehmerstaat bei einem anderen für erforderlich erachtet, nicht mehr als a priori als Einmischung in die inneren Angelegenheiten eines Staates angesehen werden kann.⁵⁶ Dieser Fortschritt war wegweisend und begünstigend für die spätere Dissidentenbewegung, die zum Ende des Kommunismus und der Teilung Europas, führte, wozu Papst Johannes Paul II. viel beitrug.

Eigene und fremde Staaten konnten von Einzelnen und anderen Staaten zur Einhaltung der Menschenrechte belangt werden;⁵⁷ besonders sei auf das heute so aktuelle Asylrecht verwiesen.⁵⁸

IV.

1. Der Freiheitsbezug der Grundrechte

Die Wahrung der Menschenwürde führt auch zu einer Erweiterung und bisweilen Überschreitung des rechtlich Normierbaren, sie verlangt nämlich kulturelle, wirtschaftliche und soziale Voraussetzungen zu ihrer Achtung

⁵⁶ Siehe *Helmut Liedermann*, Konferenz über Sicherheit und Zusammenarbeit in Europa (KSZE), ein kontinuierlicher Prozess, in: *Pro Fide et Justitia*, Festschrift für Agostino Kardinal Casaroli zum 70. Geburtstag, hrsg. von Herbert Schambeck, Berlin 1984, S. 489 ff., bes. S. 492 und *Agostino Kardinal Casaroli*, Wegbereiter zur Zeitenwende, Letzte Beiträge, hrsg. von Herbert Schambeck, Berlin 1999, S. 35 ff.

⁵⁷ Dazu *Peter Fischer-Heribert Franz Köck*, Völkerrecht, das Recht der universellen Staatengemeinschaft, 6. Aufl., Wien 2004, S. 245 ff.

⁵⁸ Näher *Kay Hailbronner*, Der Staat und der Einzelne als Völkerrechtssubjekt, in: Michael Bothe, Rudolf Dolzer, Eckard Klein, Philip Kunig, Meinhard Schröder, Wolfgang Graf Vitzthum, Völkerrecht, 3. Auflage, S. 213 ff., Nr. 217 ff., bes. S. 230 ff., Nr. 284 ff. und *Herbert Schambeck*, Statement Österreich, in: *Zeitgemäßes Zuwanderung – und Asylrecht – ein Problem der Industriestaaten*, hrsg. von Klaus Stern, Berlin 2003, S. 201 ff.

und damit liberale, demokratische sowie soziale Grundrechte, die wieder mit unterschiedlichen Freiheitsbezügen, nämlich Freiheiten von, in und durch den Staat verbunden sind. Dabei möge man nicht den Unterschied im Freiheitsverständnis der USA und Europa übersehen. Das amerikanische Freiheitsverständnis geht von einer Freiheit vom Staat aus und ist auf eine staatsfreie Sphäre gerichtet; die Freiheit im europäischen Staat schließt hingegen auch insofern die Freiheit durch den Staat, vor dem man nicht mehr wie früher Angst hat, ein, als von ihm die Schaffung all jener Voraussetzungen erwartet wird, die zur Nutzung der Freiheit für erforderlich angesehen werden.

Im technologisierten Industriezeitalter ist es nämlich auch notwendig, dass der Einzelne diese Freiheiten nicht nur in verschiedenen Bezügen erschlossen erhält, sondern dass er sie auch als gesunder Mensch nutzen kann, was den inneren und den äußeren Umweltschutz⁵⁹ verlangt. Dies führt auch allgemein zu jener Verbundenheit, die Nicholas McNally speziell im Hinblick auf das englische Recht als „interplay“ zwischen Recht, Religion und Moral festgestellt hat.⁶⁰ Dabei kann dies zu unterschiedlichen Wertigkeiten aus der Sicht verschiedener Gebiete führen, wie z.B. im Sexualbereich, und sich auch ein Bereiche überschreitender Einfluss ergibt. Paul Kirchhof weist in diesem Zusammenhang mit Recht darauf hin, dass „die Rechtsbegriffe des Gewissens, des guten Glaubens, der Ehrbarkeit, der Nächstenliebe und Barmherzigkeit, der Vorwurf des unsozialen Verhaltens, damit das dritte Ideal der modernen Demokratie, die Brüderlichkeit, und die moderne Sozialstaatlichkeit ... in dieser christlich geprägten Rechtsordnung ihre Wurzeln“⁶¹ haben.

2. Das Reiben der Grundrechte

Trotz dieser gemeinsamen Wurzeln in der Menschenwürde und ihrem christlichen Ursprung kann es zu einem *Reiben der Grundrechte* kommen, wie etwa dem Umweltschutz als existentielltem Grundrecht mit dem Schutz

⁵⁹ Näher *Herbert Schambeck*, Humanitärer und ökologischer Umweltschutz als Auftrag für die staatliche und internationale Ordnung, in: *Technologische Entwicklung im Brennpunkt von Ethik, Fortschrittsglauben und Notwendigkeit*, hrsg. Von Hans Giger, Hermann Lübke, Herbert Schambeck und Hugo Tschirky, Bern 2002, S. 347 ff.

⁶⁰ *Nicholas McNally*, a.a.O., S. 3.

⁶¹ *Kirchhof*, Die Idee der Menschenwürde als Mitte der modernen Verfassungsstaaten, S. 9.

des Eigentums als wirtschaftlichem Grundrecht oder zwischen einem sozialen Grundrecht und der Unternehmerfreiheit. Soll die Marktwirtschaft auch eine soziale sein, was vielfach durch Verfassungen angestrebt wird, gilt es, dies zu beachten!

Joseph Kardinal Ratzinger hat schon darauf hingewiesen, dass es „konkurrierende Menschenrechte“⁶² gibt, „etwa im Fall des Gegeneinanders zwischen Freiheitswillen der Frau und dem Lebensrecht des ungeborenen Kindes. Was Diskriminationsverbot heißt, wird immer mehr ausgeweitet und so kann das Diskriminationsverbot immer mehr zur Einschränkung der Meinungs-, ja der Religionsfreiheit werden.“⁶³

3. Grundrechte und Grundpflichten

Im Hinblick auf die *soziale Natur des Menschen*, die wegweisend für seine Persönlichkeitsentfaltung und mit Grundlage für die Gesellschaft sowie den Staat ist, sei nicht übersehen, dass die Würde des Menschen sowohl ihren *Schutz in Grundrechten* wie auch ihre *Verwirklichung in Grundpflichten* verlangt. In den päpstlichen Lehräußerungen wurde dieser Zusammenhang auch verdeutlicht. So hat Papst Johannes XXIII. 1963 in „*Pacem in terris*“ (Nr. 27) auf die „unauflösliche Beziehung zwischen Rechten und Pflichten in derselben Person“ hingewiesen, betont Papst Paul VI. 1971 in „*Octogesima adveniens*“ (Nr. 24) „den unlöslichen Zusammenhang zwischen den eigenen Rechten und den Pflichten gegenüber den anderen“ und Joseph Kardinal Ratzinger 2004 es „müsste heute die Lehre von den Menschenrechten um eine Lehre von den Menschenpflichten und von den Grenzen des Menschen ergänzt werden.“⁶⁴

Gerade der moderne Sozialstaat mit seiner Mehrzweckeverwendung verlangt die ausgewogene Erfassung von Rechten und Pflichten zur Wahrung der Menschenwürde. Das Verlangen an den Staat und die Leistung für den Staat sollten sich die Wage halten!

Im positiven Recht haben diese Grundpflichten unterschiedliche Ausprägungen erhalten. In diesem Zusammenhang sei in historischer Sicht auf

⁶² *Joseph Ratzinger*, Europa in der Krise der Kulturen, in: Marcello Pera – Joseph Ratzinger, Ohne Wurzeln. Der Relativismus und die Krise der europäischen Kultur, Augsburg 2005, S. 70.

⁶³ *Ratzinger*, a.a.O.

⁶⁴ *Joseph Ratzinger*, Was die Welt zusammenhält. Vorpolitische moralische Grundlagen eines freiheitlichen Staates, in: Jürgen Habermas – Joseph Ratzinger, Dialektik der Säkularisierung. Über Vernunft und Religion, Freiburg Basel Wien 2005, S.51.

die Verfassung Frankreichs von 1795 verwiesen, die neben der Erklärung der Rechte auch eine Erklärung der Pflichten der Bürger enthielt.

Die Erklärung der Grundrechte hat staatlich und international eine genauere und breitere Ausführung erhalten als die der Pflichten, zu diesen sind vor allem die Wahl -, Wehrdienst - und Steuerpflicht zu zählen. Im Zuge der Entwicklung zum Wirtschafts - und Sozialstaat ist die Sozialpflichtigkeit der Wirtschaftsrechte, insbesondere des Eigentums deutlich geworden. Sozialpflichtigkeit von Grundrechten und soziale Grundrechte bestehen mit den klassischen Grundrechten, wie es die liberalen und demokratischen Grundrechte sind, neben - und miteinander; es kommt aber darauf an, dass diese in einer dem gemeinsamen Menschenbild angepassten Weise aufeinander abgestimmt werden, was besonders in Bezug auf das Verhältnis von Grundrechtswert und Grundrechtsform wichtig ist.⁶⁵

Die *Menschenwürde* verlangt einen *Schutz*, der *zeit - und ortsbedingt* ist und somit von Staat zu Staat verschieden sein kann. Das zeigt sich in den Bereichen des öffentlichen Rechts und der politischen Wissenschaften aus verschiedenen Erdteilen, die in den einzelnen Kontinenten nicht eine gleiche, sondern verschiedene kulturelle, politische, rechtliche, wirtschaftliche und soziale Entwicklung nehmen, die sich auch im Verfassungsrecht und mit diesem in der gesamten Rechtsordnung jeweils ausdrückt.

4. Der Rechtsschutz des Lebens

Neben diesen Unterschiedlichkeiten, die allerdings ein *Mindestmaß an Rechtsschutz der Menschenwürde* zu achten und bewahren haben, gibt es für alle Verfassungsstaaten sich gleich stellende Notwendigkeiten des Rechtsschutzes der Würde des Menschen *von Beginn des Lebens mit der Zeugung bis zum Heimgang durch Tod*,⁶⁶ was die *Abtreibung*, das *Klonen*,⁶⁷ die *Todesstrafe* und die *aktive Sterbehilfe* in gleicher Weise verbietet.

⁶⁵ Siehe dazu u.a. *Herbert Schambeck*, Grundrechte und Sozialordnung, Gedanken zur europäischen Sozialordnung, Berlin 1969, bes. S. 95 ff. und S. 120 ff.; *derselbe*, Die Grundrechte im demokratischen Verfassungsstaat, S. 493 ff. und *Friedrich Koja*, Allgemeine Staatslehre, Wien 1993, S. 344 f.

⁶⁶ Beachte *Papst Johannes Paul II.*, Respekt vor der Menschenwürde in jeder Phase des Lebens, L'Osservatore Romano, Wochenausgabe in deutscher Sprache vom 4. März 2005, 35. Jahrgang, Nr. 9, S. 7.

⁶⁷ Siehe *Markus Hengstschläger*, Das ungeborene menschliche Leben und die moderne Biomedizin. Was kann man, was darf man?, Wien 2001; *Juan de Dios Vial Correa-Elio Sgreccia*, The dignity of human procreation and reproductive technologies: anthropological

Unter Sterbehilfe ist die Hilfe oder der Beistand einem Sterbenden gegenüber gemeint. Als aktive Sterbehilfe stellt sie insofern eine Hilfe zum Sterben dar, als sie entweder das Leben des Sterbenden direkt verkürzt, um dessen Leiden zu beenden; oder als indirekte Sterbehilfe, seine Schmerzen zu lindern sucht, ohne dabei die mögliche Verkürzung des Lebens direkt zu wollen. Von dieser Hilfe beim Sterben ist die passive Sterbehilfe zu unterscheiden; sie besteht in einem Unterlassen von lebensverlängernden Maßnahmen bei einem Sterbenden.

Während *direkte Sterbehilfe* als Tötung abzulehnen ist, kann die indirekte Sterbehilfe akzeptiert werden, wenn die Schmerzlinderung ethisch erlaubt ist, zwischen der Schmerzlinderung und der Lebensverkürzung ein annehmbares Verhältnis besteht und die Lebensverkürzung nur eine nicht gewollte Nebenfolge ist.

Die *passive Sterbehilfe* ist ethisch erlaubt, wenn die unterlassenen lebensverlängernden Maßnahmen ein für den Sterbenden subjektiv nicht mehr zu ertragendes Leiden in sinnloser Weise nur verlängern würden, das dann zu erwartende Dasein menschenunwürdig wäre und der Sterbende selbst eine Lebensverlängerung nicht wünscht, dieses Verlangen aber vernünftigerweise selbst nicht mehr stellen kann.

5. Die Bedeutung der Ehe und Familie

Der Rechtsschutz der Menschenwürde lässt auch in unserer Zeit ihre Grenzen erkennen, vor allem dort, wo das positive Recht die Rechtswege aufzeigt und eröffnet, ihr nutzendes Beschreiten aber ein freiwilliges in *Selbstverantwortung* ist, wie etwa, was die Grundlagen der Gesellschaft und mit ihr des Staates betrifft, nämlich die *Ehe* als eine auf Dauer bezogene Lebensgemeinschaft zweier Menschen verschiedenen Geschlechts und die *Familie*. Diese Grundlagen sind in vielen Teilen nicht mehr gegeben. Die Zahl der alleinerziehenden, alleinverdienenden, oft teilzeitbeschäftigten Mütter nimmt ebenso zu wie die der Scheidungen und Lebenspartnerschaften auf Zeit und die Partnerschaft gleichgeschlechtlicher Personen.

and ethical aspects. Proceedings of the tenth assembly of the Pontifical Academy for Life, Vatican 2004 sowie *Jens Kersten*, Das Klonen von Menschen, eine verfassungs-, europa- und völkerrechtliche Kritik, Tübingen 2004 und die Deklaration der UNO-Generalversammlung vom 9. März 2005, welche jegliches Klonen mit der Menschenwürde unvereinbar erklärte; dazu Kathpress Tagesdienst Nr. 57 vom 9.3.2005, S. 13 f.

Als Konsultor des Päpstlichen Rates für die Familie habe ich schon am 19. November 2004 bei der 16. Plenarversammlung des Päpstlichen Rates für die Familie im Vatikan darauf hingewiesen, wie sehr es auch die Würde des Menschen verletzt, wenn sich bei Ehe und Familie Gewissensanspruch und Rechtspflicht, die sich ergänzen sollten, es aber leider nicht mehr ausreichend tun, widersprechen. So erweist es sich nämlich nur all zu oft, dass nicht alles, was der Ordnung würdig wäre, auch des positiven Rechts fähig ist; z.B. sich auf einen Mitmenschen verlassen zu können, auf ein menschliches Miteinander, auch auf Liebe zu vertrauen sowie ein Ja zum Kind in Ehe und Familie zu sagen. Dies ist auch *in Österreich*⁶⁸ nicht der Fall, wo 43 von 100 geschlossenen Ehen geschieden werden; 88 Prozent all dieser Scheidungen erfolgten in beiderseitigem Einvernehmen, dabei waren 36 Prozent dieser geschiedenen Ehen kinderlos!

Solche *Situationen des Lebens* sind gleichzeitig eine wichtige *pastorale Aufgabe* und ein großes *soziales Problem*. Deshalb war es verdienstvoll, dass Mary Ann Glendon am 7. März 2005 in der 49. Sitzung des Ausschusses der UNO über die Stellung der Frau in New York darauf hinwies, dass die hohe Scheidungsrate und die Mutterschaft alleinstehender Frauen „neue Formen der Armut“ und „neue Bedrohungen für das menschliche Leben und seine Würde“ erzeugen. Auch das 2004 vom Päpstlichen Rat „Justitia et Pax“ herausgegebene Kompendium der Soziallehre der Kirche weist auf den Zusammenhang von Selbst – und Sozialverantwortung, Ehe, Familie, Staat und Völkergemeinschaft hin.⁶⁹

Wir sind gewöhnt, die Wahrung der Menschenwürde und ihren Rechtsschutz mit gerichtlicher Prüfung vor allem im Verhältnis von Gesetzgebung und Vollziehung zu beachten, dass kein Gerichtsurteil und Verwaltungsbescheid grundrechtswidrig ist. Die auf Hans Kelsen zurückgehende, von Österreich ausgehende Normenkontrolle der Verfassungsgerichte bemüht sich um diese Verfassungsmäßigkeit allen Staatshandelns.

Die Würde des Menschen stellt sich als Problem aber schon in der Ich- und Du-Begegnung sowie in der Beziehung zweier Menschen sowie dem Miteinander im privaten und öffentlichen Leben, in dem oft Formlosigkeit nur eine milde Form des Terrors ist!

⁶⁸ Beachte *Herbert Schambeck*, Zur Bedeutung von Ehe und Familie für Gesellschaft und Staat (ein österreichischer Beitrag), *Familia et Vita*, Vatikan Anno IX, Nr. 3 2004/1 2005, S. 185 ff.

⁶⁹ Siehe Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Vatican 2004, bes. S. 123 ff, S. 217 ff.

V.

1. *Die individuelle und soziale Seite der Menschenwürde*

Die *Wahrung der Menschenwürde beginnt in individuellen Bereichen und setzt sich im Sozialen fort*. Die Menschen sollten sich als Personen untereinander so achten, wie es im Verhältnis von Einzelmensch und Staat in einer ausgewogenen Verfassungsordnung von Grundrechten und Grundpflichten wünschenswert ist. Dazu treten noch neben den *Ansprüchen des Einzelmenschen* an den Staat auch solche von diesem *auf internationaler Ebene*, wie das Individualbeschwerdeverfahren der Europäischen Menschenrechtskonvention vom 4. November 1950, und die eines Staates gegenüber den anderen, etwa als Schutzmacht zum Minderheitenschutz oder nach Korb III der Europäischen Sicherheitskonferenz zur Wahrung der Menschenrechte auf.

Auf diese Weise sind heute die *Menschenrechte Grundlage der Staatsordnung und Völkergemeinschaft, Beurteilungsmaßstab* im öffentlichen Recht und auch der politischen Wissenschaft geworden. Der Verfassungsstaat gibt die Rechtswege an, ihre Nutzung und ihr Gebrauch aber ist eine jeweilige Entscheidung auf dem Weg der Verfassungskonkretisierung.

Das *Verfassungsrecht* ist, wie schon Adolf Merkl sagte, *kodifizierte Politik* und die modernen Verfassungen sind, wie es Kirchhof ausdrückt, „das Gedächtnis der Demokratie, das die Mindestanforderungen menschlichen Zusammenlebens rechtsverbindlich regelt“.⁷⁰

2. *Die Gefahr des Terrors*

Neben dem Rechtsleben wird aber in zunehmendem Maße das öffentliche Leben in Staaten sowie im internationalen Leben durch eine überraschende Gewaltausübung belastet, die mit der Vorhersehbarkeit und Berechenbarkeit auch der kontroversiellen Politik, wie sie durch den Krieg erfahrbar ist, nicht vergleichbar ist, nämlich der bereits genannte *Terror*.⁷¹ Seine Dimensionen erreichen ein Ausmaß, das bisher nicht vorstellbar war und die Menschenwürde in sehr tragischer Form geradezu vernichtend verletzt. Papst Benedikt XVI. hat auf „diese Gefahr durch den organisierten

⁷⁰ Kirchhof, Die Erneuerung des Staates, S. 29.

⁷¹ Dazu Eckhart Klein, Christian Hacker, Bernd Grzeszick, Der Terror, der Staat und das Recht, mit einem Beitrag hrsg. von Josef Isensee, Berlin 2004.

Terrorismus, der sich inzwischen weltweit ausbreitet“,⁷² hingewiesen und betont: „Die Ursachen dafür sind zahlreich und komplex; nicht zuletzt gehören dazu die mit irrigen religiösen Auffassungen vermengten ideologischen und politischen Gründe“.⁷³

Im Unterschied zum Krieg mit dem *ius in bello*⁷⁴ erkennt die Herrschaft des Terrorismus keine rechtlichen Regelungen; das Gegenteil ist der Fall. Je unvorhersehbarer, unberechenbarer und brutaler der Terror zum Einsatz kommt, umso erfolgreicher erscheint er. Er ist Grenzen der Staaten und Kontinente übersteigend. Durch den Terror wird die Menschenwürde mit Furcht und Schrecken gefährdet sowie verletzt und es wird versucht, Menschen zu töten, die selbst unschuldig sind.

Die Gründe für den Terrorismus sind unterschiedlich, sie können partei- oder machtpolitische Ansprüche sein oder auf religiöse, weltanschauliche und ideologische Einstellungen zurückzuführen sein. So wie einstens der Jakobinismus die verzerrt radikale Form der Demokratie war, ist der Terrorismus eine radikalisierte Form der politischen Auseinandersetzung mit dem Pluralismus in Gesellschaft und Staat, die in jeder Weise abzulehnen ist. Auch das Compendium der kirchlichen Soziallehre verurteilt den Terrorismus in „absolutester Weise“!⁷⁵ Er sät Hass, Tod und Rache und zeige eine „totale Verachtung“ des menschlichen Lebens. Terrorakte können durch keine Motivation gerechtfertigt werden; sie sind ein Angriff auf die gesamte Menschheit. Aus diesem Grund gibt es nach dem Compendium ein Recht auf Verteidigung, das aber nicht auf das gesamte Volk ausgedehnt werden darf, aus dem etwa eine Terrorgruppe stammt.

Es ist im Lichte der Eschatologie der Geschichte wirklich bedenkenswert, dass dieser Terrorismus nach dem Ende des Kommunismus und der Teilung Europas sowie des sogenannten kalten Krieges die Freiheit, Sicherheit und Würde des Menschen bedroht, und das in einer Zeit, in der im Jahr 2004 im Compendium der Soziallehre der Kirche in Erinnerung gerufen wird: „Die letzte Quelle der Menschenrechte findet sich nicht im bloßen Willen der menschlichen Wesen, nicht in der Wirklichkeit des Staates, nicht

⁷² Ansprache *Papst Benedikt XVI.* am 9. Januar 2006, Der Einsatz für den Frieden eröffnet neue Hoffnungen, Neujahrsempfang für das beim Heiligen Stuhl akkreditierte Diplomatische Korps, *L'Osservatore Romano*, Wochenausgabe in deutscher Sprache, 20. Januar 2006, Nr. 3, S.7.

⁷³ *Papst Benedikt XVI.*, a.a.O.

⁷⁴ Dazu *Fischer-Köck*, S. 413 ff.

⁷⁵ Compendium, S. 288 ff., Nr. 513 ff.

in der öffentlichen Gewalt, sondern im Menschen selbst und in Gott, seinem Schöpfer“.⁷⁶

3. *Das Erfordernis der Globalisierung des Schutzes der Menschenwürde*

Die erneute Einsicht in diese Glaubenswahrheit der Gottesebenbildlichkeit und der Würde der Menschen wäre ein wegweisender Grund, um über die vielfach auch jetzt durch den Terrorismus gefährdete Würde des Menschen in einer immer mehr global werdenden Welt zu einer *Globalisierung des Schutzes der Menschenwürde* zu gelangen. Es wäre aber ebenso tragisch, wenn die Außerachtlassung des Rechts durch den Terrorismus in seiner Bekämpfung auch zu einer weiteren Außerachtlassung des Rechts, vor allem der Grundrechte, bei der Terrorbekämpfung und beim Strafvollzug führen würde. Vielmehr wäre es erstrebens- und begrüßenswert, könnten die Schutzmaßnahmen des Staates auch in der Kriminalistik im Rahmen des Möglichen in einer den Menschenrechten angepassten Weise weiterentwickelt und *weder bei den Tätern noch den Verfolgern des Terrorismus ein bloßes Recht des Stärkeren* vorherrschend werden. Auch aus der Verpflichtung zur Wahrheit lehnt Papst Benedikt XVI. das Recht des Stärkeren ab: „Wer sich zur Wahrheit verpflichtet, muss das Recht des Stärkeren ablehnen, das von der Lüge lebt und das so oft, auf nationaler und internationaler Ebene, die Geschichte der Menschen mit Tragödien überzogen hat“.⁷⁷

4. *Kein Naturrecht der Stärkeren*

Das sogenannte *Naturrecht des Stärkeren*, wie es als erstes von Gorgias, Kallikles und Thrasymachos⁷⁸ im 5. Jahrhundert vor Christus vertreten wurde, sollte im 21. Jahrhundert nach Christus *keine Renaissance* erleben, vielmehr sollte die weltweite Gefährdung der Menschenwürde die Notwendigkeit erkennen lassen, in einer immer enger werdenden Zusammenarbeit der Staaten und der internationalen Organisationen einen *Weltrechtsstaat* entstehen zu lassen. Dies verlangt zum Schutz der Menschenwürde auf

⁷⁶ Compendium, S. 85, Nr. 153; Cf. Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, 27: AAS58 (1966), 1047-1048; Catechism of the Church, 1930. Cf. John XXIII, Encyclical Letter *Pacem in Terris*: AAS55 (1963) 259; Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, 22: AAS58, (1966), 1079.

⁷⁷ *Papst Benedikt XVI.*, a.a.O.

⁷⁸ Siehe *Verdroß*, Abendländische Rechtsphilosophie, S. 19 ff.

inner- und überstaatlicher Ebene einen Polizei – und Rechtsschutz, etwa in Form einer Einsatzschutztruppe, sowie entsprechende im Voraus denkende und strebende Nachrichten – sowie Sicherheitsdienste. Daneben wäre es aber begrüßenswert, wenn in – und außerhalb der Staaten in der Auseinandersetzung „die grundlegenden Werte des Soziallebens“, die das Sozialkompendium der Kirche mit „Wahrheit, Freiheit, Gerechtigkeit und Liebe“ angibt,⁷⁹ nicht verloren gehen und eine neue Form der Konflikt- und Streitkultur entsteht, die zu einem modernen *Bonum commune humanitatis* beiträgt. Die Verantwortung ist hierfür sehr groß. Es wäre nämlich tragisch, würde es zu einem Weltkrieg der Kulturen kommen; Samuel P. Huntington hat der Problematik schon 1996 sein Buch „The Clash of Civilisations“ gewidmet.⁸⁰ Die Bewältigung dieses Problems, bei dem der Mensch entweder Subjekt oder Objekt für das Recht und die Politik ist, verlangt aber in einem großen Maß gegenseitiges Verstehen und Toleranz, nicht als Gleichgültigkeit sondern als Einsicht.

⁷⁹ Compendium, S. 113, Nr. 197; Cf. Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, 26: AAS58 (1966), 1046-1047; John XXIII, Encyclical Letter *Pacem in Terris*: AAS55 (1963), 265-266.

⁸⁰ *Samuel P. Huntington, The Clash of civilisations*, New York 1996.

PART III

SOCIOLOGY AND PSYCHOLOGY

PERSONS AND ULTIMATE CONCERNS: WHO WE ARE IS WHAT WE CARE ABOUT

MARGARET S. ARCHER

The sociological problem of conceptualising the person is how to capture someone who is partly formed by their sociality, but also has the capacity to transform their society in some part. The difficulty is that social theorising has oscillated between these two extremes. On the one hand, Enlightenment thought promoted an 'undersocialised' view of man,¹ one whose human constitution owed nothing to society and was thus a self-sufficient 'outsider' who simply operated in a social environment. On the other hand, there is a later but pervasive 'oversocialised' view of man, whose every feature, beyond his biology, is shaped and moulded by his social context. He thus becomes such a dependent 'insider' that he has no capacity to transform his social environment.

Instead, if we are to understand and model the human being as *both* 'child' and 'parent' of society there are two requirements. Firstly, social theory needs a concept of man whose sociality does make a vital contribution to the realisation of his potential *qua* human being. Secondly, however, it requires a concept of man who does possess sufficient relatively autonomous properties and powers that he can reflect and act upon his social context, along with others like him, in order to transform it.

It is argued that both the 'undersocialised' and the 'oversocialised' models of humankind are inadequate foundations for social theory because they present us with either a self-sufficient *maker* of society, or a supine social product who is *made*.

¹ 'Man' and especially 'rational man' was the term current in Enlightenment thinking. Because it is awkward to impose inclusive language retrospectively and distracting to insert inverted commas, I reluctantly abide with the term 'man', as standing for humanity, when referring to this tradition, its heirs, successors and adversaries.

The preliminary part of this paper seeks to show how these two defective models of the human being have sequentially dominated social theory since the Enlightenment, and to indicate their deficiencies for social theorising. The bulk of the paper attempts to substitute a better conception² of man from the perspective of social realism. This re-conceptualisation grants humankind (i) temporal priority, (ii) relative autonomy, and (iii) causal efficacy, in relation to the social beings that they become and the powers of transformative reflection and action which they bring to their social context – powers that are independent of social mediation.

MODERNITY'S MAN AND SOCIETY'S BEING

Two unsatisfactory models of the human being have sequentially dominated social theorising since the Enlightenment. These are mirror images of each other, since the one stresses complete human self-sufficiency, whilst the other emphasises utter social dependency.

In cameo, the Enlightenment had allowed the 'death of God' to issue in titanic Man. Thus, the secularisation of modernity was accompanied by an endorsement of human self-determination: of people's powers to come to know the world, master their environment and thus to control their own destiny as the 'measure of all things'. Not only does *'Modernity's Man'* stand outside nature as its master, he also stands outside history as the lone individual whose relations with other beings and other things are not in any way constitutive of his self but are merely contingent accretions, detachable from his essence. Thus the modern self is universally pre-given.

As the heritage of the Enlightenment tradition, *'Modernity's Man'* was a model which had stripped-down the human being until he or she had one property alone, that of instrumental rationality, namely the capacity to maximise his preferences through means-ends relationships and so to optimise his utility. Yet, this model of *homo economicus* could not deal with our normativity or our affectivity, both of which are intentional, that is they are 'about' relations with the various orders of reality: the natural, practical, social and transcendental. These relationships could not be allowed to be, even partially, constitutive of who we are. Instead, the lone, atomistic and

² All arguments presented here are developed more fully in Margaret S. Archer, *Being Human: The Problem of Agency*, Cambridge University Press, Cambridge, 2000.

opportunistic bargain-hunter stood forth as the impoverished model of man.

On the one hand, some of the many things social with which this model could not deal were phenomena like voluntary collective behaviour, leading to the creation of public goods, or normative behaviour, when *homo economicus* recognised his dependence upon others for his own welfare, and, finally, his expressive solidarity and willingness to share. On the other hand, one of the most important things with which this model cannot cope is the human capacity to transcend instrumental rationality and to have 'ultimate concerns'. These are concerns that are not a means to anything beyond them, but are *commitments which are constitutive of who we are* and thus the basis of our personal identities. It is only in the light of our 'ultimate concerns' that our actions are ultimately intelligible. None of this caring can be impoverished by reducing it to an instrumental means-ends relationship, which is presumed to leave us 'better off' relative to some indeterminate notion of future 'utility'.³

Nevertheless, this was the model of man which was eagerly seized upon by social contract theorists in politics, Utilitarians in ethics and social policy, and liberals in political economy. *Homo Economicus* is a survivor. He is also a colonial adventurer and, in the hands of Rational Choice theorists, he bids to conquer social science in general. As Gary Becker outlines this mission, 'The economic approach is a comprehensive one that is applicable to all human behaviour'.⁴

However, the rise of postmodernism during the last two decades represented a virulent rejection of '*Modernity's Man*', which then spilt over into the dissolution of the human subject and a corresponding inflation of the importance of society. This displacement of the human subject and this celebration of the power of social forces to shape and to mould, reaches back to the Durkheimian view of the human being as 'indeterminate material', at least in the *The Rules of Sociological Method*. Nowadays, in Lyotard's words, 'a *self* does not amount to much',⁵ and in Rorty's follow-up, 'Socialisation ...

³ For a critique of Rational Choice Theory's 'model of man', see Margaret S. Archer, 'Homo Economicus, Homo Sociologicus and Homo Sentiens', in M.S. Archer and J.Q. Tritter (eds.), *Rational Choice Theory: Resisting Colonization*, Routledge, London, 2000.

⁴ G. Becker, *The Economic Approach to Human Behaviour*, Chicago University Press, 1976, p. 8. It seems regrettable that Becker termed this 'the economic approach' because of the erroneous implication that all economists endorse it.

⁵ J-F. Lyotard, *The Postmodern Condition*, Minneapolis, University of Minnesota Press, 1984, p. 15.

goes all the way down'.⁶ To give humankind this epiphenomenal status necessarily deflects all real interest onto the forces of socialisation. People are indeed perfectly uninteresting if they possess no personal powers which can make a difference.

The de-centring of the Enlightenment concept of the human being thus leads directly to an actual dissolution of the self, which becomes kaleidoscopically shaped by the flux of historico-cultural contingencies. References to the human person become indefinite, since contingency deprives him or her of any properties or powers which are intrinsic to humankind and inalienable from it. Consequently, to Foucault, 'Man would be erased, like a face drawn in sand at the edge of the sea.'⁷

Postmodernism has massively reinforced the anti-realist strand of idealism in social theory and thus given ballast to Social Constructionism. This is the generic view that there are *no* emergent properties and powers pertaining to human persons, namely ones which exist in between human beings as organic parcels of molecules and humankind as generated from a network of social meanings.⁸ The model of '*Society's Being*' is Social Constructionism's contribution to the debate, which presents all our human properties and powers, apart from our biological constitution, as the gift of society. From this viewpoint, there is only one flat, unstratified, powerful particular, the human person – who is a site or literally a point of view. Beyond that, our selfhood is a grammatical fiction, a product of learning to master the first-person pronoun system, and thus quite simply a theory of the self which is appropriated from society. Constructionism thus elides the *concept of self* with the *sense of self*. We are nothing beyond what society makes us, and it makes us what we are through our joining society's conversation. *Society's Being* thus impoverishes humanity, by subtracting from our human powers and accrediting all of them – selfhood, reflexivity, thought, memory, emotionality and belief – to society's discourse.

What makes human subjects act now becomes an urgent question because the answer cannot ever be given in terms of people themselves; they have neither the human resources to pursue their own aims nor the

⁶ Richard Rorty, *Contingency, Irony and Solidarity*, Cambridge University Press, 1989, p. 185.

⁷ M. Foucault, *The Order of Things*, New York, Random House, 1970, p. 387.

⁸ The best example of this model is provided by the work of Rom Harré. The leitmotif of his social constructionism is the following statement: 'A person is not a natural object, but a cultural artefact'. *Personal Being*, Basil Blackwell, Oxford, 1983, p. 20.

capacity to find reasons good if they are not in social currency. This means that to the Constructionists people can only be moved by reasons *appropriated* from society and are thus effectively condemned to being *conventionalists*. Constructionists are unable to explain why some people seek to replace society's rules and are unwilling to allow that this originates in people themselves – from their personal concerns that are forged in the space *between* the self and reality as a whole.

THE NEED FOR REALISM'S SELF

From the realist point of view, the central deficiency of these two models is their basic denial that *the nature of reality* as a whole makes any difference to the people that we become or even to our becoming people. *Modernity's Man* is preformed and his formation, that is the emergence of his properties and powers, is not dependent upon his experiences of reality. Indeed, reality can only come to him filtered through an instrumental rationality that is shackled to his interests – one whose own genesis is left mysterious. Preference formation has remained obscure, from the origins of the Humean 'passions' to the goals optimised by the contemporary rational chooser. The model is *anthropocentric* because man works on reality as a whole but reality does not work upon man, except by attaching risks and costs to the accomplishment of his pre-formed designs. In short, he is closed against any experience of reality which could make him fundamentally different from what he already is.

Similarly, *Society's Being* is also a model which forecloses direct interplay with most of reality. Here the whole of reality comes to people sieved through one part of it, 'society's conversation'. The very notion of being selves is merely a theory appropriated from society and what people make of the world is a matter of permutations upon their appropriations. Again this model cuts man off from any experience of reality itself, one which could make him fundamentally different from what social discourse makes of him. Society is the gatekeeper of reality and therefore all that we become is society's gift because it is mediated through it.

What is lost, in both versions, is the crucial notion of experience of reality; that the way matters are can affect how we are. This is because both anthropocentrism and sociocentrism are two versions of the 'epistemic fallacy', where what reality is taken to be – courtesy of our instrumental rationality or social discourse – is substituted for reality itself. Realism cannot

endorse the 'epistemic fallacy' and, in this connection, it must necessarily insist that what exists (ontologically) has a regulatory effect upon what we make of it and, in turn, what it makes of us. These effects are independent of our full discursive penetration, just as gravity influenced us and the projects we could entertain long before we conceptualised it (epistemologically).

Relations between humanity and reality are intrinsic to the development of human properties which are *necessary* conditions of social life itself. Thus, I am advancing a transcendental argument for the necessity of a 'sense of self' to the existence of society. The continuity of consciousness, meaning a continuous 'sense of self', was first put forward by Locke.⁹ To defend it entails maintaining the crucial distinction between the evolving *concept* of self (which is indeed social) and the universal *sense* of self (which is not). This distinction has been upheld by certain anthropologists, like Marcel Mauss¹⁰ to whom the universal sense of 'the "self" (Moi) is everywhere present'. This constant element consists in the fact that 'there has never existed a human being who has not been aware, not only of his body but also of his individuality, both spiritual and physical'.¹¹ However, there has been a persistent tendency in the social sciences to absorb the *sense of self* into the *concept of self* and thus to credit what is universal to the cultural balance sheet.

The best way of showing that the distinction should be maintained is a demonstration of its necessity – i.e. that a *sense of self* must be distinct from social variations in *concepts of selves* because society could not work without people who have a continuity of consciousness. The demonstration consists in showing that for anyone to appropriate social expectations it is necessary for them to have a sense of self upon which these impinge, such

⁹ Locke put forward a definition which has considerable intuitive appeal, such that a person was 'a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing in different times and places' (*Essay II*, xxvii, 2). From Bishop Butler onwards, critics have construed such continuity of consciousness exclusively in terms of memory and then shown that memory alone fails to secure strict personal identity. See, for example, Bernard Williams, *Problems of the Self*, Cambridge University Press, Cambridge, 1973. A defence of a modified neo-Lockean definition is provided by David Wiggins, 'Locke, Butler and the Stream of Consciousness: and Man as a Natural Kind', *Philosophy*, 51, 1976, which preserves the original insight.

¹⁰ Marcel Mauss, 'A category of the human mind: the notion of person; the notion of self', in M.Carrithers, S.Collins and S.Lukes (eds), *The Category of the Person*, Cambridge University Press, Cambridge, 1989.

¹¹ *Ibid.*, p. 3.

that they recognise what is expected of them (otherwise obligations cannot be personally appropriated).

Hence, for example, the individual Zuni has to sense that his two given names, one for Summer and one for Winter, apply to the *same* self, which is also the rightful successor of the ancestor who is held to live again in the body of each who bears his names. Correct appropriation (by the proper man for all seasons) is dependent upon a continuity of consciousness which is an integral part of what we mean by selfhood. No generalised social belief in ancestral reincarnation will suffice; for unless there is a self which (pro)claims *I am that ancestor*, then the belief which is held to be general turns out to be one which has no actual takers! Nor is this situation improved by vague talk about 'social pressures' to enact roles or assume genealogical responsibilities. On the contrary, this is incoherent for it boils down to meaning that everyone knows what roles should be filled but that no-one has enough of a sense of self to feel that these expectations apply to them. The implication for society is that nothing gets done. For without selves which sense responsibilities to be their own and which also own expectations, the latter have all the force of the complaint that 'someone ought to do something about it'. Thus no version of socialisation theory can work with 'indeterminate material'. Human beings have to be determinate in this one way at least, that of acknowledging themselves to be the same beings over time. In other words, Zuni society relies upon a 'sense of self', even though, concepts of the self, within Zuni culture, are unlike ours.

To reinforce this transcendental argument, it should be noted that the two impoverished sociological models of the person, examined earlier, are also dependent upon a continuity of self-consciousness – of which they give no account. '*Society's Being*' needs this sense of self in order for a subject to know that social obligations pertain to her, rather than being diffuse expectations, and that when they clash it is she who is put on the spot and has to exercise a creativity which cannot be furnished by consulting the discursive canon. Unscripted performances, which hold society together, need an active subject who is enough of a self to acknowledge her obligation to write her own script to cover the occasion. Similarly, this continuous sense that we are one and the same being over time is equally indispensable to '*Modernity's Man*'. He needs this sense of self if he is consistently to pursue his preference schedule, for he has to know both that they are his preferences and also how he is doing in maximising them over time.

THE EMERGENCE OF PERSONAL IDENTITY

So far I have dealt with only one property of human subjects, namely their crucial ability to know themselves to be the *same being* over time because they have a continuous sense of self. However, they also become the bearers of further emergent properties and powers which are what make them recognisable as persons who respond differently to the world and act within it to change it. The next step is therefore to account for the emergence of the *personal identity* of agents, derived from their interactions with reality: its natural, practical, social and transcendental orders. However, such a *personal identity* depends upon the prior emergence of a *sense of self* because the latter has to secure the fact that the different orders of reality are all impinging on the same subject – who also knows it.

Fundamentally, *personal identity* is a matter of what we care about. This proposition is examined in exclusively secular terms in the present section. Constituted as we are, and the world being the way it is, humans ineluctably interact with the three different orders of natural reality: (i) nature, (ii) practice and (iii) the social. Humans necessarily have to sustain relationships with the natural world, work relationships and social relationships if they are to survive and thrive. Therefore, none of us can afford to be indifferent to the concerns that are embedded in our relations with all three natural orders.

Our emotional development is part of this interaction because emotions convey the import of different kinds of situations to us. In other words, the natural order, the practical order and the discursive order are the intentional objects to which three different clusters of emotions are related. Because emotions are seen as ‘commentaries upon our concerns’,¹² then emotionality is our reflexive response to the world. A distinct type of concern derives from each of these three orders. The concerns at stake are respectively those of ‘physical well-being’ in relation to the natural order, ‘performative competence’ in relation to the practical order and ‘self-worth’ in relation to the social order.

(i) In nature human beings have the power to *anticipate* what the import of environmental occurrences will be for their *bodily well-being*. Anticipation is the key to affect. We know what the bodily consequences of

¹² Margaret S. Archer, ‘Emotions as Commentaries on Human Concerns’, in Jonathan H. Turner (ed.), *Theory and Research on Human Emotions*, Elsevier, Amsterdam, 2004, p. 327-356.

fire or icy water will be and somatically this is projected as fear; were it not for anticipation, there would be nothing other than the pain of the event itself. It is from the interaction between environmental circumstances and embodied concerns that, because we are conscious beings, we can anticipate their conjunction and furnish ourselves with an emotional commentary. The relationship between properties of the environment and properties of our embodiment are sufficient for the emergence of emotions like fear, anger, disgust and relief.

(ii) In the practical order there is a distinct cluster of emotions which are emergent from our subject/object relations, which concern our *performative achievement*. These are the two strings made up of frustration, boredom and depression, on the one hand, and satisfaction, joy, exhilaration and euphoria, on the other. The task/undertaker relationship is quintessentially that of subject confronting object and what exactly goes on between them is known to the subject alone. Each task makes its own demands upon the undertaker, if a skilled performance is to be produced. It thus carries its own standards which give the undertaker either positive or negative feedback. In other words, the sense of failure and the sense of achievement are reflected emotionally. Positive emotions foster continued practice and negative affect predisposes towards its cessation.

(iii) In the social order we cannot avoid becoming a subject among subjects. With it come 'subject-referring properties' (such as admirable or shameful), which convey the import of social normativity to our own concerns in society. Generically, the most important of our social concerns is our *self-worth* which is vested in certain projects (career, family, community, club or church) whose success or failure we take as vindicating our worth or damaging it. It is because we have invested ourselves in these social projects that we are susceptible of emotionality in relation to society's normative evaluation of our performance in these roles. Our behaviour is regulated by hopes and fears, that is anticipations of social approbation/disapprobation. Simply to be a role incumbent has no such emotional implications – pupils who vest none of their self-worth in their school performance are not downcast by examination failure. Therefore, it is our own definitions of what constitutes our self-worth that determine which of society's normative evaluations matter enough for us to be emotional about them; few people are genuinely distressed about collecting a parking ticket.

However, a dilemma now confronts all people. It arises because every person receives all three kinds of emotional commentaries on their concerns, originating from each of the orders of natural reality – nature, prac-

tice and the social. Because they have to live and attempt to thrive in the three orders simultaneously, they must necessarily (in some way and to some degree) attend to all three clusters of commentaries. This is their problem. Nothing guarantees that the three sets of first-order emotions dovetail harmoniously. It follows that the concerns to which they relate cannot all be promoted without conflict arising between them. For example, an evasive response to the promptings of physical fear can threaten social self-worth by producing cowardly acts; cessation of an activity in response to boredom in the practical domain can threaten physical well-being; and withdrawal as a response to social shaming may entail a loss of livelihood. In other words, momentary attention to pressing commentaries may literally produce the instant gratification of concerns in one order, but it is a recipe for disaster. This is because we have no alternative but to inhabit the three natural orders simultaneously and none of their concerns can be bracketed-away for long. It is only on rather rare occasions that a particular commentary has semi-automatic priority, as in escaping a fire, undertaking a test or getting married.

Most of the time, each person has to work out their own *modus vivendi* in relation to the three natural orders. What this entails is striking a liveable balance within our trinity of inescapable naturalistic concerns. This *modus vivendi* can prioritise one of the three orders of reality, as with someone who is said to 'live for their art', but what it cannot do is entirely to neglect the other orders. Yet which precise balance we strike between our concerns and what precisely figures amongst an individual's concerns is what gives us our strict identity as *particular persons*. Our emergent *personal identities* are a matter of how we prioritise one concern as our 'ultimate concern' and how we subordinate but yet accommodate others to it, because, constituted as we are, we cannot be unconcerned about how we fare in all three orders of natural reality. Since these concerns can never be exclusively social and since the *modus vivendi* is worked out by an active and reflexive agent, *personal identity* cannot be the gift of society.

That we all have concerns in the natural, practical and social orders is unavoidable, but *which* concerns and in *what* configuration is a matter of human reflexivity. The process of arriving at a configuration, which prioritises our 'ultimate concerns' and accommodates others to them is both cognitive and affective. It entails both judgements of worth and an assessment of whether or not we care enough to be able to live with the costs and trade-offs involved. We are fallible on each count, but our struggle to establish a *modus vivendi* reflecting our commitments is an active process of delibera-

tion that takes place through our reflexive 'internal conversations'. In these we 'test' our potential or ongoing commitments against our emotional commentaries, which tell us whether we are up to living this or that committed life. Because the commentaries will not be unanimous, the inner conversation involves evaluating them, promoting some and subordinating others, such that the combination of concerns we affirm are also those with which we feel we can live. Since the process is corrigible (we may get it wrong or circumstances may change), the conversation is ongoing. I believe that our 'internal conversations' are the most neglected phenomenon in social theory, which has never adequately examined the *process* of reflexivity that makes us the singular subjects we are. I have begun to unpack this process as an interior dialogue through which a *personal identity* is forged by coming to identify one's self as the being-with-this-constellation-of-concerns.¹³

By this act of identity-formation, a new source of imports comes into being. We now interpret and articulate imports in the light of our commitments which define us, and this brings with it a transformation of emotional commentary. In short, our new commitments represent a novel sounding-board for the emotions. For example, if marriage is one of our prime concerns, then an attractive opportunity for infidelity is also felt as a threat of betrayal; its import is that of a *liaison dangereuse*, because we are no longer capable of the simplicity of a purely first-order response. Our reactions to relevant events are emotionally transmuted by our ultimate concerns. This is reinforced because our current commitments also transvalue our pasts; the vegetarian is disgusted at once having enjoyed a rare steak and the 'green' inwardly shudders at once having worn a fur coat. The effect of these retrospective feelings is to provide positive reinforcement for present commitments. The same process also works prospectively, for the simple reason that our lives become organised around them. We consort and concelebrate with those sharing our commitments and 'discomfort' is the transvalued feeling that keeps us apart from those with counter-commitments.

The *modus vivendi*, which depends upon a durable and effective transvaluation of our emotional responses, is an achievement – not one which can be accomplished immediately and not one which can necessarily be sustained. For children and young people, who undoubtedly have inner dialogues, the establishment of a stable configuration of commitments is a vir-

¹³ See Margaret S. Archer, *Structure, Agency and the Internal Conversation*, Cambridge University Press, Cambridge, 2003.

tual impossibility because they are still learning about themselves, the world and the relations between them. Nor is its achievement a certainty at maturity. Some remain at the mercy of their first-order emotional pushes and pulls, drifting from job to job, place to place and relationship to relationship. Drift means an absence of *personal identity* and the accumulation of circumstances which make it harder to form one. The downward spiral of homelessness or addiction is downwards precisely because it condemns people to preoccupation with the satisfaction of first-order commentaries – the next night or the next fix. Furthermore, there are destabilised commitments resulting from external changes of circumstances, some of which are predictable (for example, in the life-cycle), whilst others derive from the contingencies of life in an open system (for instance, involuntary redundancy). These are nodal points which prompt a radical re-opening of the ‘internal conversation’. But for all people the dialogue is a continuous reflexive monitoring of our concerns, since our commitments are promissory and provisional – subject to renewal or revision.

PERSONAL IDENTITY AND RELIGIOUS CONCERNS

What has been sketched so far is a purely secular argument about our ineluctable embedding in the natural, practical and social orders of reality. It has been maintained that our personal identities derive from our ultimate concerns, from what we care about most, together with our other concerns, which cannot be discarded but are accommodated to our prime commitment. As Frankfurt put the matter, our ultimate concerns are definitive of us in that what our commitments ‘keep us from violating are not our duties or our obligations but ourselves’¹⁴ – that is what I am calling our personal identities. What difference is made if our relations with transcendental reality are introduced?

Those who hold that they have justifiable beliefs in the existence of God also consider that they have good reasons for holding relations between humanity and divinity to be as ineluctable as those pertaining between humankind and the other orders of reality. But what of those who disavow the transcendent and therefore any transcendental concern? I will argue that

¹⁴ Harry G. Frankfurt, *The Importance of What We Care About*, Cambridge University Press, 1988, p. 91.

this denial has the same damaging consequences for human well-being as ignoring those of our concerns that are vested in natural, practical and social reality. How can this possibly be asserted, since non-believers appear to make out just as well in the world – including making their way through it with as much goodness and generosity as do believers? My argument is based on the belief that God is love – the quintessence of unconditional love. That is what He offers us by His nature. To defend my case, I thus have to adduce some indispensable human concern that hinges upon our relations with transcendental reality, namely one which it is universally damaging for us to ignore and one which is intimately related to our flourishing.

There seems to be every reason to advance love itself as this concern. As an emotional commentary, love also signals the most profound human concern in that our fulfilment depends upon our need to love and to be loved. It has been debated since Antiquity what makes this particular emotion different from others. The answer seems to lie neither in its intentionality nor in its cognitive or evaluative characteristics, but quite simply in its indispensability. As Robert Brown puts it, 'What makes love unusual among the emotions is the human inability to do without it – whether its bestowal or receipt – and the immense amount of satisfaction that love commonly brings to the people concerned ... Only love is both completely indispensable to the functioning of human society and a source of the fullest satisfaction known to human beings'.¹⁵ It follows that the unbeliever does not do without love because she cannot if it is indispensable. She may find it in love of nature, of art or of another person – where only in the last case can it be received as well as given. It remains to try to show that someone who settles for anything less than divine love then damages their potential for fulfilment.¹⁶

To care about anything sufficiently to make it a matter of ultimate concern, entails two elements. Firstly, there is a cognitive judgement about its inherent worth, which is always fallible. Secondly, there is a deep emotional attachment to it and must be since it would be strange to say that a person was devoted to X if they felt quite indifferent towards it.¹⁷ The affective element is not fallible; we cannot be mistaken that we love but, nevertheless, we can love unwisely by pinning our affections on someone or something of dubious worth – even in our own eyes.

¹⁵ Robert Brown, *Analyzing Love*, Cambridge University Press, 1987, p 126-7.

¹⁶ This is basically St Augustine's argument: 'Fecisti nos ad te et inquietum est cor nostrum donec requiescat in te'.

¹⁷ See Justin Oakley, *Morality and the Emotions*, Routledge, London, 1992, p. 65.

If the religious believer's belief is justifiable, then he or she cannot be wrong in their cognitive judgement that God is, by his nature, inherently worthy of the highest loving concern. This is how they have experienced Him to be and it is these experiences which constitute the justification for their religious belief.¹⁸ Indeed, unbelievers would probably concur that were there a God whose nature is that of pure unconditional love, whose intentions towards humankind were that we should participate in it to the fullest, their judgement about his supreme goodness would not be in doubt. What they doubt is not his putative worth but his existence. However, were they to become convinced through experience that he does exist, they themselves would admit that they had previously invested their loving in something inherently less worthy and which failed fully to satisfy.

We need to go one step further than this to show that human fulfilment depends upon perfect love and that only lesser degrees of satisfaction derive from imperfect loves. This is possible because in the long running Aristotelian debate about whether we love someone or the qualities that they personify, it seems that on either side we settle for the imperfectly worthy. If we love a (human) person 'for themselves', as is often said, then the qualities that they do instantiate may well leave out some of those which we value highly - it is improbable that this would not be the case. Conversely, if we love someone because they (very nearly) embody all the qualities that we value most highly, we will also have to put up with unrelated characteristics to which we are not wholly indifferent: as with the intelligent, virtuous and handsome man who also dominates every conversation. Only a being whose person and nature are identical, one that consists of love itself, is inherently and unreservedly worthy of our highest loving concern. Only God fulfils these desiderata. To be love is to love unconditionally, because there is nothing else upon which such a nature can set store without contradicting that very nature. To be love is also to love unchangeably, since to love less or more would be a contradiction in terms. Of course, consequentiality, conditionality and changeability are the very rocks upon which human loving most frequently breaks up. Human love does indeed tend to alter when it alteration finds.

¹⁸ Note that this is an argument *from* religious experience. Those who come to believe in other ways, such as through tradition alone or from natural theology, will not have personal knowledge of God's nature, in the first case, and may not even ascribe a nature to him, in the second case, where he may simply be accepted as a (mechanistic) 'first cause'.

However, to return to the believer, what difference does the love of God make to their personal identities? In their acknowledgement of transcendence they find an ultimate concern that is cognitively of supreme worth, if they are justified in their beliefs. If so, then one new item of information that they will have gained from their religious experience, as opposed to the teaching tradition in which the experience of transcendence is contextualised, is that they are personally loved. It was argued earlier that deeming anything to be one's ultimate concern entailed both cognition and affect. Hence, what is now being asked is *how much we care* about that to which we have cognitively assented, for it is how we respond by loving back (with all our heart, soul, strength and mind...) which determines its effect upon our identities.

We humans respond by loving God back with a feeble lack of proportionality. The reason why is partly because our transcendental experiences are discontinuous and partly because other (naturalistic) concerns do not go away and we let them get in the way: 'Martha, you worry and fret about so many things and yet few are needed' (Luke. 10.41). Mostly, we do not have that kind of trust; our other concerns are indeed inescapable and generally we act as if only our care for them can ensure our well-being in the other orders of reality. Believers are as familiar with compromise and trade-off as is anyone else about their purely secular concerns. The rich young man from Mark's gospel has often suffered a rough re-telling. It was not that he chose a love of Mammon over that of God, because Jesus loved him for the service he already gave, but rather that he would not do that one thing more which would have shown that God was his ultimate concern. Most of us are guilty of wrong ranking rather than rank wrongdoing.

THEOSIS AND BEING-IN-THE-WORLD

Nevertheless, those who have experienced anything of the unconditional love of God cannot fail to care about it at all if, as has been maintained, such love is indispensable to human fulfilment. The response may be unworthy, but that does not mean it is non-existent. *Theosis*, or progressive divinisation, is a process that remains incomplete for the vast majority of believers during their lifetimes. However, given fidelity, it is in process and is increasingly formative of ourselves as persons. The main *inward* effect of endorsing *any* ultimate concern is that it transvalues our feelings. Such a commitment acts as a new sounding board against which old concerns

reverberate; the emotional echo is transformed. Consider something as simple as once having enjoyed eating sausages. In the natural order, the newly committed vegetarian may now feel positive revulsion; in the practical order, Olympic competitors may see these as salivating temptation; in the social order, the new executive may consider them beneath his status. In other words, any serious commitment acts as a prism on the world that refracts our first-order emotions *by* transmuting them into second-order feelings – for affectivity is always a commentary upon our concerns.

Finally, what I want to argue is that a religious commitment is constitutive of new transvalued emotions, distinctive of this concern, that differentiate its adherents from those dedicated to any form of secular concern. This affectual transformation is the substantive justification of how transcendental relations are at least as important in forming us, in our concrete singularity, as are our naturalistic experiences and secular commitments.

The first feeling which is discrete to those who have experienced God as unconditional love is sinfulness: of having fundamentally missed the mark, of representing a different order of 'fallen' being, or of our unworthiness to raise our eyes. Sinfulness is qualitatively different from the emotions attending dedication to secular ultimate concerns. However high or deep these latter may be, when we fall short of them the corresponding feelings are self-reproach, remorse, regret or self-contempt. Even the lucky lover who declares himself unworthy of his beloved protests something different, namely that he has hit the mark undeservedly. Conversely, disconsolate swains merely feel disconsolate rather than sinful. In their turn, these secular feelings are different again from the unemotional state of those without any commitment and whose only question is can they get away with whatever they seek to do – which is precisely where cost-benefit analysis rules. Sinfulness is regarded as an emotional commentary which is emergent from relations between humanity and divinity – one expressing the quintessential disparity felt between them.

It grows out of those human emotions such as remorsefulness and unworthiness, but only through their transmutation. This entails a penitential revaluation of our lives, which develops only as the transcendental commitment and thus the contrast, deepens. Graham Greene's whisky priest in *The Power and the Glory* progressively embraces his loss of social self-worth and endorses service of God as his ultimate concern, which leads to his martyrdom. At the start of this transvaluation, he treasures an old photograph showing himself as a well-fed and well-respected priest with his immaculate flock at a time when his vocation had seemed to involve little sacrificial sub-

ordination of his physical and social well-being. As his ultimate concern becomes ultimately demanding, his emotions towards the photo are transformed and its eventual loss is simply irrelevant. The more his divinisation proceeds, the deeper is his sense of his sinful nothingness. In Newman's words, 'the truest penitence no more comes at first, than perfect conformity to any other part of God's law. It is gained by long practice – it will come at length. The dying Christian will fulfil the part of the returning prodigal more exactly than he ever did in his former years'.¹⁹ The sense of being a sinner intensifies, whereas the protests of unworthy but lucky lovers fade away as they make good their vows to 'prove themselves'. Growing proofs of divine love may indeed rectify a life but they simultaneously deepen the feeling of disparity; that whatever we do, we have all fallen short of the glory of God. There seems to be no human equivalent to the affect associated with sinfulness; that the closer we become to our ultimate concern, the further apart and more different in kind we feel ourselves to be.

Secondly, let us consider the growth of detachment. There are always costs to commitment because to promote one concern is to demote others, yet the concerns in question are inescapable. Generically, our three secular concerns were not acquired at will, they emerged from the necessary interplay between the way we are constituted and the way the world is. Consequently, it takes a considerable act of will to prioritise an ultimate concern because this means the subordination (not the repudiation) of other concerns – by producing an alignment between them with which the subject believes he or she can live. Struggle is therefore generic to human commitment to *any* ultimate concern, because subordinate concerns do have naturalistic legitimacy. They are about different aspects of our well-being and the emotional commentaries emanating from them signal the costs entailed to the person by the priorities that they have reflexively determined.

Although such struggle is endemic to the crystallisation and confirmation of what we care about most and thus to our personal identities themselves, the battlefield is very different for the believer and the unbeliever. Secular struggles are basically about sustaining dedication to an ultimate concern *within* the triad naturalistic concerns. They involve preventing these three from slipping out of the alignment that has been determined between them. Poignant regrets and powerful temptations often recur after

¹⁹ Cited in Owen Chadwick, *The Mind of the Oxford Movement*, Adam and Charles Black, London, 1960, p. 153.

an ultimate commitment has been made; costs are recurrent and the bill is frequently re-presented. In a purely mundane sense, religious commitment is even more expensive. This is because the struggle of those who have put their transcendental commitment first is that they thereby seek to subordinate *all three* of their naturalistic concerns to it: their physical well-being, performative achievement and social self-worth. Those who try to respond more and more freely to God's unconditional love feel drawn to live in conformity with this supreme good, which explicitly means *not* being conformed to the world.

Their struggle has always been well understood in the Christian tradition and has been represented as the battle between the two Kingdoms of heaven and earth or, by extension of the military metaphor, as the battle-lines between the 'two standards' in St Ignatius's *Spiritual Exercises*. In our own terms, it is the antinomy between transfiguring *theosis* and both the *anthropocentrism* of 'Modernity's Man' and the *sociocentrism* of 'Society's Being'. This struggle is constitutive of a new transvalued emotion, detachment. Such detachment, by definition, is without secular counterpart – precisely because it constitutes a new view of natural reality and a different way of being-in-the-world with its three concerns. Since it is a transvaluation, its secular precursors are emotions such as resignation towards what has been subordinated: for example, the careerist, resigned to the loss of his sporting life, or the mother who reconciles herself to putting her career on hold. However, these secular responses of resignation to the consequences of having made an ultimate commitment are negative emotions, tinged with nostalgia, at best, and bitter regret, at worst. It is the absence of such negativity that distinguishes the growth of religious detachment.

Detachment does not mean that the battle is over, for it never is. Compromise, concession and betrayal are life-long possibilities and assailants. Yet, in the lulls, detachment is a new and positive commentary upon being in the world but not of it. Detachment is a real inner rejoicing in the freedom of unwanting; it is a carefree trusting that all manner of things will be well; it is the ultimate celebration of being over having or not-having. It is the feeling that we are *sub specie aeternitatis* and have been unbound from the wheel; freed from those constraining determinations of body, labour and self-worth. It is to have glimpsed human autonomy in the form of sharing in divine autarky. Under the prompting of this emotional commentary, our orientation towards the world is transformed; since our identity is not primarily vested in it, we are enabled to serve it. In disinterested involvement, true detached concern is possible: for the planet, for the

good use of material culture, and for the intrinsic value of every human being and encounter. Thus, comportment towards the three natural orders of reality is itself transfigured. If seeking to be conformed to unconditional love is the ultimate concern, then it will be more formative of our way of being-in-the-world than any naturalistic commitment can be. This is where the argument comes full circle. Deriving from the response of humans to divine reality, there are certain ways of being-in-the-world that remain incomprehensible without the admission of transcendence

THE EMERGENCE OF SOCIAL IDENTITY

This exploration of what makes us persons has emphasised our voluntarism, because every version of the 'oversocialised' view (*Society's Being*) or the pre-programmed view (*Modernity's Man*) traduces our personal powers to live meaningful lives; they dismiss the power of *personal identity* to shape our lives around what we care about most and to which we commit ourselves. Nevertheless, we do not make our personal identities under the circumstances of our choosing, since our embeddedness in society is indeed part of what being human means. Thus, when we come to examine the emergence of our *social identities* we have to deal with our involuntary placement as *social agents* and how this affects the *social actors* which some of us can voluntarily become.

Social identity is the capacity to express what we care about in social roles that are appropriate for doing this. *Social identity* comes from adopting a role and personifying it in a singular manner, rather than simply animating it.²⁰ But here we meet a dilemma. It seems as though we have to call upon *personal identity* to account for who does the active personification. Yet, it also appears that we cannot make such an appeal because on this account it looks as though *personal identity* cannot be attained before *social identity* is achieved. Otherwise, how can people evaluate their social concerns against other kinds of concerns when ordering their ultimate concerns? Conversely, it also seems as if the achievement of *social identity* is dependent upon someone having sufficient *personal identity* to personify any role in their unique manner. This is the dilemma.

²⁰ Martin Hollis, *Models of Man: Philosophical Thoughts on Social Action*, Cambridge University Press, Cambridge, 1977.

The only way out of it is to accept the existence of a dialectical relationship between *personal* and *social identities*. Yet if this is to be more than fudging, it is necessary to venture three 'moments' of the interplay (P.I. < — —> S.I.) which culminate in a *synthesis such that both personal and social identities are emergent and distinct, although they contributed to one another's emergence and distinctiveness*.

The first moment is held to be one in which nascent *personal identity holds sway over nascent social identity* (P.I. -> S.I.). Confronted with a choice, let us say the decision to be made about someone's first occupation, what resources do they have to draw upon? The answer has to be their experience of the four orders of reality – nature, practice, the social and the transcendental – even though as minors they can only make 'dry-runs' at their internal conversations about them. Some of these experiences are limited by the natal context into which people are born and their associated life-chances. Nevertheless, everyone has some access to all. Firstly, their experience in the natural realm is not negligible. Through play, sport, travel and outdoor activities it is at least extensive enough to perform a regulatory function over what is sought or shunned when considering the array of occupational roles. My older son, a frustrated explorer, calls it 'life in a fleece'; the younger one, who hated riding, will never be found applying for stable management.

Secondly and similarly, constant interaction in the practical order has supplied positive and negative feedback about the kinds of activities from which satisfaction is derived through exposure to a host of common activities: painting, drawing, music, construction, sewing, mechanics, gardening, computing, childcare, cooking and household maintenance. Thirdly, in their involuntary social roles children are reflexive beings and it is they who determine which of the arenas they have experienced might become the locus of their own self-worth. The child, and especially the teenager, basically asks, 'do I want to be like that?', or, more searchingly, they interrogate themselves about which aspects of a role are worth having and which they would want to be different for themselves. In other words, they inspect not only their own involuntary roles but also the lifestyles of those who have put them there. These are sifted into elements worthy of replication versus others meriting rejection. 'I like studying x, but I don't want to teach' is a frequent verdict of many undergraduates. Finally, experience of transcendental reality may arise through church attendance, compulsory acts of daily worship or wordless experiences of divine pres-

ence.²¹ The key point is that there would be no process at all unless the nascent personal identity brought something to the task of role selection. Otherwise we would be dealing with an entirely passive procedure of role assignment through socialisation.

Of course their preliminary choices are fallible because the crucial missing piece of information is the experience of having made the choice itself. Yet, without taking the plunge there is no other way in which it can be acquired; but in its acquisition, the individual herself undergoes change. This is why it is legitimate to disengage a *second 'moment'*, where the nascent social identity impacts upon the nascent personal identity (S.I. -> P.I.). All 'first choices' are experiments, guided by the nascent personal identity. But through experimentation the 'terms and conditions' of investing oneself in the role, and choosing to identify with it, also become manifest. What appointees have to ask (internally) is whether or not they wish to invest anything of their future selves in their present experimental enterprise. Reflexively, their answer can be 'no' to endorsing this social identity, in which case their choice is corrigible; they can search for an alternative source for their social identity. However, in the process of experimentation they will have undergone certain subjective and objective changes. Subjectively, they have acquired some new self-knowledge which will impact upon their personal identity. They are now people who *know* that they are bored by x, disillusioned by y and uneasy with z. Yet, they have also changed objectively and consequently the opportunity costs for their revised 'second choices' have altered in such a way that it may be harder to come by corrected positions.

(c) Once subjects have found a satisfying social role, whether on the first or subsequent corrected attempts, they have a decision to make, namely, 'how much of myself am I prepared to invest in it?' *This is the moment of synthesis between personal and social identity, which takes the P.I. < — > S.I. form.* Those who have experienced enough of a role to wish to make some of its associated interests their own have also changed, to the extent that they now *know* that they do indeed find such activities worthwhile. Quite literally they have lost their disinterested stance because they now see their self-worth as being constituted by occupying a particular role. However, most roles are greedy consumers; there are never enough hours in the day

²¹ See Margaret S. Archer, Andrew Collier and Douglas V. Porpora, *Transcendence: Critical Realism and God*, Routledge/Taylor and Francis, London, 2004.

to be the 'good' academic, billing lawyer, or company executive, and a 'good' parent can be on the go around the clock. Does this mean that this crystallising social identity swamps personal identity?

This cannot be the case for three reasons. To begin with, most of us hold several social roles simultaneously. If all of them are 'greedy', who or what moderates between their demands? Were this a matter which is simply settled by the strength of these competing role demands, then we would again have reconciled ourselves to the 'passive agent'. Secondly, if it is assumed that subjects themselves conduct the arbitration, then we have to ask who exactly is doing this? *The answer can only be a person*. Yet, if it is indeed the person who has these abilities, then it has to be granted that if subjects can 'weigh' one role against another they can also evaluate their social concerns against their other commitments. This is precisely what it was argued that the 'adult' internal conversation was about. Certainly, a recent role incumbent brings new and socially derived information into the inner dialogue but *in relation* to the claims of other ongoing concerns. Only dialogically can their prioritisation and accommodation be worked out.

The resultant is a personal identity *within which* the social identity has been assigned its place in the life of an individual. That place may be large ('she lives for her work') or small ('he's only in it for the money'), but there is nothing that ensures social concerns have top priority. It is the person who prioritises. Even if conditions are such that good reason is found for devoting many hours to, say, monotonous employment, nothing insists that subjects do it wholeheartedly. Thirdly, in determining *how much* of themselves anyone will put into their various ultimate concerns, they are simultaneously deciding *what* they will put in. It has to be the person who does this, acting as he or she does in the role precisely because they are the particular person that they have become. By allowing that we need a person to do the active personifying, it finally has to be conceded that our personal identities are not reducible to being gifts of society. *Unless* personal identity is indeed allowed on these terms, then there is no way in which strict social identity can be achieved. Personification needs a person: without personification no social identity derives from any role. *In the process, our social identity also becomes defined, but necessarily as a sub-set of personal identity.*

CONCLUSION

The foregoing argument aimed to secure a concept of the person who is active and reflexive; someone who has the properties and powers to moni-

tor his or her own life, to mediate structural and cultural properties of society and thus to contribute to societal reproduction or transformation. However, the process of being a person is ongoing because throughout life we continue our reflexive work. The internal conversation is never suspended, it rarely sleeps, and what it is doing throughout the endless contingent circumstances encountered is continuously monitoring the subject's concerns. Inwardly, the subject is living a rich unseen life that is evaluative (rather than calculative, as is the case for *Modernity's Man*) and that is meditative (rather than appropriative, as is the lot of *Society's Being*). What these subjects are doing is conducting an endless assessment of whether or not what they once devoted themselves to as their ultimate concern(s) is still worthy of this devotion (or calls for yet more) and if the price which was once paid for subordinating and accommodating other concerns is still one with which the subject can live (or ought to live still more wholeheartedly).

In a nutshell, the person, as presented here in his or her concrete singularity, has powers of reflexive monitoring of both self and society. These are far outside the register of *'Modernity's Man'*, who remains shackled to his own individualistic preference schedule. In parallel, this person is also capable of authentic *creativity* which can transform 'society's conversation' in a radical way – one that is foreign to *'Society's Being'* who is condemned to making conventionally acceptable permutations upon it. Ultimately, it is this transformative creativity, deriving from the response of human persons to unconditional love that forever holds open the door to the two Kingdoms becoming one.

UNDERSTANDING THE HUMAN PERSON
AS A RELATIONAL SUBJECT:
AN 'AFTER'-MODERN PARADIGM FOR THE SOCIAL
SCIENCES (OR: THE 'ECONOMY' OF HUMAN PERSONS
LIES ON THEIR ULTIMATE CONCERNS)

PIERPAOLO DONATI

1. THE NOVELTY OF THE ISSUE

Margaret Archer's main issue concerns the vexatious question of how to conceptualise the human person as a living subject (i.e. having an existence, meaning *ex-sistere*: to be out) from the viewpoint of the social sciences broadly understood. The main difficulty does not consist in seeing what a human person is made of (i.e. the unity of body and mind, the continuity of a 'substance' together with its 'accidents', etc.), but what relates the single components of the human person (their properties and powers) to themselves and to the external world.

Archer deliberately starts the story from the Enlightenment. Why does she do so? Why not to start from previous eras, as scholars often do, particularly when trying to define the human person? The answer is trivial, but it deserves to be explained: the answer is that the social sciences she is talking about have been born with modernity. The attempt to tackle the issue by going back to previous conceptualisations would be vain. This is so for two main reasons.

i) The issue, as Archer proposes it, has not been 'thematized' (understood as a theme in itself) before the modern epoch. In other words, 'the social dimensions' of the human person in his/her inner and outer life do not represent a meaningful and central issue *per se* in pre-modern thought, from ancient Greece to the Middle Age. So much so that, if we try to understand the social dimensions of the human person by relying upon the classical philosophical categories, we come across 'natural explanations' which cannot grasp the reality we are trying to explain.

ii) The challenges issued by modern and post-modern society to the very existence of the human person have no precedent in the history. These challenges are so great and radical that they require the elaboration of a new paradigm, based on a social ontology able to comprehend the empirical evidences as offered by the social sciences. For the first time in history, our society describes itself as non-human, and even anti-human, in deeply conscious and convincing ways.

To put it bluntly, the issue of understanding the human person from the viewpoint of the social sciences can certainly resort to the wisdom and knowledge of the classical thought, but cannot find a solution within it. The basic reason for that is that modernity has generated the issue of the *social relationality* inherent in the human person on the basis of modalities, which did not exist before the explosion of modernity. The unity of the human person has been submitted to processes of differentiation in every dimension. The relations between the differentiated dimensions (what one calls today 'the process of individualisation of the individual') cannot be approached by applying to pre-modern knowledge categories.

In which way and to what extent this situation implies a revision of classical metaphysics is a topic that has been largely perceived, but certainly not solved. The revision should take into account the fact that classical metaphysics deals with the human person within the general ontology of *entia*, while the modern turn implies a distinct ontology of the human person as different from the other *entia*.¹ The issue put forward by Archer appeals to an ontology of 'the social' which is still to be fully developed.

Classical philosophy has conceived of the social as a pure 'accident', which can be separated from the substance or nature of the *ens*.² If we conceptualise the 'sociability' of the human person as *relationality* which is 'constitutive' of him/her, we must go further than the distinction between substance and accident. We must treat the relational character (natural, practical, social and spiritual) of the human person as co-essential to his/her existence and to our understanding.

¹ Cfr. Leonardo Polo, *Quién es el hombre. Un espíritu en el mundo*, Ed. Rialp, Madrid, 1991; Id., *Presente y futuro del hombre*, Ed. Rialp, Madrid, 1993.

² See for instance: Cornelio Fabro, *Dall'essere all'esistente. Hegel, Kierkegaard, Heidegger e Jaspers, Marietti 1820*, Genova-Milano, 2004.

Archer responds to the challenge. She does so in an original way, in a distinctive way in respect to almost all those thinkers who have dealt with the same issue, for instance M. Buber and M. Heidegger and, as concerns sociology, the various schools which go back to the classics (Durkheim, Weber, Pareto and Simmel). They are rightly put under the headings of reductionist and conflationary theories.

2. ARCHER'S THESIS ABOUT THE SHORTCOMING OF MODERNITY IN DEALING WITH THE HUMAN PERSON AND THE NEED FOR A NEW PERSPECTIVE

Professor Archer maintains that modernity has brought about an issue, the relational constitution of the human person, while treating it on the basis of distorted approaches, which cannot account for what really generates and regenerates the human person.

The sociological problem of conceptualising the person is how to capture someone who is both partly formed by their sociality, but also has the capacity to transform their society in some part. The difficulty is that social theorising has oscillated between these two extremes. On the one hand, Enlightenment thought promoted an 'undersocialised' view of man, one whose human constitution owed nothing to society and was thus a self-sufficient 'outsider' who simply operated in a social environment. On the other hand, there is a later but pervasive 'oversocialised' view of man, whose every feature, beyond his biology, is shaped and moulded by his social context. He thus becomes such a dependent 'insider' that he has no capacity to transform his social environment (Archer, 2005).

Archer points out that modernity is intrinsically unbalanced: it sees only the over-socialisation and the under-socialisation of the human person. The well-known distinction between *homo sociologicus* and *homo oeconomicus* is based on these reductions.

Archer claims that the dilemma lies in the circular loop which links the person to society: the person is 'both "child" and "parent" of society', the generated and the generator at the same time. We need a new scientific paradigm to understand how the human person can be both (i) dependent on society (a supine social product) and (b) autonomous and possessing its own powers (a self-sufficient maker). Classical philosophical thought has coped with this dilemma in a quite simple way: it has reduced the dependence on society to contingency and it has treated autonomy by means of the

concept of substance. A 'solution' which refers to a low-complex and 'non-relational' society.

The idea of classical philosophy, according to which the person is a substance and society is an accidental reality, cannot be sustained any longer if we want to understand the vicissitudes and the destiny of the post-modern man. After modernity, it is not possible to understand social relations basically as a projection of the human person.

Differently from classical thought, which denies the paradox inherent in the sociality of man, modernity accepts it and, more than that, it generates it. But the question is: how does modernity solve the paradox, granting that it tries to solve it?

Professor Archer claims that modernity looks for possible solutions by adopting conflationary epistemologies. And by this way modern social sciences lose the human person *as such*. She is undoubtedly right. So we are left with the task of 'rescuing' the singularity of each human person, his/her dignity and irreducibility, and, at the same time, of seeing the embodiment and embeddedness of the person in social reality without confusing or separating the two faces (singularity and sociality). How can this task be accomplished?

Professor Archer proposes

a better conception of man, from the perspective of social realism, which grants humankind (i) temporal priority, (ii) relative autonomy, and (iii) causal efficacy, in relation to the social beings that they become and the powers of transformative reflection and action which they bring to their social context, powers that are independent of social mediation

These three operations (i, ii, iii) – as seen from the viewpoint of the social realism – are not easy to be understood where one wishes to avoid a *desocialised* vision of the human person. As a matter of fact, Archer's proposal is to open a new perspective (a relational perspective) on the processes of human socialisation. The novelty lies in prompting that there is a temporal priority of the person vis-à-vis society (which is counter-intuitive), in conceiving of autonomy as experience guided by an internal conversation and by understanding the concept of 'relative' as 'relational', and by restoring the notion of causality.

These operations become likely within a theory that, going well beyond modern social sciences, states that:

– *reality is stratified*: whichever kind of reality we are observing, it is made up with multiple layers, each one possessing its own powers and emergent properties;

- in between the layers, there exists a *temporal relationality*, which means that powers and properties are emergent effects;
- all in all, the relationality of the human person is conceivable as a *morphostatic/morphogenetic process*.

By adopting this social theory, based upon a realist epistemology (which is called critical, analytical, and relational, without being *relationist*), it becomes possible to perform some operations which otherwise would be impossible.

1) We can see the *pre-social* and *meta-social* reality of the human person, so that the human person cannot be reduced neither to a social product (conflated with society) nor to an idealistic concept;

2) We can observe the identity of the self, its continuity and its ability to mature within and through social interactions, while displaying between nature and the *ultimate concerns*.

3) We can see how the singularity of the human person is realised in a unique and necessary combination of four orders of reality (natural, practical, social, spiritual or supernatural), so that the contingency turns into a necessity if the person must personalise his/herself and thus becoming 'more' human.

The challenge of the widespread argument about 'the individualisation of the individual' is turned into the argument of 'the personalisation of the person'.

3. WHY AN AFTER-MODERN PARADIGM?

The sweeping criticism of the modern social sciences worked out by Professor Archer (what she calls the two complementary faces of Modernity's Man and Society's being) is intended to overcome the *modernism* itself as a mentality and as an obsolete scientific paradigm. That's why I believe that Archer is developing an *after-modern* way of theorising about social reality, and consequently about the human person.

She is able to show, in a clear and well argued way, how the two main strands of modern social sciences are now conflating in a particular version (the *central* conflation between agency and structure) – which can be also called the *lib/lab* conflation – where the human person and the surrounding society are mutually interacting and generating each other without the chance to distinguish between different contributions, properties, powers and the temporal phases of the processes.

As I have already said, Archer rejects all forms of conflationary thought by elaborating the paradigm of morphogenesis/morphostasis, based upon a social ontology in which the human person recovers his/her priority both logical and temporal, but without getting into a metaphysical abstraction or an idealist entity. I'd like to reformulate her view in the following way. I suggest to criss-cross Archer's scheme concerning the development of the self³ with the AGIL scheme as revised in the relational theory of society⁴ (fig. 1).

The human person is someone who, standing in between the natural world (bio-physical) and transcendence, develops through social interaction. At the start, the person is a subject or potential self ('I') who, through experience (practice), gets out of nature and becomes a primary agent ('me'), then a corporate agent ('we'), then an actor (*auctor*) ('you'). To me, it is at this point that the dialectic I/you meets the need to cope with the transcendental world. Then the subject returns on to the 'I' as self. The 'exit' from nature must always pass through the nature again and again. The transcendental reality is treated in the reflexive phase that the subject realises after having passed through practice and sociality. Through these passages, the subject becomes a more mature self-living in society.

Every mode of being a self (as I, me, we, you) is a dialogue (an internal conversation) with her own 'I'. The battlefields are everywhere. But I'd like to emphasise that they are particularly meaningful (i) at the borders between the 'I' and the bio-physical nature, (ii) in social interactions, (iii) at the borders with the transcendental world (see fig. 1). Professor Archer discusses the third area in detail because this battlefield is the most underestimated within the social sciences. She makes clear how the human person can get a progressive divinisation (*Theosis*) while being in the world. Fig. 1 of my commentary makes it explicit that the You can go out of the social and come back to it without living the circle of practice and experience of the world. That is why the personal identity (PI) emerges as distinct from the social identity (SI) exactly because the former is in constant interaction with the latter: but the latter (SI) is subordinated (i.e. is a sub-set) to the former (PI):

Social identity is the capacity to express what we care about in social roles that are appropriate for doing this. *Social identity* comes from adopting a role and personifying it in a singular manner, rather than

³ See M. Archer, *Structure, Agency and the Internal Conversation*, Cambridge University Press, Cambridge, 2003, pp. 123-129.

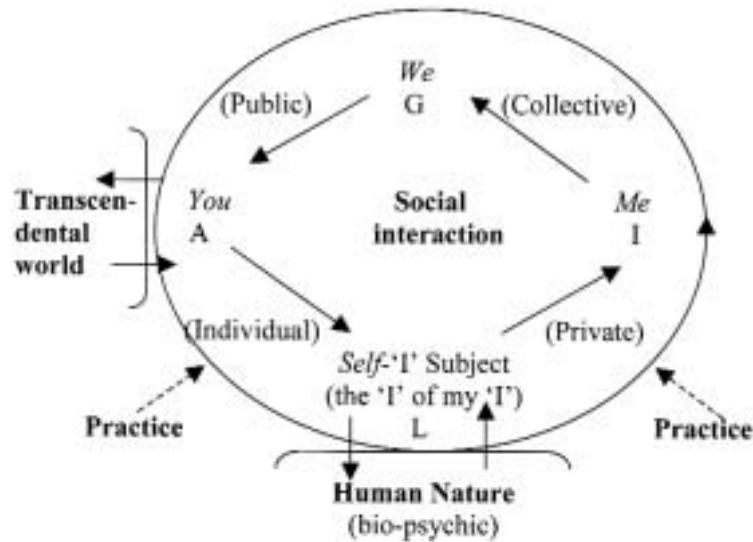
⁴ See P. Donati, *Teoria relazionale della società*, Angeli, Milano, 1991, ch. 4.

simply animating it. But here we meet a dilemma. It seems as though we have to call upon *personal identity* to account for who does the active personification. Yet, it also appears that we cannot make such an appeal, for on this account it looks as though *personal identity* cannot be attained before *social identity* is achieved. How otherwise can people evaluate their social concerns against other kinds of concerns when ordering their ultimate concerns? Conversely, it also seems as if the achievement of *social identity* is dependent upon someone having sufficient *personal identity* to personify any role in their unique manner. This is the dilemma. The only way out of it is to accept the existence of a dialectical relationship between *personal* and *social identities*. Yet if this is to be more than fudging, then it is necessary to venture three 'moments' of the interplay (Personal Identity <—> Social Identity) which culminate in a *synthesis such that both personal and social identities are emergent and distinct, although they contributed to one another's emergence and distinctiveness*. ... By allowing that we need a person to do the active personifying, it finally has to be conceded that our personal identities are not reducible to being gifts of society. *Unless personal identity is indeed allowed on these terms, then there is no way in which strict social identity can be achieved. In the process, our social identity also becomes defined, but necessarily as a sub-set of personal identity.*

Society is surely a contingent reality, but contingency does not mean pure accident. It is in fact the notion of contingency which is in need for new semantics. Contingency can mean 'dependency on' (Parsons), or 'the chance not to be, and therefore to be potentially always otherwise' (Luhmann), but it can also mean 'the need for personal identity to mature through social identity'. The third position implies that contingency can be monitored by the 'sense of self', and guided through the internal conversation of the subject.

Without this different semantics of contingency, the human person could not take the steps, which are necessary to go from nature to the supernatural world, discovering its transcendence in respect to society. This is the deepest sense of reflexivity as the proper operation of that 'internal conversation' which *makes* the human person more human. The social relationality is precisely the fuel or food for the reflexivity, which makes the human person effective.

If we apply the AGIL scheme (in the revised, relational version I have offered in the book '*Teoria relazionale della società*') to the sequence I-me-you, we can see a quite curious thing: the natural world occupies the



Legenda:

'I'-Subject = person at T¹ as *self* (individual-private), having its 'sense of self'.

Me = person at T² as *primary* agency (private collective).

We = person at T³ as *corporate* agency (collective public).

You = person at T⁴ as *actor* (public individual).

(the sequence is taken from M. Archer, *Structure, Agency and the Internal Conversation*, Cambridge University Press, Cambridge, 2003, pp. 123-129).

The capital letters A,G,I,L correspond to the relational AGIL scheme (P. Donati, *Teoria relazionale della società*, Angeli, Milano, 1991, ch. 4).

Fig. 1. The conceptualisation of the human person as someone who develops in between nature, practice, social interaction and transcendence.

dimension (function) of latency, while the transcendental world occupies the dimension (function) of adaptation. Why so? My interpretation is that the self is a latent reality rooted in its nature, while the means which realise the human person as such do not consist of material instruments, nor of practices as such, not to mention the processes of socialisation due to the *contrainte sociale*, but consist of its *ultimate concerns*. From this perspective we can better understand the meaning of Archer's statement according to which 'who we are is what we care about': it means that our *self* becomes what it generates in the 'T' by way of adaptation to (confrontation with) the ultimate concerns during the life span.

This internal work (reflexivity) must be accomplished in the dialogue that the 'I' has with itself, i.e. when the 'I' asks who is really its own 'I' when confronted with a Me, a We (fellowship) and a You (one who play a social role in which ultimate concerns are involved). To operate the distinction, 'the "I" of my "I"' does not mean to be self-referential by re-entering the same distinction (as Luhman thinks): it is also, and at the same time, to choose which environment to refer to (and therefore it is also an etero-referential operation, but accomplished by the same identical person). When discussing with his/herself and deciding where to bring the 'I', one self has to be both self-referent and etero-referent (this is where 'the social' comes into play).

In order to understand the process of humanisation of the person, it is necessary to disprove the epistemic fallacy according to which 'what reality is taken to be, courtesy of our instrumental rationality or social discourse, is substituted for reality itself' (Archer). In other words, in order to arrive at a scientific model able to avoid any conflation in the understanding of the human person as a relational being, it is necessary to refute what is known today as epistemological 'constructionism', be it radical or moderate. This can be done by using what I'd like to call the epistemic triangle suggested by critical realism (fig. 2).

As a matter of fact, most contemporary social sciences claim that: i) the human person can be known only as a product of knowledge (the person is viewed as a cultural production of socialisation), meaning that the knower can only know through the cultural products of the context he lives in; ii) the relation between knowledge and known is supposed to be relativistic; iii) the experienced relation of the knower towards the known is reified (Pierre Bourdieu gives us an excellent example).

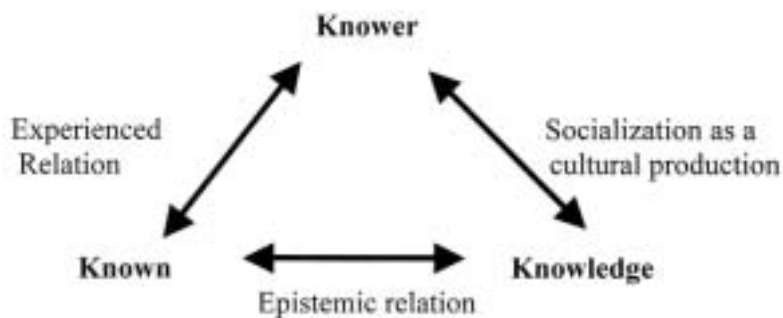


Fig. 2. The epistemic triangle of critical realism. (Note that 'experienced relation' means natural, practical, social and transcendental).

Professor Archer is able not only to criticise all these assumptions, but also to clearly show how, behind the methodological and epistemological debate, lies an 'ontological issue'. What we are used to call methodological individualism and methodological holism harbour opposite ontologies that she calls anthropocentrism and sociocentrism. Only the epistemic triangle can overcome this fallacies, in so far as it allows us (i) to distinguish between knower, known and knowledge as stratified realities of different orders, (ii) to consider their relations as reflexivity driven (instead of being reified) (fig. 2).

In Archer's conceptual framework, personal knowledge is the product of a complex series of operations, done by the self, through a reflexive activity in relation to the reality to be known, in which the knowledge already existing in society (its 'culture') is only a given (in systemic terms: an environment).

Only this epistemic triangle can valorise the human person as subject and object of his/her own activity.

4. A FEW QUESTIONS

The work by Archer offers many suggestions, which should be treated more properly and more deeply than I can do here. Let me just raise some questions.

With reference to my fig. 1, we can envisage the following open issues. They lie a) at the borders between nature and the person in society, b) in the relationships between the internal reflexivity of the person and its social networks, c) at the boundaries between the human person and transcendence.

a) The border between nature and the person in society (the battlefield of practical experience) becomes more and more problematic in so far as society changes nature continuously. Certainly nature reacts. But changes produced by science and technology are challenging the ability of the human person to dialogue with nature in its very roots. The question is: is/will the subject be able to relate itself to nature when society has made/shall make nature more and more unrecognizable, or fuzzier and fuzzier? It is evident that changes in the natural world can shift the thresholds within which the experience of the 'sense of self' can be adequately managed.

b) The second question concerns the relation between the internal reflexivity of the person and the social networks he/she belongs to. The core claim of Archer's argument is that consciousness should be understood as

emergent, where emergence implies the non-reducibility of analysis; the epistemological impossibility of the reduction of the emergent state is determined by the constitutive feature of consciousness, namely, *reflexivity*. I agree on that. But, possibly, the emphasis on the internal reflexivity needs to be connected to the properties and powers of the social networks in which people live, given that these networks may have their own 'reflexivity' (of a different kind).

c) The third set of questions concerns the borders between the person and the transcendental world. The ability of the human person to connect him/herself to the transcendental world strongly depends on his/her ability to 'symbolise', i.e. to understand and appropriate the symbolic world (to know reality through symbols). The question is: how is this ability produced in the internal conversation? How is it promoted or endangered by society? Certainly we must distinguish between different types of symbols: prelinguistic, linguistic and 'appresentative' (in the Luhmannian sense). But it seems to me that much effort should be made in understanding the importance of symbols – their formation and their use – to get a person properly involved in the supernatural. My feeling is that sociology has reduced the symbols to what sociologists call the 'media' (the generalised media of interchange according to Parsons and the generalised means of communication according to Luhmann). It is evident that symbols cannot be reduced to 'means' when dealing with the transcendental world. There is the need to better understand the role of symbols in Archer's framework.

To conclude. The emergentist paradigm worked out by Professor Archer in order to understand the human person puts the old query of the relation between personal identity and social identity in new terms. I have used the word *after-modern* to catch it.

Within the social sciences, the relation Personal Identity \leftrightarrow Social Identity is usually observed as an antithesis by. But it is clearly not an antithesis. It is an interactive elaboration, which develops over time, provided that the personal identity side operates it. It can induce humanisation only by being asymmetric.

We can therefore go well beyond those scholars who, in the last century, have thought of the relation between Personal Identity and Social Identity as something necessarily reifying the person (neo-marxists) or conceiving it in dualistic terms (for instance Buber, but also Habermas and many others). The human person must deal with all kinds of social relations. We need not to oppose system relations and lifeworld relations, good

and bad relations 'in themselves', or warm and cold relations as Toennies referred to, in so far as *what is relevant is the reflexivity of the human person in dealing with them*.

Only this vision can explain why and how the human person can emerge from social interactions, while he/she precedes and goes beyond society. In short, the relation between PI and SI is a dialogue between the lifeworld (intersubjective relations) and social institutions (role relations), but it must not be conceived as symmetric, because it is acted by the subject (agent and actor) who does not want simply to animate a role, but also to personify it in a singular manner.

Archer's vision has positive implications in the long run: her critical realism allows us to give room to, to think of and to promote the capabilities of the human person to forge a more human society, notwithstanding the fact that modernity has brought us into an anti-human era. That's why I have tried to comment on her paper, by saying that the 'economy' of the human beings does not lie on their natural, physical or material means, but on what fuels their ultimate concerns.

POSITIONING THEORY AND MORAL STRUCTURE OF CLOSE ENCOUNTERS

ROM HARRÉ

ABSTRACT

In every scientific endeavour one must try to locate the sources of activity. In physics these are fields, in chemistry ions and so on. What are they in social sciences?

Persons.

Persons are morally protected embodied centres of reflexive consciousness. They are actively engaged in deploying bodies of knowledge in joint activities with others. The sense of personhood is analysable into a sense of living a continuous trajectory in space and time – tied to mode of embodiment, and a sense of 'self'. This comprises beliefs about one's past life, capacities and powers, social location and so on, including bodies of knowledge and belief apropos of correct and proper action. The sense of one's selfhood does require a conversational community, and a developmental psychology such as that of Vygotsky.

The duality of personhood is reflected in the grammar of the 1st person, which indexes the content of an utterance with the place and moment of utterance, with the presumed moral status of the speaker, and, in some cultures, with the social status of the speaker relative to interlocutors.

Social constructionists believe that people are the only sources of efficacy in the human world, apart from the material effects of the environment. However, people can do only what they know how to do. Boundaries of social knowledge are boundaries of intelligible social action. Moreover, people do only what they believe is the right thing to do, and, of course not always then.

Positioning theory is an analytical scheme that can be used to reveal the inter-relation between speech acts, social meanings of what is said or done;

local clusters of rights and duties that influence what people choose to do out of all they know how to do; and story lines, the cultural schemas for living out strips of everyday life.

Constraints on and opportunities for action arise through *local* acts of positioning.

THE TRUE DOMAIN OF THINKING

To appreciate the significance of positioning analyses one must first reflect on some main features of the relations between language and thought and language and action. Thinking has many forms, but the form that is of paramount importance for most people is thinking as the use of cognitive tools to carry out the tasks of everyday life. The most important cognitive tools are symbols, usually words and other language like devices, and models and other forms of iconic representation. Only recently has it been realised by psychologists that thinking can be communal as well as individual, public as well as private.

That insight leads to reflections on the question of where and when people are thinking. The domain of thinking is intrapersonal and interpersonal. Thinking is not only an Individual – Personal activity but also a Social – Public one. For example, the process of remembering includes conversational as well as introspective activities. Members of a family group, or a committee, or the golf club reminisce, each contributing something to the construction of a version of the past. It is communally constructed, and each member takes away with them some version of that version on which further action is often based. It follows that there are exterograms, records of the past outside the brain of a person, as well as engrams, traces of the past incorporated in the long term memory. There are legible material things, such as diaries, photos and monuments. There are the relevant sayings and doings of other people. These are all resources for acts of remembering, often over riding personal recollections.

There are plenty of examples of thinking spanning both the Individual – Personal Social – Public domains. In deciding what to do a person will spend time on private reflections of the consequences of a plan of action, perhaps attempting to imagine the future in some concrete way. However, often there are public discussions; people go about seeking advice on the best course of action. There are influences from the unstated opinions of others which may show up indirectly in what they do and say. There are

informal varieties of the formal decision procedures involving agendas, resolutions, amendments, votes and so on.

Clearly interpersonal relations must enter into communal forms of remembering, deciding, problem solving and so on. Among the most important are rights and duties and their distribution among the people involved.

VYGOTSKY'S PRINCIPLE

According to Vygotsky all higher order mental processes exist twice; once in the relevant group, influenced by culture and history, and then in the mind of the individual. The development of a human being is dependent as much on interpersonal relations as it is on individual maturation. Here is the famous passage from Vygotsky (1978: 57):

Every function in the child's cultural development appears twice: first, on the social level, and later, on the individual level; first between people (interpsychological) and then inside the child (intrapsychological). This applies equally to voluntary attention, to logical memory, and to the formation of concepts. All the higher functions originate as actual relationships between individuals (Vygotsky, 1978: 57).

The appropriation of public-social practices as personal-individual skills comes about by a kind of psychological symbiosis. When an activity is in the Zone of Proximal Development, Vygotsky's rather clumsy phrase, the less skilled member of a dyad tries to accomplish some task (which may be recognizing the task required in the first place). If the junior member is unable to carry through the performance correctly, the senior or more skilled member supplements the efforts of the less competent in such a way as to bring the task to a successful conclusion. The junior member copies the contributions of the senior next time the opportunity arises. Thus individual – personal skills are transferred in social – public performances.

Sometimes the contribution of the more skilled member of a group is hands-on showing and guiding, sometimes it is accomplished by words and other signs. Whatever device is employed one thing is of paramount importance in the unfolding of such an episode – the distribution and acknowledgement of rights and duties among the members. In both communal thought processes and in Vygotskian development the distribution of power in the group is closely tied in with the assignments and appropriations of rights and duties.

It is important to emphasize that Vygotsky's ideas about how a human mind is formed do not imply social determinism. People are capable of and actually do transform the cognitive skills, moral principles and so on, that they acquire by psychological symbiosis. Some of these transformations are spontaneous; some are due to the influence of other persons, life events, even the material environment. The human mind is dynamic.

So too is the moral order of close encounters.

THE CONCEPT OF A PERSON

The concept of 'person' is intimately linked with manifold moral considerations. Part of my aim in this paper is to take a somewhat different stance to the way these linkages come to be and are maintained. Discussions of moral attributes of persons in society, and particularly with regard to law and economics, begin from the assumption that the structures in which the concepts of 'person' are to be considered are of very broad dimensions. Perhaps consideration is given via reflections on the rights of human beings as recognized and protected in international law, which presupposes at least potentially a scope as large as humanity. Discussions of the effect of globalization the economic order of the pre-conception of the person as an economic unit, a fortiori, have a global reference. In this paper my focus is on the creation and maintenance of moral orders and their embedded persons on a very small scale, and in the course of short-lived, even ephemeral human encounters.

DUALITY OF THE CONCEPT OF 'PERSON'

The concept of 'person' has an ontological aspect: a person is member of a loosely bounded domain of basic particulars, singular beings that collectively constitute the world of humanity.

The concept of a 'person' has a moral aspect: being a person attracts certain kinds of normative demands, both on how a person is to be treated, and how a person is to act. Persons are morally protected and morally constrained.

So far so commonplace. However, two recent developments in the philosophical analysis of personhood contribute some novel perspectives on what it is to live as a person in a community of persons. At the same time

these developments raise the perennial issue of the proper balance between rights and duties in a new way.

In keeping with the discursive turn in psychology, the linguistic devices by which personhood is expressed and recognized has become a focus of study. The main thrust has been to deepen and broaden an understanding of the role of pronoun grammars in the discursive construction of social orders.

In keeping with the recent emphasis on the study of very small scale, ephemeral and fine grain social encounters, the study of local moral orders, local distributions of rights and duties to perform acts of various kinds has been a focus of attention.

Taking these trends together leads to an interest in more dynamic aspects of human life than social structures, institutions and roles.

ONTOLOGICAL CONSIDERATIONS

Every so often a philosopher comes to realise and to remind the rest of us that human life is lived in a world of words and other symbolic devices. Life is, among many other things, a story. Boethius, as Enrico Berti reminds us (Berti, 2005), took the 'rationality' of humanity to be a matter of fact, not only 'reason' but the mastery of discourse. Shotter, following Wittgenstein, imagines the human form of life as an evolving pattern of language games, activities in which the word is an essential ingredient. In accordance with this intuition we might say that persons are eddies or vortices in the great ocean flow of conversation, of symbolic interaction in general. People are speakers and hearers. This has a moral dimension: if my interlocutor is to be required to listen to me, I am equally required to listen to whatever he or she might say. Speaking and listening are internally related aspects of linguistic capacities.

It is also true that persons are embodied centres of reflexive consciousness. The phrase I have chosen to express this aspect of the ontology of personhood already involves a resolution of the debate over the priority of bodily identity and continuity of self-consciousness as the prime criterion for continuous singular personhood. I shall presume that in all practical contexts the prime criteria have equal weight unless special circumstances can be brought into deciding whether this being is one and the same person as that.

The practice of psychiatry, the demands of the law and such matters of commerce as financial responsibility make it a conceptual matter that there is just one person per body. More than one person per body is stigmatised

as Multiple Personality Disorder, and the exotic customs of some strange cultures that sometimes require more than one body to support just one person are indeed presented as strange, even unintelligible.

In this paper I propose to show how the grammar of the first person is the prime device by which these two domains of individuals are bound together into a coherent social order. The linguistic property that makes this possible is 'indexicality', the necessity to know certain personal things about the speaker before the sense of what has been said can be completed.

TEMPORALITY

Not only do the tools of thought and action change with time, but so too do the distributions of rights and duties among a group of people. The individuals involved in communal cognitive activities are the bearers of a complex and labile psychology, some of which can be captured in a discussion of 'selves'. Though the English word 'self' does not translate easily into most other languages, for instance into Spanish, nevertheless the concept can be appropriated as a term of art for scientific purposes. We must take account of how the mutability and multiplicity of self ties in rights and duties in thought and action.

Persons 'have' selves. There seem to be four main items in personhood that the word 'self' is currently used to pick out, in philosophical schools and communities influenced by the use of English as the analytical language.

1. There is the *embodied self*, which comes down to the unity and continuity of a person's point of view and of action in the material world, a trajectory in space and time. The embodied self is singular, continuous and self-identical.
2. Psychologists use the phrase 'self-concept' to refer to the beliefs that people have about themselves, their skills, their moral qualities, their fears and their life courses. But this concept covers a significant variety of sub-concepts.
 - a. There is the *autobiographical self*, the hero or heroine of all kinds of stories. Research has shown how widely the autobiographical selves of real people can differ from story to story. This is not a matter of telling falsehoods, but of differences of emphasis depending on audience and situation.
 - b. There is the *social self* or selves, the personal qualities that a person displays in their encounters with others. This 'self' too is mul-

tiple. We have different repertoires of attributes appropriate for showing in different circumstances.

What can change? Clearly the embodied self is invariant under the kind of transformations that occur in everyday life. Changing jobs or partners, the birth and death of family members, even moving into a new linguistic community, does not disrupt the continuity of the sense of a trajectory of life through space and time. When memories fade and anticipation of the future dims the continuity of self fades with it, and though a living human body is before us sometimes we are forced to acknowledge it is no longer an embodied self. Moreover, the repertoire of social selves and the stories with which one marshals one's life may and do change, sometimes in radical ways.

Persons have rights and duties which are also distributed in a variety of ways, depending on many factors, some of which involve the selves comprising the personhood of an individual. Here we encounter the province of 'positioning theory', the study of the way rights and duties are taken up and laid down, ascribed and appropriated, refused and defended in the fine grain of the encounters of daily lives. The analysis of 'positioning' will occupy the second main section of this paper.

THE LANGUAGE ANGLE

Language is the prime instrument of thought and social action. In following up the line of argument of the discussion so far, we must abandon a widely held presupposition of much psychological and sociological research, namely the stability, transcultural and even transpersonal intelligibility of language. In so far as there are psychologically and sociologically significant varieties of language, so there are many dimensions along which we find multiplicities of selves.

Indexicality

Certain useful expressions, such as 'here', 'now', 'this' and pronouns and inflexions of the first person, cannot be fully understood in any context, unless the listeners are aware of who is speaking, where and when the person is speaking, and various other characteristics the speaker is known or believed to possess, such as moral character. This is the property of indexicality. The content of what is said is completed in sense by use of these special words to index it with the relevant attributes of the speaker.

'Put this here now!' To obey the command the person addressed needs to know who is speaking, where and when the words are being uttered and the right the speaker has to issue such an order.

For the English 'I' we have the following indexical forces:

1. Spatial location of embodied speaker.
2. Moment of utterance.
3. Moral standing of speaker, for example is the speaker known to be reliable.
4. Social status of speaker, for instance what rights and duties the speaker is endowed with or claims for him or herself.

It is easy to see that the grammar of 'I' is a prime device by which the person as speaker is tied to the person as an embodied centre of reflexive consciousness. In this way for all the complexity of its inner nature, each human being is, or should be, one and only one person.

There are many pronoun systems and other person denoting devices in the world's languages. Indo-European languages reflect a sense of self as a unique, independent individual. Oriental languages reflect a sense of self, personhood, in which interdependence is prominent. For example, there are differences in patterns of self-reflection between users of languages in which pronouns index sayings with the speaking individual's responsibility for what is said, largely independently of their social affiliations, family membership and so on, compared with those in which pronouns index speech acts with the family group or social category to which a person belongs. In Japanese there are many first person pronominal expressions, the use of which displays the speaker's and the hearer's sense of relative social position. 'Watakushi' is used to display higher status than is displayed by the use of 'watashi'. There is even a form, 'ore', which can be used to index a speech act as one's own, but which exempts the speaker from the moral commitments of what he might say. ('He' is needed in this account since pronoun use differs between men and women.) Modern urban Japanese speakers largely omit pronouns, reflecting differences in the modern Japanese sense of self from the socially dominated sense of personhood of the past, and, at the same time, a sense of the lingering expressive power of the explicit pronominal forms.

This kind of research, along with ethnographic studies of social customs, the law and so on, enables one to see that while people in Japan, Indonesia and other cultural domains in the East have just as robust a sense of themselves as embodied centres of consciousness, subtle differences in the personhood can be seen in the fine details of the moral patterns of personal encounters.

It is worth noticing that Indo-European languages do not inflect the first or second person for gender or for age, though most inflect the second person for social status. These differences in personhood are marked in different ways. English speakers have various linguistic devices for addressing the old, mostly slightly derogatory. Gender marking appears formally only in the third person in European languages, though it is discernible in the participles. 'Soy cansado' ('I'm tired') can be said only by men, and 'Soy cansada' only by women.

Transitory Significances

Languages are unstable, in the sense that *significance of utterances* is likely to vary from time to time and situation to situation. For example, there are subtle changes of the word 'captain' from its use in ships, teams and planes. Technically context includes indexicality, the contribution to the meaning of an expression from knowledge of the place, time and person of utterance which I have just discussed.

Then there is historicity, the way a word's current use is loaded with its past history. No one can use the words 'twin towers' now in the kind of generic descriptive way for some architectural feature, as it was used before '9/11'.

For the purposes of the presentation of the creation and maintenance of small scale and ephemeral social order the way that social relations partly determine the *moment by moment significance* of utterances will be of paramount importance. For example, take such a simple utterance as 'I am going out; I might be some time'. Think of the way being married sets up a pattern of social relations between a man and a woman and so informs the significance of utterances such as 'I am going out; I might be some time'. And then think of these words as famously uttered by Captain Oates on Scott's ill-fated Antarctic expedition, as he wandered off into the blizzard to relieve his companions of the burden of caring for him. This aspect of the meanings of speaking and acting is one of the central aspects of the field of 'positioning theory'.

MORAL CONSIDERATIONS OF SCALE

Discussion of the moral status of persons in large scale structures, such as national constitutions, international law, globalised economies and so on, have been dominated since the seventeenth century by discussions of rights.

Every Constituent Assembly sets about devising its own Bill of Rights, modelled perhaps on the realization of Tom Paine's rhetorical developments of Lockean political philosophy. Rights legislation is exemplified wonderfully well by the amendments to the American Constitution inspired by Hamilton. I look in vain for a Bill of Duties.

It is no good saying that settling the 'rights of man' settles the matter of duties. These are not reciprocal as *moral* concepts. There are all sorts of non-moral ways in which the assertion of one's rights can be satisfied by the actions of those deemed responsible. For example, there is coercion, there is endless complaining, and there is even the enforcement of action on an idle or venal bureaucrat by a court and so on. A culture of rights in which there is no place for a sense of duty among those delegated to satisfy them, is only too possible. The reciprocal to 'rights' might be no more than a sullen compliance under pressure of demand and the need to fulfil a job description.

However, on the scale at which the processes analyzed by Positioning Theorists take place, there is a growing sense of the relevance of duty as a moral concept, that is as incumbent on one's conscience, a matter of what it is to be a good person. Part of the thrust behind the development of Positioning Theory has been the need those of us who pioneered this approach have felt to revive the sense of duty, as a felt moral demand. There should be no need for the poor to assert their rights. The sense of duty of the better off should have been enough. That it has not been in the last century is a matter of significance.

Foregrounding rights and duties pushes other moral concepts into a secondary place. For example, the virtues of tolerance, benevolence and so on, along with the utilitarian emphasis on the moral importance of happiness, have no place in the moral universe of Positioning Theory.

Moreover, points of growth of moral sensibility are often found at locations in which some people have come recognize supererogatory duties. A few people began to feel a duty to the natural environment, a supererogatory duty that gradually metamorphosed into the formal duties expressed in legislation. There is no such thing as a supererogatory right!

POSITIONING THEORY

Positioning Theory is the study of the nature, formation, influence and ways of change of local systems of rights and duties as shared assumptions about them influence small scale interactions. Positioning Theory is to be

seen in contrast to the older framework of Role Theory. Roles are relatively fixed, often formally defined and long lasting. Even such phenomena as 'role distance' and 'role strain' presuppose the stability of the roles to which they are related. Positioning Theory concerns conventions of speech and action that are labile, contestable and ephemeral.

Positioning Theory is also independent of considerations of motivation, except in so far as declarations of motives are social acts, aimed at making one's actions intelligible to others and sometimes to oneself. Positioning Theory is particularly opposed to explanatory theories of human action that posit motives as causes. For the most part people are best thought of as trapped within discourse conventions. In the simplest case, everyday conversations, one's freedom to utter this or that statement is circumscribed by what has been said before and the conventions at work in shaping a conversation of a certain kind.

Conditions of Meaningfulness

There are three relevant background conditions for the meaningfulness of a flow of symbolic interactions. The media of such interactions include linguistic performances, but also other symbolic systems. People make use of religious icons, road signs, gestures and so on in the maintenance of the flow of actions constitutive of a social episode.

a. The local repertoire of *admissible social acts* and meanings, in particular the illocutionary force of what is said and done. Illocutionary force is the effective, then and there social significance of a speech, gesture or social action. (Austin, 1959). The same verbal formula, gesture, flag or whatever, may have a variety of meanings depending on who is using it, where and for what. Uttering 'I'm sorry' may, in certain circumstances, be the performance of an apology. It may also, in the UK, be a way of asking someone to repeat what has just been said. It may be a way of expressing incredulity. There are no doubt other uses for the phrase.

b. The implicit pattern of the *distribution of rights and duties* to make use of items from the local repertoires of the illocutionary forces of various signs and utterances. Each distribution is a position. A mother has the right to discipline her child in whatever way law and custom allow, but a visiting neighbour does not. The right to issue the reprimand 'Nice little girls say "Thank you"' is only available, properly, to a parent and perhaps a grandparent. Catholics have a duty to confess their sins individually, while Protestants do not. Positions have this in common with roles, that they pre-

exist the people who occupy them, as part of the common knowledge of a community, family, sports team and so on.

c. Every episode of human interaction is shaped by one or more *story lines* which are usually taken for granted by those taking part in the episode. The study of origins and plots of the story lines of a culture is the work of narratology. There are strong connections too to autobiographical psychology, the study of how, why and when people 'tell their lives' and to whom. A train journey may be told as a 'heroic quest', and what would have been complaints about lateness according to one story line become obstacles to be bravely overcome. A solicitous remark can be construed as caring according to one story line, but as an act of condescension according to another (Davies & Harré, 1990).

Even in a brief schematic summary one can see the great variety of story lines that may be realised in an encounter. The structural sequences of the acts that constitute episodes of social life can be ordered by at least the following background assumptions of a culture.

1. Story lines.
 - a. Folk tales and fairy stories.
 - b. Histories.
 - c. Soap operas and the like.
2. Ceremonies.

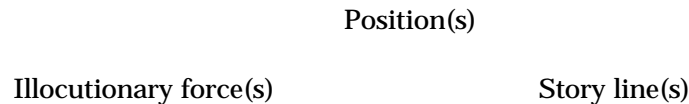
Managed by an existing script, rule book or manual

 - a. In the actors' native language, such as a wedding ceremony in Europe.
 - b. In a formal language, such as the Latin used in the degree giving ceremony at Oxford.
3. Customs.
 - a. Never explicitly formulated, such as the way one should introduce a stranger to the members of one's family.
 - b. Passed on one to another informally, for example to who, when and how much should one give as a tip.

THE POSITIONING 'TRIANGLE'

The three background conditions mutually determine one another. Presumptions about rights and duties are involved in fixing the moment by moment meanings of speaking and acting, while both are influenced by

and influence the taken-for-granted story line. Challenges to the way an episode is unfolding can be directed to any one of the three aspects. We can represent this mutuality schematically as follows:



Each such triangle is accompanied by shadowy alternatives, into which it can modulate, or which can sometimes exist as competing and simultaneous readings of events.

There is a possible fourth vertex, the physical positions and stances of the actors, for example, the doctor is standing while the patient is lying down on the table; Hitler and Mussolini in Chapman's film, outdoing each other in elevating their chairs; studies of layout of furniture in offices, which is differentiated by the status of the person whose office it is.

POSITIONING ANALYSIS

Some examples will illustrate the value of using Positioning Theory to analyze the underlying structure of moral presuppositions that influence the unfolding of an episode. How is the distribution of rights and duties created and maintained in short term close human encounters?

Example: Taking charge

Marga Kreckel's (1981) studies of life in a working class family revealed the positioning structure of episodes of collective remembering. The family consisted of middle aged parents and three sons each of whom had a partner. Discussions frequently involved creating a version or story of events of the past, in the process of deciding some future course of action. The fiancée of the youngest son tried to make contributions to the remembering project but her suggestions were *never* taken into account. She was positioned as lacking any right to conduct memory work. Power and the right to adjudicate disputes as to 'what really happened' was taken by the mother. She positioned herself as the authority on the events of the previous weekend, and so appropriated both the right and the duty to admit or refuse contributions to the agreed family history.

After the Osaka earthquake the newspapers reported how a person with no official standing had taken charge of rescue operations. He began to issue orders to people which were obeyed without question. The community positioned him as 'the person in charge', thus ascribing certain rights to him, supporting his own taking on of duties.

Example: Attribution of Personal Qualities Creates and Changes Positions

In giving an account of a scientific controversy Gilbert & Mulkay (1982: 390) show how a damaging character description ascribing certain faults to the leader of a rival research team served to weaken the standing of the team, disputing the right of the leader to be taken to be authoritative on the structure of a certain compound. The effect of this repositioning echoed round the positioning triangle, to change the illocutionary force of the publications of the rival team. The story line changed from 'sober scientific research' to a 'mad scramble for fame', involving not dishonesty, but self-deception. Paraphrasing a quotation we have a rival declaring 'She is so competitive that her results are suspect', that is she has lost the right to be believed. Declaring that a scientist's results are 'self-deception' is to transform their overt illocutionary force from fact stating to mere speculation. Latour and Woolgar (1979: 119) report a conversation in which a rival's character was described as 'he never dared putting in what was required, brute force'. In this phrase he is positioned as lacking the right to be heard in the scientific community.

On the other hand ascriptions of good character strengthen the rights inherent in a position and again changes illocutionary force of what has been said. 'You are a very honest person, so we can trust you to keep promises' is a paraphrase of an exchange between Dr. Kissinger and Secretary Brezhnev reported in the Kissinger transcripts of his conversations with foreign statesmen. Shortly afterwards Kissinger repositions himself with respect to Brezhnev in a conversation with the Chinese, when he seems to approve a remark by Ambassador Huang apropos the Russians: '... first they will bully the weak and are afraid of the strong. And that their words are not usually trustworthy'. Kissinger's repositioning is confirmed by a remark to a British diplomat that the Soviet leaders 'capacity to lie on matters of common knowledge is stupendous' (Moghaddam & Harré, 2003: 150-153). In the last remark we have an explicit re-interpreting of the illocutionary force of Russian speech acts, so that the positioning and the story line of the Kissinger-Brezhnev conversations are retrospectively revised.

As a general rule acts of positioning are preceded by and justified in accordance with attributes of personal qualities to the person or persons being positioned. Both rights and duties demand competencies of various sorts, so beliefs about lack of skills and abilities relevant to a certain task can be used to deny, delete or downgrade a default position.

Example: Simultaneous but Incompatible Positionings Possible with Same words

A recent study of the documents produced by and interviews with the protagonists of the two sides in a dispute between the Georgetown community and Georgetown University over the University's development plans yields nicely to positioning theory. Each party to the dispute read the very same sentences, uttered by the protestors and by the University authorities as having quite different illocutionary force. Each side constructed a story line in which the opposition was cast as villainous and dishonest. Statements by activists against development of University housing, such as 'They should not build any more dormitories' were interpreted by their authors as examples of a brave stand against the bullying tactics of a privileged institution. The story line was roughly this: 'The University is encroaching on the city without a right', that is the activities of the community spokespersons were legitimate protests. The very same utterances were interpreted by some on the side of the University authorities as typical expressions of jealous resentment. (Harré & Slocum, 2003: 130-135).

Example: Malignant Positioning

Tom Kitwood (1990) introduced the term 'malignant psychology' to highlight the catastrophic effects of a priori psychological categorising of people with declining powers in old age. Sabat (2003) introduced a development of this idea in his expression 'malignant positioning'. This reflected a stance from which the ways that sufferers from Alzheimer's Disease were positioned in such a way that a demeaning and destructive story line was set in motion.

Two brief illustrations of malignant positioning should make the concept clear. Speaking of sufferers from Alzheimer's a caretaker says 'They don't know anything anymore'. In this remark a description of the apparent loss of cognitive capacities by the elderly is used as a positioning move, deleting certain rights, for example to be heard. Thus the utter-

ances of As are not listened to, and the story line is of non-humanity. More startling still is the remark of a physician who introduces his story line when he says 'Treating an Alzheimer's patient is like doing veterinary medicine' (Sabat, 2003: 87).

The result of malignant positioning is more complex. Sabat (2001) describes in detail the lives of several sufferers from Alzheimer's Disease. Positioned as having no right to be heard, on the presumption that such people have nothing worth listening to, the sufferer is cut off from communal cognition, and the thinking together that is such a feature of language using beings like ourselves. The strain of waiting for the person with word finding problems to complete the expression of a thought quickly gives way to impatient dismissal of the other as any sort of conversationalist.

Sabat reports the striking effect on the willingness with which a regular visitor to the day care centre continued to struggle to express his thoughts of officially appointing him to the Georgetown University research team, studying the condition. This man re-entered the communal conversation. In this and like ways the effects of malignant positioning can be reversed by the restoration of rights (and sometimes the taking on of duties), that is by repositioning the person. At the same time the dynamics of Positioning Theory transforms the story line of daily episodes equally dramatically. From seeing the days events as 'mere filling', Sabat's retired professor came to see it, and so to live it, as ongoing research.

CONCLUSION

The advent of Positioning Theory as a development of Vygotsky's conception of the person in an ocean of language, in intimate interaction with others in the construction of a flow of public and social cognition, opens up all sorts of insights and research opportunities. Moving beyond the overly restrictive frame of Role Theory and the logical fallacies of a Sociology of Casually Efficacious Structures it offers a conceptual system within which to follow the unfolding of episodes of everyday life in new and illuminating ways. The person in the Law and the person in the contemporary climate of sensitivity to avoidable poverty have been presented as a being locked into a contestable system of rights. By changing the scale of the investigation one can begin to redress the balance between rights and duties, as well as making visible the moral orders of those close encounters which make up the greater part of our lives.

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THE CONCEPT OF THE PERSON AS THE GIFT OF SOCIETY

MARGARET S. ARCHER

Rom Harré's trilogy, *Ways of Being*, is briefly covered in the notes which preface his text for this meeting: *Social Being*, *Personal Being* and *Physical Being*. Social constructionism has become progressively more pronounced in *The Discursive Mind* (1994) and particularly *The Singular Self* (1998). Together, these volumes present the most comprehensive approach to the concept of the person within social psychology. Their leitmotif can be summed up in one quotation: 'A person is not a natural object, but a cultural artefact'.¹

HUMANITY'S INVOLVEMENT IN A MORAL ORDER

If viewed from the natural science model, the concept of the person 'tempts us to think of such concepts as referring to causally potent inner states of people. A closer look shows that the expression makes sense only as a feature of discourse'.² To Harré, we must change to a different and discursive ontology. This he schematises in the following diagram, which contrasts the Newtonian ontology, representing the mechanical picture of the world, with the Vygotskyan ontology, appropriate to social psychology.

TWO ONTOLOGIES

Ontologies	Locative Systems	Entities	Relations
Newtonian	Space and time	Things & Events	Causality
Discursive	Arrays of People	Speech acts	Rules & Storylines

Figure 1. *The Discursive Mind*.³

¹ Rom Harré, *Personal Being*, Basil Blackwell, Oxford, 1983, p.20.

² *The Singular Self*, Sage, London and Beverly Hills, 1998., p.51.

³ Rom Harré and Grant Gillett, *The Discursive Mind*, Sage, London and Beverly Hills, 1994, p. 29.

The appropriateness of this discursive ontology derives directly from the fact that the relations between 'speech acts' are not ones of causality. On the contrary, Harré maintains that the 'orderly structure of a conversation is maintained by norms of correctness and propriety. This is not a causal theory. In the physical world model, events and things are linked into structures and patterns by causal relations. But one speech-act does not cause another. Rather, one speech-act makes another appropriate or normatively accountable'.⁴ The acceptability of this ontology depends upon our acceding that social life is purely conversational. Many other social theorists will want to protest that some of its constituents – structural properties, cultural constraints and the distributions of resources – cannot be reduced to speech-acts, may never even entail them, and yet exert causal influences of a constraining or enabling kind. Moreover, their causal influence does not depend upon correct conversational diagnosis. For instance, our 'life-chances' do not hinge upon our knowledge of them because the different opportunities associated with different social origins are independent of their discursive detection.

In advocating a discursive ontology, Harré takes as his central assumption that 'Conversation is to be thought of as creating a social world just as causality generates a physical one'.⁵

The first stage in the argument tries 'to show that what people have called 'selves' are, by and large, produced discursively, that is in dialogue... Selves are not entities'.⁶ This means more than a rejection of Cartesian 'mind stuff' because it constitutes a denial, strictly speaking, of any private life of the mind. Our seemingly private mental lives of dilemma, deliberation and determination, of curiosity, creativity and contrition, and of anguish, awe and amendment, lose their privacy. With it, they lose the ability to make us (something of) what we are in public. Instead, there 'is no necessary shadow world of mental activity behind discourse in which one is working things out in private'.⁷

The word 'I' merely displays mastery of the first-person pronoun which indexes one's spatial location and expresses moral responsibility for the utterances made. Instead of a robust 'I', there is the discursive self, the

⁴ *The Discursive Mind, op. cit.*, p. 33.

⁵ *Personal Being, op. cit.*, p. 65.

⁶ *The Singular Self, op. cit.*, p. 68.

⁷ *The Discursive Mind, op. cit.*, p. 27.

meaning of whose symbol use is a function only of usage in discourse. Thus, there is no sense in which a psychological subject or agent has a nature which can be defined in isolation from a conversational context. We become a socio-spatial location, such that 'the study of the mind is a way of understanding the phenomena that arise when different sociocultural discourses are integrated within an identifiable human individual situated in relation to those discourses'.⁸ The term 'ethogenics' has been coined for the study of human behaviour in its environment, construed as a normative one made up of the rules and conventions which constitute genres of discourse. Thus, via Wittgenstein, mental activity loses its 'inner' impenetrability and comes out into daylight as public discursive practices – framed within and governed by informal rules.

In this wholesale replacement of causal properties by rule-following,

Harré's basic claim is that discursive activities are involved in a moral order. This is summarised in the following quotation.

Discursive activities are always subject to standards of correctness and incorrectness. These standards can be expressed in terms of rules. Therefore a discursive practice is the use of a sign system, for which there are norms of right and wrong use...The use of the word 'I' in English is a discursive practice. One of its many roles is in the act of taking responsibility by a speaker for what he or she says and to what he or she is committed by the saying of it. According to the discursive point of view, in this and similar discursive practices of reflexive talk, I constitute myself as a self, as an embodied moral unit in the world. By using the indexical world 'I', I create my moral individuality for you or anyone else whom I might address.⁹

What might seem to us to be the private lives of our minds are, in fact, internalized from the public moral order. This is because Harré's is 'an ontology in which utterances, interpreted as speech-acts, become the primary entities in which minds become personalised, as privatised discourses'.¹⁰ It is important to note here that it is not only the contents of our minds which are socially derivative (we think no thoughts which are not dependent upon public discourse). In addition, the form of private thought itself derives from the moral order (our epistemology is confined to the internalised conversation of society and we have no other means of access to knowledge). Thus,

⁸ *The Discursive Mind, op. cit.*, p. 22.

⁹ *The Discursive Mind, op. cit.*, p. 28-9.

¹⁰ *The Discursive Mind, op. cit.*, p. 36.

Harré argues that the 'structure of the discourses in which psychological phenomena, such as remembering, displays of emotions, avowals of attitudes, attributions of causality and responsibility, and so on, *are created under the control of conventions of right and wrong performances*'.¹¹

By making us intrinsically part of the public discursive order, Harré has succeeded in eliminating those 'inner entities' which to him share the dubiety of 'mental substances'. Instead, all has been brought to the surface because there is nothing other than the conversation of humanity – what might seem to us to be personal and idiosyncratic is derivative from private forms.

Harré is advancing a two factor theory. At the individual level, the only powerful particular is the 'person' and at the social level it is the 'discourse'. His present paper fills in the gaps between the two. To Harré, there are only two entities in question, bodies whose basic particulars are molecular clusters and discursive resources, or meanings, which are common to the social group. Between molecules and meanings there is nothing – no inner states, no mental attributes and no personal psychology.

There are only persons as powerful particulars and persons have no inner psychological complexity. Indeed, our very 'personal singularity is a product of social processes, while the very attributes that characterise the seeming 'free standing' person are through and through relational'¹² – a category which includes memory, intentionality, beliefs, rationality and emotions, which are all created through public discourse. Were it to be objected that many of these predicates apply to pre-linguistic children or indeed to other animate species, the response would be that for humans the key to understanding the transformation of these natural potentials into developed powers involves taking part in society's conversation.¹³

Yet many of us would resist the notion that our singularity as individuals reduces to our social specification. In short, most people believe themselves to be or to have 'a self'. To Harré, our common feeling of our distinctiveness is not misplaced, but we are grossly mistaken if we think we possess selfhood. The 'singularity we each feel ourselves to be, is not an entity. Rather it is a site, a site from which a person perceives the world and a place from which to act. There are only persons. Selves are grammatical fictions, necessary characteristics of person-oriented discourses'.¹⁴

¹¹ *The Discursive Mind, op. cit.*, p. 36. (My italics).

¹² *The Singular Self, op. cit.*, p. 70.

¹³ *The Singular Self, op. cit.*, p. 127.

¹⁴ *The Singular Self, op. cit.*, p. 3-4.

Because of our embodiment, we occupy a special location which gives us a particular point of view. However, this position in time and space exhausts our singularity. Persons then are not like things but like places.¹⁵ The social construction of selfhood is simply a co-ordination of the embodied point of view (site) with grammatical devices, the most important of which is mastery of the pronoun system. Site plus syntax together give rise to the fiction of being 'a self'. However, 'I' does not designate an entity but, rather, indexes a location such as '39N 77W' (the co-ordinates for Washington). Beyond that, 'I' does not refer to an individuated speaker who talks from their private inner being. It merely labels a speech-act as mine, which carries with it responsibilities within the public moral order. Indeed, the only meaning of 'inner' which Harré will entertain is the literal one of 'inside the skin'. What it can never be is a metaphor for 'the private', which has been disposed of through its dependence upon 'the public'.

In place of concepts that stand for inner properties, Harré's conceptualisation claims to have 'condensed this ocean into a drop of grammar'.¹⁶ 'Person' then is the only genuine substantive term designating a real entity. Unsurprisingly, Harré aligns himself with Hume who, when he looked 'inward', could never detect his own self but only an array of memories and experiences. The self that was sought proved unavailable to private introspection. To Harré, the reason was quite simply that there was nothing there to find. The alleged properties of the Cartesian ego amount to no more than the grammatical rules for using the word 'I', rules which belong to the public and not to the private domain.

Nevertheless, many of us will feel unease about this emptying process which leaves nothing (of us) between the molecules and the meanings. There is only our bodily constitution and the stories we tell autobiographically – courtesy of the public linguistic medium. Most of us continue to harbour the notion that we have a sense of self and that its continuous nature is what distinguishes me from you. Some of us will maintain that the self that eluded Hume's introspection was precisely the self which was doing the searching. In *Personal Being* this common intuition is taken very seriously. However the 'self', or the sense of selfhood, is not allowed to be an entity or a stratum because personhood remains firmly *unstratified*. So what can a 'sense of self' be, such that it does not traduce this proposition

¹⁵ *Personal Being*, *op. cit.*, p. 61.

¹⁶ *The Singular Self*, *op. cit.*, p. 178.

and does not challenge the sole ontological level of 'persons'? The answer is 'a theory' – one which we obtain from society.

Thus, 'while 'person' is an empirical concept which distinguishes beings in a public-collective realm, 'self...is a theoretical concept acquired in the course of social interactions'.¹⁷ We learn it by being taught it but this theory, acquired by all normal people, has the same ontological status as that which Harré accords to scientific theories in general – the stories which scientists tell one another. He suggests 'that 'I', the first person pronoun, does have a referential force to a hypothetical entity 'the self', in much the same way that the gravitational term *g* refers to a hypothetical entity, the gravitational field'. In other words, we can acquire this theory, the holding of which can do organisational work for us, but he does not concede the existence of a real stratum constituted by our 'selves' because the 'self' remains a theoretical construct.

'The self as a theory appropriated from society's conversation' has far reaching implications, some of them moral ones. Harré has the tough-minded honesty to confine 'personhood' to those capable of such appropriation, of mastering society's pronominal system. It is restricted to those who can speak: the pre- and a-linguistic represent empty spaces. This derives directly from Harré's bold assertion that the 'fundamental human reality is a conversation'¹⁸ – and nothing else.

HUMANITY AND SOCIETY'S CONVERSATION

Harré coined a motto for his work – 'Nothing in the mind that was not first in the conversation'.¹⁹ In elaborating this statement that all we are as human beings is a gift of society, his argument has three stages. Firstly, he posits the priority of language in human thought and action; secondly, he maintains that all mental activities and attributes are derivative from conversation and, thirdly, that our private reflections are parasitic upon public discourse. In conjunction, they lead to the conclusion that 'the minds of individuals are privatised practices condensing like fog out of the public conversation onto material nuclei, their bodies'.²⁰

¹⁷ *Personal Being, op. cit.*, p. 26.

¹⁸ *Personal Being, op. cit.*, p. 20.

¹⁹ *Personal Being, op. cit.*, p. 116.

²⁰ *The Singular Self, op. cit.*, p. 50.

The starting point is explicitly Wittgensteinian, namely it 'is based on the assumption of the priority of language use over all other forms of human cognition'.²¹ This then becomes a straightforward doctrine of social construction. Harré asserts the 'essential linguistic basis for all human practices'.²² Because of this, he moves on to explain both the degree of universality that characterises human beings as language users and also the extent of human diversity that derives from their using different languages. As he puts it, 'a large chunk of what it is to be a person comes with learning the local language'.²³ Thus, (embodiment apart) we are what we are through the affordances of language and we are who we are through theories of the self which are linguistic in origin. Harré's project is nothing short of a complete reorientation of psychology because he insists upon 'attributing the properties of mental-predicate ascriptions and avowals to the culture, not to minds'.²⁴

Whereas traditional psychology was based on what has been termed the 'faculty model'²⁵ (i.e. that people are bundles of faculties, such as memory, attitudes, cognition, feelings etc.), Harré reverses the sequence and next argues how each of these is produced under the aegis of society's conversation. This is a new psychological paradigm, in which

not only are the acts which we as individuals perform and the interpretations we create of the social and physical world prefigured in collective actions and social representations, but also that the very structure of our minds (and perhaps the fact that we have minds at all) is drawn from those social representations.²⁶

What is radical here is not only the large claim that our minds are culturally dependent, but also (i) that the reality of the world is deemed to be mediated through the cultural conversation rather than ever impinging upon us directly, and (ii) that it is only in a discursive environment that consciousness comes into existence. I have questioned both (i) and (ii) in detail elsewhere.²⁷

²¹ *The Singular Self*, *op. cit.*, p. 21.

²² *The Singular Self*, *op. cit.*, p. 18.

²³ *The Singular Self*, *op. cit.*, p. 29.

²⁴ *Personal Being*, *op. cit.*, p. 1.

²⁵ See Norbert Wily, *The Semiotic Self*, Polity Press, Oxford, 1994, Ch. 1.

²⁶ *Personal Being*, *op. cit.*, p. 20.

²⁷ Margaret S. Archer, *Being Human: The Problem of Agency*, Cambridge University Press, 2000.

Let us simply note what a very large list of attributes, once deemed matters of personal psychology, are now held to be discursively dependent: intentionality, rationality, emotionality, the activities of reporting and recounting and the bundle of skills including intelligence. The display of any proto-skill takes place in the public domain, where it is subject to commentary and correction according to the moral order. Only after repeated adjustment to convention does the skill become part of an acceptable and thus fixed repertoire. Skills are construed as displays which earn a public encore or, at least, encouragement in the form of conversational correction. The implication is that without an encore, the proto-display falls into desuetude – deselected through discursive socialization. This, of course, is an account of the processes responsible for the persistence of a proto-skill and its development into an acknowledged skill. It is not an account of its genesis, which is not explained and thus leaves rather a large question mark.

Since it is impossible to examine the full gamut of ‘attributes’ with which Harré deals, let us glance at one – memory – which is held to be ‘a cognitive/discursive skill and not a native endowment’.²⁸ The old model of the memory ‘tool’, operating in conjunction with experience (such as recency, frequency and intensity) to generate recall (or failure to recall), is replaced by social constructionism. Attention shifts to how people represent their pasts in discussion and construct versions of past events in conversation. For example, take a memorial interchange between mother and child over an old photo of the two of them and note how dialogically the parent marks the significance of the pictured event (happy, familiar etc.). The mother also cues the child’s recall by supplying appropriate descriptions, provides contextual couching for reminiscences (one of many episodes) and positively sanctions the moral right to the recollection.

I think there are difficulties with this account. The example of a childhood photograph contains elements independent of the social constructions which significant others try to put upon it. Many of us find that our childhood memories are sieved through the photographs available, simply because these visual recordings are there (and assure us that we did indeed ride a donkey on the sands when we were about three). They tend to be looked at periodically until they can outweigh or overlay all the un-snapped moments (of flying a kite at the same age). Equally, the photos supply their own context pictorially and independent of commentary. We often go

²⁸ *The Singular Self*, *op. cit.*, p. 143.

through the albums alone and, whatever accounts we have been given, the visual evidence can still leave us thinking that, *contrary* to what we had been told, the house seemed rather small and father less than athletic.

The full brunt of the social constructionist account of memory is turned against Locke, who made our continuous sense of self dependent upon our embodiment and memories. Harré changes the basis of this continuity into one of narrative. 'My life is not a sequence of historical events but a story which I tell myself and which is forever being updated and revised'.²⁹ Above all, since 'one's life is lived and told with others, autobiographical storytelling, like all forms of memory work, is essentially social, produced dialogically'.³⁰ It seems to me that this omits the artistic license we (consciously) give ourselves when recollecting in public (to aggrandise or to be self-depreciating). Often we catch ourselves in the act of embellishing on 'the facts' (and to Harré who does this catching and against what?). Moreover, without any objective anchorage in 'what happened', our recollections become fantasies and all of our biographies become open to revision by the social group.

My main reservations about Harré's presentation of memory/autobiography as a social construct hang upon our having private thoughts and private lives. These latter are, of course, firmly repudiated by him. Public conversation and private thoughts form a continuous web. From 'a discursive point of view the private experience of a human being is shaped and ordered in learning to speak and write...This was Vygotsky's great insight. That ordering is expressed in language and other intentional, norm governed practices. This was Wittgenstein's great insight'.³¹ In brief, what he takes from both is that inter-subjectivity has primacy over, and is prior to, intra-subjectivity. In his Vygotskian developmental account, the private is always posterior to the public because the private derives from internalisation of the public. Through symbiosis, the carer supplements the deficient efforts of the child by treating it as if it had the full complement of skills. Only thanks to this partnership is the child (aged about three) able to begin to develop the capacity for private discourse. This is, therefore, a secondary ability as are the powers of self-expression and self-reflexivity. Thus reflexive practices like self-criticism and self-exhortation simply borrow from

²⁹ *The Singular Self*, *op. cit.*, p. 138.

³⁰ *The Singular Self*, *op. cit.*, p. 146.

³¹ *The Singular Self*, *op. cit.*, p. 42.

society's conversation about criticism, exhortation etc. This loss of reflexivity 'proper' seems to deprive society of its fund of creativity, which even Mead – as one of the most 'over-socialised' of theorists – sought to preserve through his spontaneous 'I'.

CONCLUSION

The loss seems to go further. Not only are 'my thoughts' permutations upon society's conversation, but my reflexive deliberations *about society* are also restricted by it. This is in the important sense that 'I' am disallowed any 'direct' experiences of other parts of reality – nature, practice or the transcendental – which can make me other than I am and also what I want to be and try to be within society. This conclusion seems to follow ineluctably from the fact that experience is held to be secondary to society's conversation: 'discourses of self play the role of a grammar, the rules that make a discourse of persons possible. They are not the result of abstractions from experience. They are what make experience, as we have it, possible'.³²

Conversely, a more robust concept of the self would allow that a person has become something of what she is through her (unmediated) experiences of reality: through interacting with nature (as in teaching oneself to swim), through developing practical skills (a solo mountaineer learning hand and footholds) and through experiencing transcendence (as in solitary contemplative prayer). She will also have become something of a different person in the process, in ways that have not depended upon a detour through society's conversation. Moreover, if any of the above experiences come to feature among her 'ultimate concerns', they will have served to shape her personal identity. In turn, how she reflexively reacts to face-to-face encounters and the 'positionings' others attempt to assign her will also be different. All of her actions and attitudes, including the reasons she gives for her acceptances, rejections or variations upon the 'positionings' proffered to her, will not be explicable within the confines of the small group itself – or even within 'society' at all.

³² *The Singular Self, op. cit.*, p. 72.

WHAT MAKES US TICK? INTEREST, PASSION AND REASON

JON ELSTER

The set of human motivations is a pie that can be sliced any number of ways. Although none of them can claim canonical status, there are three approaches that I have found illuminating. The first suggests a continuum of motivations, while the second and the third each offers a trichotomy of motivations. The three classifications are both roughly similar and interestingly different, allowing us to illuminate the same behaviors from different angles.

On September 11 2001, some people jumped to their death from the World Trade Center because of the overwhelming heat. 'This should not be really thought of as a choice', said Louis Garcia, New York City's chief fire marshal. 'If you put people at a window and introduce that kind of heat, there's a good chance most people would feel compelled to jump'. There was no real alternative. Subjectively, this may also be the experience of those who drink sea water when freshwater is unavailable. They may know that drinking even a little seawater starts you down a dangerous road: The more you drink, the thirstier you get. Yet the temptation may, for some, be irresistible. The craving for addictive substances may also be experienced in this way. An eighteenth century writer, Benjamin Rush, offered a dramatic illustration: 'When strongly urged, by one of his friends, to leave off drinking [an habitual drunkard] said, "Were a keg of rum in one corner of a room, and were a cannon constantly discharging balls between me and it, I could not refrain from passing before that cannon, in order to get at the rum"'. As the recent adventures of an American President show, sexual desire may also be so overwhelming as to crowd out more prudential concerns. Some emotions may also be so strong as to crowd out all other considerations. The feeling of shame, for instance, can be unbearably painful, as shown by the suicide of a Navy admiral who was about to be exposed as not entitled to some of the medals he was wearing, or by the six suicides in 1997 among Frenchmen who were exposed as consumers of pedophilic material.

Except perhaps for the urge to jump from the World Trade Center, it is doubtful whether any of these desires was literally irresistible, in the way a boulder rolling down a hillside might be irresistible to a person trying to stop it in its course. Addicts are somewhat sensible to costs: they consume less when prices go up.¹ People in lifeboats sometimes succeed in preventing each other from drinking seawater. Other high officials with the same urges and opportunities have been able to resist sexual temptation. The urge to kill oneself in shame is certainly resistible. Because of their intensity, these visceral cravings nevertheless stand at one extreme of the spectrum of human motivations. They have the potential, not always realized, for blocking deliberation, tradeoffs and even choice.

At the other extreme, we have the paradigm of rational choice. Rational agents are unperturbed by visceral factors, including emotion. They act only after carefully – but only as carefully as is desirable under the circumstances – weighing against one another the consequences of each available option. In doing so, they take account of their intrinsic value, their likelihood of occurrence and their distribution over time, and choose the one that appears best overall. The motivation of rational agents is *disembodied*, in the sense that their decision-making process might be faithfully represented by a computer program. The only affective element in the process is that of assigning values to outcomes.

Between the extremes of this visceral-rational continuum, we find behaviors that are partly motivated by visceral factors, yet are also somewhat sensitive to cost-benefit considerations. A man may seek revenge (a visceral desire), yet also bide his time until he can catch his enemy unawares (a prudential concern). If he challenges his enemy to a duel (as required by norms of honor), he may take fencing lessons in secret (a dishonorable but useful practice). If a person is made an offer that is both unfair and advantageous, in the sense that he would be better off taking it than not, he might accept it or reject it depending on the strength of his interest vs the strength of his resentment. In more complex cases, one visceral factor might counteract another. The desire for an extramarital sexual affair might be neutralized by guilt feelings. An urge to flee generated by fear may be offset or preempted by an urge to fight caused by anger.

In their analysis of human motivations, the 17th century French moralists made a fruitful distinction among interest, reason and passion. *Interest*

¹ That might also be, however, because their budget does not allow them to consume at the same level.

is the pursuit of personal advantage, be it money, fame, power, or salvation. Even action to help our children counts as the pursuit of interest, since our fate is so closely bound up with theirs. A parent sending his children to an expensive private school where they can get the best education, is not sacrificing his interest but pursuing it.

The *passions* may be taken to include emotions as well as other visceral urges, such as hunger, thirst, and sexual or addictive cravings. The ancient also included states of madness within the same general category because, like emotions, they are involuntary and unbidden.

Reason is a more complicated idea. The moralists mostly used it (as I shall use it here) about the desire to promote the public good rather than private ends. Occasionally, they also used it to refer to long-term (prudential) motivations as distinct from short-term (myopic) concerns. Both ideas may be summarized under the heading of *impartiality*. In designing public policy, one should treat individuals impartially rather than favoring some groups or individuals over others. Individuals, too, may act on this motivation. Parents may sacrifice their interest by sending their children to a public school, because they believe in equality of opportunity. At the same time, policy makers as well as private individuals ought to treat outcomes occurring at successive times in an impartial manner by giving each of them the same weight in current decision-making, rather than privileging outcomes in the near future. In fact, some moralists argued, individuals concerned with their long-term interest will also tend to promote the public good. At the Federal Convention in Philadelphia, for instance, George Mason argued that

We ought to attend to the rights of every class of people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy, considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would distribute their posteriority through the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

Either form of impartiality comes in degrees. Even other-regarding individuals usually do more to promote the welfare of their family members than to promote that of unrelated individuals.² Often, the strength of

² At the same time, they may adopt an impartial attitude by acknowledging the right of unrelated individuals to give priority to *their* family members.

concern for others varies inversely not only with genealogical distance, but with geographical remoteness. Similarly, even prudent individuals usually give somewhat more weight to the near future than to the more remote, a fact that can only partly be explained by their knowledge that they might not live to enjoy the distant future.

As an example of how behavior may be understood in terms of any of these three motivations, we may cite a 1783 letter from the New York Chancellor Robert Livingston to Alexander Hamilton in which he comments on the persecution of those who had sided with the British during the wars of independence:

I seriously lament with you, the violent spirit of persecution which prevails here and dread its consequences upon the wealth, commerce & future tranquillity of the state. I am the more hurt at it because it appears to me almost unmixed with *pure patriotic motives*. In some few it is a blind spirit of *revenge & resentment*, but in more it is the most *sordid interest*.

The phrases I have italicized correspond to reason, emotion and interest, respectively. The adjectives are telling: reason is pure, passion is blind, interest is sordid. I return to some implications of these assessments.

Some motivations may be refractory to this trichotomy. Today, historians believe that the eight French wars of religion in the 16th century originated in the refusal of the Protestants to accept the doctrine of the transsubstantiation rather than, as has traditionally been argued, in their reaction to the widespread abuses in the Church. Because they believed in the absolute transcendence of God, they claimed that the idea of Jesus Christ as 'really present' in the bread and the wine in the Eucharist was a form of idolatry. A logical extension was to the idea that images and statutes representing religious figures were also 'idols' that had to be destroyed. The Catholics reacted with extreme violence to what they perceived as an intolerable insult to God and his saints. It took forty years of civil war for the ensuing passions to calm down enough for a durable peace to be possible. Yet although passions (as well as interest) have an important role in explaining the dynamics of the wars, the origins of the conflict are more difficult to grasp. Explanations in terms of 'religious fervor' or 'religious anxiety' are often opaque.³

³ For instance, it is not clear why anxiety that one was *not doing enough* to ensure one's salvation should be more intense than the anxiety generated by the belief that there was *nothing one could do* to ensure salvation. Yet Calvinist believers in predestination apparently felt that the latter belief provided a greater peace of mind.

In his analyses of human motivations, Freud also suggested three basic forms, each of them linked to a separate subsystem of the mind. The three systems are the id, the ego, and the superego, corresponding respectively to the Pleasure Principle, the Reality Principle, and Conscience. The id and the superego represent respectively impulses and impulse control, while the ego, 'helpless in both directions [...] defends itself vainly, alike against the instigations of the murderous id and against the reproaches of the punishing conscience'. In a more illuminating statement from the same essay ('The Ego and the Id'), Freud wrote that the ego is 'a poor creature owing service to three masters and consequently menaced by three dangers: from the external world, from the libido of the id, and from the severity of the superego'. Yet even this formulation does not capture fully what I think is the useful core of Freud's idea. This is the proposition that as the ego is navigating the external world (the Reality Principle) it also has to fight a two-front war against the impulses coming from the id (Pleasure Principle) and the punitively severe impulse control exercised by the superego (Conscience).⁴

This proposition was original, profound and true. What it lacks, is a mechanism. Why could not the ego itself exercise whatever impulse control might be needed? Why do morality and conscience so often take the form of rigid rules? Do we need to stipulate the existence of separate and quasi-autonomous mental functions? It took the pioneering work of George Ainslie to provide satisfactory answers to these questions. His point of departure is that many impulses need to be kept in bay because of the *cumulative* damage they can do if unchecked.⁵ On any given occasion, drinking or eating to excess, splurging or procrastinating (such as a failure to do one's homework) need not do much harm to the agent. The damage occurs after repeated excesses (or repeated failures). The focus of impulse control, therefore, must not be the individual occasion, since the person can always say to himself or herself that a new and better life will begin tomorrow. Impulse control must address the fact that the impulse will predictably arise on an indefinite number of occasions. The solution arises from reframing the problem, so that failure to control an impulse on any

⁴ To combine two of Freud's metaphors, the ego is like a rider on an unruly horse (the id) while also being ridden by an incubus (the superego).

⁵ There is also a fact of cumulative *risk*. The chance of unwanted consequences from unprotected sex may be small on any given occasion, but the lifetime risk might be considerable. On any given occasion, the chance of being injured in a car accident while not wearing a seatbelt is small, but the life-time probability is about one in three.

one occasion is seen as a predictor of failure to control it on all later occasions. 'Yes, I can postpone impulse control until tomorrow without incurring important harm or risk, but why should tomorrow be different from today? If I fail now, I shall fail tomorrow as well'. By setting up an *internal domino effect* and thus raising the stakes, the agent can acquire a motivation to control his impulses that would be lacking if he just took one day at a time. The other side of the coin is that the control must be relentless and, as the Victorian moralists put it, 'never suffer a single exception'.

These three approaches to motivation capture some of the same phenomena. Visceral factors, passions and the Pleasure Principle clearly have much in common. The last applies to a wider range of cases, because it involves pain avoidance as well as pleasure seeking. When students procrastinate in doing their home work, it is not necessarily because there is something else they very much want to do. Often, they are merely taking the path of least resistance. The superego and reason also have some features in common. Although not all systems of morality are rigid and relentless, some are. Kant's moral theory is a notorious instance. In fact, his moral philosophy may have originated in the private rules he made for himself to control his impulses, such as his maxim of never smoking more than one pipe after breakfast.⁶ At the same time, morality can rise above rigidity, in individuals not subject to ambiguity aversion. The toleration of ambiguity is, in fact, often said to be the hallmark of a healthy ego. By contrast, the relation among rationality, interest, and the ego is more tenuous. It would be absurd to claim that the hallmark of a healthy ego is the rational pursuit of self-interest.

We often think of motivations as taking the form of wanting to do something. They may also, however, take the form of wishing something to be the case.⁷ This distinction between wants and wishes is important if we look

⁶ The rule was not unambiguous enough, however, to give him full protection, since as time passed he bought himself bigger and bigger pipes. Similarly, people who make a rule of not drinking before dinner may find themselves having dinner at ever earlier hours. The only rule that is invulnerable to such manipulation is 'Never do it'.

⁷ If I wish something to be the case, there are three reasons why I may not want to bring it about. It may be unfeasible, as when I wish I were Napoleon. It may be feasible but outside my control, as when I wish that my love were requited. It may be within my control but I do not want to exercise it, as when I wish for my rival to lose his possessions yet do not want to be the person whose agency brings about that outcome. I am not saying that wishes cannot have any causal effects. When conjoined with other mental states, notably beliefs, they may induce cognitive dissonance and subsequent dissonance-reducing adjustments.

at the motivational component of emotion. Emotions can, in fact, be accompanied either by a want to do something or by a wish that something be the case. In anger or wrath, A's urge to take revenge on B cannot be satisfied by C doing to B what A had planned to do or by B suffering an accident. What matters is not simply the outcome, that B suffer, but that he suffer by A's agency. In sadism, too, what matters is to make the other suffer, not merely that he suffer. By contrast, in hatred what matters is that the hated person or group disappear from the face of the earth, whether this happens by my agency or by someone else's. In malice, too, what matters is that the other suffer, not that I make him suffer. In fact, a malicious person may recoil before actively taking steps to make the other suffer, not merely because he is afraid of being seen to do so but because it would be incompatible with his self-image. This is even clearer in envy. Many people who would enjoy seeing a rival losing his possessions and would do nothing to prevent it from happening if they could, would never take active steps to destroy them, even if it could be done without costs or risks to themselves.⁸ A person who would not set his neighbor's house on fire might abstain from calling the fire brigade if he saw it burning.

A motivation to *get something* also differs from the motivation to *do something to get it*. In standard choice theory, people care directly about outcomes and only indirectly about actions. Preferences over outcomes induce preferences over actions: I prefer doing A rather than B if and only if doing A will get me X and I prefer X to Y, which is what I will get if I do B. If I got X without doing anything to get it, I would be just as well off as if I got X by doing A. In fact, since actions usually involve some cost or at least expenditure of effort, I'd probably be better off. This way of looking at the relation between behavior and outcomes is clearly right in many cases. If I suddenly discover a turkey in my freezer, I won't miss the trip I'd planned to the supermarket to buy one. Yet sometimes the value of getting something is conditioned upon agency. Addicts know that a drug will produce a more intense high when it is self-administered than when it is injected by someone else.⁹ As suggested by the proverb 'Easy come, easy go' – and

⁸ Some envious people, to be sure, have no such qualms. They may live in a society where little shame attaches to envy or they may just be shameless.

⁹ Their reports are confirmed by experiments on rats in which level of brain reward can be measured directly. These findings show that the volitional centers and the pleasure centers of the brain are connected.

by the behavior of gamblers – windfall gains do not have the same weight as earned income.¹⁰

In some cases doing I can get X by doing A, but only if I do A in order to get Y. If I work hard to explain the neurophysiological basis of emotion and succeed, I may earn a high reputation. If I throw myself into work for a political cause, I may discover at the end of the process that I have also acquired ‘a character’. If play the piano well, I may impress others. These indirect benefits are parasitic on the main goal of the activity. If my motivation as a scholar is to earn a reputation, I’m less likely to earn one. To enter a political movement *solely* for the sake of the consciousness-raising or character-building effects on oneself is doomed to fail, or will succeed only by accident. If I think about the impression I’m making on others while I’m playing, I’ll play less well and fail to impress them. Self-consciousness interferes with the performance.

These cases fall in the category of *states that are essentially by-products* – states that cannot be realized by actions motivated only by the desire to realize them. These are states that may *come about*, but not be *brought about* intentionally by a simple decision. These self-defeating motivations include the desire to forget, the desire to believe, the desire to desire (e.g. the desire to overcome sexual impotence), the desire to sleep, the desire to laugh (one cannot tickle oneself), and the desire to overcome stuttering. Attempts to realize these desires are likely to be ineffectual and can even make things worse. It’s a commonplace among moralists that intentional hedonism is self-defeating, and that nothing engraves an experience so deeply in memory as the attempt to forget it. Although we may wish for these states to be realized, we should beware of wanting to realize them.

Many people care about *salvation* (in the afterlife) and *redemption* (for wrongs they have done). They may also believe they can achieve these goals by action. To die the death of a martyr in the fight against the infidels may provide the passport to heaven, or so some believe. To fight against the Nazis after having collaborated with them at an earlier stage may redeem the wrongdoing. Yet if these actions are undertaken for the *purpose* of achieving salvation or redemption, they may fail. In Catholic theology, the intention to buy a place in heaven by voluntary martyrdom would be an

¹⁰ Leibniz said (correctly) that it would be absurd to assert that a man was richer the longer he had worked to build up his fortune. Yet it may be true that the longer he has worked to build it up, the longer he will retain it.

instance of the sin of simony. Some Islamic scholars make a similar criticism of suicide attackers who are motivated by the belief that they will get a privileged place in paradise. On moral grounds, the French press magnate who had collaborated with the German forces during the occupation of France and tried to redeem himself by writing a large check to the resistance when it became clear that the Germans were losing the war, should not have been granted, as he was, a nonsuit after Liberation.¹¹

We can distinguish between *intrinsic* and *instrumental* motivations for action. Often, people read books or watch movies because they enjoy it, not because these activities are a means to some other end. Parents might, however, try to motivate children to read by offering them a reward if they come up with correct answers to five questions about a book they have been given. They would hope, presumably, that the children would 'get hooked' on reading and that their motivation would change from an instrumental to an intrinsic one, so that when the reward is taken away the children will keep reading at the same higher level. There is some evidence, however, that the opposite effect might be produced. A child might by himself or herself read 5 hours a week, then read 10 hours when rewarded for doing so, but fall back to 3 hours when the reward is removed. Although this phenomenon is indeed observed, its interpretation is controversial. The lower post-reward reading might be due to disappointment or to resentment rather than to an instrumental motivation crowding out an intrinsic one.

A related but different distinction is that between *consequentialist* and *non-consequentialist* motives for action. A policy maker might adopt the principle 'Finders keepers' (e.g. in patent legislation), on the assumption that if the person who discovers a new valuable resource is assigned the property right in it, more valuable resources will be discovered. This is a consequentialist argument. A non-consequentialist argument for the same policy might be that the person who discovers a new resource, whether it be a piece of land or a cure for cancer, has a natural *right* to property in it. For another contrast, consider two injunctions to act. The statement 'always wear black in strong sunshine' (as do people in Mediterranean countries to maintain circulation of air between the clothes and the body), appeals to a consequentialist motive. The statement 'always wear black at funerals' reflects a non-consequentialist social norm.

¹¹ The reason he went free was probably that the resistance needed the money and later found itself obliged to keep the implicit promise of immunity that acceptance of the check implied.

Why do people leave one country for another? Why do academics leave one university for another? Often, answers are classified as 'push versus pull'. One may emigrate either because the situation at home is unbearable or because the situation abroad is irresistibly enticing. At least this is a common way of viewing the matter. In many situations, however, it is misleading. Typically, people move because they *compare* the situation at home and abroad and find that the difference is big enough to justify a move, even taking account of the costs of the move itself.¹² Yet it can make sense to distinguish push-motives from pull-motives, when the former are closer to the visceral end of the continuum and the latter closer to the rational end. People in the grip of strong fear sometimes run away from danger rather than towards safety. The only thought in their mind is to get away, and they do not pause to think whether they might be going from the frying pan into the fire. Depending on the drug and on the circumstances, addicts can be motivated either by the pull from euphoria (cocaine) or by the push from dysphoria (heroin). Suicidal behavior, too, may owe more to push than to pull. It is escape from despair, not a flight to anything.

The operation of social norms can also be viewed in terms of push versus pull. The desire to excel in socially approved ways exercises a strong pull on many individuals, whether they strive for *glory* (being the best) or for *honor* (winning in a competition or combat). Other individuals are more concerned with avoiding the shame attached to the violation of social norms. In some societies, there is a general norm that says 'Don't stick your neck out'. To excel in anything is to deviate, which is the object of universal disapproval. 'who does he take himself for?' The relative strength of these two motivations varies across and within societies. Classical Athens illustrates the competitive striving for excellence.¹³ In modern societies, small towns often show the stifling effects of the hostility to excellence. To risk a generalization, overall the push from shame is a more important motivation than the pull towards excellence, which is not to say that the latter cannot be powerful.

¹² This formulation presupposes that the costs of moving enters on a par with the benefits of having moved, as determinants of the overall utility of moving. Yet the costs of moving may also enter as *constraints* on the decisions. If the cheapest transatlantic fare costs more than the maximal amount a poor Italian peasant can save and borrow, he will remain in Italy no matter how much better he could do for himself in the US.

¹³ Aeschylus, for instance, wrote his plays for performance at a dramatic competition. When he was defeated by the young Sophocles, he was so chagrined that he left Athens for Sicily.

The existence of *competing* motivations is commonplace:

In a divorce situation, I want custody of the children, but I also want the house and the car.

I need a book so strongly that I am tempted to steal it from the library, but I also want to behave morally.

In the face of a bully I am both afraid and angry: I want to run but also to hit him.

I want all children to have public education, but I also want my child to go a private school to obtain the best education.

I want a candidate who is pro-choice, but I also want one who favors lower taxes.

I want to smoke, but also to remain healthy.

If I am made an advantageous but unfair offer, 'take it or leave it', I want both to reject it because it's unfair and accept it because it's advantageous.

I want to donate to charity, but also to promote my own interest.

How is the conflict among these motivations resolved? A general answer might go as follows. Where the situation is one of 'winner take all', so that no compromise is possible, the strongest motivation wins. If my concern for my child is stronger than my concern for the schooling of children in general, I will send him or her to a private school. Since my pro-choice concern is stronger than my tax-cut concerns and no candidate favors both positions, I vote for a pro-life candidate who proposes to raise taxes. If somebody offers me 3 dollars out of a common pool of 10, intending to keep the rest for himself, I accept it. If I am offered only 2 dollars, I reject the offer if I can thereby prevent the other from getting anything. When compromise is possible, the stronger motivation has a stronger impact than the smaller one. A smoker may decide to cut down his cigarette consumption from 30 to 10 cigarettes a day. As a reflection of the strength of my altruism, I may decide to spend 5% of my income on charity.

This answer is not exactly wrong, but it is pretty simplistic, since the idea of 'strength of motivation' is more complicated than these quick examples suggest. A motivation may owe its strength to its sheer psychic force; this is the sense in which for instance visceral motives are often stronger than what Madison called 'the mild voice of reason'. A strong motivation

may also, however, be one that the agent endorses strongly. Each society or culture is characterized by a normative hierarchy of motivations. Other things being equal, a person would rather perform a given action for motive A than for motive B if A ranks higher in the hierarchy. These are *meta-motivations*, desires to be animated by desires of a certain kind.¹⁴

Interest and passion, notably, often show a certain *deference to reason*.¹⁵ As Seneca said, 'Reason wishes the decision that it gives to be just; anger wishes to have the decision which it has given seem the just decision'. As there are very many plausible-sounding conceptions of reason, justice and fairness, it will indeed often be possible to present a decision taken in anger as conforming to reason. The trials of collaborators in countries that had been occupied by Germany during World War II were in many cases anchored in a deep desire for revenge. Yet because of their deference to reason, combined with their desire to demarcate themselves from the lawless practices of the occupying regimes, the new leaders presented the severe measures as justice-based rather than emotion-based. A person may have a first-order interest in not donating to charity and a second-order interest in not seeing himself as swayed by interest. In deference to reason, he may then adopt the philosophy of charity that can justify small donations: if others give much he will adopt a utilitarian policy that justifies small donations, and if others give little he will adopt a fairness-based policy that justifies the same behavior.¹⁶

¹⁴ The idea of meta-motivations is unrelated to the concept of meta-preferences. An example of the latter would be a person with two *different* preference orderings, one for eating over dieting and one for dieting over eating, and a meta-preference favoring the latter. Following La Bruyère's insight that 'Men are very vain, and of all things hate to be thought so', a meta-motivation could amount to a preference for preferring dieting over eating on grounds of health over having *the same* preference ordering on grounds of vanity.

¹⁵ Agents may also show a deference to *rationality*. We *want* to have reasons – desires and beliefs in light of which the action appears as rational – for what we do. In fact, our desire to act for a reason – our deference to rationality – can be so strong as to induce irrational behavior. When two options appear to be equally good, we may spend time and resources determining the one that is slightly better rather than simply flipping a coin. A dramatic illustration is how the use of the 'best interest of the child' principle in awarding child custody may work against the interest of the child, because of the emotional suffering induced by protracted litigation.

¹⁶ I assume that these are unconscious adaptations, whose existence can be inferred only from their results. For a given individual, we would need evidence of consistent opportunism across *many* decisions to justify the inference. To infer self-serving adaptation from the fact that *one* impartial argument matches the interest of the agent would be to commit the functionalist fallacy of assuming that consequences of behavior that benefit an agent always serve to explain that behavior.

In these cases, reason has no independent causal role. It only induces an after-the-fact justification for actions already decided on other grounds. The conflict is not resolved, but swept under the carpet. In other cases, the adoption of a reason-based justification may change behavior. If I adopt a fairness-based policy of charity because others give little and they then begin donating much more generously than before, I have to follow suit. The same need for self-esteem that caused me to justify self-interested behavior by impartial considerations in the first place also prevents me from changing my conception of impartiality when it no longer works in my favor. We may imagine that in *King Lear* both Burgundy and France initially fell in love with Cordelia because of her prospects, but that only the former cared so little about his self-image that he was able to shed the emotion when it no longer coincided with his interest. This is a case of interest paying deference to passion rather than to reason, suggesting that passion, or rather this particular passion, ranks above interest in the normative hierarchy. Other passions, such as envy, might well rank below interest. We might then observe efforts to present envy-based action as interest-based or, rather, to undertake only such envy-based action as may be plausibly presented as interest-based.

Here's a more complex case. I wish that I didn't wish that I didn't want to eat cream cake. I want to eat cream cake because I like it. I wish that I didn't like it, because, as a moderately vain person, I think it is more important to remain slim. But I wish I were less vain. *But is that wish activated only when I want to eat cream cake?* In the conflict among my desire for cream cake, my desire to be slim and my desire not to be vain, the first and the last can form an alliance and gang up (or sneak up) on the second. If they catch me unawares they may succeed, but if I *understand* that the salience of my desire not to be vain is caused by the desire for cake I may be able to resist them.

Here is another complex case of motivational conflict. Let us assume that a person is tempted to steal a book from the library. If he feels guilty about doing it, he may abstain. If he steals the book and then feels guilt, he may return the book to the library. Suppose that the agent is initially unwilling to steal the book, but that as its value to him increases (for some reason) he finally decides to do so. Suppose conversely that the agent has stolen the book, but that as its value to others increases (for some reason) he finally returns it to the library. In the first case, its value to others is 10 and he decides to steal it just when its value to him reaches 15. In the second case, its initial value to him is 15 and the initial value to others is 6, but

he decides to return it only when its value to others reaches 15 (rather than 10). The reason for this asymmetry is found in the mechanism of dissonance reduction. A individual who is subject to several motivations that point in different directions will feel an unpleasant feeling of tension. When on balance he favors one action, he will try to reduce the tension by looking for cognitions that support it; when he favors another, he will look for cognitions which stack the balance of arguments in favor of that action. The strength of each motive is 'path-dependent' rather than fixed.

COMMENT ON JON ELSTER'S PAPER

PAULUS ZULU

I must begin by stating that I found Elster's paper very difficult to pull together, perhaps mainly because its simple language and illustrations belie the complexity of his thinking. Elster offers us two explanations of or approaches to understanding human behaviour or action. Common to both approaches is the concept of human motivations. Human beings act or behave because they are motivated to do so, and two interrelated explanations account for this. The first is that human motivations exist in a continuum starting from visceral impulses at one extreme to rational behaviour 'unperturbed by visceral factors' on the other. However, even within this domain of impulses, Elster posits that:

There are instances where impulses as a trigger to human action may overshadow any other considerations:

There are instances, especially in complex cases, where visceral factors or impulses might counteract one another and

There is a relativity in the intensity or strengths of impulses to the costs envisaged in pursuing the acts they determine, and in such instances a costs-benefits analysis mediates between impulses or visceral factors and the behaviour to be pursued.

Rational choice on the other hand, is governed by factors such as the weight of each behavioural action under consideration (costs, the energy to be expended and consequences anticipated), consistency i.e. the likelihood of repeating the same behaviour over time and the intrinsic value of such behaviour.

Finally, between the extremes in the visceral – rational continuum there are actions that are motivated partly by visceral factors and partly sensitive to rational factors or to the costs – benefits analysis.

The second approach, still operating within the domain of motivation, is that human behaviour or action can best be understood from the opera-

tions of three precursors or determinants. These are interest, passion and reason corresponding to the Freudian ego, the id and the superego. The superego, corresponding to reason, checks the impulses of the id. The id, which corresponds to passion, instigates or triggers action; and the ego, which corresponds to interest, negotiates between the two.

From these two approaches, it is apparent that Elster's thesis of human behaviour offers a post behavioural explanation or analysis whereupon we may explain the behaviour or action from motives but not necessarily predict its course or finality. We can tell what motivated the behaviour in question post facto, but not predict, from the parameters, what the behaviour will be. We can not, for instance, tell with certainty which of the parameters will be in operation at a given time although given the circumstances and perhaps the temperament of the individual, we can predict the probability of a specific course of action from a range of possible alternatives. This takes us into the domain of culture and I shall comment on this in the sections below.

There are three definitive propositions in Elster's paper. The first is that human behaviour is motivated by forces or drives which operate within stated parameters. Although these parameters are stated they do not operate in a straight forward mode as they have shades of meanings giving rise to different types of action. Take, for instance, the distinction between wanting and wishing both which fall within the domain of emotions. In the former the subject is engaged in direct action while in the latter the subject is interested in the outcome and may not do anything to bring it about. The same problematic exists in the categorisation of intrinsic and instrumental motivation for action. As predictive tools they present enormous problems in analysis.

The second proposition is that these parameters operate within socially constructed values which give rise to social norms and standards. It is these norms and standards that determine, influence or shape the way in which the stated parameters or determinants express themselves. For instance, given the same interests, individuals from different cultures will express themselves differently on the same issue. Freely expressing cultures will allow members of the masculine sex to weep openly in instances of bereavement whereas stoic cultures reserve this expression to members of the fairer sex. Some African cultures permit levirate i.e. taking over a dead brother's wife and find the practice rational on the grounds that it keeps the lineage intact whilst Christian cultures define the practice as incest. We can, however, not tell with certainty if the widow will accept advances from the late husband's brother or if he will develop an interest in her.

The question of values, which are functions or products of a culture adds yet another complicated dimension to the equation. Given a number of pos-

sible values we are not certain of a specific value operating at a given time. In the example of taking over a dead brother's wife values such as economic considerations, emotional feelings towards the widow, fear of competition, on the part of the widow should the brother in law be married and vice-versa may influence the ensuing action or behaviour. We would have to find out, from the subjects themselves, what influenced their behaviour. Predicting it would present great difficulties. Elster's thesis becomes more ambiguous to apply both as a predictive and as an explanatory instrument or framework as the behaviour becomes more complicated and the alternatives also become complex. There are instances when both motives and cultural (normative or ethical) considerations weigh equally on the decision to act or not to act in a practical way. The domino effect as a factor in impulse control is a case in point. Individuals may refrain from the expected action both from the eternal domino effect and from moral considerations. This renders the thesis ambiguous. For instance, probable modifications such as Kant's bigger pipes or bringing dinner forward in order to drink earlier are such examples of behavioural modifications which may be interpreted as a negation of the thesis on the one hand and yet fall within the visceral desire, prudential concern domain on the other. Whatever the label, the ambiguity is not easy to resolve.

The third proposition is that the relationship between motives and action is not linear. The movement is not directly from motive to action, but may entail other alternatives including digressions, retreats and even a change of action. This is a phenomenon which Elster resolves by the statement the 'interest and passion', notably often show a certain deference to reason. This deference may be expressed by 'sweeping the conflict under the carpet' or by modifying the behaviour or action originally envisaged, or by complete withdrawal.

In conclusion Elster offers very interesting framework for explaining behaviour but not necessarily a theory of human behaviour. The critique that I have presented is not a criticism of his framework as a theory of human behaviour. He did not venture it as that in the first instance. The critique is, therefore, an attempt to demonstrate problems in the efforts made at explaining and predicting human behaviour as the variables involved are too many and too complex at any given time.

PERSONS: POINTS OF CONDENSATION IN A SEA OF LIVING INTERACTIONS

JOHN SHOTTER

How does it happen that I give to my hands, in particular, that degree, that rate, and that direction of movement that are capable of making me feel the textures of the sleek and the rough? Between the exploration and what it will teach me, between my movements and what I touch, there must exist some relationship by principle, some kinship, according to which they are... the initiation to and the opening upon a tactile world... Through this crisscrossing within [my hand] of the touching and the tangible, its own movements incorporate themselves into the universe they interrogate... [and] the 'touching subject' passes over to the rank of the touched, descends into the things, such that the touch is formed in the midst of the world and as it were in the things (Merleau-Ponty, 1968, pp. 133-134).

I.

INTRODUCTION

For the past 15 years or so, although I was originally trained in academic Psychology, I have been a Professor of Interpersonal Relations in a Department of Communication. Thus primarily, what I want to discuss with you today is the concept of the person as it arises for us out of the sea of everyday living interactions within which we live our lives, along with all the others (and othernesses) around us. A while ago (Shotter, 1984), I called my approach to social inquiry 'social ecology', and that is what I want to return to here today. So, instead of people as self-contained entities to be characterized by their possession of a particular set of properties, I shall be setting out a characterization in terms of their embedding in a set of dynamic, always changing relations to their surroundings – hence, my title.

Central to the work I want to present to you, will be the philosophical and theoretical work of Wittgenstein, Vygotsky, Bakhtin and Voloshinov, G.H. Mead, William James, H-G Gadamer, along with many others. While they all emphasize different aspects of our embedding in what I am calling 'the sea of living interactions' within which we live our lives, one way or another; they all also, it seems to me, emphasize the primacy of our spontaneous, living, bodily activity as it unfolds *within the active, expressive-responsive relations* we have to the others and othernesses around us – and it is our immersion in this 'sea', and the resources it provides for us, as well as the limitations it imposes upon us, that I also want to emphasize.

This 'immersed' way of being in the world contrasts starkly with that assumed in recent forms of modernist inquiry in the Human and Behavioral Sciences influenced, for instance, by Kant and Descartes (along with other modern philosophers), who all emphasized the central role of our deliberately intended activities as self-contained individuals in our knowledge-seeking activities. For instance, we find Kant (1970) claiming that:

Reason has insight only into that which it produces after a plan of its own, and it must not allow itself to be kept, as it were, in nature's leading-strings, but must show itself the way with principles of judgment based upon fixed laws, constraining nature to give answer to questions of reason's own determining (p. 20).

Where Kant's stance here, clearly, follows on from that of Descartes (1968), who, in his *Discourse on the Method of Properly Conducting one's Reason and of Seeking Truth in the Sciences* of 1637, celebrated his proposed 'geometric' methods of inquiry as aimed at our becoming, 'as it were, masters and possessors of Nature' (p. 78).

In this view, the important processes of reason occur inside the heads of individuals and have the character of 'inner symbolic representations' of outer states of affairs – where our outer states of affairs are thought of as occurring merely in the empty and neutral space and time of the physicists. And we still far too often accept that the 'background realities' to our actions must take the form given them by Descartes (1968) long ago. In deciding to speak only of what he could clearly conceive, you will recollect that he resolved to speak 'only of what would happen in a new world, if God were to create, somewhere in imaginary space, enough matter to compose it, and if he were to agitate diversely and confusedly the different parts of this matter, so that he created a chaos as disordered as the poets could ever imagine, and afterwards did no more than to lend his usual preserving action to nature, and to let her act according to his established laws' (p. 62).

Such a reality of neutral particles in motion is, of course, unrestrictedly open to our mastery and possession, to our every manipulation.

However, if we emphasize the primacy of our spontaneous, living, bodily activities as they unfold spontaneously in responsive relation to the activities of the others and othernesses around us, rather than a neutral space and time, filled with neutral particles in lawful motion, we find ourselves always embedded in, as I have called them elsewhere (Shotter, 1993a), 'conversational realities'. And within such already ongoing, dialogically-structured realities, we find that what we can do deliberately is highly constrained. With each utterance in a dialogue, for instance, within a circumstance that is already structured to a degree, we can only propose a little further structuring; we can only *intend* a next action to the extent that it has been made available to us as a possibility by what has *happened* to us within the circumstance already.

Gadamer (2000), for instance, in describing his philosophical concerns, notes his crucial focus on: 'not what we do or what we ought to do, but [on] what happens to us over and above our wanting and doing' (p. xxviii). Hence, for *Gadamer* (2000), in contrast to the central role of willful activity depicted in Descartes's and Kant's philosophy above, our relation to our circumstances is quite different: 'We say "we" conduct a conversation, but the more genuine a conversation is, the less its conduct lies within the will of either partner... Rather, it is generally more correct to say that we fall into conversation, or even that we become involved in it... the partners conversing are far less the leaders of it than the led. No one knows in advance what will "come out" of a conversation... All this shows that a conversation has a spirit of its own, and that the language in which it is conducted bears its own truth within it - i.e., that it allows something to "emerge" which henceforth exists' (p. 383).

Wittgenstein (1980a), similarly remarks that: 'The origin and primitive form of the language game is a reaction; only from this can more complicated forms develop. Language - I want to say - is a refinement, "in the beginning was the deed" [Goethe]' (p. 31). And that by the word 'primitive' here, he means that 'this sort of behavior is *pre-linguistic*: that a language-game is based *on it*, that it is the prototype of a way of thinking and not the result of thought' (1981, no. 541).

While *Bakhtin* (1986) notes that: 'All real and integral understanding is actively responsive... And the speaker himself is oriented precisely toward such an actively responsive understanding. He does

not expect passive understanding that, so to speak, only duplicates his or her own idea in someone else's mind. Rather, he expects response, agreement, sympathy, objection, execution, and so forth...' (p. 69). Thus, among the other features of such spontaneously responsive talk, is its orientation toward the future: 'The word in living conversation is directly, blatantly, oriented toward a future answer-word; it provokes an answer, anticipates it and structures itself in the answer's direction. Forming itself in an atmosphere of the already spoken, the word is at the same time determined by *that which has not yet been said but which is needed and in fact anticipated by the answering word*. Such is the situation of any living dialogue' (Bakhtin, 1981, p. 280, my emphasis).

Mead (1934) too outlines the influence of such a process within the single individual: 'That process... of responding to one's self as another responds to it, taking part in one's own conversation with others, being aware of what one is saying and using that awareness of what one is saying to determine what one is going to say thereafter – that is a process with which we are all familiar... We are finding out what we are going to say, what we are going to do, by saying and doing, and in the process we are continually controlling the process itself. In the conversation of gestures what we say calls out a certain response in another that in turn changes our own action, so that we shift from what we started to do because of the reply the other makes. The conversation of gestures is the beginning of communication' (pp. 140-141).

These remarks, by these four writers, set the scene for the dialogical, 'prospective'¹ concept of the person' I want to outline below – *dialogical*, because 'I' can be 'me' only *in dialogical relation to 'you'*; and *prospective*,

¹ I have taken the notion of 'prospective concepts' from Myhill (1952). In his view, 'beauty' is just such a concept. For, 'not only can we not guarantee to recognize it [beauty] when we encounter it, [for it is not, in Myhill's terms an "effective" concept], but also that there exists no formula or attitude, such as that which for example the romantics believed, which can be counted upon, even in a hypothetical, infinitely protracted lifetime, to create all the beauty that there is [for it is not a "constructive" concept either]' (p. 191). In other words, prospective concepts are concepts that cannot be arrived at by any known rational methods or procedures. Hence the value that Myhill attaches to the 'crystal clarity' imposed by mathematic logic on our thought processes, for 'it was here that we first had conclusive evidence of an essential rather than an accidental limitation on knowledge, and of the fact that this ignorance is but the obverse of creativity' (p. 192).

because as living, growing, and developing beings, able both to accumulate and to embody a shared (and sharable) cultural history, there is no end to what we as persons are and can be.

In other words, the concept of the person that I want to discuss, is a concept of people as being themselves *dialogically* open to further exploration and development of themselves (along with the others around them), and of their *concept* of themselves as being *dialogically* open to..., and so on, and so on; as well as of them as being open also to an exploration as to why some of the changes they may seek to make to themselves are more preferable than others.

II.

SEVEN THEMES

In leading up to what I now think should be the primary focus of our inquiries in our attempts to understand our own nature – that is, a focus on our *meetings* with the others and othernesses around us – there are seven introductory comments I want to make:

1) The first is that, in discussing the changes we might promote within ourselves, we must learn, I think, to talk about something which in fact, strangely, quite unfamiliar to us in the context of modern western thought, and which – if we are to do justice to its detailed characteristics and relationships – requires us to make some quite radical changes in our current modes of intellectual inquiry, as well as in the whole nature of our social relations with each other. The new topic that I want to confront us with, is simply that of 'life', the properties, the characteristics or *aspects* of living bodies, as enduring, self-maintaining, self-structurizing, self-reproducing, organic structures. For we seem to be rather badly served by the vocabularies currently available to us for describing the many different kinds of transitional forms occurring within such continually changing structures and relations. As William James (1967) noted: 'We live, as it were, upon the front edge of an advancing wave-crest, and *our sense of a determinate direction in falling forward* is all we cover of the future in our path... Our experience, *inter alia*, is of variations of rate and direction, and lives in these transitions more than in the journey's end' (p. 206, my emphasis).

2) Such structures change *internally* by growth and differentiation into more internally complex forms, while at the same time retaining their identity as the identifiable individuals they are. In other words, in all living

activities, there is always a kind of *developmental continuity* involved in their unfolding, such that earlier phases of the activity are indicative of at least the *style*, the *physiognomy*, of what is to come later. All changes 'gesture' or 'point' beyond themselves in either an indicative or mimetic way.

3) Thus, the earlier phases of a living activity are indicative of at least the *style* of what is to come later – thus we can respond to their activities in an *anticipatory* fashion. Indeed, just as acorns can only grow into oak trees and not rose bushes, and eggs produce only chickens and not rabbits, so all living activities, it seems, give rise to what we might call *identity preserving* changes or deformations – as T.S. Eliot puts it: 'In my beginning is my end'. By contrast, the dead Cartesian world, a world of mechanical movement, a world of forces and impacts, can only give rise to movements as a change in the spatial configuration of a set of separately existing parts.

4) In other words, instead of changes of a quantitative and repeatable kind, *ordinary* changes, changes taking place *within* a reality already well-known to us, we must become concerned with unique, only 'once-occurrent events of Being', as Bakhtin (1993, p. 2) calls them, first-time, irreversible changes of a *qualitative* kind. As living changes, these are irreversible, developmental changes, changes making something possible that was before impossible. Thus living movement, living change taking place in time, confronts us, with some quite new phenomena, needing some quite different concepts, if we are not simply to assimilate it to Cartesian forms of change, i.e., change simply as a re-arrangement, as a re-configuration, in a basic set of unchanging 'particles'. But in no way can the earlier phases of merely 'configurational' changes be indicative of the style of what is to come. Against a Cartesian background, such living changes – to the extent that they are not according to a law or principle but dependent on circumstances – can strike us as changes of an unpredictable kind, as changes that can strike us with wonder or amazement, as *extraordinary* changes.

5) This leads me on to a fifth comment: which is, that even the most complex of mechanical systems are constructed piece by piece from objective parts; that is, from parts which retain their character unchanged irrespective of whether they are parts of the system or not. In other words, they are constructed from *externally related* parts. But whole people as natural systems are certainly not constructed piece by piece. On the contrary, they grow, and in growing, they develop from simple individuals into richly structured ones in such a way that their 'parts' at any one moment in time owe not just their character but their very existence both to one another *and* to their relations with the 'parts' of the system at some earlier point in

time – their history is just as important as their logic in their growth.² In other words, they consist in *internally related* parts.

6) My sixth comment connects with those I have already mentioned above, it is to do with our taking into account what is already ‘there’, so to speak, in the background of our lives together, what it is in our surrounding circumstances that makes such developmental changes possible.

Here, I am particularly concerned to counter claims made by many who currently call themselves *social constructionists* – who take it that people communicate with each other in purely linguistic terms, seen in a structuralist (Saussure, 1911) or post-structuralist light (Derrida, 1977) – and who suggest, like Richard Rorty (1989), for instance, that because ‘there is nothing “beneath” socialization or prior to history which is definatory of the human being’ (p. xiii), all the shared (or sharable) bases to our lives together can be deconstructed ‘all the way down’. That is, they argue, because all claims in favor a shared ‘ground of being’ are nothing more than persuasive rhetorical constructions, they can be opposed by other, equally persuasive constructions.

It is the seemingly radically shocking nature of this claim that has, I think, stood in the way of seeing the need for the more corporeally oriented developments that I would like to propose here. It has, I feel, stood in the way because it is nowhere near a radical enough claim! For such structuralist and post-structuralist views of human communication – as working in terms of a self-contained ‘linguistic system’ – leave Descartes’s account of our background reality – as ‘a chaos as disordered as the poets could ever imagine’ – in place. And this means, of course, that we cannot draw any shared guidance from our shared backgrounds in our controversies with each other as which of each other’s claims to adopt for the best. No wonder

² Because of this it is impossible to picture the life of living systems in spatial diagrams. As Capek (1965) remarks, ‘any spatial symbol contemplated at a given moment is *completed*, i.e., all its parts are given *at once*, simultaneously, in contrast with the temporal reality which by its very nature is *incomplete* and whose “parts” – if we are justified in using such a thoroughly inadequate term – are by definition successive, i.e., nonsimultaneous. The spatial symbolism leads us to forget the essential difference between juxtaposition and succession and to reduce the differences between the past, present, and future to simple *differences of position*: “past” events are symbolized by positions lying to the left of the point representing the “present”, while “future” events lie to the right of the same point on the same already drawn “temporal axis”. Thus the spatial diagram suggests the wrong idea that the successive moments already *coexist* and that their pastness and futurity is not genuine, but only “phenomenal” or “apparent”’ (pp. 162-163).

it provokes anger and diverts attention to what is important in social thought about the nature of human communication.

7) This leads me on to my final introductory comment, which is that I do not want to argue (in opposition to Rorty) that there is in fact already something definite 'there' in us, as individual beings in the world that, prior to any of the *meetings* we may have with the others and othernesses around us, that defines and delimits the nature of those meetings. Instead, what I want to claim, is that something very special happens when living bodies interact with their surroundings that we have not (explicitly) taken account of at all in our current forms of thought or institutional practices. Everything of importance to us as psychologists occurs within the context of living meetings, occasions when one form of life comes into contact with an other or otherness different from itself. The resulting relations have – not just a dialogically-structured character, as I once thought (Shotter, 1980, 1984, 1993) – but a *chiasmic* structure (Merleau-Ponty, 1968). What this means, is tremendously difficult to articulate, and a part of what I want to try to do below, is simply to draw out further the implications of this notion of chiasmically organized relations.

III.

MEETINGS AS JOINT, CHIASMICALLY STRUCTURED ACTIONS

Sometimes, something very special can occur on those occasions when two or more of us approach each other bodily, face-to-face, and engage in a *meeting*, in a joint action or dialogically-structured encounter. For in such encounters, when someone acts, their activity cannot be accounted as wholly their own activity – for a person's actions are partly 'shaped' by being *responsive* to the actions of the others around them. This is where all the strangeness of the dialogical begins ('joint action' – Shotter, 1980, 1984, 1993a and b). For our joint actions, in being neither mine nor yours, are truly 'ours'.

Hence, such activity is not simply *action* (for it is not done by individuals; and cannot be explained by giving people's *reasons*). Nor is it simply *behavior* (to be explained as a regularity in terms of its causal principles). It constitutes a distinct, third sphere of *transitional* activity with its own distinctive properties, always on the way toward what it *not-yet-will-be*.

This third sphere of activity involves a special kind of nonrepresentational, sensuous or embodied form of *practical-moral* (Bernstein, 1983) understanding, which, in being constitutive of people's social and personal

identities, is prior to and determines all the other ways of knowing available to us. Indeed, what is produced in such dialogical exchanges is a very complex 'orchestration' of not wholly reconcilable influences – as Bakhtin (1981) remarks, it includes both 'centripetal' tendencies *inward* toward order and unity at the center, as well as 'centrifugal' ones *outward* toward diversity and difference on the borders or margins. In being transitional, activities in this sphere lack specificity; they are only partially determined; they complex 'intertwining' of many different kinds of influences:

- They are just as much material as mental; constituted just as much by feeling as by thought, and by thought as feeling.

Their intertwined, complex nature makes it very difficult for us to characterize their nature:

- They have neither a fully orderly nor a fully disorderly structure, neither a completely stable nor an easily changed organization, neither a fully subjective nor fully objective character.

- They are also distributed or non-locatable – rather than 'in' individuals, they are 'spread out' among all those participating in them.

- They are neither 'inside' people, but nor are they 'outside' them; they are located in that space where inside and outside are one.

- They are neither wholly agentic in shaping their surroundings, nor are they wholly shaped by them – rather than having 'masterful' agency, we can say that they have 'participatory' agency.

- Nor is there in their transitions a succession with a separate 'before' and a separate 'after' (Bergson), but only a meaningful, developing whole which cannot divide itself into separable parts either in space or in time.

- But, nonetheless, as living activities, they can still have a 'style' and 'point' beyond themselves toward both events in their surroundings, and what can possibly come next for them in the future.

Wittgenstein (1981) describes the nature of our meetings well, I feel, when he says:

How could human behavior be described? Surely only by sketching the actions of a variety of humans, as they are all mixed up together. What determines our judgment, our concepts and reactions, is not what *one* man is doing *now*, an individual action, but the whole hurly-burly of human actions, the background against which we see an action (no. 567)... (see also 1980b, II, no. 629).

Indeed, it is precisely their lack of any pre-determined order, and thus their openness to being specified or determined *by those involved in them, in practice* – while usually remaining quite unaware of having done so! –

that is the central defining feature of the 'realities' whose characterizations or formulations we create in our meetings with each other. And it is precisely this that makes this sphere of activity interesting... for at least the two following reasons:

1) to do with the practical investigations we can conduct into how people actually do manage to 'work things out' between themselves, and the part played by the *ways of talking* we interweave into the many different spheres of practical activity occurring between us which enable such 'workings out'.

But also 2) for how we might *refine* and *elaborate* these spheres of activity, and how we might *extend* them into novel spheres as yet unknown to us.

IV.

CHIASMIC (INTERTWINED) RELATIONS

As I indicted above, my claim here today is that everything of importance to us in our lives together occurs in *meetings* of one kind or another. Something very special occurs when two or more living beings meet and begin to *expressively-respond* to each other (more happens than them merely having an *impact* on one another). There is in such meetings the creation of qualitatively new, quite novel and distinct forms of life, which are more than merely averaged or mixed versions of those already existing. As I intimated above, elsewhere (Shotter, 1980, 1984) I have discussed this under the heading of 'joint action', and more recently (Shotter, 1993 a&b) as 'dialogically-structured' activity, but here, following Merleau-Ponty (1968), I want to go a step further and talk of it as 'chiasmically-structured' activity.

My aim in doing this, is to try to begin to understand how *the living actions of the others* around us can 'enter into' our actions at crucial moments, not simply to change their shape or form, but to enrich our abilities to *relate* ourselves to our circumstances in such a way as to help us increase, so to speak, the *depth* of our relations to our surroundings. In saying this, of course, I am calling on – as Merleau-Ponty does also – the most immediately obvious example of chiasmic interweaving available to us in our binocular vision: for it is the chiasmic interweaving of our visual relating to our surroundings through our *two eyes*, gave rise to the *presence of depth* in our looking.³ In a moment, I want to turn to the discussion of how

³ We can also note that Bateson (1979), in *Mind and Nature*, makes the same point: 'From this elaborate arrangement [of the intertwining in the optic chiasma of two slightly

we can be influenced by other people's voices, but for the moment, let us stay with our visual relations to our surroundings.

Straightaway, we can note that, even with something as simple as looking over a visual scene, a picture, a painting, a sculpture, an art object of any kind, say, different *styles* of looking are available to us. There are different bodily ways of moving our eyes over the scene, and of 'orchestrating' into these ways, other bodily movements – we can move up closer to the painting or further away, adopt a new angle, pause for a moment to make a comparison (in fact or from memory), we can stop to ask a friend's opinion or to recall a text's account, and so on, and so on. And if in these movements we open ourselves to the 'calls' coming to us from the object as look over it, we find ourselves not so much looking *at* it – as in our instrumental gazing *at* an object we want to manipulate – as looking *according* to it.

Then, over time, if I 'dwell with' the work of art long enough, between it and myself, a *real presence* (Steiner, 1989) begins to emerge, a *presence* with 'its' own requirements, with 'its' own calls, to which I – if I am to do 'it' justice – must 'dwell with' responsibly, i.e., be *answerable* to all the 'calls' it exerts upon me.

When we 'look over' or 'look with' a picture in *this* way, 'I would be at great pains', says Merleau-Ponty (1964a), 'to say *where* is the painting I am looking at. For I do not look at it as I look at a thing; I do not fix it in its place. My gaze wanders in it as in the halos of Being. It is more accurate to say that I see according to it, or with it, than that I *see it*' (p.164).

Rather than looking *at* it, I look *beyond* it, or *through* it, to see other things in my world in its light; it is, would could say, a guiding or directing agency in my looking; it gives me a *way* of looking. Thus, as Steiner (1989) suggests, 'the streets of our cities *are* different after Balzac and Dickens. Summer nights, notably to the south, have changed with Van Gogh (p. 164)... It is no indulgent fantasy to say that cypresses are on fire since Van Gogh or that aqueducts wear-walking shoes after Paul Klee' (p. 188). Or, as Paul Klee himself remarked: 'In a forest, I have felt many times over that it was not I who looked at the forest. Some days I felt that the trees were look-

different sources of information], two sorts of advantage accrue. The seer is able to improve resolution at edges and contrasts; and better able to read when the print is small or the illumination poor. More important, information about depth is created. In more formal language, the *difference* between the information provided by the one retina and that provided by the other is itself information of a *different logical type*. From this new sort of information, the seer adds an extra *dimension* to seeing' (p. 80).

ing at me, were speaking to me... I was there listening...' (Quoted in Merleau-Ponty, 1964a, p. 167).

Wittgenstein (1980a) also noted the power of works of art to 'move' us in this way: 'You really could call [a work of art], not exactly the expression of a feeling, but at least the expression of feeling, or felt expression. And you could say too that in so far as people understand it, they resonate in harmony with it, respond to it. You might say: the work of art does not aim to convey *something else*, just itself' (p. 58).

But, just as paintings can 'instruct' us in a possible *style* or *way* of looking, a possible way of relating ourselves visually to our surroundings, so can certain pieces of text, or another's voice, also 'instruct' us in different possible *styles* or *ways* of relating ourselves to our surroundings as well. Indeed, just as we all can be spontaneously 'moved' by a piece of music being played in a concert hall, to some extent at least in the same way, while *listening* to its sequential unfolding over a period of time, so we can also all be 'moved', to a similar shared extent, in responding sequentially to any aspect of human expression – for, to repeat, what is at issue here is not the 'seeing' of a finalized form or pattern, but the intertwining of one's own living, bodily responsiveness with influences from something other than ourselves to create a 'real presence' between us, an influence that can instruct us in a new, possible way of going on.⁴

V.

CONCLUSIONS – 'WITNESS'-BEING

So, what I have dwelt on above – besides all the other points I have tried to make about the importance of our spontaneous living bodily expressive responsiveness to the others and othernesses around us – is the importance of our being able to adopt a certain attitude or stance toward the others and othernesses around us: rather than trying to relate to them as something that stands before us as a 'puzzle' or 'problem' that we must 'solve' if we are to understand them aright, I have talked of entering into living, dialogically-

⁴ This is the way that those of you who read Wittgenstein can – if you take the appropriate *dialogical* stance or attitude to his texts – experience his voice: Not as giving us new information which we had until then lacked, but as giving us orientation, helping find our 'way about' when we didn't know 'how to go on', helping us in this or that practical situation to make a connection or relation we might not otherwise have made.

structured or chiasmically-structured relations with them, and of allowing them in the course of our relations *with* them to teach us something utterly novel, utterly unique, something that we could not learn in any other way.

This leads, as I intimated at the outset, to the concept of the person as a *prospective concept*, that is, to it being the kind of concept that cannot be contained within any systematic or logical framework, and which is still open, in dialogically-structured, or better, chiasmically-structured exchanges, to further development... of a kind still to be explored dialogically... Thus, to end in a way that I hope captures and expresses something of what I have been trying to express above, I would like to end by contrasting what I will call 'withness'-being with 'aboutness'-being.

Withness-being ('withness'-talking, thinking, acting, perceiving, etc.) is a dynamic form of reflective interaction that involves our coming into living contact with an other's living being, with their utterances, with their bodily expressions, their words, their 'works'. It is a meeting of outsides, of surfaces, of two kinds of 'flesh' as Merleau-Ponty (1968) puts it, such that in coming into 'touch' with each other, in the dynamics of the interaction at their surfaces, another form of life in common to all participants, is created. All both touch and are touched, and in the relations between their outgoing touching and resultant incoming, responsive touches of the other, a felt sense of a 'moving' sequence of differences emerges, a sequence with a *shaped and vectored sense* to it.

In the interplay of living movements intertwining with each other, new possibilities of relation are engendered, new interconnections are made, new 'shapes' of experience emerge.

A reflective encounter of this kind is thus not simply a 'seeing' of objects, for what is sensed is in fact invisible; nor is it an interpretation (a representation), for it arises directly and immediately in one's living encounter with an other's expressions; neither is it merely a feeling, for carries with it as it unfolds a bodily sense of the possibilities for responsive action in relation to one's momentary placement, position, or orientation in the present interaction.

In short, we can be spontaneously 'moved' toward specific possibilities for action in such a way of being. And this where another person's *words in their saying* can be helpful – in entering into our inner dialogues, they can help to orient us, help us to be responsive to what we might otherwise ignore: 'Look at this, notice that, think about it this way..., and so on!'

Thus, only in this kind of spontaneously responsive being, in which we are related bodily to those around us, is it possible to be 'in touch with', or

'struck by', the *uniqueness* of the others and othernesses around us; and only in this kind of being is it possible to be 'moved by' another's words, and for us to carry them 'on our shoulder', so to speak, to 'remind' us of how to relate ourselves to the circumstances before us. As Merleau-Ponty (1964b) puts it: 'For more clearly (*but not differently*) in my experience of others than in my experience of speech or the perceived world, I inevitably grasp my body as a *spontaneity which teaches me what I could not know in any other way except through it*' (p. 93).

While in aboutness-*being*, in which we try to understand others only cognitively, by 'explaining' them to ourselves in terms of a theoretical framework, we stand over against them, and view them as if from a distance. Bakhtin (1984) calls this, taking a *monological* stance toward them, and in such a stance '(in its extreme pure form) another person remains wholly and merely an object of consciousness, and not another consciousness... Monologue is finalized and deaf to the other's response, does not expect it and does not acknowledge in it any *decisive* force' (p. 293).

Such a style of understanding works simply in terms of 'pictures', but even when we 'get the picture', we still have to decide, intellectually, on a right course of action. This in this way of being, *interpretation* becomes a central issue.

And it is this style of being that has until recently dominated our academic and intellectual lives in the West. No wonder that we have come to place *theories* at the center of our lives as thinkers. But if instead of 'aboutness'-thinking, we begin to think 'with' an other's voice, with their utterances, in mind, we can begin to see another very different way in which what we call a 'theory' can be an influence on us. Literally, the words in which the theorist expresses his or her theory can, by moving us this way and that, 'instruct' us in our practical actions out in the world of our everyday, practical affairs. Then, if we respond to their words is *this* way, instead of turning away from the events of importance to us to bury ourselves in thought, in order to think of an appropriate theoretical scheme into which to fit them in order to respond to them, we can turn ourselves responsively toward them immediately. Indeed, we can begin an intensive, i.e., in detail, and extensive, exploratory interaction with them, approaching them *this* way and *that* way... 'moved' to act in *this* way and *that* in accord with the beneficial 'reminders'⁵ issued to us by others to us, as a result of their explorations.

⁵ 'The work of the philosopher consists in assembling reminders for a particular purpose' (Wittgenstein, 1953, no. 127).

In other words, seeing *with another's words in mind* can itself be a thoughtful, feelingful, way of seeing, while thinking *with another's words in mind* can also be a feelingful, seeingful, way of thinking – a way of seeing and thinking that brings us into a close and personal, living contact with our surroundings, with their subtle but mattering details. And this, I think, is how we need to relate and respond to Wittgenstein's remarks, his utterances, to the nature of the very in fact practical philosophy he has bequeathed to us. And because so much of what I have said here to day has been influenced by his words; and because I think, once the nature of his philosophy is appropriately understood, its consequences are utterly *revolutionary*; I want to end in his honor with a few of his remarks.

Because we are renouncing the Cartesian aim of being 'masters and possessors of nature', and working instead merely as participants in what we are seeking to understand; and because we already embody in all of our spontaneous responses to events in our surroundings the beginnings of new understandings, Wittgenstein (1953) recommends that: 'We must let the use of words teach you their meaning' (p. 220). Thus in his philosophy, we are not seeking to discover anything entirely new: 'Philosophy [as he sees it] simply puts everything before us, and neither explains nor deduces anything. – Since everything lies open to view there is nothing to explain. For what is hidden, for example, is of no interest to us. One might also give the name "philosophy" to what is possible before all new discoveries and inventions' (no. 126). Thus, instead of seeking explanations and solutions when we feel disquiet, he suggests another approach, for:

Disquiet in philosophy might be said to arise from looking at philosophy wrongly, seeing it wrong, namely as if it were divided into (infinite) longitudinal strips instead of into (finite) cross strips. This inversion of our conception produces the *greatest* difficulty. So we try as it were to grasp the unlimited strips and complain that it cannot be done piecemeal. To be sure it cannot, if by a piece one means an infinite longitudinal strip. But it may well be done, if one means a cross-strip. – But in that case we never get to the end of our work! – Of course not, for it has no end. (We want to replace wild conjectures and explanations by the quiet weighing of linguistic facts) (Wittgenstein, 1981, no. 447).

And if we do 'replace wild conjectures and explanations by the quiet weighing of linguistic facts' – while bearing in mind the ineradicable *chiasmic* relations of such linguistic facts to their surrounding circumstances – then, as I see it, we can begin to see how, not just the concept of the person,

but people themselves can further develop themselves, and their relations to each other, as a result of collaborative or dialogically-structured inquiries of a practical kind. Indeed, much work of this kind is already underway in the fields of psychotherapy, management studies, medical education and doctor patient relationships, regional development, and in public dialogue projects, as well as in many of the other practical activities that constitute certain crucial moments in our everyday lives (see details on the website <http://pubpages.unh.edu/~jds>). But detailed reference to that work is a topic for another day.

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COMMENT ON JOHN SHOTTER'S PAPER

JERZY ZUBRZYCKI

The late call from the Academy to act as commentator for John Shotter's paper and my personal circumstances have forced me to offer my remarks in a summary form. I propose to speak to the following points during the afternoon session on Friday, 18 November.

1. GENERAL ASSESSMENT

The paper, written from the perspective of a social psychologist, is a welcome addition to the XI Session in which we explore the concepts of personhood that inform the various social sciences. Shotter's aim is to explore the concept of the person 'as it arises in a sea of living interactions' – a challenging task rooted primarily in the writings of the philosopher-linguist Ludwig Wittgenstein, the philosopher G.H. Mead and the psychologist and philosopher William James. Shotter also refers to the philosophical and theoretical writings of other scholars, especially Merleau-Ponty and H-G Godamer, whose thinking has informed his own substantial scholarship. (At this point I have to confess to my ignorance of these authors. JZ)

At the centre of Shotter's 'social-ecological' interest is an inquiry into the dynamics of inter-personal relationships in which people 'characterized by their possession of a particular set of properties' are immersed in spontaneous actions in response to the activities of other people. Initially he characterizes the essence of this activity or its 'point of condensation' as dialogical; the person involved in the dynamics of interaction with the other person.

Within the 'sea of living interaction' that people experience, the person is seen by Shotter as 'a prospective concept': standing as witness to the surrounding society the person is ready to respond to 'others and otherness' in adapting his or her behaviour. But the resulting mode of behaviour of actors involved in such an interaction is not just of a dialogical nature but

is, of necessity, chiasmic (from Greek *khiasmos* – crosswise arrangement. JZ), i.e. involving what Shotter calls ‘intertwined relations’. Initially people experience an impact on one another and then ‘begin to expressively respond to each other’. Thus the ‘living actions of others around us can enter into our actions [and consequently] enrich our abilities to relate ourselves to our circumstances in such a way as to help us to increase ... the *depth* of our relations to our surroundings’.

[A remarkable coincidence, as I am trying today to summarize what Shotter calls the *presence of depth* in our looking, is the newspaper report (Associated Press, London, October 14, 2005) of the award of the Nobel Prize for Literature to the British playwright Harold Pinter. The agency gives the following summary of Pinter’s unique dramatic idiom ‘as it evolved gradually into an acute observation of social and linguistic tics, in which small talk, hesitations and disjointed conversational gambits served to express his characters’ inner turmoil and contradictions’.

Professor Shotter: is the above akin to your paradigms of ‘chiasmic relations’ and ‘witness-being’?]

2. SOME METHODOLOGICAL OBSERVATIONS AND QUESTIONS

(i) Does the ‘prospective concept’ of the person leave out of account introspection and its theoretical point of reference? An early Wittgenstein quote: ‘inner processes stand in need of outer criteria’.

(ii) Shotter’s largely philosophical argument provides – as I read it – a heuristic point of reference to the person as an actor in society. But does it also serve as a point of departure for further investigations outside the narrowly conceived ‘points of condensation’? Do social structures and social processes influence the attitudes, beliefs, decisions, etc, of individuals (methodological holism) or are all such influences to be explained simply in terms of person-to-person interaction (methodological individualism)?

3. FROM INTER-PERSONAL RELATIONS TO THE SOCIOLOGY OF SOCIABILITY

The very mention of methodological holism changes the focus of this commentary. Instead of dealing with the self, the individual, the ‘prospective concept’ of the person, etc, we shift to such conceptual ‘wholes’ as social structure, social organization, society – indeed all types of collectivities characterized by notions such as the obligations of giving and receiv-

ing, reciprocity (e.g. Marcel Mauss in *The Gift*) and social bond. I addressed those ideas in the paper distributed at XI Session:

Sociology sees the human person as a beneficiary of the advantages and a victim of the disadvantages of membership of a collectivity. The simple truth is that we cannot live without society. Thus sociological analysis is a systematic attempt to understand the human person as a collective and not a biological entity. ... The human person's existence in a collective entity obliges him to use moral and rational judgements. Hence sociological analysis is also humanistic because it attempts to understand whatever the human person does in all categories that affect his humanity: his need for cognitive orientation, his capacity for rational judgement, for affectual attachment and moral decision.

The theorist who conceptualized the human person in all the dimensions of the individual's humanity was Georg Simmel when he wrote about sociation – an awkward translation of an equally awkward German compound noun *die Vergesellschaftung*.

Simmel asked about society and the human actor therein as Kant had asked about knowledge: how is it possible? Simmel's response focussed on the human actor: 'the individuals in their directly perceptible existence [become] the bearers of the process of sociation which one calls society'. Society is possible, according to Simmel, because of the presence of one key element that is present in all forms of interaction – the relations of sociability (*die Geselligkeit*). Such forms – these conscious and unconscious relationships of the social order – loyalty, friendship, love, gratitude, dependency, solidarity, power, but also grief and secrecy – are the constituent elements of social bond or 'sociation'. Thus in a negative response to Simmel's leading question, we could say that society would not be possible without sociability.

For the sake of acting as an *advocatus diaboli*, I wish to argue that Simmel's sociological conceptualization of the human person as an actor in all forms of sociability might provide a logical extension – or should I say framework? – within which we might analyze Shotter's idea of the person as a 'prospective concept' immersed in his or her diagonal and chiasmic relationships in 'a sea of living interactions'.

COMMENT ON JOHN SHOTTER'S 'PERSONS: POINTS OF CONDENSATION IN A SEA OF LIVING INTERACTIONS'

PEDRO MORANDÉ

It is a pleasure for me to comment the very interesting and suggestive paper of Prof. Shotter which reflects on human persons from the background of their spontaneous embedding in daily life's world, following the philosophical orientations of Wittgenstein, Vygotsky, Gadamer, Bakhtin and others.

The argumentation has as much a critical dimension as a positive one. Regarding the first one, it puts under question the person's view as 'subjectum' which has dominated the whole first phase of the modern world from Descartes and Kant until their questioning by phenomenology, structuralism and hermeneutics. Shotter characterizes this position pointing out that it 'emphasizes the central role of our deliberately intended activities as self-contained individuals in our knowledge-seeking activities... In this view, the important processes of reason occur inside the heads of individuals and have the character of "inner symbolic representations" of outer states of affairs - where our outer states of affairs are thought of as occurring merely in the empty and neutral space and time of the physicists', what allows to conceive them as 'unrestrictedly open to our mastery and possession, to our every manipulation'.

Instead, Shotter develops an approach on the human experience as a living dialogical meeting among people which happens on the basis of its own corporal reality that makes them participate of an emergent reality, unpredictable and incalculable beforehand. This dialogical meeting allows them to be open to prospective development to each other 'within the active, expressive, responsive relations' following their radical embedding in a dynamic world of interactions that includes speaking, thinking, acting, perceiving, etc., characteristic of human life. Toward the end of his paper, and after having explained the corresponding premises, he opposes the form of living which he denominates very suggestively the 'withness'-being from the merely entitative form of an 'aboutness'-being. 'While in "about-

ness-being", in which we try to understand others only cognitively, by "explaining" them to ourselves in terms of a theoretical framework, we stand over against them, and view them as if from a distance'; "witness-being" is a dynamic form of reflective interaction that involves our coming into living contact with an other's living being, with their utterances, with their bodily expressions, their words, their "works". His conclusion is that 'only in this kind of spontaneously responsive being, in which we are related bodily to those around us, is it possible to be "in touch with" or "struck by" the *uniqueness* of the others and othernesses around us; and only in this kind of being is it possible to be "moved by" another's words, and for us to carry them "on our shoulder", so to speak, to "remind" us of how to relate ourselves to the circumstances before us'.

This interesting approach has so much metaphysical as psychological and sociological implications as well, and it is for me very difficult to embrace all them in a brief comment. Without seeking to make justice to all the depth suggested by the argumentation, I would like to remark some aspects of his proposal, which has the undoubted merit of not being trapped in a given person's concept to explore instead the constituent reality of the person itself. In this sense, I believe that he is faithful to the ideal traced by phenomenology of 'returning to things themselves' just as they happen in the finite world of life, which we don't inhabit as an outer reality to us, but in which we are embedded as in a 'sea lot of living interactions', as it is expressed in the title of the paper.

I would like first to point out, that I fully agree with his critic to the Cartesian view of individual as 'subjectum', as foundation of itself, which identifies it, simply, with the certainty achieved by the cognitive self-reference of its conscience. Great contemporary thinkers as Heidegger or Gadamer, and also the philosopher Karol Wojtyła, have incorporated to their thought this same critic, and they have looked for to overcome the dualism between *res cogitans* and *res extensa* outlining the worldliness and temporariness of the world as the main constituent of the finite human experience which is not other than that of being-in-the-world and being-in-history. To this regard, I would like to quote Heidegger who denounces the limitless pretence of human being in the Cartesian tradition: 'If man becomes the first and authentic subjectum, this means that he becomes that entity on which all entity is based, concerning its way of being and its truth. Man becomes the central reference of the entity like such'. Such a pretence can only be sustained at the cost of Being's forgetfulness, not occasional or distracted, but systematic, from which he wanted to liberate ontology.

Gadamer, on the other hand, points out that the 'idea of an absolute reason is not a possibility open for historical humankind. Reason only exists for us as real and historical, that means, that reason is not owner of itself but rather it is always referred to that already given in the realm in which it is exercised... In fact it is not the history the one that belongs us, but rather we are those that belong to it. A lot before we understand ourselves to ourselves through reflection, we are already understanding ourselves in a self-evident way through the family, the society and the state in that we live. The lens of subjectivity is a distorting mirror. Individual's self-reflection is not more than a spark in the closed current of historical life'.

From sociology's point of view, it is also evident that the development of modern functional differentiated society which coordinates its activities by means of information's mass-media has nothing to do with the person's idea of subjectum, since it does not exist any observation point in society from which a singular person could observe in real time all the information which is produced at a given time. Therefore Niklas Luhmann points out that the 'subjectum is, in strict and paradoxical sense, the "utopia" of modern society, the place that is not in any place'. And he hurries to add that, nevertheless the sophisticated reflection of philosophers about this cognitive capacity of synthesis of the diversity that they denominate subjectum, this great modern utopia has been innocuous for the social evolution itself and has had no incidence in it. 'What the subjectum makes clear to modern society, is its inability to describe itself as a unit'.

It seems reasonable, therefore, to look for a new perspective to understand human person from its embedding in the world and in history, from its bodily activity, from its dialogical dynamic attitude to other people and from the description of this encounter experience. I believe that the contribution of Prof. Shotter is, to this respect, very creative. However, a sociologist cannot be totally satisfied with a perspective that, for its very nature, must be fixed in the realm of face-to-face relationships of individuals embedding in living interactions. The novelty of the complex social reality in that we are embedded at present time, is the emergency of a world society, governed by information and which can only approach to an unitary description of itself with the help of mass-media.

Communication that makes possible this new scale of society has also the characteristic, analysed by Prof. Shotter at the level of face-to-face experience, of being highly dynamic and contingent, as well as, obtaining their reasons and topics from the circumstances rather than from the narration of any singular and reflexive conscience that exposes orderly and logically

the arguments that move it to see the world in the way in which it does. However, this contingency is not spontaneously ordered starting from the encounter experience among people in daily life's world, but for the selectivity with which it is forced to produce a differential of complexity between communication and its context. Luhmann states that 'the necessary distance for the introduction and maintenance of universalists orientations, presupposes a sequential gradation of the multiple functional differentiations and, with it, a reinforcement of the selectivity that would be inconceivable inside the immediacy of the world of life. The particular environments that become functionally differentiated, as social environments already ordered, are the condition of possibility for further differentiations'. Without this pressure to selectivity and without its reinforcement which end achievement is the adoption of specialized codes of communication for the different subsystems of society, communication would be impossible, as beautifully describes Borges in his story of the emperor's map, where the cartographers receive the task to make a map of its Kingdom on a real scale.

Certainly, it makes a lot of sense to distinguish between 'whitness-being' and 'aboutness-being'. But it arises me the doubt if they are at all two alternative and excluding ways of being, which someone should choose anyone of them. Are they not rather two necessary moments of human living which presuppose each other and enforce each other? In his analysis of testimony, Ricoeur also approaches, as Prof. Shotter, to the witness's pre-narrative experience that he denominates the 'immediacy of the absolute', without which there would not be anything to testify. For the judge, however, or for anyone that faces the discernment of recognizing a witness like witness, such an immediacy of the absolute from the part of the witness is necessarily mediated through the narration of his/her testimony, which should be interpreted and reconstructed inside of an hermeneutic circle. So, 'whitness-being' and 'aboutness-being' are mutually needed so much to the witness's self conscience as to the possibility that his/her testimony can serve as evidence in the context of litigation.

To a relatively equivalent conclusion arrives also Heidegger when he is forced to distinguish between the authentic language that allows the *Dasein*, attentive to Being's call, to appropriate each time his own existence, and the 'gossips' and utterances said with an impersonal pronoun ('it is said', 'someone says', etc.) which so well describes the way of functioning of our mass-media. Without the last one it could not be recognized the first one. Only for the experience of getting lost in the inauthenticity of impersonal language, says Heidegger, it is possible to recover the authenticity of language in personal pronoun.

It may be wondered anyway, in what measure the pre-coded language of social mass-media affects the experience of people's encounter nowadays and their embedding in a sea of living and dynamic interactions. Practically all what people have for real today comes from the information transmitted by mass-media. Television has already completely blurred the old frontier among public and private or it has reduced it to a mere legal fiction. It has also finished, in many cases, with the temporal limit between happening and deferred reproduction, approaching public and private communication to 'real time'. The transmission of images and voice, from cameras or telephones have also shortened the bodily distances and enabled the perception of gestural language, projecting their scope far beyond the space-time limits of bodily interactions. Could it suffice under the current social conditions to understand this new situation with the categories of 'show' or of 'simulation', suggesting that it is a mere appearance, from which it could be distinguished a true and finally incommunicable experience?

I don't want to suggest, evidently that these frontiers have disappeared completely or that they became senseless. What demands us rather is a new frontier concept that allows us to represent the unit of the difference and not only the option between being located at one or another side of it. Social communication is not certainly a sum of individual experiences of communication, since the contexts where they operate and their respective selection criteria are very different. But neither is it a sort of parallel communication that let indifferent to the face to face communication. Although the selection criteria are very different, they have in common that they are selection criteria which regulate contingency and that they can be stabilized with help of memory and of the record of communication, especially when they have succeeded.

People as much as social systems are certainly prospective realities, in permanent becoming. The reason that Shotter adduces is 'because as living, growing, and developing beings, able both to accumulate and to embody to shared (and sharable) cultural history, there is not end to what we as persons are and can be'. The sociological question, however, is how it is possible that such interactions and relationships could be ordered, sufficiently predictable, protected from the high probability of deception. The tension between the actual and the possible, configures for individuals sets of expectations that vary according to the multiples systemic references which can respecify them in each case. Therefore there are limits to the possible, at least, sense limits according the diverse referential frameworks. For this same reason, in the level of social communication, expectations are not

only formed from the shared experiences but also from the attributions and imputations which involving actors or outsiders can make to specify what is possible for them. We usually speak of persons, for instance, when the expectations referred to social communication include a high probability of individual's successfully inclusion in the respective reference function. When the probability favours the exclusion, on the contrary, we don't speak of persons but of categories: the poor, the unemployed, the criminals, etc... Therefore, it seems that not all the condensation points in the sea of living interactions correspond to persons, but only some of them. I leave then open the question regarding which selection criteria are those that can refer the expectations specified through a communication situation to persons, and also the even more complex question, if these selection criteria are transverse at all to the different function subsystems or they became rather specified in a different and even contradictory way between them.

In the realm of philosophical anthropology, Julián Marías has also outlined a similar problem. He affirms that all human beings are persons, but it doesn't imply that all their acts are personal. Personal are only those which we consider significant as to include them in our biography. In a similar sense to Prof. Shotter, he points out that the 'person is never given, is not there, but rather coming' and for this same reason he points out, negatively, that 'the bigger danger for the personal character of love is the temptation to give for supposed the other person, to believe that it is already known who it is, losing the essential dramatism of coexistence'. The argumental sense of personal being, characteristic of the construction of a biography, supposes the capacity to differentiate personal being from others forms of non personal being, so that the map of personal world doesn't fall in the already mentioned paradox of Borges. Therefore he recognizes that 'the human world of coexistence presents three levels: the properly social one, the psychic one, that of interindividual treatment without effective intimacy and the personal in strict sense. The portion that each one of them acquires in each form of life, is a decisive factor in their configuration and sense'. Without the capacity to introduce these differences it could not be properly a personal life. In other words, the 'Witness-being' and the 'Aboutness-being' are needed reciprocally to become possible.

I would like to thank very much Prof. Shotter for the stimulating depth of his reflection that allows us to advance in the complex questions addressed in this meeting.

PART IV

ECONOMICS

THE HUMAN PERSON IN NORMATIVE ECONOMICS

SERGE-CHRISTOPHE KOLM*

1. *Introduction*

Normative judgments about economic life and its consequences determine a large part of the world we live in: our economic systems and their rules; the division between private activities and the public and political sector; public transfers, taxes and expenditures; the distribution of income and resources; economic policies; world economic organizations, institutions, and their rules and policies; and so on. Private interests are defended and justified by moral arguments. Favouring some kind of 'spontaneous order' is but one of the a priori possible positions and solutions.

Are these judgments justified? They refer to values such as freedom and rights, welfare and happiness, and community, and to assumptions about human possibilities. That is, their concepts rest on a conception – or on conceptions – of the nature of man and society, on a philosophical anthropology. Hence, judging these judgments requires, first of all, clarifying their explicit or implicit presuppositions about human nature, which constitute the material of their reasoning and the basis of their conclusions.

Economics, the science of economic life (or of the 'economic aspect' of life), has for long been eagerly criticized in this respect, both about its conception of man and about normative conclusions derived from it. Yet, it does not reduce to the 'dismal science' denounced by Carlisle, to the individualistic 'Robinsonades' calling exploitation freedom described by Marx, or to political prejudices sold with analyses but hardly derived from them. In fact, economics has even produced one of its branches – normative economics – specialized in the analysis of its normative questions and conclusions. This may open the door to still more mistakes, possibly with disas-

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trous consequences, or to the correction of some mistakes or the acknowledgment that some others did not really exist. At any rate, it seems important to make clear and explicit the views of man and society that underlie normative economics as it has actually developed, to point out their shortcomings, the attempts to remedy them, and the possible contributions of these conceptions to understanding and evaluation. Yet, we should first see that, since normative economics is made for application, its useful – and hence relevant – models of man and society are often imposed by the views held by societies whose basic values or principles it is asked to apply and which will have to implement the conclusions.

We will first show examples of questions asked to normative economics (Section 2). The fact that such normative questions are posed and that policies will apply answers imply – notably in democracies – that people have moral and altruistic concerns beyond their self-interest. In fact, economics has for long developed models of individuals with altruistic and moral concerns – contrary to a popular view (Section 3). Moreover, the necessity of considering questions asked and providing answers applicable by the society both provides the conceptual material for dealing with the problems and constrains the concepts used and the solutions proposed (Sections 4 and 5). Normative economics often uses the model of individuals endowed with preferences and ‘utility’ common in all economics, it – indeed – adds particular uses of these powerful concepts which can represent both freedom and welfare or happiness, but it has to be particularly careful about their meanings and epistemic status (Section 6). Issues of economic justice and fairness require particular emphases on the questions of impartiality, equality, and inequality, and on the relevant objects of these concepts (Section 7). The free individual has for long been central in economic views, and it has led to values of social (‘negative’) freedom, of real freedom and freedom of choice, and of responsibility (plus desert and merit when they result from free effort); the distinction between freedom and self-ownership is central in the solution of the question of economic justice (Section 8). The question of the efficient alleviation of misery by public transfers or private charity raises subtle and important issues based on the various types of altruism and reasons for giving (Section 9). Moreover, policies of ‘development’ have been particularly oblivious of the values of cultures and civilizations both for the people and intrinsically, with consequences which are one of the major catastrophes of our world (Section 10). The famous virtue of efficiency of selfishness in exchange requires, in fact, non-selfish attitudes of

respect of others' property, truth-telling, and trustworthiness (Section 11). Collective action and spontaneous contributions to public goods are also possible only thanks to a number of sentiments which are not strict self-interest (Section 12). Sentiments and relations of reciprocity of various types constitute a pervasive mode of economic and other relations (Section 13). This is a central concept in present economic analyzes of the family, organizations, labour relations, and the political and public system (Section 14). In the end, good relations and good people are no less important than satisfied consumers and just distributions for the quality of society (Section 15). Normative economics has thus considered and analyzed a number of features of the human person in social setting and drawn notable conclusions from them; undoubtedly, this cannot be seen as constituting a very deep view of the human person; but would such a deeper view describe anything actual, or at least useful for alleviating need or remedying lack of freedom, dignity, or culture? (Section 16).

I. THE GOOD ALLOCATION FROM PERSONS' MORAL JUDGMENTS

2. *The Proper Allocation of Resources*

If economics is seen as the science of the allocation of scarce resources – a common although restrictive definition –, normative economics is the discipline in charge of the non-negligible task of organizing reflection about the proper allocation and modes of allocation of these resources. How can one alleviate the distress due to misery? Can different policies make everyone happier or freer? Who needs what? Who deserves what? Who is entitled to what? What is fair? Who should give what to whom? What should be left to the market or realized by government or through associations? What are the proper public expenditures and taxes? What should we leave to future generations or take from them by public borrowing? What is the optimum compromise between unemployment and inflation when there is such a choice? Should we 'aid development'? Answering these questions and others certainly implies assumptions about what is relevant in the human person as end-values and about human capacities. The very fact that such questions are asked and that proposed answers are assumed to be able to have any influence on actions implies and reveals such assumptions. Conceptions of the human person underlie both the values and the means of reaching them, the moral and the economics.

Hence, one cannot fail to admire the extraordinary success of various classical schools of normative economics with respect to the highly praised scientific virtue of the parsimony of hypotheses, and be astounded by how much has been written on the basis of how little concerning aspects of the human person. This goes from the utilitarian who sees man as a pleasure machine adding to the heap of 'social happiness' (or 'society's happiness'), to the (process-) liberal who prides himself of not being concerned about what people do, in passing by the egalitarian whose only concern is to count people for dividing equally, the social choice theorist for whom a person is simply not jointly preferring a to b , b to c , and c to a , and the 'developer' who knows individuals' needs better than the persons in question know themselves.

But is Occam's razor a valid principle for moral conclusions? And, indeed, when you have to be practical, demands for further precision flow in: What can be the meaning of adding the pleasures of different persons? Should you also alleviate misery when it is due to envy? Which needs are basic? What is the borderline between two people's liberty? Or are the relevant freedoms intrinsically non-rival? What should you equally share? How many euros less for a rich are worth one euro more for a poor? Is the transitivity of preferences any sufficient? Should you enforce persons' values against their own selfish greed? How can you both praise favouring one's nephew and condemn nepotism? Will future generations want to have helped their grand parents through public borrowing for which they pay? Should policies 'develop' when this entails the death of traditional civilizations? The list can be long, but the lesson is clear. What normative economics has to propose about the human person are not answers but questions, lessons from theoretical and (alas) applied mistakes, a vast field of important applications for persons who have answers about what a person is, and possibly valid ways of avoiding deep and difficult questions in some important policy proposals.

However, in the process of its quest, normative economics has built a number of formal theories about conducts of individuals and structures of their mind, and about interactions and comparisons among people. These are in no way profound, tangible understanding of human nature, as those to be found, notably, in psychological philosophy, advanced Buddhist psychology,¹ even psychoanalysis (*cum grano salis*), or a few pages in sociolo-

¹ See, e.g., *Le Bonheur-Liberté, Bouddhisme profond et modernité*, S.-Ch. Kolm (1982).

gy and anthropology. Yet, they have to be considered because the conclusions derived from some of them may influence policies, and, in the end, importantly influence our lives and the world we live in. Moreover, these models of man may have some intrinsic interest. They may help explaining – if not understanding –, they may provide a framework which imposes possibly relevant precisions and specifications, they may help making policy proposals operational, and they point out questions that have to be faced and, particularly, their relative importance or unimportance.

Such questions will for instance concern the issues of needs and suffering, types of happiness and of freedoms, reasons for altruism and giving, types of and reasons for reciprocity, envy and justice, the objects of impartiality and equality, the structure and objects of inequality, responsibility and accountability, merit and deservingness, human community and solidarity, the interactions between the interests and the values of a person, the formation of tastes and of values, communication and its effects, and the value of cultures. A main problem of normative economics concerns distributive fairness and justice. This leads to questions of comparisons across individuals, such as ‘who is happier’, ‘who is the most miserable’, or ‘who is freer’? Such questions may seem nonsensical and very scholastics, but assume you have only a little piece of bread for two starving persons (we do not even know, a priori, if we should give it to the person who suffers the most or to the person to whom it will provide the largest relief). We thus have to be concerned about what can mean ‘to each according to her need, effort, responsibility, merit, virtue, rights, entitlement, contribution, intentions, and so on’. This makes the classical and praiseworthy emphasis on the uniqueness and incomparability of each human person often besides the point. If you have to share, you have to compare. A contrario, it drives towards conceptions of ‘the human nature’, which happens to be also a demand of the classical scientific point of view (*il n’y a de science que du général*).

Now questions about the just allocation are asked by persons, available answers are proposed by persons, and realization will be decided and carried out by persons. Hence, people are not exclusively self-interested. Everybody knows it, but this is supposed to have to be pointed out when we deal with economics. Even phariseism using moral arguments for defending one’s interest assumes *ipso facto* that these arguments will influence some other people. In particular, in a democracy where the sovereign political power is diffused, realization by the public authority implies that many people have an opinion about what is just or fair. In fact, the very concepts for thinking about this topic are found in the

minds of people in society. I do not hope that answers can be obtained otherwise than by the mediation of properly considering people's opinions, that is, outside some *vox populi* carefully listen to (people who think they produce a solution out of their own mind are likely to be 'the unconscious victims of some dead economist' – as John Maynard Keynes puts it). Hence the very existence of the allocative problem posed, and any hope to usefully face it in theory and in practice, imply that people do not care exclusively about their own self-interest. Assuming otherwise would be a contradiction and imply arbitrariness and impotency. Now, a persisting rumour has it that this assumption of selfishness is precisely a central feature of economists' vision of the human being.

3. *Economists' Models of Man*

Indeed, exposing the mischiefs of economists' conception of the human person has been one of the most popular rhetorical exercises for almost two centuries. So much has been said that it could not be all wrong. For the same reason, yet, it might not be all true. One should be impressed by the indictment of the 'dismal science' by Carlisle, a close friend of John Stuart Mill – and who, therefore, should know what he speaks about. Yet, when you see that the alternative he proposes is a Nietzschean cult of the hero, one may wonder. Receiving fire from another side, one cannot fail to be impressed by Marx's irony about the 'Robinsonades' of individual choice and by his exposition of the objective hypocrisy of economists who call exploitation freedom. However, his most powerful adept published millions of copies of a pamphlet called 'Man, the most precious capital', which reveals a worrying instrumental view of the human person.

Many economists are still influenced by Adam Smith's remark that if you need something from somebody, you would do better to rely on his self-interest (in exchange) rather than on his benevolence. Yet, the famous first lines of the first book about society² of the founding father of economics are:

How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it. Of this kind is pity or compassion, the emotion which we feel for the misery of others,

² He had a previous book about astronomy.

when we either see it, or are made to conceive it in a very lively manner. That we often derive sorrow from the sorrow of others, is a matter of fact too obvious to require any instances to prove it ; for this sentiment, like all the other original passions of human nature, is by no means confined to the virtuous and humane, though they perhaps may feel it with the most exquisite sensibility. (The Theory of Moral Sentiments, Part I, Chapter 1, *On Sympathy*).

A next remark of this book is: 'Kindness is the parent of kindness, and if to be beloved by our brethren be the great objective of our ambition, the surest way of obtaining it is, by our conduct to show that we love them'. This may reveal a kind of basically self-centered *homo economicus* in the end, yet no more than 'give and you will be given to' (Luke).

The truest *homo economicus*, however, may be that of mathematical economists, since you cannot cheat with mathematics, can't you? Either it is written in the equations, or it is not. Yet, two founders of mathematical economics, Ysidro Edgeworth (1881) and, more fully, Vilfredo Pareto (1913, 1916), write the 'utility' of a person as an increasing function of the 'ophelimity' of others, by which they mean that you are happier, the higher the other person's welfare. They differ from a third founder, Léon Walras, and from John Stuart Mill, only because these two think that persons have multiple selves successively in time, in being altruistic and moral in their moments of calm reflection, rather than simultaneously along with their taking care of themselves (in fact, it is often in times of excitement in danger or in political debate that people turn out to be the most altruistic). And, indeed, Walras spent his nights a week-ends lecturing and writing about solidaristic workers' associations.

However, the basic issue is not so much such a time sequencing of the human person, than a distinction of the various types of relations in which he is engaged. This solution of the basic misunderstanding was presented the most clearly by the economist and Methodist Clergyman Philip Wicksteed (1888, 1906, 1933). Wicksteed points out that when economists analyze selfish behaviour in exchanges, they describe a particular type of relation rather than a particular selfish type of person. People seek to earn money to feed their family or give to charity. Persons are not egoistic, but only *non-tuistic* towards others in these particular relations, Wicksteed says. There is no 'economic man' in the classical sense, but only economic relations. In his terms: 'What makes it an economic transaction is that I am not considering you except as a link in the chain, or considering your desires except as the means by which I may gratify those of someone else – not necessarily myself. The

economic relation does not exclude from my mind every one but me, it potentially includes everyone but you'.³

Another economist, Robertson, even proposed that the purpose of these economic relations not using directly altruism is to 'economize on love', the scarcest resource. Kenneth Arrow (1974) echoed this famous remark in proposing that 'we do not wish to use up recklessly the scarce resources of altruistic motivation'. However, these economic conceptions bypass the point that altruism, like the capacity to love, is a virtue, and that this type of resource has the particularity – pointed out by Aristotle – that it is more augmented than eroded by use, that the more you use it, the more you have of it, because it is perfected by training and habit. This may be why the guru of English economics, Alfred Marshall (1890), after noticing that 'men are capable of more unselfish service than they render', sets the objective as 'the supreme aim of the economist is to discover how this latent asset can be developed more quickly and turned to account more wisely'.

Finally, one can no longer count the innumerable economists who think that the characteristic of economics' model of man is not egoism but the preference ordering and the so-called 'utility function' – shortly discussed. Then, it seems to be possible to account for people's altruistic sentiments in 'writing other people's welfare or means in utility functions'.⁴ However, the proper consideration or even only modelling of social sentiments often requires much more elaboration. For example, this simple technical device cannot explain private charity when several people independently give to the poor (these gifts are contributions to the 'public good' of helping the poor, and they should be fully 'crowded out' by public transfers). Considering that people care about their own contribution or donation ('writing them in the utility function') cannot provide the explanation either, notably for a large society.⁵ More specific social and moral sentiments have to be theorized, including sense of duty, generalization of the 'categorical imperative' type ('what if everybody did like me?'), or 'putative reciprocities' (I help because I would have been help if I needed it).⁶

³ An interesting discussion of this view of Wicksteed is provided by Ian Steedman (1989).

⁴ This economics of altruism is presented in Kolm 1966. People can value others' happiness, or directly their income or some other means, or some ambiguous conception of their 'welfare' (i.e., Pareto's ophelimity). Presently, economic studies along this line number by several hundreds.

⁵ See Kolm 2005, and Section 9.

⁶ Id.

4. *The Necessarily Moral Persons Subject of Normative Economics: the Normative Economist as Elephant Driver and Minerva's Owl*

This view of the human person as caring about others is basic for *explaining* a large part of the allocation of resources – the topic of ‘positive’ economics – through the family, charity, the public sector, and general respect of persons and their properties. Yet, for evaluating this allocation and advising about it – a task of *normative economics* –, this view of the person is a condition *sine qua non*. Indeed, as we have noted, the fact that a number of people care about others is necessary for the very existence of the normative problem of allocation and of the concepts that permit one to think about it and possibly to solve it, and also for the obtained result to have any influence and hence usefulness. In the absence of such altruistic sentiments, one could only try to explain allocations as the sole result of selfish fighting and threats. In particular, saying what should be done makes sense only if there exists people motivated by such normative advice, hence who are not classical *homines economici*. And when the application passes by the public sector, in a democracy these persons should be very numerous (the electorate, for instance). The classical economists’ assumption of a ‘benevolent dictator’, or of a ‘philosopher king’, flies in the face of what we know about the human person: kings are not philosophers and conversely, dictators claim to be benevolent but hardly are; and we live in Republics.

In fact, this even implies that there is no sense in proposing actions different from what influential groups of people want to do or can be convinced to desire. The normative economist is much like the mahout of the Thai proverb: ‘the elephant driver must be very careful about where the elephant wants to go’. Hence, normative economics makes sense only if it shows people what they really want to support. This implies having a view of the human person that includes its moral dimension.

This situation also implies that normative economics can usefully and rationally consider a value only if it is endorsed by sufficiently many people. The normative economist cannot impose values and therefore cannot choose them by himself. He has to come after the diffusion of values, after the success of the preacher.⁷ For instance, he can apply the values of a tradition only if people endorse and follow this tradition. Social values, nowadays, have unavoidably to be filtered by democracy – by the particular and

⁷ Yet, the economist as preacher is a common figure, but his discourse is beyond his analytical expertise, when he has one.

imperfect type of it that prevails. In another animal metaphor from a different tradition, normative economics is another Minerva's owl. Yet, the normative economist can take part in the discussion, and has to. Of course, if he wants to convince, he has to stoop to conquer and start from popular values. But his special expertise is indispensable for specifying imprecise emotional values into rational, logical, consistent, operational and applicable rules – think, for instance, of the notions of welfare, freedom, equality, solidarity, need satisfaction, responsibility, desert, merit, and so on. It is indispensable for pointing out with the required precision the relation between values, their possible incompatibility or implications, and the possible terms of the choice between them. It is also unavoidable for embodying the values into rules, laws, fiscal systems, or public expenditures with sufficient comprehensiveness and efficiency. It alone can show a number of consequences of the realization of a number of these values, notably concerning their effects on the economy, on people's welfare and on the distribution of wealth, and on a number of liberties. All these analyses and operations rest, at bottom, on the conceptions of the human person implied by the values in question.

Oblivion of the basic requirement that relevant values have to be socially endorsed has historically led vast stretches of normative economics to sterile conceptions. This applies in particular to utilitarianism, the evaluation of the society by the 'sum' of individuals' pleasures, happiness, 'felicity', or utility. The fact is that nobody uses such a principle for general evaluations – undoubtedly not the utilitarian scholars themselves when they make such judgments in real life. Rather, people use various criteria, with a large importance given to rights of various types as basic social ethical values. This is in fact a relief, because defining mental items that can generally be so added over various individuals is not easy! However, some judgments implicit by those who chose to utilitarianism exist. This is revealed by expressions such as 'give this to her rather than to him because she likes it more than he does', or 'let me do it rather than you because it is less painful for me to do than it is for you'. Yet, these cases are restricted to local issues, among other cases using various other principles, far from the universal application dreamed by utilitarian philosophers (and economists). One can remark, in the end, that Jeremy Bentham introduced this social ethical principle only for the political purpose of the ideological fight against the ethics of basic rights on which the American and French revolutions were built. In fact, he also said that he does not believe that adding the pleasures of various individuals makes sense, but this remark was ignored by his epigons.

Finding social ethical principles in the views of people and society – a method called ‘endogenous social choice’ – implies in particular that unanimity of reflective and thoughtful opinion cannot be disobeyed (this would even be a logical impossibility because, being in society, you share this unanimous view by hypothesis, and hence you cannot want to disobey it – ‘we are all embarked’, Pascal said). Hence, an allocative solution should not be proposed if everyone thinks that a better one is possible. Such a structural consequence of the principle of unanimity is usually considered by economists with respect to persons’ self-interest: from such a ‘Pareto efficient’ state, it is not possible to jointly improve everybody’s welfare. Avoiding not being in such a state – avoiding ‘social waste’ so defined – is considered the first question posed to normative economics. Economists consider choosing among such states to be the problem of ‘distribution’ properly posed. Finding the solution of this question in society requires considering the opinions of persons when they take a higher standpoint, for instance when they judge morally conflicts of interests. However, these higher views held by the persons may still differ, because they have different values and because they may remain somewhat influenced by their own self-interest (people may be *phariseans*, i.e. defend their interest with moral arguments, but they may more or less believe in these moral reasons). Yet, a basic logical property shows that a progress has nevertheless been made in the direction of unanimous agreement if individuals’ moral judgments are charitable or benevolent, in the sense that they always approve that some people are better-off while none is worse-off. In this case, indeed, a state that makes everyone (self-interestedly) better-off than he is in some other state is also unanimously judged better than the latter on moral grounds. Hence, if a possible state is such that no other possible state is unanimously found morally better (a morally Pareto-efficient state), then it is also such that no other possible state makes everyone (self-interestedly) better-off (a self-interested Pareto-efficient state). Moreover, there generally exist possible states such that no other possible state makes everybody better-off whereas some other possible states are unanimously morally preferred. For instance, in the latter states people have unanimously morally agreed to diminish poverty at some material cost for the wealthier. Hence, passing at the moral level has unambiguously diminished the set of states among which there is some disagreement.⁸

⁸ In this specific and precise sense, the ‘overlapping consensus’ considered by John Rawls unambiguously expands in passing from the self-interest of people to their benevo-

Further considerations make personal judgments still more similar in further expanding the scope of the consensus of unanimous preferences and restricting the set of states among which some disagreement exists. A main step will be a requirement of impartiality, shortly considered. The basic issue is that moral views are caused by influence, reasoning, personal experience, and sensitivity. They become more similar when these causes become more similar. And all these causes except some innate physiological basis of sensitivity are influenced by information, notably about other people's moral views and personal experiences, and about reasons. Dialog is a main way of transmitting such information. Limits to these processes can be notionally waved thanks to theories of these effects.⁹ In the end, the solution importantly depends on the cognitive, rational, and emotional structure of the human mind concerning humans as individuals and as constituting communities.

5. *Limits to Depth: Common Understanding and Comparisons*

However, this structure is in itself a priori largely formal, and more specific and tangible properties are needed for applications. Yet, difficulties in this direction and in basing normative economics on a deeper view of the human person are a priori raised by two intrinsic aspects of the problem: the necessity of abiding by common views and of comparing persons for allocating resources (other difficulties come from the tradition of disciplines and the culture and imagination of scholars). Indeed, one has to take account of common opinions which may not be based on a deep understanding, and comparing across persons raises further problems rarely faced by other specialists (such as psychologists) except when, precisely, an issue of justice is raised (as it happens for law about rights or welfare when it compares cases or has to define equality of to compute *praetium doloris* or fair compensations). However, the reference to common opinion is also the main source of solution for the latter problem, sometimes in showing that specific difficult questions are in fact irrelevant, as we will see. A number of a priori puzzling basic questions have been avoided or solved in this way. Yet, we probably still have things to learn about issues such as needs, empathy, or sense of community. Normative economists can learn from

lent and respectful social ethical judgment. This property was first perceived, about an example, by the English economist Y. Edgeworth in 1881.

⁹ See Kolm 2004, Part IV.

other scholars, but a difficulty comes from the fact that they need answers to questions that are not emphasized, at least with the precision required, often, as noted, in the family of interpersonal comparison, such as comparing, comparing variations, aggregating, and the like, applied, a priori, to items such as persons' needs, happiness, freedoms of various types, and so on, not to mention issues of personal consideration or dignity when they meet questions of scarcity.

For instance, some applications require the consideration of human happiness or suffering. Normative economists can then become knowledgeable about this topic and become experts about pain, anguish, anxiety, frustration, shame, serenity, *ataraxy*, joy, excitement, exhilaration, fulfillment, *eudaemonia*, and the like. Yet, what will first be required from them is comparing across persons, for alleviating the deepest pain or realizing some other allocation according to values based on such sentiments. It is sometimes clear that one person is happier or more miserable than another. For instance, one is happy, or miserable, and the other is not. It is also of course not possible to tell in many cases. Yet, this sometimes is a question of information rather than an intrinsic impossibility – for instance, a common close friend or a common mother may be able to compare. The main difficulty, however, rests in comparing happinesses or sufferings of different natures. For the same person, the comparison can be made by this person's choice among situations with different types of satisfaction or dissatisfaction. But this solution is not available for different people. Even for the same person, the case is not easy if one attaches a moral value to the type of satisfaction, not only for discarding envy, sadism or *shadenfreude*, but also, as John Stuart Mill did for example, in finding the pleasure from reading poetry superior to that derived from playing pushpin.

However, if the problem is difficult for the ethical analyst, it also is for the *vox populi* which necessarily leads his relevant choices. Yet, following people's views often solves the problem in another way: in proposing that the difficult question is not the relevant one. For example, the most mundane topic of normative economics is the determination of the proper income tax, and this is indeed a main distributive problem in our societies. A long economic tradition has tried to solve this problem basically from comparisons of variations in people's satisfaction, in a refined way with James Mirrlees (1971) and Partha Dasgupta and Peter Hammond (1980). However, people do not think that someone should pay a higher income tax than someone else as a compensation for his higher capacity to enjoy the remaining income or, on the contrary, because he is less able to derive sat-

isfaction from what is taken from him. People are not worried about choosing between these two contradictory solutions – or some intermediate case – because they think that the eudemonistic capacities of individuals – their capacities to derive pleasure or happiness – are irrelevant for this question. Then, deriving the logical consequences of unanimous views of people and of the relevant facts leads to the solution, shortly noted, which is a kind of equal sharing of given resources. A practical solution is thus obtained by logical necessity, but at the cost of not being forced to have a deep view or analysis of the human person.

The limits of the common conception and understanding of the human person affect normative economics not only in limiting solutions that people can understand, accept, and implement, but also, to begin with, in setting the problems it has to solve. Indeed, the question of scarcity and its consequences such as the problem of distributive justice would vanish, or at least be very different, if people were aware of the possibility of mastering the birth of their desires, a way they would choose if they knew its effects and how to do it. Yet, this information requires teachers, training, and time, and is not a possible part of the solution on a sufficient scale and in the short run, although culture and education can induce some progress in this way. However, a main characteristic of present-day economics as a whole is that it takes preferences and tastes as more rigid, given, and exogenous than they actually are – although some studies provide exceptions –, and its analysis of the structure, ways and possibilities of the self-formation of preferences (and of the related mental freedom and autonomy) has been still more scant.¹⁰ In historical perspective, this is an impoverishment of thought and culture, since the direct ancestors of economics, the utilitarian philosophers of the 18th century, drew their inspiration from stoic and epicurean philosophies which centered on this self-formation.¹¹ This question is to be related to that of altruism, which can also reduce conflicts due to sharing scarce resources. This has been more studied by economics, as we have seen. Yet, there remain things to be learnt in this respect, notably concerning the question of community, and there also remains to choose the non-conflicting allocations. At any rate, economics is largely a second-best question: the scarcity of resources would be much less a problem if human capacities for self-formation and general altruism were not so scarce.

¹⁰ See Kolm 1982 and in Elster, ed. (1986).

¹¹ See Rosen (2003).

II. RATIONALITY, IMPARTIALITY, LIBERTY

6. *The Rational Preferer*

Normative economics, which is intrinsically economics by its main topic (be it economic life, economic aspects of life, or the allocation of resources), also de facto relates to economics in general by the conceptual tools it commonly uses. Yet, it adds specific applications and emphasises specific meanings of these concepts. A most basic of these tools is a kind of view of the human person. This is the assumption that the person is a priori endowed with an 'order of preference' between alternatives, or that he behaves as if this were the case. These 'preferences' compare each pair of possible alternatives, with conditions of consistency (alternative *a* preferred to alternative *b* excludes *b* preferred to *a*, and 'transitivity' saying that *a* preferred to *b* and *b* preferred to *c* implies *a* preferred to *c* plus the obvious introduction of indifference). Then, a person's choice is 'explained' by her choosing her most preferred alternative among the possible ones. This preference ordering is often representable and represented by an (ordinal) 'utility function' that the person seeks to maximize (at any rate, his acts are assumed to have this effect). This 'utility' – further discussed shortly – is how the concept was introduced. The basic reason for this device, and the reason why economists who explicitly consider individuals almost always use it, is that it summarizes the person's motives (tastes for the consumer) in a theory of choice and of the resulting actions. The origin of these preferences is almost always not studied (only a few formal structures are assumed), because this is considered another problem, not the economist's – probably that of the psychologist. Thus, these preferences can be an assumption about the division of labour among disciplines. However, psychologists hardly care to provide preference orderings: when they study motives, they usually go directly to the resulting actions (similarly, the philosophers Frege and Wittgenstein were astounded by such a theory where 'action flows from preferences like water from a reservoir').¹²

Yet, this basic meaning and intent is lost in the most 'depsychologized' conception of these preferences. This notion holds that the structural properties noted above, notably transitivity, are only a property of rationality of

¹² The main efforts for translating findings of experimental psychology into structures of utility functions are probably those of the economist Louis Lévy-Garboua (2004, 2005). See also Kahneman and Tversky (1984) and Payne, Bettman and Johnson (1992).

the person who binds herself to obey them in his choices (this view even defines 'rationality' as being these properties).¹³ These properties are usually assumed without justification. However, they can also be backed by psychological considerations. Choosing *a* rather than *b* and *b* rather than *a*, or, more subtly, choosing *a* rather than *b*, *b* rather than *c*, and *c* rather than *a*, may be felt by the person as a kind of inconsistency, which produces in her a kind of disagreeable cognitive dissonance, which she tries to avoid in respecting these ordering properties. Yet, the basic notion that preferences represent the underlying tangible set of motives is now out of sight (and another psychological explanation is brought back in).

Moreover, this rationality-as-consistency approach to preferences has the ambiguous merit that it can make the hypothesis of this ordering robust to the point of being unfalsifiable. Indeed, a person's preferences can be dated, they exist at a certain date. Now, if the person's actions violate the properties (such as transitivity or consequences it implies),¹⁴ this always requires several actions occurring at several dates, and it can be said that the underlying preferences are not the same at these different dates. Then, the preference ordering belongs to what Karl Popper calls 'metaphysics'. The falsifiable property is only a certain stability in time of the preference ordering. This relates to a classical philosophical discussion about the person's 'self' as being characterized by duration or consistency in time. Yet, it is strange that a psychological concept can be untestable, and yet both fully precise (indeed, mathematical – Popper's examples of unfalsifiable properties rest on the vagueness and lack of precise definition of the concepts) and so rich in varied implications. These specific implications are multiplied when we reach the normative applications, which are considered now.

¹³ The label 'rationality' was applied to this 'maximizing behaviour' by some economists (including John Hicks) for the purpose of giving a favourable and impressive name to this hypothesis which was so convenient for economic modelling but which they did not know how to justify, in the hope that this would make it more acceptable without questions. The term may fit better if applied to the noted formal ordering properties. This is clear for not preferring both *a* to *b* and *b* to *a*, which would be a contradiction. Yet, it is not sure that lack of transitivity is such a contradiction, or, perhaps, one should consider that its usual cause is focussing on different aspects of the items *a*, *b*, and *c* when making each pairwise choice, and this lack of overall consideration would be irrationality in attention. If, for instance, one considers a most general concept of rationality, that of a choice or action being 'for a reason' or justified, then its application to transitivity would be that preferring *a* to *b* and *b* to *c* would be a reason (or a good reason) for preferring *a* to *c*.

¹⁴ For instance, choosing *a* in a possibility set *A* and *b* in a possibility set *B* whereas *a* and *b* both belong to both *A* and *B*.

Historically, this hypothesis of 'maximizing behaviour' is derived from the theory of 'utility' by which individuals were supposed to seek the highest happiness or pleasure. Present-day economists keep this formal structure, but their behaviourist tastes lead them to shun these tangible psychological interpretations. Normative economics commonly shares this use of this conceptual representation and tool, but it needs a few additions. To begin with, the historical and classical tangible meaning of utility as happiness, or something like it, has often to be kept for normative uses. Indeed, in many of these applications of this concept there is not even an individual's choice but only the consideration of levels of what is sometimes called 'satisfaction' for fear of using the heavily psychological notion of happiness, but has often to mean about this for the desired normative conclusions. Yet, choice from preferences is also commonly considered, with three possible effects. First, this may just be intended as a kind of explanation of choice and behaviour, as in all economics.

Second, preferring may in addition be taken to mean 'being happier with', and this raises two issues. On the one hand, this provides the magnificent trick which enables one to say that free choice provides the highest possible happiness. Hence, roughly, if you want the person's happiness, you cannot do better than *laissez faire, laissez passer*. This is the basis of the classical 'welfarist' justification of the free market, and this is used in many other applications. On the other hand, however, this consideration assumes that the person chooses what makes him happier, or more satisfied, which is a strong behavioural hypothesis. Note that the hypothesis may be as much about the definition of happiness as about human conduct. If you define the person's happiness as that which he maximizes by his choice, the hypothesis is true but a simple tautology. And, indeed, the variety in the concept and fact of happiness is a priori a general problem for this eudemonistic interpretation of the preference ordering or the 'utility' function.

The third issue about choosing from preferences comes from the fact that choice manifests freedom, which is also a value in itself, in fact the other type of individualistic value as contrasted with happiness, satisfaction, welfare, lower suffering, and the like. This, of course, raises a form of the classical question: if choice and action are determined by preferences, are they actually free? The answer is a discussion based on the following remarks: by definition, an act is free in so far as it is determined by the will or by reason (two conceptions), but the will and preferences are joint caus-

es of the choice (which leads to specifying the meaning of 'in so far as'), and preferences are sometimes more or less influenced by reason.¹⁵

These possible meanings of preferences and utility functions, and the extraordinary formal versatility of this concept, have permitted one to provide formal models of important psychological structures, with various normative consequences exhibited thanks to these precise representations. For instance, an economic theory of psychoanalysis shows the ways in which the normative *superego* both confronts the impulsive *id* and reality thanks to the *ego*, and regulates interpersonal relations; a theory of comparative social sentiments and notably envy shows how to discount such sentiments for normative studies – see below – and important relations between equality, freedom, and these sentiments or their absence; a theory of the self-formation of preferences shows the psychological logic of this action and how this can more or less affect the economic problem; the structures of altruistic sentiments have been closely analyzed in this way; such studies have also helped us understand relations of reciprocity and their consequences (see below); formal theories of the multiple self have a number of types and applications; and so on.¹⁶

Finally, the necessity of deriving the relevant norms and values from the opinions of persons or of society often leads one to consider that persons are endowed not with one but with two (at least) sets of preferences, one concerned with their interest and the other describing their moral or social values – as we have seen. The person in complete normative economics thus tends to have a multiple self, at least an 'economic' self and a moral self. This structure does not seem too unrealistic. The moral ordering describes in particular the person's moral judgment about the allocation of resources, his altruism, and his sense of justice. However, one has to go behind these structures and look for their causes, notably because these preferences can change and be different. These causes are of course very different for tastes and for values, which these two types of preferences represent. And the normative solution is largely derived from similarities between the value preferences of the various people and from

¹⁵ The definition of the will also has to be specified: weakness of the will (*akrasia*) is freedom if it is considered an intrinsic property of the will and unfreedom if it is considered an external obstacle to it. Of course, the will and reason are themselves processes involving more primitive psychological elements in dynamic interactions (cf. Kolm 1982).

¹⁶ See, notably, Kolm (1966, 1971, 1981, 1982, 1984, 1987, 1995, 2005), Elster (1986), Rabin (1993), Lévy-Garboua, Meidinger and Rappoport (2005).

influences among them. Passing from the self-interested preferences of people to their moral preferences is clearly in the direction of a progress towards the solution of the central problem posed, the proper allocation of scarce resources. Indeed, people's self-interests are a priori intrinsically directly opposed in this allocation, whereas this is not necessarily the case for their moral preferences. We have seen that the sole general property of benevolence of all moral preferences implies that people's moral evaluations are closer to one another than their self-interests are, in a specific but uncontroversial sense. By extension, this suggests that the more people value others' interest, the less they disagree about the proper allocation. However, this view raises two questions. First, people should not go so far as sacrificing their own interest to those of others – that is, becoming altruists in the sense of Auguste Comte when he introduced this term. They should stop at impartiality. Second, not all aspects of individuals' interest may be relevant: this depends on the conception of the human person deemed to be relevant for this distributive issue.¹⁷

7. The Capacity for Impartiality and the Ideal Equalizand

The objective of evaluating allocations to people implies that a basic value to consider is justice or fairness. The sense of justice implies one property of the human person, this strange capacity of abstracting from oneself and seeing oneself as anybody else, Thomas Nagel's 'view from nowhere',¹⁸ namely impartiality. The classical image (Hutcheson, Hume, A. Smith, J.S. Mill, etc.) is that of an 'impartial spectator' 'resting in the breast of each of us' (Smith). However, impartiality in itself does not suffice for defining the principle of justice, contrary to what a number of these scholars believed. Indeed, it can apply to various possible aspects of the person and of his situation that are deemed relevant. And the choice of these aspects implies a crucial distinction, in the person, between what is con-

¹⁷ Preference orderings have thus been used in a large variety of ways in normative economics. A question that arises in various guises is that of deriving, from the set of functions or orderings that represent individuals' utility, welfare, ophelimity or values, a unique maximand or ordering, to be used for the social choice or for an evaluation, that represents an individual's overall utility (Pareto) or social ethical evaluation (Bergson 1966), or a social ethical maximand (utilitarianism and again Pareto) or society's preferences (Arrow 1951, 1963, which launched an extensive investigation of the logic of this aggregation of orderings).

¹⁸ The contrary of now-here, *hic et nunc*.

sidered under social responsibility with the requirement of impartiality, and the residual that is left to the accountability of the individual himself. This choice is a basic option about the retained concept of the person in society. This issue is particularly clear concerning a logical consequence of impartiality, the ideal of equality. Such an ideal is, indeed, a necessary consequence of impartiality and of rationality in the primitive sense of 'for a reason' – this technicality is not developed here, but the relation is probably intuitive.¹⁹ According to the noted dichotomy in the person, this equality can be in very different things, for instance in basic rights and freedoms ('men are free and equal in rights' are the first words of the 1789 Declaration) as well as in wealth or happiness (if such an equality can be defined), or in the right to a minimum income or to some specific good. The implication between justice and (some) equality is the historical basis of this reflection; Aristotle remarks that 'justice is equality, as everybody thinks it is, quite apart from any other consideration', and he discusses, after Plato, the types of equality (strict or in proportion) according to the type of issue (sharing a given item or rewarding merit or responsibility).²⁰ More generally, equality can be of an item – of any nature – or of a rule, that is, a function from some characteristics or acts to such items.

Hence, the nature of the ideal equalizand defines the conception of the human person that is deemed relevant for the just society. The alternatives refer first to the two polar conceptions of the person as a choosing agent and as a sentient being. The former entails values of freedom and responsibility. The latter focuses on the relief of suffering, on varieties of happiness, and on their conditions of well-being and welfare. Other focal items are mixed or intermediate. Merit and desert remunerate effort (or cost) irrespective of choice, but this can be freely chosen effort; the difference between both concepts is that people are a priori entitled to the effects of their own capacities with merit, whereas this is not the case for desert. Welfare requires goods. Income provides the freedom for acquiring them (it is 'purchasing power'). Other values seem right in between freedom and happiness, such as self-fulfilment, or Aristotle's own *eudaimonia* (usually translated as happiness) and activity. These values are moreover *prima facie* correlated: the eudemonistic chooser manages to be happier with more freedom and means; he may even value the possibility of choosing per se

¹⁹ See notably Kolm 1998 (English translation of 1971/1972), Foreword, Section 5.

²⁰ *Nicomachean Ethics* and *Eudemian Ethics*, and *The Laws*.

and the ensuing responsibility – although the costs and the anguish of choice, and a possible aversion to responsibility, may have the opposite effect; and his unhappiness constitutes a constraint (since he would like to get rid of it). However, each choice of a specific equalizand gives a different solution to the problem of allocation.

More generally, for whatever normative use, one may be led to perform a dichotomy of the person into what is relevant and what is not, for keeping only the former aspect. The person is then replaced in the reasoning by a notional but relevant, 'cleaned' individuality. This applies notably to the person's preferences representing motives or tastes. This operation is then called the 'laundering or ironing of preferences'.²¹ This conceptual disentangling of the various psychological aspects of the person is more or less difficult or easy, depending on the case. For example, an important and easy case is that of negative comparative social sentiments such that envy, jealousy, or sentiment of superiority (we would not want to give less to some person only because someone else is envious). The notional ablation of these sentiments is straightforwardly technically performed in replacing, in the objects of the person's preferences (or in his utility function), the items of the other persons that this person compares to his own by items identical to his own. Then, the comparative sentiments have no ground to apply.²² The actual individual is not a better person (the normative economist is not a preacher), but, at least, his perverse sentiments have no influence on the chosen policy and on its consequences for other people.

8. *Social Freedom or Self-Ownership*

Social freedom is, for each person, an absence of forceful interference by others as individuals, in groups, or in institutions. Each is only constrained, if necessary, not to forcefully interfere with others. Free interaction, agreement, and exchange are possible (and important). Respecting others' actions implies respecting their intended consequences, for instance rights acquired in exchange. Public constraint enforces the respect of the rule (including explicit or implicit collective agreement). The 'negative freedom' of some philosophers (Kant, John Stuart Mill, Berlin, for instance) describes the basis of social freedom, and the classical basic rights or freedoms state its application to main domains. Social freedom thus is the

²¹ Goodin, 1986.

²² See Kolm, 1995.

basic rule of our societies. The social freedoms of various individuals are not rival and hence can be full and at satiety for all (oppositions can only come from a lack of definition of rights).²³ Social freedom can be valued for itself, but also as a consequence of rationality, since each consistent individual wants not to be forced and hence, if he takes a view of justice which is by nature impartial, he has to want social freedom for all.

Valuing social freedom is process liberalism (simply called liberalism in European languages other than modern English).²⁴ Most economists have been such process liberals. The underlying concept of the person is the classical one presented in law. However, economists do not see social freedom as an end value only. They emphasize its role of means in exchange and the resulting efficiency. Yet, this changes the relevant aspect of the person from the free chooser to the selfish (or nontuistic) exchanger. This person can then turn into the exploitative capitalist or the greedy accumulator in hostile – if not cut-throat – competition. Hence the success of Adam Smith's remark – after the jansenist Pierre Nicole's in his *Essays on Moral* – that selfish behaviour in exchange in fact leads one to serve the other person, a case of 'public virtue of private vice'. This developed into Pareto's proof that perfectly competitive markets lead to a Pareto-efficient allocation.

Social freedom implies that the person is entitled to the product of his labour and of his exchange. Yet, it does not say a priori how to allocate the given, 'natural' resources. Transfers allocating these given resources are also those that respect economic efficiency because they are not based on items influenceable by people's actions which could react to taxes or subsidies (this is a classical remark in elementary economic analysis). Among these resources, that which produces the largest amount of economic value, by far, consists of the given human productive capacities. As an order of

²³ The classical notion that basic rights should be 'equal for all and maximal' (Rousseau, Condorcet, John Stuart Mill, Rawls) misses this point. It wants to associate to each basic right some specific material mean of its actualization, but there is no limit to these means, and hence this principle can allocate all the resources and provides no guidance for this allocation (see Kolm 1996, 2004).

²⁴ This liberalism, valuing the absence of forceful interference, is the opposite of 'libertarianism' as defined by Murray Rothbart (1973) for which freedom is the meeting of forces and possibly their balance. This latter view is also that of James Buchanan (1975, 1986) who extends it to all of society whereas Rothbart or David Friedman (1978) consider private acts only as manifesting freedom. A present tendency of calling libertarianism all these views thus is particularly unfortunate (Rothbart himself stole this term from another view opposed to all these, left anarchism).

magnitude, the attribution of social (e.g., national) income to its 'primary factors' labour, capital, and natural resources are often like 80, 18, and 2, but since capital is itself produced (by definition), the responsibility of the two 'natural' factors of labour and land is about as 97,5 and 2,5 (John Locke puts the share of labour as '9/10 or rather 99/100') – moreover, some productive capacities are not actually used in labour.

Now, social freedom implies that each person has the right to freely use her own capacities (a use-right), but it does not a priori imply that she has the full right to the economic value of this use-right, that is, to the 'rent' of her given productive capacities. Part of this rent may belong to some other person to whom she has to pay it. Social freedom implies that people are the legitimate tenants of themselves, but not that they fully own themselves (i.e., have both the use-right and all the rent-right in their own capacities).

Yet, someone may both be liable of some rent on her own capacity towards others, and entitled to some of the rent of others' capacities. The point is that these capacities a priori differ across people. Of course, someone who, on the whole, has to pay for providing a transfer, has to work for this if she has no other means. But if this is the case of the more productive people, this restriction of freedom of choice (opportunities, 'real freedom') may simply compensate the larger such freedom a priori provided by this larger productivity or wage rate (the possibility to have more income and goods for a given labour or leisure). The relevant application of the rationality of equality then yields a result which has several equivalent but different meaningful forms: each person yields to each other the product of the same labour in a kind of general labour reciprocity; each receives an equal share of the proceeds of the same given labour from everyone; each receives the same 'universal basic income' and contributes to its financing by an equal sacrifice in labour; all people have an equal freedom of choice (although their domains of possible choices differ as a result of the full respect of social freedom).²⁵

The labour whose product is equally shared constitutes a degree of equalization and solidarity which describes the degree to which the society in question constitutes a community of resources. A formally particular case is that where this degree is null and there is no transfer: this is full self-ownership. In a sense, this is a different case because a more productive person (with a higher wage rate) has more opportunities or freedom of choice of goods and leisure (labour). Full self-ownership implies social free-

²⁵ Kolm 2004.

dom, but the converse does not hold in the most rational conception. However, full self-ownership has often been presented as deriving from freedom. This solution, and this defence, have been the most important social and economic ethics of the modern world (the last two centuries and the victorious market, bourgeoisie, and capitalism). It implies low incomes for people whose productive capacities are poorly valued by others, and vast economic inequalities.

These two process-liberal ethics imply two very different views of the person in society. Full self-ownership makes society be a bundle of individuals only related through exchange and with very large economic inequalities. In the other case, by contrast, there can be some larger or smaller equalizing transfers, which result from solidarity and a sense of community, and manifest that each person has some claim in the given capacities of each other, and some duty to more or less share the value of his natural endowments with the others. Yet, given these transfers, the persons are free to use their capacities and work and earn as they wish. However, they are no longer the full owners of themselves since, for the use of part of their productive or economic self, they are to be seen as only having a right of tenancy. But they correspondingly have a share in the rent of other people's natural productive endowment.

The solution of owning what results from one's action and equally sharing what is given to society is in fact the grand ancestor of principles of justice. Aristotle in *Nicomachean Ethics* and in *Eudemian Ethics*, and Plato in *Laws*, describe the common view about justice in saying that it distinguishes 'arithmetic' and 'geometric' equality. The former consists of equally sharing what is given. The latter consists of remuneration 'in proportion' to merit (*axia*), notably for what is yielded in exchange (in 'commutative justice') where merit is measured by what the other party accepts to pay. This amounts to social freedom. When what is given is a priori allocated to people and cannot or should not be transferred, 'arithmetic equality' leads to compensatory transfers which realize *diorthic justice*. This is the case of given capacities and of the transfers distributing their rent.

The other face of entitlement from action is responsibility and these concepts are, like those of desert or merit from freely provided effort, but ethical evaluations of the free choice. Responsibility as an allocative criterion has for long been explicitly analyzed and applied in normative economic studies. The basic principle is accountability according to responsibility (Kolm 1966, 1970, 1976). Studies of Roemer (1993, 1998) have focussed on equality for equal responsibility or effort, but Fleurbaey (1995, 1998) has emphasized logical and moral limitation of the reference to responsibility.

The transfers noted above, distributing given natural resources and notably the human ones, avoid misery and low income for persons whose own capacities, given by nature or by the family, are not sufficiently economically valued by the rest of society. Yet, they do this not as assistancy, but as the application of a right in society's resources, and, consequently, with full respect of the dignity of the beneficiaries. When this is not done, however, aid for the purpose of alleviating poverty becomes a necessary second-best. Among the problems that this raises, two have particularly serious implications concerning the nature of the person of the donors and of the beneficiaries. They concern respectively the motives for giving and the choice of the needs of the beneficiaries, and are the topics of the next section.

III. AID: THE LOGIC OF MOTIVES AND CULTURAL EFFECTS

9. *Private Charity, Public Transfers, Efficient Help, and the Motives for Giving*

Voluntary transfers for alleviating poverty and need are given in charity. A priori, each person gives an amount such that he stops giving when his moral appreciation of the benefit to the poor of the extra rupiah falls short of the cost of this extra gift for him (this is economics!). For some persons, this is the first rupiah and they give nothing. However, if 1000 people would like the poor to be helped, if they can agree that each gives only 1/1000 of each new rupiah received by a poor, then the cost, for each of them, of the poor receiving this rupiah is only this tiny amount, and therefore each will want to give much more. In particular, some who did not give before now decide to give. However, an agreement between 1000 people is very difficult to reach, and this may in fact be 10 millions – moreover, this has to be a binding agreement. These persons cannot even meet. Hence, we are left with individual charity, which is grossly below what people would want to give if they could so agree.

However, things become different if the donors care not, or not only, for the poor's relief in itself, but about their own personal charity or also about this. Then, however, the motives that actually induce giving are no longer pity, compassion, or altruism, but different ones which do not have this moral value. These motives can even be rather immoral when they are vain-glory, showing off, status seeking, or vanity, although they refer, then, to judgments – of oneself or of other people – that value the act of giving and the benefit for the beneficiaries (yet, the holders of these moral judgments

may judge other people's acts and not give themselves). These motives can also be more neutral from a moral point of view, such as self-satisfaction or warm glow with the same judgments, or, with or without such a judgment from a social opinion, a sense of duty or of propriety, obedience to a moral rule or a social norm, habit, or specific moral reasons such as the 'generalization' of a categorical imperative ('what if nobody gave?') or putative reciprocity ('I help because they would have helped me if our situation were reversed'). A person cannot give for being an altruist since altruistic giving has by definition another, altruistic motive (but pretence in this respect is of course not unusual).

However, altruistic and compassionate people can also elect a government that will force them to make these transfers. Then, if this is correctly done, the transfers may be sufficient, and each altruistic citizen approves of the whole distributive taxes, even though he may regret the personal tax he has to pay when he considers it in isolation. It can even be shown that everybody prefers distributive taxes that fully crowd out any private individual gift motivated by pity or compassion.²⁶ This even holds for gifts motivated by other motives if they lead the person to wish his full contribution – private charity plus tax – to be higher. Yet, a person's private giving can be consistent with social (Pareto) efficiency if he wants his own gift alone to be higher (rather than his full contribution, and this is often irrational), or if other people desire that his full contribution be lower from a motive of envy or of sense of inferiority or superiority. All these motives are not pity or compassion, and are often quite questionable from a moral – and rational – point of view. Moreover, in fact these motives cannot even justify private giving in large societies (such as nations). For instance, caring about one's own gift in itself can justify this gift with social efficiency only if average altruism is inversely proportional to population size (many millions), that is, *de facto* vanishes. But there exists some altruism. Therefore, social (Pareto) efficiency precludes all these private givings, and the existence of such charity implies that the alleviation of misery in society is inefficient and wasteful. This inefficiency reveals, in turn, a lack of democracy in the political system, because it means that everybody could be better satisfied by another set of taxes and transfers: a competing party that presents this program would be elected by a unanimous vote. All these logically subtle

²⁶ The properties noted in this paragraph are shown in Kolm (2005). The reference to unanimity implies that the property considered is Pareto efficiency (see Section 3).

results underlie social phenomena of major importance. Do they say something about transatlantic comparison of morality, efficiency and democracy given that, for alleviating poverty, the US rely much on private charity (5% of GNP), whereas Europe relies almost only on public transfers?

10. *Development and Civilizations*

The second problem of aid to alleviate poverty is specifically a question of conception of the human person. Aid wants often not only to help the beneficiaries but also to improve their way of life. This has particular consequences in issues called 'development'. Two questions should be distinguished to begin with. One concerns catastrophes, such as tsunamis, volcanic eruptions, floods, effects of wars, or famines. Aid in these cases is not the present topic, although the origin of these events sometimes is (effects of development and modernization on deforestation, availability of weapons, and so on). The other, very different, issue is the 'fight against poverty and underdevelopment', and in general the policies that aim at promoting 'development'. Indeed, there are two very different types of situations of low income. There is poverty due to misery, notably in modern civilization, often in large urban areas. But there also are people whose consumption measured in money can be as low or lower, and who live balanced traditional lives, often with a rich culture in a *sui generis* civilization. The two cases are very different, and, in particular, statistics about poverty that mix both types of situations mean nothing. Worse, they can induce major human catastrophes, or lead one to praise them when they have occurred. Indeed, much of what goes under the heading of development consists of transferring people from the second category to the first. Members of traditional societies, proud tribesmen with a rich culture, a wealth of social relations, and an adapted know-how, are transformed into the down and out of industrial societies in moving from villages to shanty towns. This is what the anthropologist Germaine Tillon calls *clochardisation* (in describing Algeria). Employers gain cheap labour force. But cultures are killed, languages disappear, civilizations are wiped out (unless you consider that there is only one civilization, yours).²⁷

Do the people who incur this change want and choose it? Do they volunteer for it? The ways are varied. There exist forced labour and labour

²⁷ As I was taught to praise *la mission civilisatrice de la France*.

draft. More subtly, some people are taxed for forcing them to produce cash-crops for the only purpose of bringing them into the money system (in Papua for instance). When they seem to be volunteers, people do not make a free choice because they do not know where they will arrive in the end. They often clearly make mistakes that they regret later but cannot reverse because they have lost their initial place or ability, or, in the best of cases, because they have become addict to other goods. In fact, they cannot make such a free choice because the change finally transforms their tastes and outlooks and they become different people. But are they happier people, are they better people, are they more civilized people? At best, one cannot answer, and in many instances the answer is undoubtedly negative. (Even when the situation does not reach the limiting case of the Australian Pintubis who let themselves die because of despair caused by the loss of the meaning of life and of the world – a cultural deprivation which they called 'broken heart'). In the best possible case of development, with steady growth and much educational effort, the hope can be that the grand children of these people may become modern petits-bourgeois, and, with luck, that the sixth generation includes some stressed (and uncultured) executives. Unless you define this as progress, is this progress?

This can be the result of global development. Other, specific aspects of modernization such as automatic weapons and aids have not even been mentioned. Yet, there also are well-meaning specific development policies that seek to develop 'all of man and all men' (F. Perroux) in focussing on specific needs. They want to improve nutrition, housing, health, education, and so on. They could give money to the people and let them choose to buy what they want – once they have decided not to leave them alone in the first place. Yet, these policies think they know better (or, perhaps, that the people will drink the aid). Any durable assistance creates dependency, lack of autonomy, and often disincentives, addiction, and loss of dignity. These effects are multiplied when the aid wants to interfere with specific aspects of the person and of the society. And this interference also generally multiplies the deculturizing effects. Nutrition and housing are closely linked to traditional adaptation to the environment and to cultural sociability (e.g., one of the various problems in the case of the Pintubis noted earlier was to have built concrete houses with no possible voice communication from one to the other). Education is, of course, a major issue. Rather than describing the problem, let us point out an example, which, although admittedly extreme, reveals the central point. When the school teacher approaches a Tuareg encampment, people send the children to the mountain because

they know that, if they go to school, they will finally speak Bambara, or French (or possibly English), and Tuaregs will no longer exist. Health care seems much less debatable. Not fully so, though. Drug companies are eager to collect traditional knowledge about plant medicine, which people lose when they change culture. Relations increase pandemics, sometimes in dramatic ways. Aids is modern. The bulge in population growth from the time were people are used to high infant mortality to that where they adjust with lower birth rate is not often welcome. I have made an inquiry (in Northern Thailand) about which modern goods people would like to have. The answers included neither transistor radios nor planes but were unanimously restricted to one good, spectacles for the elderly (especially where hunting is important). It should not be too costly to set up a vast UN spectacle program for satisfying this acknowledged basic need on a large scale.

More generally, the way to find people's needs that respects people as free and responsible persons is simply to ask them, possibly in providing them with the necessary information. More simply, still, the way, if aid is provided, is *prima facie* to provide monetary income and let people buy what they need most, in providing information and securing the correctness of supply. Other ways should bear the burden of the proof of their necessity. Yet, deciding from outside what people's needs are or should be is common practice. This imposes a particular conception of the good, an ideology – often, nowadays, that of technical modernization – in violation of freedom and disrespect of culture. This practice commonly serves various interests of economic, political, or administrative nature, but it is often not better, and it is sometimes worse, when it is well-meaning.

People's situation and development have for long been considered in their various dimensions, such as health, education, and welfare, with a possible distinction of nutrition, housing, and various pieces of private and public equipment, along with basic rights, participation, or power. Indices of multidimensional inequality or deprivation were built and compared in the 1950's. Most of these items are means of doing things. This is the emphasis put by Sen (1985) and Nussbaum (1992, 2000) in considering such 'capabilities' permitting 'functionings'. Nussbaum relates this to Aristotle's 'activity' and *eudaemonia*, and advocates securing minimal capabilities in the line of basic needs. Sen prefers equalizing capabilities as the 'midfare' (Cohen) equalizand between welfare and income. This approach has been extensively worked out empirically by international institutions for development. However, an ideal of such multidimensional equality has to be qualified. Indeed, people have a priori various prefer-

ences about their capabilities, what they can do or obtain with them, and the possibilities they offer (some prefer to know more, others to move more, still others to socialize more, and others prefer the final consumption of eating better). As a result, an equality of capabilities violates social efficiency in Pareto's sense: other, unequal, allocations are unanimously preferred. This implies that people's preferences and free choice (of capabilities) are not respected, and that the overall system of social decision is not democratic (as we have seen). The solution consists of withdrawing to second-best equality in choosing an efficient allocation such that no more equal one is possible.²⁸ However, a theorem says that if all individuals have some of each capability, this solution amounts to free individual choices with equal incomes. This solution can thus be achieved in simply providing equal incomes and letting people freely choose the formation of their capabilities, without the need to know individuals' preferences. Yet, this respects the preferences and choices of persons, contrary to other solutions, notably equality, which necessarily imposes more or less an outside view of what is supposed to be good for them. In some cases and societies, this issue is a quite serious one.

Finally, we have seen earlier that, contrary to a popular indictment, the blind spot of the grand tradition in economics is not altruism. Yet, caring about others emphasizes individuals as much as opposing them does, and, in a sense, more than is the case when they are simply forgotten (as in a large, anonymous market). The absent is the community in itself, and particularly its overall cultural dimension, civilization. Humankind divides into individuals, but it divides no less into cultures and civilizations. Now, what mostly characterizes our era is not so much the clash of civilizations that some see, but the wiping out of many civilizations and cultures, according to various modalities. This holds in 'developing countries', and as much within 'developed' ones (at least in Europe). The world becomes substantially impoverished in this most essential respect. Even when life is better, it is less worth living, and superficial mechanical amusements can hardly hide it. When I raise this question with my economist colleagues, I almost always discover an intensely black spot (contrary to the case of anthropologists, for instance). Since a number of them have a responsibility in advising institutions, it can probably be said that the economic sub-culture has some responsibility in this lethal omission and in the ensuing ethnocides.

²⁸ See Kolm 1996b.

IV. THE MORAL BASES OF ECONOMIC RELATIONS

11. *The Moral Basis of Exchange*

The main topic of economics is the allocation of resources by market exchange. A priori, someone engaged in such an exchange seems to have a purely egoistic behaviour, at least towards the other party, and towards competitors. This also is how this person is described in almost all economic models of this behaviour. In particular, the exchanger seems to consider his partner *only as a means* rather than also as a human person valuable in itself: this is the very definition of immorality for Immanuel Kant. However, this vision is qualified at three or four levels which can make the exchanger an altruist in various ways.

It is said that at some early Council, the Fathers decided not to excommunicate businessman, in spite of their very selfish motives, because, in the end, their actions were also beneficial to other people – intentions would be judged later, by more competent. The fact that selfishness in exchange can benefit other people is discussed in the *Essays on Morals* of the Jansenist Pierre Nicole, translated into English by John Locke, and doubtlessly known by the economist interlocutors of Adam Smith during his stay in Paris (before he wrote the *Wealth of Nations*) and by Smith himself.²⁹ Smith also refers to Mandeville's *Fable of the Bees* where 'private vices make public virtues'. Yet, he made famous the idea that the magic of exchange transmutes *in petto* egoism into 'objective' altruism. With the addition of competition, the 'invisible hand' produces this effect at the overall level. Pareto made this view precise by showing how perfect competition leads to 'his' efficiency (no person can be made better-off without someone else being made worse-off) – the so-called 'theorems of welfare economics'. Note that Smith and Pareto happen to be economists who have also particularly considered altruism in other works.

Another objection to seeing the exchanger as an egoist is that best expressed by the clergyman-economist Philip Wicksteed, noted above. A seemingly egoistic relation can implement an altruistic motivation towards other people than the other party in the exchange. That is, market exchange displays *non-tuism* rather than egoism.

²⁹ A few of the best known passages of the *Wealth* are very close to passages of the *Essays*. For instance, in addition to the idea noted here, this is the case of the astonished description of the large number of persons whose work indirectly serve a single one and conversely.

However, when Smith remarks that, if you want meat from you butcher, you have better rely on his egoism in exchange than on his altruism, he forgets that, in fact, your interest is not to buy the meat but to take it. If the butcher defends himself, you can associate with the next customer. And if everybody did that, the police would not have the means to prevent it – and, in fact, its interest would demand that it joins the spree in a rational use of its weapons. Hence, the famous efficiency of egoism (and non-tuism) thanks to exchange requires that it be limited, since it rests on respect of other people and their property which requires at least some element of other motives.

In fact, a widespread view in the 18th century was that of ‘sweet trade’ (*le doux commerce*) which emphasized that exchange is not a hostile relation but a peaceful intercourse – trade precludes war –, and praised its role in the spreading of social enlightenment.

This relates to the general observation that selfish people in everyday life and in particular in exchanges, or people engaged in non-tuistic relations, are generally not maximal takers, they almost always do not try to take as much as they can by any means. They often do not steal, cheat or lie when they could. They commonly respect other people, their property, and truth when they communicate with them.

Closer analysis confirms that the working and efficiency of the market system requires both egoism or non-tuism, and their opposite. Indeed, the theory showing this efficiency rests on the former behaviour plus two conditions: the possibility of excluding persons from the benefit of goods as long as they have not paid, and sufficient information. However, actual difficulties, costs, or impossibilities in exclusion and information jeopardize these conditions. There result ‘market failures’, and analyzing them and proposing remedies is the other classical task of normative economics – with distributive justice. They are described as non-exclusion or costly exclusion, missing markets, incomplete markets, incomplete information, asymmetric information (one trader knows better than the other), and the like. Non-exclusion leads to externalities, but it also includes non-respect of property rights. Remedies to all these diseases of the market system are usually proposed in the form of public action, but this has limits in terms of motivation, information, power, and other possibilities of the public sector. However, it happens that markets often work rather efficiently, or simply exist, when the analysis of the effects of the noted impediments with purely selfish or non-tuistic behaviour would have predicted ‘failure’ or sheer absence.

This is essentially due to conducts that are not purely self-interested and are of moral or altruistic nature. Difficulties in constraining and in being informed are remedied by voluntary restraint and truth telling. This is favoured by steady relations with the same others, but this also exists in the other cases. Often, properties are respected, scales are not tilted, the quality of products is rather truthfully revealed, and promises are kept. Gratitude and sense of responsibility and of fairness sometimes lead to rewarding positive externalities or compensating negative ones. Asymmetric information is remedied by truth telling or by abstention from exploiting this situation, motivated by a sense of responsibility. Impossibilities or high cost of constraining or excluding are remedied by voluntary restraint or by promise keeping. In fact, the respect of property or of agreements can use three means: self-defence, public constraint, and voluntary restraint. Extensively used, the first one using locks and private weapons makes society be a war of all against all, and the second using public weapons and jails leads to a police state; and excessive reliance on courts makes a procedural society. All these means consume resources and are wasteful. They cannot even fully succeed. For instance, if only self-interest reigned, the public force could not exist because there should be one or two policemen behind each policeman for preventing him to misuse his weapons. Moreover, bargainings using threats maximally would result in mutual harm (from long delays for instance). They therefore often end up in settling for a solution referring to fairness, for instance in splitting differences or in accepting a 'fair price' (a distant reminiscence of the moral theories of the 'just price'). In fact, people often prefer a fair deal to a good deal.

It is striking that the very specialist of the theory of missing and incomplete markets, Kenneth Arrow, has been, in a more discursive contribution, a particularly keen observer of the necessary morality of market exchanges. As he puts it (1974), 'It can be argued that the presence of what are in a slightly old-fashioned terminology called *virtues* in fact plays a significant role in the operation of the economic system... The process of exchange requires or at least is greatly facilitated by the presence of several of these virtues (not only truth, but also trust, loyalty, and justice in future dealings)... Virtually every commercial transaction has within itself an element of trust...' This was proposed in the framework of a comment of a book by the English economist Richard Titmuss (1971) about the procurement of human blood. Titmuss compares the buying of blood which prevails in the US with the donation which is the rule in the UK. He finds that the latter system is superior in all respects, notably about the quality of blood

(because altruistic givers will not give if they know they have had a disease which could be transmitted in this way, notably hepatitis undetectable in blood samples – a case of asymmetric information). This raised an intense discussion in the community of economists.

However, altruism in exchange can also lead to price rebates, overpayments, or overprovisions, and abstention from competition, which jeopardize the efficiency of the market due to the role of the price system of providing information about desires and scarcities. This can result in wastes, and notably in unemployment, resulting from price or wage rigidities due to collusion or lack of competition, or from reciprocity in labour supply shortly noted. However, altruism implies that participants no longer judge the result with selfish preferences only. The overall conclusion is that the classical efficient working of the market requires morality and altruism in a limited range: enough for preventing stealing in its various forms, and sufficiently little for preventing disruption from giving and collusion.

12. Collective Action

In other, neighbouring fields also, classical models of selfish agents predicted catastrophes which failed to occur. The most conspicuous concerns voluntary contributions to public goods (goods which benefit several persons jointly) and participation to collective actions, when the number of people prevents them from making a direct binding agreement. By individual, isolated decisions, people should contribute not at all or too little, for the reason noted above about charity which is a particular instance of this situation (the public good is the beneficiary's relief appreciated by the joint givers). This happens in a number of cases, but not in a number of others observed in real life or in experiments. A neighbouring case is that of voting: many people take the pain of voting in large elections, whereas their own ballot makes no difference. Hence, the persons' motives are not strict self-interest. Yet, they happen to be of a variety of types, including simple duty, liking the other participants, norms of fairness (I contribute given that the other people contribute), universalization of the Kantian type ('what if nobody contributed?'), satisfaction from participating, conforming, not giving less than others, but also sometimes the immoral sentiments of showing off, vainglory, feeling or showing a superiority, and the like. The case of joint charity described earlier has shown some examples, and problems of the relations between individuals' motives, the realization by a public authority, and social efficiency.

13. *Homo Reciprocans*

Non-purely-self-centered motivations of various kinds occur in various interactions – those just noted and others – that determine the allocation of goods (in fact, everything can be seen under this economic angle in suitably defining a 'good'). The logic of a number of these motives and of their consequences has been closely studied. The most extensive analyses have been made for relations of reciprocity. Reciprocity is giving something because a gift has been received (this is not an exchange *stricto sensu* because these two transfers or services are not conditional on each other by external obligation or promise keeping, that is, they are genuine gifts). *Homo reciprocans* has been the central view of the human person in anthropology for almost a century, and it has been considered in sociology. It has been theoretically modelled by economists for about one third of this time.³⁰ Apart from an endless sequence of gifts both ways where each agent gives in order to receive later gifts (*sequential exchange*), which can be purely self-interested, there are two families of reciprocities. In *balance reciprocity*, the return-gift aims at maintaining some social balance, sometimes with a notion of fairness. In *liking reciprocity* a benevolent gift elicits liking the giver and as a result giving to him, and there also is the direct reciprocity in sentiments of reciprocal liking. Gratitude, rewarding merit, and demonstration effects for showing sentiments, also play a role. Reciprocity has various structural extensions such as *A* gives to *B* as a result of *C* having given to *A* (the 'generalized reciprocity' of social psychology's 'helping behaviour') or of *B* having given to *C* ('reverse reciprocity' pointed out by René Descartes and Adam Smith). The reciprocitarian relation and motive turns out to be pervasive in human life. Reciprocity is 'the vital principle of society' for L. t. Hobhouse (1906), 'one of the human rocks on which societies are built' for Marcel Mauss in his influential *Essay on the gift* (1924). In particular, reciprocity has a large importance in many types of economic relations such as labour relations; the economics of families; mutual respect of property; mutual fairness, promise-keeping, trustworthiness or loyalty; intra-firm organization; cooperatives; and various aspects of the political and public system.³¹ Although there are oppressive norms of reciprocity and 'gifts' for eliciting a return gift and thus exploiting reciprocitarian motives, many reciprocities are also the possible altruisms because

³⁰ See the studies gathered in Kolm (1984), and Rabin (1993).

³¹ See Kolm and Mercier Ythier, eds. (2006).

givers then also receive, and the vectors of fellow-feeling, local fairness, and good social relations in general.

14. *Families, Organizations, Labour Relations, the Political and Public System*

These models of non-strictly self-interested conducts have been particularly useful for the economic analyses of relations and allocations outside the market. Thus, there has been three successive economic theories of the family: it has been seen as the benevolent dictatorship of a *pater familias* (Becker), then as a self-interested exchange (as modelled by Chiappori), and finally as a complex of reciprocities (Arrondel and Masson). The present view emphasizes reciprocities of all types, and considers intra-family relations of the types of command or exchange as rather moments and parts of a more general reciprocitarian system. Analyses of relations within organizations and notably within firms also importantly rest on conceptions of persons moved by norms, reciprocity, loyalty, fairness, envy, or status-seeking. An application essential for economics has been the field of labour relations, where the most standard empirical and theoretical studies describe persons more or less motivated by a variety of sentiments of solidarity, equity, reciprocity, loyalty, and the like. This is notably a main factor in the explanation of rigidities in wage rates and hence of the resulting macroeconomic diseases of societies in unemployment and inflation. As an example, one can note the analysis of the supply of labour and effort as a reciprocity answer to pay, initiated by Adam (1963, 1965) and Adam and Rosenbaum (1964), and which forms the basis of an explanation of unemployment by Akerlof (1982). Another important field of application concerns the analysis of the political and public system, with its various types of actors diversely motivated – citizens and voters, activists and party members, and professional politicians and civil servants –, and where self-interest is accompanied by a variety of other motives such as duty, reciprocity, loyalty, seeking and maintaining reputation, righteousness, and so on. This belongs to the discipline of political science, but more than half of the studies in this field have borrowed the economists' way for the theoretical representation of the human actors.

15. *Good Relations and Good Persons*

All these conducts are led by motives which are normative – either moral or only social –, or altruistic either for a moral reason or otherwise.

They have essential normative consequences in the fields of efficiency (with the relevant individual preferences for defining Pareto efficiency), the distribution of resources, macroeconomic effects, and also the quality of interpersonal relations, the intrinsic value of motivations, and the quality of the individuals themselves. The intrinsic quality of relations, motives and, in the end, people, is particularly important. They can be valued directly and in themselves, but also indirectly because people value them when they concern others or themselves, as an application of the classical economic value of 'respecting people's preferences' applied to these particular judgments. As everybody knows, the good society is made not only of satisfied consumers and just distributions, but also of good social relations and good people. These types of ends have a variety of relations between them. One view has held that economic efficiency requires selfish motives and hostile competitive relations – the standpoint of the 'dismal science'. The above remarks have reminded us that the opposite is true – as if by immanent justice – in a vast and pervasive field of relations. This question is a main one for normative economics.³²

V. CONCLUSION

16. *Conclusion: Free, Suffering, Happy, Compassionate, Normed, Cultured – But Does it Exist?*

In brief, misery, injustices, lack of freedom and of dignity, hostile or selfish relations, the waste of much needed resources, destructions of cultures and environments, are diseases of society about which normative economics has to advise in considering as far as needed the social ethical reasons that justify solutions. This is a discipline made for application, in a sense a medical endeavour. Yet, both the values which are its material and the possibilities it considers refer to various aspects of the human person and hence rest on conceptions of it and assumptions about it.

This person is seen in itself and in society. The individual is seen both as a sentient being amenable to suffering, distress, need, satisfaction, pleasure, happiness, and self-fulfilment, and as a free agent capable of choice, reason, and action, who therefore can be responsible for the results of his

³² This issue is developed in Kolm 1984.

choices and deserving or meritorious for the efforts of his actions. Incomes, goods, resources, and other means provide both freedom of choice (opportunities) and the satisfaction of needs. The sentient being and the free agent provide the two poles of values: individualistic social ethical criteria are eudemonisms or eleutherianisms. The liberties considered are social freedom, or freedom from forceful interferences of others which amounts to peaceful and respectful social relations, notably in exchange, and possibilities offered by various means, such as income as 'purchasing power' or opportunities to act and earn. The moral of freedom also leads to analyses and principles based on values of responsibility, merit, and deservingness. Normative economics has emphasized the dichotomy, in the person and its means, between what the person should be left entitled to or accountable for, and what should be the object of society's active care for a reason of justice or compassion.

The person in society is both an agent interacting with others and a part of a culture and a civilization. Cultures and civilizations both include and constitute values. The values they include provide both possible normative opportunities and more or less avoidable or unavoidable constraints. The basic general value of social freedom entails peace and non-violence and permits free exchange. The famous virtue of selfishness (or at least non-tuism) in exchange requires, in fact, a number of other-regarding conducts. Such motives also entail altruism and giving, which has to be largely performed publicly in large societies. A variety of social sentiments and norms, including reciprocities, determine the life of groups, organizations and political systems, and the intrinsic quality of social relations and of people.

The main success of normative economics is probably the determination of the structure of distributive justice. Both social freedom and social efficiency imply that distribution focuses on allocating given resources (rather than redistributing the outcome of activity). Yet, the main such resources are, by far, human capacities. This leads to the structure of distributive taxes and subsidies that allocate the largest part of resources (Section 8). Beyond this 'macrojustice', issues of local and specific 'microjustice' (and 'mesojustice' dealing with specific but widespread issues such as health and education) follow a number of criteria referring, notably, to need, merit, equality, or tradition. In relation with these analyses, normative economics has particularly developed the analysis and application of the various types and values of freedom, and their relation with distributive justice. Normative economics has also particularly developed the economic psychology and the

normative consequences of social sentiments, notably positive ones such as altruism and sense of fairness, leading to giving, pro-social and other-regarding conducts, reciprocities, and political redistributions. It has also analyzed in depth a number of various other criteria. Unjust inequalities, in particular, are the object of a large body of studies. Many other possible criteria of fairness have been extensively studied.

Allocative judgments are classically divided into 'efficiency' on the one hand and, on the other hand, 'distribution' which chooses among efficient states. Taking the human person as the end-value 'measure of all things' leads to defining efficiency as states such that no other possible one is unanimously preferred (Pareto). Preferred can mean here either renders less distressed or happier, or would be freely chosen. This efficiency is jeopardized by a number of 'market failures' whose analysis is the other basic concern of normative economics. The remedy can be through political-public interventions. However, many market failures are more or less corrected by a number of moral or normed conducts concerning respect, truth, promises, equity, solidarity, social balance, affection, and so on, often in reciprocity. Yet, some of these sentiments are also main causes of 'market failures', notably in jeopardizing the working of competition. In addition, persons also have a number of sentiments or preferences concerning the distribution, in the family of altruism, pity, compassion, empathy, sympathy, liking, sense of justice, impartiality, sense of community, conforming, distinction, with a dark side in envy, jealousy, sentiments of superiority or inferiority, and even *schadenfreude*. All these aspects of the human person have therefore been more or less integrated and analyzed by normative economics. They are not only causes of sentiments and conduct but also objects of moral evaluation.

Normative economics is both social ethics and economics. With the rest of economics, it shares an outlook and a favoured style of method, both of which have strong implications about the implied conception of the human person. 'Outlook' is a better expression than field – which would, for instance, be 'economic life' – and is, rather, an angle from which to see society, which favours issues of scarcity and of 'utility' in a broad sense, and can apply to a large variety of specific questions and domains. The method favours the use of precise modelling in mathematical form, which permits an elaborate analysis of the logical relations between various aspects of the question and the use of the powerful tool of mathematical deduction. Both the social effects of scarcity and the models often refer to individuals who receive, incur, choose, and act.

Indeed, normative economics has largely followed economics in general in seeing society primarily as an aggregate of human persons, that is, in its conceptual individualism. Hence, to the ideal methodological individualism of economics in general, it added a moral individualism in taking, as end-values, individual values such as pain and satisfaction, and liberty. This assertion may require some qualification, though, since classical objectives such as the highest sum of individual utilities of utilitarians or the highest social income are not a priori individualistic. They tend to become so, however, when utilitarianism – for example – is seen in the form of precepts of microjustice such as: ‘let me do this because this is less painful for me to do than it would be for you’. Now, we have seen that this ethical individualism tends to blind economists about the intrinsic value of civilizations and cultures, with consequences which are a main drama of our times.

It is therefore easy to point out the questions that normative economics needs to integrate more. For all these issues, it will have to display the triple quality of deep understanding, precise formulation, and operationality for policies. A main issue is the question of human community, closely related to the social scope and depth of distributive justice, altruism and other social norms and sentiments, and to the value of cultures and civilizations. Moreover, these latter cultural and civilizational values have to be considered for themselves by normative economics’ analyses, conclusions, and recommendations: normative economics – largely an individualism – should also be a humanism. The other required developments turn, on the contrary, to individual psychology, concerning the two aspects of ‘feeling’ and freedom. The first is a better understanding of the question of needs, and a consideration of the variety of types of pain and satisfaction (in particular, interpersonal comparison of their levels or variations is sometimes required, although it is by no means the central social ethical problem as this was believed by scholars who thought that utilitarianism or some other welfarism should be the universal principle). Finally, another necessary development is that of the question of mental freedom and self-formation. It is more basic because it influences satisfaction, suffering, and needs. This insufficiency is due to the fact that economists, pertaining as they do to the Western culture, do not know the relevant psychology, whereas people knowledgeable in this field consider that questions of insatisfaction and justice should first be faced by the lowering of desires and attachments which makes the problems loose importance and vanish, rather than by larger production and hostile sharing.³³

³³ See Kolm 1982.

Finally, I have pointed out, perhaps with regret, that normative economics does not seem to offer any very deep view of the human person. In fact, any regret would have to refer to the usefulness of such a view, given the ethics of the discipline (which in reality it often fails to follow). The transitive preferer can be simply a technical conceptual tool (and an unfalsifiable hypothesis if one accepts that preferences are dated and can a priori differ from one moment to the next). The duality of selfish and moral preferences is rather banal. And the structures of the various other models used are specific to the particular issue studied, and in this sense somewhat ad hoc. However, what can a deep view of the person be? A priori, the paragon of depth may seem to be Martin Heidegger's description of the awakening of consciousness under the name of 'being'. Yet, given his famous moral slip, one may beware. The *psychologie des profondeurs* has vanished from sight. Psychoanalysis has insights and a structure, but is also often doubted. Political philosophy, the cousin of normative economics, often cannot be said to rely on a much deeper view of the human person, although it has an advantage when it studies issues such as community, culture, norms, or the self. Academic psychology provides abundant but rather scattered information. Psychological philosophy proposes views that are often better described as insightful and clever rather than hitting at some basic kernel. Advanced Buddhist psychology is impressive for three reasons. First, it considers any information only in so far as it serves the unique final aim of diminishing suffering or dissatisfaction (*dukkha*). This is, in a sense, an extreme economism. It also is the standpoint of facing the problem of human suffering directly (which does not preclude the use of psychological 'skilful means'). In fact, it often presents itself as essentially a medical discipline. Second, this tradition has developed a very elaborate theory of the structure of the human person and especially of the human mind, and of the dynamics of interactions among its elements. This view is widely applied for curing from pain through advised introspection and elaborate games of attention. Yet, the most impressive may be the third aspect, the denial of the existence of a self (Hume's criticism of Descartes or remarks by Ayer or Sartre are, in the West, insights in the direction of this view which both is counterintuitive before reflection and comes out from it as a rather plausible hypothesis). What is denied is certainly the 'transcendental I' of some Western philosophers, as well as the Vedantic (or gnostic) 'sparkle of the great fire' in each of us. Awareness of this emptiness, this philosophy argues, is a necessary condition for a deep and durable diminishing of suffering. The effect begins by diminishing unsatisfiable

desires (thus pointing to a drastic solution of the economic problem). At any rate, if there is no core self, 'nobody home' as Jon Elster wrote, if the standard 'I' is a damageable illusion, any quest for a 'deep' and integrated conception of the human person may be a futile and hopeless game, possibly a dangerous one.

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COMMENT ON KOLM'S PAPER

CHRISTOPHER BLISS

1. ECONOMICS AND ETHICS

Many people think that Economics is an immoral discipline. There are two ways in which that is true, and in neither case is it the whole truth. First, and obviously, Economics is not a branch of Ethics, and economists are no better at making moral judgments than anyone else. Secondly, like Jesus Christ the discipline does not recoil from the company of publicans and sinners. It deals with an imperfect world peopled by self-seeking individuals. It does not ask: how can we make the world perfect? It tries to work out how to make it better. Then some clear meaning has to be given to 'better', and that is how we arrive at normative economics. This is a system for arriving at recommendations that are more than mere subjective expressions of taste. Economics has to give a meaning to 'better'. For that reason it is condemned to traverse the border area between technical resource-allocation theory, on the one hand, and ideas about how mankind should live, on the other. Like a traveller near an unmarked border, it often has no good idea in which country it finds itself.

Serge-Christophe Kolm has done an excellent job in explaining how economists proceed. He is particularly good at elucidating the relationship and differences between preferences, a utility measure of those preferences, and the philosophy that goes by the name of utilitarianism. Respecting preferences can be no bad thing in suitable circumstances. In many societies it is taken for granted that personal preference can be given free reign where the choice of a marriage partner as concerned (at least if a male is exercising his preference).

Even the statement that Economics is not Ethics is itself a simplification. In truth the boundary between Science and Ethics is never absolute. If it is not entirely for scientists to decide which research programmes

should be pursued, they are uniquely placed to appreciate in full the probable effects on humanity of certain programmes. Ethics is not just an abstract formal discipline. It needs the quantitative assessment of consequences to weigh choices. For that reason economists are duty bound to take positions while never, it is hoped, disguising their personal political positions as Science.

2. NON-ECONOMIC MAN (AND WOMAN)

In his essay Serge-Christophe Kolm pays attention to 'sympathy'. This is the habit of humankind of feeling and acting towards others in a non-selfish manner. It is perhaps one of the most striking features of humanity. Modern biological theory teaches that all apparent examples of altruistic behaviour in animals are in fact selfish from the genetic point of view. The late great W.D. Hamilton of the Zoology Department of my own university established *Hamilton's Law*. This says that an animal's willingness to risk its own life for another animal depends entirely on how many genes it shares with that individual. A mother will fight hard to protect an infant, which has half her genes, but not as hard as a bee will fight to protect the entire hive, whose members, because of the strange biology of social insects, share all his genes.

When we look at humanity, Hamilton's Law does not apply. The Christian Gospels present us with many of Jesus' parables. They offer us a special sharp view of the historical Jesus, because they are unlikely to have been edited, and their very peculiarity, such as the use of agricultural illustrations, indicates authenticity. None is more striking than the parable of the Good Samaritan. It is a direct answer to the question: 'Who is my neighbour?' The story contrasts selfish individuals (economic men) who pass by their helpless compatriot, with the Samaritan (a despised enemy) who stops and helps. That this story is not ridiculous illustrates that human beings are not wholly driven by selfish genes. We commit suicide, practice contraception, and the Good Samaritan does not pass by on the other side.

That is not to say that Jesus' story is easy to hear. Very rarely do Christians take the Gospels seriously, because if one does they are *too frightening*. The parable says that your enemy is your neighbour. And Jesus tells us that a man who looks upon a woman to lust after her *has already committed adultery*. The young man who asked Jesus what he had to do to attain eternal life was told that to be perfect he had to sell everything and

give it to the poor. He went away sorrowful, because he had great possessions. Surely Jesus understood, for he knew about imperfection. The company of publicans and sinners would have educated him in that regard.

3. THE ESSENCE OF HUMANITY

What I have said already will make it clear to some extent why I am extremely unhappy with the ideas that go under the name of socio-biology. Viewing human beings as gene-driven *automata* neglects what is striking, and from the point of view of biology, distinctive, about humankind. Crucial to these differences is elaborate language, and the self consciousness that comes with it. We can experience Serge Kolm's sympathy because we can think: 'What would it be for me to suffer like that'. Even higher animals cannot do that.

Aristotle described man as the *rational* animal. To judge that claim, we have to state clearly what rationality entails. I offer the following definition. Rationality involves observing the world around and learning from it. Notice that this definition immediately implies that no belief by itself can ever be condemned as necessarily irrational. Consider the following tale. Looking out of my window one night, I observe my neighbour dancing naked by the light of the moon. Is he irrational? There is no way of knowing. Next day I confront him. 'Why do you dance naked in your garden, Joe?' 'Because it makes my garden vegetables grow better', he replies. Is he irrational? It remains uncertain. I press him further. 'Why do you believe that, Joe?' If he replies: 'It is self-evident', then I have reason for the first time to suspect that he may be irrational. I show Joe the results of a massive study, carried out by Oxford University, into the effect of naked dancing on vegetable growth, which finds that there is no effect. If he says that he has no interest in such a study, as he knows that it must be wrong, then I am now sure that he is irrational. He is like the Aristotleans who refused to look through Galileo's telescope, as irrational as it is possible to be.

If you accept my account of rationality, it has notable implications for Aristotle's definition. Observing the world around and learning from it is something that animals do all the time. Apes do it; rodents do it, think of the famous laboratory rats; even wild birds do. In Britain milk is delivered to doorstops with the bottles sealed by aluminium-foil caps. Birds have learnt to peck holes in the caps to get to the cream. So if rationality does not distinguish man from other animals, what does? I propose this defini-

tion: *man is a potentially-altruistic animal*. I stress the word *potentially*, because plainly most human beings most of the time are not altruistic at all. But we can do it, and animals cannot. A lioness teaches her cubs how to hunt, and she shows them how to strip meat from the carcass of a hunted animal. She cannot, however, and she does not attempt to, teach her young to share meat fairly with her smallest and weakest cub. Each cub takes what it can get, the weak cub gets little food, and soon dies. Contrast this with a human mother, who takes special care of a sickly child, and teaches its siblings to do likewise.

When I discussed my ideas with Joseph Stiglitz, he remarked that the generous behaviour just described is only possible because we are rich. I agree with that point, but more has to be said about it. It surely is the case that when human beings are desperately poor, their behaviour frequently becomes less human and more animal. Yet the fact that we are often rich itself distinguishes us from animals, because it says that we are not powered by a relentless Malthusian drive to reproduce to the maximum extent possible. If one takes an animal population, and provides resources for it on a hugely generous scale, it does not remain rich for long. Its numbers increase rapidly until the resources are no longer abundant.

4. THE LIMITS TO ALTRUISM

We live in unusually selfish times. It is not that people are more selfish than they used to be. Rather selfishness is more highly regarded than has typically been the case in the past. This can be accounted for to a great extent by the collapse of Communism and the failure of some parallel socialist experiments. In theory Communism abolished selfishness, and turned men into social insects dedicated to the common good. That was a big lie. Aside from the fact that it denied the corrupt self-interest of communist leaders, it also de-humanized ordinary people by denying them the natural human drive to improve the situation of self and family. Naked capitalism, which makes self-interest everything, appears attractive in contrast.

Yet surely this will be a passing phase of history. Man does not live by selfishness alone, and ultra-capitalist societies do not work particularly well. Witness in this regard the gross failure of the rich US to provide effective medical care for a large slice of its population. Every time we place too much emphasis on one aspect of mankind, the neglect of another aspect comes to the surface. What we see then is an imperfect and oddly incon-

sistent human nature. We cannot evade an answer to the question: who is my neighbour? It is tempting to say that all humanity should be our neighbours, with each unknown Chinese weighed equally with a cousin. The trouble is that people who assert that they feel the pains of all humanity too frequently treat people close to them atrociously. The example of Bertrand Russell springs to mind.

Look at the response to the recent Tsunami disaster. Vast sums of money were donated by people in rich countries to help distant anonymous people. The same donors too often support cruel unhelpful policies towards local gypsies or asylum-seekers. We are publicans and sinners. The problem for Economics is to design policies that work effectively in our sad imperfect world.

CONCEPTUALIZATION OF AGENTS IN POSITIVE ECONOMIC THEORIES

EDMOND MALINVAUD¹

1. INTRODUCTION

Two typical economic agents are: (i) the individual, consuming, working and saving, (ii) the manager of a firm. Whereas normative theories focus on comparing economic systems, as well as on the individual and collective choices which would be best appropriate for the fulfilment of human objectives, positive theories claim to be realistic, that is to represent phenomena as they are, each theory in the particular domain it is studying. Realism of the conceptualizations here discussed for the economic agents should be judged in each case, especially by reference to what most matters for the well defined economic phenomenon under examination.

Homo economicus, pet hate of humanism, was and remains at the center of controversies and misunderstandings between economists and others. This paper would like to contribute to reduction of such misunderstandings.²

¹ Une version française est disponible sur le site de l'Académie: http://www.vatican.va/roman_curia/pontifical_academies/index.htm

² The expression *homo economicus*, or equivalently 'economic man', was frequently used in the twentieth century. But its origin in the nineteenth is somewhat obscure in the history of my discipline, as shown by J. Persky, 'Retrospectives: the ethology of *homo economicus*', *Journal of Economic Perspectives*, Spring 1995. The earliest explicit use of the expression he could find was in a 1888 book advocating a broad sociology in the tradition of Auguste Comte and disparaging J.S. Mill's political economy. But the author did not claim to be an inventor of the phrase. From other evidence concerning the same period, Persky infers that 'economic man' was the buzzword around Cambridge in 1890. Probably also, in the preceding decade or so at least, the expression had been more used by critics than by proponents of the new trend in classical theory. I owe to François Etner to have brought my attention to this historical puzzle.

From the outset we must still note that conceptualization of the agent cannot be fully isolated from conceptualization of the context in which it is supposed to act. For simplicity here, all contexts considered will assume a market economy similar to those existing since many years in OECD countries.

The Thesis Here Argued

Some of the main fundamental models in positive economic theory rely on the hypothesis of purely rational individual agents motivated by self-interest and faced with impersonal markets. As a first approximation made in these models, the hypothesis is not necessarily bad for specified economic behaviors in market economies, particularly if we recognize that persons often distinguish between several spheres of activity, which all contribute to implementation of their life plans.³ How the idea emerged in the history of economics will be reported here in Part 2.

The importance of the hypothesis in the corpus of positive economic theories is much more limited than is often believed, because many models in this corpus bear on contexts in which the freedom of agents is formalized as subject to definite constraints, in which some agents are groups of individuals acting collectively, and/or in which perfectly competitive impersonal markets have to be replaced by forms of imperfect competition ruling various kinds of interpersonal relations. This will be the guideline of Part 3.

Parts 4 and 5 will deal with the main conceptualizations of economic agents, respectively focusing on individuals in their private decisions and on firms.

Today economists have to recognize existence of systematic deviations of economic behaviors from what the hypothesis of purely rational and selfish agents would imply. Embodiment of the main such deviations in positive theories is a challenge now faced in many research reports, but not yet fully met. That will be the subject of Part 6, before the tentative conclusions of Part 7.

³ The statement will be explained and qualified later, as we shall be going along.

2. BRIEF REFERENCES TO THE HISTORY OF THE DISCIPLINE

2.1. *Adam Smith*⁴

Still today Adam Smith's famous 1776 book *The Wealth of Nations*⁵ is vilified by many as contrary to humanism. A serious reading of the Scottish author should exempt him from such a charge, which he hardly deserved. His conception of the human person is to be found in another book *The Theory of Moral Sentiments* (1759), which he regularly revised until his death. He there explains how so self-regarding a creature as man succeeds in erecting barriers against his own passions. The starting point is an answer to the question: 'Wherein does virtue consists?'. Smith insists that there are three components: certainly 'benevolence', but also 'propriety' (by which he means conformity to moral norms) and 'prudence', within which he ranks self-interest.⁶ In *The Wealth of Nations* characteristics of the human person in its economic dealings deserve just one page, in which he writes: 'Man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this'.

The book must be seen in his historical context. 'Smith's system of thought took its shape from his intense reaction against the elaborate apparatus of controls which the surviving feudal and mercantilist institutions were still imposing on the individual. The need for removing these controls was Smith's underlying theme' (Skinner, op. cit.). But he could present a forceful argument about the existence of a natural order which would make all the individual strivings for self-interest add up to the social good. At the same time he could exhibit a good deal of common sense about the way to implement such an order.

⁴ This is partly drawn from A. Skinner, 'Smith, Adam (1723-1790)' in *The New Palgrave Dictionary of Economics*, Macmillan, London 1987, as well as from J. Evensky, 'Adam Smith's Theory of Moral Sentiments: on morals and why they matter to a liberal society of free people and free markets' *Journal of Economic Perspectives*, Summer 2005.

⁵ Reprinted with introductions by The Modern Library, New York, 1937.

⁶ In a footnote Persky notes incidentally that the Italian expression *economio prudente* was discovered by Schumpeter in a writing dating from circa 1629.

2.2. A Methodological Stand

Two criticisms were recurrently addressed, during the last two centuries, to the representation of the individual economic agent by the classics: its abstract nature and its selfishness. John Stuart Mill was probably the first economic theorist to have formulated rebuttals of these criticisms, which he took seriously. His arguments can be found in two of his essays, published respectively in 1836 and 1843, as well as in his main book first published in 1848.⁷

Mill argued in 1836 that economic theory must be based on abstract concepts: '[political economy] does not treat of the whole of man's nature as modified by the social state, nor of the whole conduct of man in society. It is concerned with him solely as a being who desire to possess wealth, and who is capable of judging of the comparative efficacy of means for obtaining that end'. I agree with Persky (see footnote 2) in thinking that the last sentence is not entirely clear, even after the following text of the same 1836 essay, which I interpret as showing that 'possess wealth' means something more general, quite close to 'fulfil his own interest'. Also I interpret the capacity stated in the last part of the quoted sentence as quite close to the capacity of 'behaving rationally'.

Probably independently, Vilfredo Pareto took the same stand about the role of abstraction, then speaking of *homo oeconomicus*, in Chapter 1 (§ 21 to 27) of his *Manuale d'economia politica*.⁸ He explained that the economic man was an abstract concept appropriate for pure economic theory. He ended by: 'We may say: sometimes actions of the concrete man are approximately those of *homo oeconomicus*; sometimes they are assimilated almost perfectly with those of *homo ethicus*; such others are closely assimilated with those of *homo religiosus*, and so on; such others still are like actions of all these men'.

⁷ 'On the definition of political economy; and on the method of philosophical investigation in that science', *The London and Westminster Review*, October 1836; 'A system of logic, ratiocinative and inductive', 1843, reprint in his *Collected Works*, Toronto Press 1967; *Principles of Political Economy with Some of Their Applications*, Parker, 1848. The seventh edition of the book appeared in 1871, two years before Mill's death. It appeared again in 1961 in *Reprints of Economic Classics*, Kelley, New York.

⁸ Società Editrice Libreria, Milan 1906.

2.3. *Development During the Nineteenth Century and Early Twentieth*

The fact that, after the first decades of the industrial revolution and some of its social impacts, the nineteenth century witnessed violent criticisms of capitalism can easily be explained. Indeed, today important branches of positive economics, dealing with labor economics, industrial structures or financial crises, accept a large part of these criticisms.

Among critics a mention must be made here of 'Christian socialists' and other Christian reformists who were active in the middle of the nineteenth century. In their famous *History of Economic Doctrines* Gide and Rist devote a full chapter to this multifarious movement. The 1891 encyclical *Rerum Novarum* well drew, for the Catholic Church, a number of implications of the events and controversies of the earlier decades. It focused on the conditions made to the workers and on the relations to be established between labor and capital.

At that time a new generation of economic theorists was very active and introduced not only abstract but also mathematical formulations of their theories.⁹ Other theorists, although reluctant to the introduction of mathematics, well accepted 'marginalism', which had been introduced by the new generation. The most representative figure among economists in 1900 and the first decades of the new century was probably Alfred Marshall, who published his *Principles of Economics* in 1890 and died in 1924.¹⁰ He was often considered as representative of the 'neoclassical school', but he had been young teaching Moral Sciences in Cambridge. The first sentence of his *Principles* reads 'Economics is a study of mankind in the ordinary business of life; it examines that part of individual and social action which is most closely connected with the attainment and with the use of the material requisites of wellbeing'. Hence Marshall well accepted to isolate for study one part of human action.

⁹ 'Plusieurs économistes éminents, simultanément en Autriche, en Angleterre, en Suisse, aux Etats-Unis, revendiquaient avec éclat pour l'Economie politique le droit de se constituer à l'état de science exacte ou, comme il le disaient, d'Economie Pure. ... *L'homo oeconomicus*, qu'on avait si fort raillé chez les classiques, est remis en honneur', Gide et Rist, *Histoire des Doctrines Economiques*, 1915 (pages 559 and 560 in the seventh edition, Sirey, Paris, 1947).

¹⁰ See J. Whitaker, 'Marshall, Alfred (1842-1924)' in *The New Palgrave Dictionary of Economics*.

However, he was anxious to keep *homo economicus* at a distance.¹¹ He emphasized that human motivation in economic affairs was not merely a matter of pursuing pecuniary self-interest, even broadly conceived to include interests of family and friends. He stressed the human desire for social approbation or distinction, and the pleasure of skilful activity. Individuals were for the most part seen as imperfect optimizers, often failing to see their long-term interests. Such views would reappear, be substantiated and seriously studied a century later, as we shall see in section 6.

Notwithstanding his reservations about *homo economicus* (and also, by the way, about the use mathematics in economic theory), Marshall accepted the contributions of the new generation of economists who had, a little earlier, given a new content to the classical study of economists. In the *Principles* five authors are often quoted, all Englishmen: Smith, Malthus, Ricardo, Mill and Jevons (1835-1882). This last one is commonly considered as one of the three founding members of neoclassical economics, the Austrian Menger and the French Walras being the other two.

2.4. *General Equilibrium Theories, Theory of Games and Other Fundamental Deepenings*

The middle of the twentieth century was marked by fundamental progress in theories. We saw a revival of macroeconomics, Keynes being the main initiator for models of the business cycles, Solow for growth models. Public economics was reformulated. Still more remarkable was the emergence of new mathematical foundations for the theory of imperfect competition with the theory of games, and for the theory of prices and resource allocation. Concerning the latter, deep investigations bore on what

¹¹ In the first chapter of his *Principles* lengthy passages deal with his positions on questions of methods and substance. It is relevant to quote here page 25: 'Perhaps the earlier English economists confine attention too much to the motives of individual action', and on page 26-27: 'In all this [economists] deal man as he is: not with an abstract or 'economic' man; but a man of flesh and blood'. Here Marshall was clearly thinking about Mill's essay. Indeed in Appendix B to this chapter ('The growth of economic science') after praising Mill's main book, Marshall explains in a long footnote: 'John Mill wrote an essay on economic method in which he proposed to give increased sharpness of outline to the abstractions of the science. ... A change had come over his tone of thought and of feeling before he published in 1848 his great economic work' (page 764). References to pages of the *Principles* here concern the eighth edition, Macmillan, New York, 1948.

would be the general equilibrium of a complete competitive market economy in which many decisions would bear on the future (more precisely on an uncertain future). Finally we should not forget the study of the consequences following from the fact that real market economies were different from what was assumed in any mathematical model.

This multifarious progress often needed an increase in abstraction. It made economic theory more difficult to learn and to apply. It also meant an increasing isolation of economics from neighbouring social sciences. In order to avoid some misunderstandings which I could witness outside of my profession, I must stress that extended general equilibrium theory, as taught in advanced courses, was not taken as giving undisputable foundations to macroeconomic theory, or as a matter of fact to any other field of application of economics.

Such was the past.

3. ON THE DIVERSE CONTEXTS STUDIED IN POSITIVE ECONOMIC THEORIES

3.1. *Realities of Market Economies*

In real economies a great diversity of agents operate on a great diversity of goods and services. However, the most developed theory of the market economy assumes still many more goods and services than are actually exchanged on markets (indeed, materially identical goods are identified as different in this theory as soon as they are to be available at different times, or simply under different sets of possible circumstances). The theory in question also assumes that on all markets the law of supply and demand applies (for each good so stringently defined, the total of supplies just matches the total of demands, because the price adjusts up to what is required). In order to come closer to reality other theories assume the existence of 'market constraints': a less rich set of markets is assumed, and/or supply is recognized as possibly exceeding, or being short of, demand on some markets.

Quite naturally, theories dealing with different phenomena will assume different sets of market constraints, and correspondingly different kinds of economic behaviors. What really matters for a relevant science is that, for each phenomenon, an appropriate set of constraints and behaviors is recognized. So, old distinctions between theoretical domains are recovered and put in better perspectives with one another.

3.2. *Individual and Collective Agents*

When closely analyzing real economies it is almost inescapable to recognize not only different types of decisions but also different types of decision makers. In particular organizations, such as corporations, trade unions, administrations and the like, have a sufficient autonomy to be usually taken as decision makers, hence agents.

For simplicity we shall make no attempt here at describing the conceptualization of all such collective agents. We shall consider only two types of agents: the persons as individuals consuming, saving and working (we shall hardly pay any attention to households), and the firms, then distinguishing between individual entrepreneurs and (large) enterprises.

3.3. *A Short List of Subdisciplines*

The fundamental, but special, theory of the competitive general equilibrium and prices had a strong impact on some more focused theories such as that of international trade or on Solow's model of economic growth and its successors. But theories of imperfect competition or of general equilibrium under market constraints, although less tightly unified, provide more frequent references in the analyses of labor economics or of short-run business cycles. Public economics exhibits a multiplicity of models of its own, dealing with various kinds of policies (monetary or fiscal policies, regulation of competition, provision of public services).

It would be possible to trace what remains of *homo economicus* in these various domains. Considering the object of this paper we shall rather identify and briefly examine a few important behaviors. But two general remarks are here appropriate.

Some subdisciplines work essentially at the macroeconomic level and pay little attention to the characterization of individual persons or firms, preferring to base specification of their models on factual information about economic structures and on empirical regularities observed between aggregates. This is a respectable position. But it must be granted that close characterization of individual behavior would nevertheless be useful for best understanding and interpreting the theories. Such microeconomic foundations of macroeconomic models will not be considered here.

No economic theory can cope with the economic drama of societies experiencing acute conflicts or the consequences of major crises. Some social order has to be somehow assumed to pre-exist for theory to make sense. The remark probably applies to other social sciences as well.

4. CONCEPTUALIZATION OF THE PERSON AS AN ECONOMIC AGENT

Concerning individuals to whom this part is devoted, three behaviors will be studied, which should be enough to convey a proper view of the diversity in current conceptualizations and of the hesitations expressed about them by economists: the acts of consumption and saving, behavior towards work and behavior in relation to the family.

4.1. *Consuming and Saving*

An important question in economics is to know how aggregate consumption reacts to changes in conditions affecting household behavior. In order to deal with it we naturally look, first, at the behavior of the individual consumer, and second, at the aggregate implications. The second step is not trivial, but falls beyond the scope of this paper. Considering the issues to be tackled, we most often find it appropriate to pose the individual problem directly in terms of volumes of immediate and future consumption, so aggregating across goods and services consumed.

The agent essentially has to plan the series of its consumption levels in conformity with the volume of its initial wealth and current income, and also with expectations of its future incomes. The main limitation is the intertemporal budget constraint stating that eventually the agent will not be able to spend more than its resources will permit. For economists it is then natural to characterize the objective of the agent as meaning the maximization of a function of the series of consumption levels. The function is naturally called the 'utility'. Indeed, the approach belongs to the positive side of what has been called utilitarianism, as against its normative side which does not belong to the scope of this paper. It is, of course, restrictive, but less so than its normative side.

In some respects such a framework is actually quite flexible. Other constraints can be added, such as those following from the idea that the agent can never borrow out of proportion with its current wealth. The theoretician can also consider various specifications, each one being suited to one aspect of the consumption-saving behavior (saving may serve for smoothing the flow of consumption when the flow of income experiences irregularities; or it may be used for permitting a satisfactory life cycle of consumption; its future course may depend on whatever familiarization with a given level of consumption occurred in the meantime; and so on).

Quite naturally predictions of the model chosen will be all the more precise as the specification will be more narrowly defined. This is why theo-

reticians got used to particular forms of the consumer's objective function. A precise specification may serve here as an example, which might be labelled for our purpose 'the utilitarian objective' (the label is actually excessive because it was used for a broader class of objectives). If C_t denotes the level of consumption in future period t , a function $U(C_t)$ characterizes the utility obtained in period t , a positive number g , usually assumed smaller than 1, characterizes the factor discounting future utilities and the objective then is simply the sum of the terms $g^t U(C_t)$ over all the period considered ($t = 1, 2 \dots T$). Just in passing I note that this specification is inappropriate for a close study of either the life cycle (during which consumption needs vary) or the effect of familiarization to earlier consumption levels. But it was often found appropriate for studying consumption smoothing or precautionary saving.

Representation of the reality of behavior does not stop with the choice of a model such as the one sketched above. Research continues with a dialogue between theoreticians and econometricians. The latter must empirically estimate the laws of behavior from observed data. If they do not invalidate the proposed model, these empirical laws provide information about the values of its parameters. If on the contrary they invalidate it, the theoretician is led to revise his or her model (we shall see an example of that type in Section 6.2). Thus the dialogue puts order and discipline in the progress made in parallel by theoreticians and econometricians. It insures in particular that the theoretician does not fall prey of a dogmatic acceptance of the formalizations on which she or he worked.

4.2. *Working and the Individual in Labor Economics*

Robert Solow¹² wrote: 'Common sense ... seems to take it for granted that there is something special about labor as a commodity, and therefore about the labor market too ... Wage rates and jobs are not exactly like other prices and quantities. They are much more deeply involved in the way people see themselves, think about their social status, and evaluate whether they are getting a fair share out of society ... It does not follow ... that the ordinary forces of supply and demand are irrelevant to the labor market ... [But] the labor market [is also] a social institution'. Indeed, even for a well defined job, contracts between employers and employees are very different

¹² *The Labor Market as a Social Institution*, Basil Blackwell, Oxford, 1990, page 3.

from contracts, on the goods market, between buyers and sellers. Labor contracts are more tightly regulated and subject to stricter moral norms. They stipulate more or less long attachments to the job. Most often, wage bargaining involve trade unions and trade associations rather than directly the employer and the employee.

Not surprisingly, when representing economic agents, positive theories of labor economics take various viewpoints, which reflect the special and dual position of work described by Solow.¹³ Most models of 'the supply of labor' by a worker are close in spirit to models of the supply of saving, just alluded to above. But other important models take quite different stands, such as most of those concerning wage bargaining where the main agents are no longer persons but organizations such as trade unions. The exact relation assumed to exist between a worker and his or her trade union then raises the kind of problems we shall find in the next part of this paper about the conceptualization of decisions in the firms.

As an example in which identification of the worker is still fairly direct, I may take here the characterization of job search, which is an essential part in theories¹⁴ dealing with flows on the labor market (flows of people moving from unemployment to employment, or the reverse, or still from unemployment to 'out of the labor force'). From their representation of the determination of such flows these theories often find that job search of workers may be characterized as containing a simple rule: 'accept the first job offer which will provide a wage at least equal to your predetermined "reservation wage"'. Determination of the latter wage by the worker will of course depend on what Solow wrote, but also on self-interest, hence on the 'state of the market', i.e. in particular on the pressure of demand for labor by employers. Similarly when formulating their job offers employers will wonder about the current levels of 'fair wages'.

4.3. *The Individual in the Family, and Non-Economic Behaviors*

It is common for economic theories to ignore the fact that most individuals belong to households in which they live with others, and also belong

¹³ The inherent complexity of labor economics is apparent in the so-called *Handbook of Labor Economics* published by Elsevier in a series organized by K. Arrow and M. Intriligator: five big volumes.

¹⁴ About these theories, see Chapter 39 in the *Handbook of Labor Economics: 'New developments in models of search on the labor market'*, D. Mortensen and C. Pissarides.

to families in which they were born and raised, to which they will leave human, cultural and material assets. Most often this simplification of the facts has no damaging consequence for the relevance of the particular subject discussed. Moreover it is possible, and indeed done, to duplicate the simplified model of a phenomenon by more realistic and more complex models addressed to the study of the same phenomenon as lived by households or families.

The economics of the family, as first defined by Gary Becker,¹⁵ pretends to go beyond such transpositions and to explain by economic factors marriage, birth of children, divorce and the like. Partners are then characterized as economic agents moved by the same basic rationale as *homo economicus*. Many economists refuse to endorse such a theory because they feel there is too much in the life of families that depends on other kinds of behavior. These reluctant economists maintain that it belongs to demographers, sociologists, psychologists and moralists to evaluate the worth of the economics of the family as now understood.

Indeed, at the beginning of his 1991 preface Becker writes 'In this book I develop an economic or rational choice approach to the family. The title does not refer to economic aspects of the family, however, because most non-economists and many economists would interpret the qualifier 'economic' to indicate that the discussion is confined to the material aspects of family life to income and spending patterns.¹⁶ My intent is more ambitious: to analyze marriage, births, divorce, division of labor in households, prestige, an other nonmaterial behavior with the tools and framework developed for material behavior'. A little later he writes: 'Many economists are hostile to this application of [their] approach, whereas increasing numbers of sociologists, anthropologists, lawyers, biologists, psychologists, and historians are using a rational choice approach or related methods to analyze the family'.

I must grant that Becker's arguments have some force, as he insists on the idea that a rational choice approach must recognize the diversity of preferences and the presence of altruism. I agree with the idea that the rationality of human beings goes beyond purely material concerns. Moreover, some

¹⁵ The first publication of Becker on human fertility appeared in 1960. Elaboration of his theory of the family was mainly developed in the 1970s, leading in 1980 to the first publication of his *A Treatise on the Family*. Here references are to the enlarged edition, Harvard University Press, 1991.

¹⁶ Remember for comparison the definition of economics by Marshall, as quoted here in section 2.3.

of the conclusions he derives from his approach make sense and are consonant with observed facts. Nevertheless, along with Marshall, I am reluctant to rank rational choice before emotions, sentiments and spiritual concerns as the major determinant for the positive analysis of behavior in the family. Hence, I prefer to leave other social scientists free to request from us economists what they will find relevant. I note, however, that the economic approach to the family is more palatable than many may believe. Becker for one concludes the last chapter of his *Treatise* with: 'It is remarkable how many state interventions in family decisions appear to contribute to efficiency of family arrangements'.

Actually, during the 1960s and 1970s, there were other cases in which economists succumbed to the temptation of extending the domain of their discipline beyond its earlier borders. For instance Richard Posner used the economic approach for the study of law.¹⁷ In some such cases, however, the narrowly economic posture retroacted on the traditional economic vision of old subjects. I for one was particularly hopeless when witnessing this occurring in public economics. The traditional standpoint was there to assume that civil servants existed in order to serve public interest, in the organization of public services or the conception of public policies. It was all too easy for some economists, first, to note that economic interest of those agents, seen as private persons, was often conflicting with their duty, and second, to argue before any test that therefore civil servants would hardly anywhere abide by their duty.

5. CONCEPTUALIZATION OF THE FIRM

5.1. *The Firm in Theories of General Equilibrium of Prices and Resource Allocation*

In these theories it is common to pose that top management of firms maximize the profit of these firms. The hypothesis much contributes to the hostility, both within and outside economics, against even the concept of equilibrium. Indeed, the hypothesis of profit maximization remains short of giving the full characterization that this paper must provide.

¹⁷ See R. Posner, *Economic Analysis of Law*, 3rd edition, Boston, Little-Brown, 1986.

The best defence of the hypothesis claims that, in market economies, firms which would not maximize their profit would not fare well in competition; they would make losses, hence disappear. The argument is not a foolproof defence, however, because it strictly applies only in general equilibrium and in case of perfect competition. Out of equilibrium and/or under imperfect competition firms will typically exist, which will benefit from rents, whether or not they maximize their profit.

The theory of general economic equilibrium under perfect competition is, however, an unavoidable reference for those economists who want to fully understand the challenges facing conceptualization of the firm. Certainly, this theory leaves much to be desired. Not only for the reason given above, but also because it pictures the firm as something like a computing machine which just determines how inputs have to be transformed into outputs. The fact that identification of the firm tends to be arbitrary in this theory gives evidence of the difficulty of finding a good formalization of the firm. According to the theory of general equilibrium, the level of the productive capacity of the individual firm could be chosen at will. Clearly, such an abstraction leaves too many relevant questions pending. Rather than surveying the whole set of these questions, the following sections will deal with a selection among those most closely connected with economic the conceptualization of agents.

5.2. The Individual Entrepreneur

Who is it? How does he or she behave, assuming that no employee, or only a small number of them, is involved? In fact, a person taken at random in the whole labor force has a higher chance to be an entrepreneur if there was or are other entrepreneurs in the family, something which is of great concern for sociologists. But economists pay more attention to two other facts. (i) In order to accept being an entrepreneur you have to be ready to assume risks, hence the number of entrepreneurs in a society will be all the larger as risk-taking will be better regarded and better paid, other things being equal. (ii) Having more people likely to perform as entrepreneurs depends on opportunities for attractive innovations. Economic conceptualization of entrepreneurship reflects these two facts. It has to consider risky undertakings extending over time.¹⁸

¹⁸ See W. Baumol, 'Entrepreneurship: productive, unproductive and destructive', *Journal of Political Economy*, October 1990.

5.3. *The Firm as an Organization*

Large firms in industry or services may be directly viewed as economic agents. But, given the goal of our session, it is most relevant to look for people inside their organization. Before anything else, let us ask the question: why do we see so many large firms, which have a quite different way of operating within their boundaries from what economic theory most often conceived for its representation of the market economy? Why do markets rule some operations between agents, whereas authority rules other operations, those taking place within firms?

Such was the question already discussed by R. Coase in 1937 and later revived, particularly during the last two decades.¹⁹ Full answers will not be given here. But two simple ideas often underlying such answers may be reported. First, it is widely recognized that 'the theory of the firm should move from a production function [toward] a governance structure'.²⁰ Second, when closely examined, detailed operations within large organizations face important transaction costs and incentive problems, which actually forbid the kind of full decentralization that markets provide in other cases.

One important concern when deciding about a governance structure is the conditions under which the firm will best strike a balance not only between distributing profits (equivalently rents) in the short run and being successful in the long run, but also when allocating its distributions to various 'stakeholders': owners, employees and customers. Actually, these two considerations have to be seen as closely linked, but in terms that business management practice and positive economic theory have difficulty in disentangling.²¹

¹⁹ R. Coase, 'The nature of the firm', *Economica*, November 1937; R. Radner, 'The internal economy of large firms', *Economic Journal*, Supplement, vol. 96, 1986. See also the section 'The scope of the firm: new empirical directions' in *American Economic Review*, May 2001.

²⁰ O. Williamson, 'Transaction cost economics: how it works; where it is headed', *De Economist*, April 1998.

²¹ See for instance: H. Siebert, ed. *Trends in Business Organization: Do Participation and Cooperation Increase Competitiveness?*, Verlag J.C.B. Mohr, Tübingen, 1995; also: M. Faccio, L. Lang and L. Young, 'Dividends and expropriation', *American Economic Review*, March 2001; or: J. Tirole, 'Corporate governance', *Econometrica*, January 2001; or still 'Gouvernement d'entreprise: évolution et aspects éthiques' third part in Association d'économie financière, *Rapport moral de l'argent dans le monde*, 2000, Montchrétien, Paris.

5.4. *Market Structures*

Self-interest is the natural concern of anybody shopping in an impersonal market since there are better opportunities for altruism. But relations often become personal when they are bilateral and long-lived. This is why it is appropriate to briefly look at the important literature concerning market structures. This literature immediately appears as very complex, because there are so many different market structures besides perfect competition and because in most cases, for a given structure, several conceptualizations have been found worth considering. Once again this paper has to be selective.²²

Monopoly was the first case to have been discussed in economic theory. The appropriate model is essentially simple for this case, as soon as competition between buyers of the output is so high as to appear approximately perfect. But at least dating from the U.S. Sherman act in 1890, developed market economies have used antitrust laws in order to break private monopolies. Thus, now the interesting questions rather concern competition policies, which would take us away from our main theme.²³ From monopoly theory two important lines of research emerged.

Oligopoly theory concerns the case in which perfect competition holds between buyers of a good or service sold by several (typically a few) producers. Dating from the first treatment of the subject by the mathematician A. Cournot in 1838, this theory has been the subject of a long literature, dealing with various conceptualizations, and a field of application of the new school of experimental economics, which cannot be ignored in this paper (see C. Plott, *op. cit.*).

Bargaining theory generalizes the bilateral monopoly in which one single buyer confronts a single seller. Again there is a variety of models. At one extreme concerning a form of bargaining in the labor market, a case has sometimes been taken as relevant: the wage for an occupation is autonomously decided by a trade union; then employers, holding the 'right to manage', freely decide how many jobs of this occupation to use.

²² For an introduction to this complex field see F. M. Scherer, *Industrial market structure and economic performance* Houghton Mifflin, Boston, second edition 1980; and C. Plott, 'Industrial organization theory and experimental economics', *Journal of Economic Literature*, December 1982.

²³ See for instance the entries 'antitrust policy' and 'competition policy' in *The New Palgrave Dictionary of Economics*, Macmillan, London, 1987.

6. RECENT RECONSIDERATIONS

Thanks in particular to substantial contributions from psychologists, increased knowledge of lapses from rationality and of the role of other motivations than self-interest explains why we now see signs of more or less extensive reconsiderations in positive economic theories. Although the process is probably still far from completion, even a rough idea of the stage now reached is worth having.

In order to organize this part we shall be looking at one and the other of two predictions made by Richard Thaler: '*Homo economicus* will begin losing IQ, reversing a 50-year trend' and '*Homo economicus* will become more emotional'.²⁴ Sections 6.1 and 6.2 will bear on the limits of rationality in actual economic behavior. Section 6.3 will introduce ideas about the role of emotions. Section 6.4 will consider various forms of mutual interactions between agents and suggest how in a number of cases rationality and emotions may combine their effects.

6.1. *Bounded Rationality*²⁵

Already in 1950 appeared in economics the phrase of 'bounded rationality', meaning that actual behavior was less sophisticated than theory often assumed. But for many years using the expression was seldom more than recognition of a difficulty. Simultaneously the progress in the fundamental general equilibrium theory, as acknowledged in section 2.4, was *de facto* extending the scope of the assumed rationality to intertemporal behavior, to risk taking, to the formation of expectations, and to the perception of effects of asymmetrical information.

Developments in experimental economics and in psychology during the last three decades brought more constructive knowledge about lapses from rationality. Leaving apart for the moment emotional reactions to be examined later, we have to distinguish on the one hand deliberate decision procedures, which do not conform to full rationality but insure prudent self-controls and, on the other hand, logical errors through more or less consequential oversights of the true features of the decision problem.

²⁴ R. Thaler, 'From homo economicus to homo sapiens', *Journal of Economic Perspectives*, Winter 2000.

²⁵ For a serious account of the present state of our knowledge on bounded rationality, read the Nobel lecture of Daniel Kahneman: 'Maps of bounded rationality: psychology for behavioral economics', *American Economic Review*, December 2003.

Typically, deliberate prudent procedures concern people who divide their life and interests into compartments, which they consider in turn, then neglecting part of the real interdependencies between them. Psychologists, who have often observed such behaviors, speak of distinct 'mental accounts'. By the way, such observation provides indirect support to those economists who claim that economic behavior often has an important degree of autonomy with respect to behavior in other spheres of human activity.

As for unconsciously lax behavior, some decisions have been shown to systematically depend on inconsequential variation in the frame within which the problem was perceived, such as the order in which the choice options were presented. Psychologists then speak of 'framing effects' or develop a 'prospect theory'. More interesting and also often more important are the cases in which people, being confronted with a complex problem, rely on intuition for taking their decisions.

6.2. Intertemporal Choices and Risk-Taking

Some robust findings about intertemporal choices and risk-taking behavior clearly do not fit into the patterns of rational decisions as they were worked out fifty years ago. These empirical findings lead to see in new perspectives some relations between normative and positive economic theories. Indeed actual agents are often inconsistent in their decisions. Should not public intervention find ways to, at least in part, impose correction of such inconsistencies?

The clearest case in point concerns discounting of the future. Many people today apply a high discount rate in decisions about the close future, 2008 say, but definitely lower rates to what concerns more distant horizons (i.e. what will materialize after 2010, say). From past experience we are sure that, when 2010 will arrive, the same people will be again impatient enough to borrow at high interest rates for the following three years and to claim that they cannot afford saving. This inconsistent behavior, which was ruled out by earlier theories of the consumer, such as utilitarianism, should no longer be ignored in discussions about, for instance, the respective roles of public mandatory pensions and private pensions. Nor can it be ignored in studies of environmental policies.

Observation that households were subject to impatience in their short-term intertemporal choices and awareness that the fact could matter in applied economics, led economists and econometricians to search for more

accurate representations of actual choices. Hence, the favor now attached to either 'the hyperbolic consumption model', or to the study of controls that households are imposing on themselves in order to mitigate the damaging effects of their impatience.

6.3. *Emotions*

Focusing on bounded rationality, economists mainly drew, up to recently, from cognitive psychology. But a few of them are now turning their attention to the psychology of emotions and of their impact on behavior. There are good reasons for that. For instance, what is the nature of intuitive reactions of economic agents to the difficult decision problems they are facing? Certainly not often the same as that of the intuitive perception of the likelihood of a logical property as is experienced by a mathematician (the prototype of a rational person). For ordinary people many intuitive reactions reflect, if not always emotions, at least sentiments. Some psychologists think that intuitions appear in the automatic system of the human mind, whereas a second system operates for deliberations, which require time and attention. Intuitive reactions would therefore often be emotional (see Kahneman, *op. cit.*). Others stress that some emotional capacities are overdeveloped in humans in relation to intelligence. So, emotional behavior would often dominate rational behavior.

Jon Elster convincingly argues that the real challenge is to understand how emotions interact with other motivations such as self-interest, and that moreover there is often a tension between the moves inspired by sentiments and those responding to other motivations. He speaks of a dissonance in a number of examples, which he discusses: guilt, shame, envy, etc.²⁶

Elster observes that, for instance, the envy man is not made happy by carrying out his urge to destroy the envied object or its possessor. He would like to see his rival to be made worse off, but not by the result of his action. If that does not happen, he will cope with the dissonance between his inaction and his envy. This he will often do by an inner rationalization of his inaction, so as to put the blame for it on someone else or something else. The purpose of Elster in this analysis is to show that there is something truly special in the role of emotions: you cannot simply say that envy enters into the preference system, which you would assume to rule the behavior

²⁶ J. Elster, 'Emotions and economic theory', *Journal of Economic Literature*, March 1998.

of the man. Such a sentiment as envy differs in this respect from the most frequent forms of altruism.

The list of sentiments to consider in positive economics obviously contains altruism, as well as concerns for fairness, equity or justice. They may all be vehicles for emotions. And let us note that long before the end of the last century such concerns were often taken as significant determinants of economic behavior besides self-interest. For instance, in this respect Solow (*op. cit.*) quotes Marshall.²⁷

6.4. *Trust, Reciprocity and Social Norms: How Interests and Sentiments May Combine*

In actual market economies mutual interactions are now recognized as much more important than the abstract models of the market would suggest? Trust in business relations, reciprocity in face-to-face dealings, as well as social norms acting as constraints on individual decisions, are three features now well recognized in positive economics and about which there is a substantial literature.

Business relations are ruled by contracts. But these contracts do not specify what should happen in many cases which are too complex to describe at the time of signing. We economists therefore speak of incomplete contracts. Where mutual trust prevails bona fide arrangements are more or less easily found in order to cope with such contingencies when they occur. And the literature shows that this is frequent and it explains why.²⁸

The role of reciprocity is also well substantiated by direct reports of market participants, by observation of behaviors and by laboratory experiments on games with more or less artificial confrontations.²⁹ Indeed, reciprocity is one of the best established features of human relations, in economic matters as in others. Note that, discussing the behavioral approach

²⁷ On this point, which will not be developed here, see also G. Akerlof, 'Labor contracts as partial gift exchanges', *Quarterly Journal of Economics*, November 1982; D. Kahneman, J. Knetsch and R. Thaler, 'Fairness as a constraint on profit seeking', *American Economic Review*, September 1986.

²⁸ See B. Nooteboom, *Trust: forms, formulations, functions, failures and figures*, Cheltenham, Edward Elgar, 2002, and *Interfirm collaboration, learning and networks: an integrated approach*, London, Routledge, 2004.

²⁹ See E. Fehr and S. Gächter, 'Fairness and retaliation: the economics of reciprocity', *Journal of Economic Perspectives*, Summer 2000.

to economics, Kahneman writes: 'The clearest progress has occurred in correcting and elaborating the assumption of selfishness, and the progress has come entirely from developments in economics, where the invention of the ultimatum game³⁰ had a great impact'.³¹ The concept of reciprocity and its manifestations are sufficiently rich to now make many developments granted.³²

Social norms impose rules of conducts that constrain the behavior of economic agents. On close examination they share with reciprocity and trust the two following features: to have ethical value, but often to be also conform to mutual interest of those concerned.³³ This point will not be developed here, but it is part of the environment within which the positive theory of economic behavior has to be reconsidered.

7. CONCLUSION AND PROSPECT

The attempt in this paper was to persuade the reader that current conceptualizations of economic agents have a fair degree of realism and that their uses in positive economic theory are most often sensible. It was also to show that my profession was not dogmatic about its conceptualizations and was ready to recognize their deficiencies. How far will this recognition be fundamentally changing our analytical methodology? It will belong to younger generations of theorists to answer the question.

The majority of us, who now welcome the reconsideration, will also issue a serious warning: embodying, systematically and everywhere, more realistic hypotheses is likely to be very costly because it spontaneously seems

³⁰ In this game a given sum of money is available, 100 euros say. The first player has to propose a sharing of the sum between himself and the second player, for instance (50-50) or (90-10). The second player has to say whether he accepts or not the proposal. If he rejects the offer, no money will be given to either of the two. In this game the first player has a strategic advantage: if the second player rationally maximizes his gain, he will accept the proposal (90-10). Experiments have repeatedly shown that most people in this situation have enough self-respect for rejecting the offer.

³¹ See D. Kahneman, 'A psychological perspective on economics', *American Economic Review*, May 2003, p.162.

³² See S. Kolm, 'Introduction' in *Handbook on the Economics of Altruism, Giving and Reciprocity*.

³³ See J. Elster, 'Social norms and economic theory', *Journal of Economic Perspectives*, Fall 1989.

to lead to more complex models and more grim mathematics. Calling to witness three of those who now are at the forefront, I am quoting :

Amartya Sen – ‘It will not be an easy task to find replacement for the standard assumptions of rational behaviour – and related to it of actual behaviour – that can be found in the traditional economic literature, both because the identified deficiencies have been seen as calling to rather divergent remedies, and also because there is little hope of finding an alternative assumption structure that will be as simple and usable as the traditional assumptions of self-interest maximization, or of consistency of choice’.³⁴

Richard Thaler – ‘Behavioral models are harder than traditional models. Building models of rational, unemotional agents is easier than building models of quasi-rational emotional humans’ (op. cit., page 140).

Daniel Kahneman – ‘The model of the agent that has been presented here ... may be more difficult to translate into the theoretical language of economics ... The central characteristic of agents is not that they reason poorly but that they often act intuitively. And the behavior of these agents is not guided by what they are able to compute, but by what they happen to see at a given moment’ (Kahneman, December 2003, *op. cit.*, page 1469).

A different kind of prospect is given by Vernon Smith, an economist who specialized in experimental economics, focusing his experiments on bargaining and market behavior. He received in 2002 the Nobel prize jointly with Kahneman.³⁵ In order to oppose an alternative concept to the ‘constructivist’ rationality now common in economics, V. Smith writes: ‘Ecological rationality uses reason – rational reconstruction – to examine individual behavior ... ; to understand the emergent [social] order in human cultures; to discover the possible intelligence embodied in the rules, norms and institutions of our cultural and biological heritage that are created by human interactions but not by deliberate human design’ (page 470). With the concept of a non-deliberate order V. Smith reminds us of what was written by Adam Smith and by some older predecessors, as well by Friedrich Hayek in post-world war II. The grandiose research program of Smith,

³⁴ ‘Rational behaviour’, entry in *The New Palgrave Dictionary of Economics*, Macmillan, 1987.

³⁵ His Nobel lecture was published in the *American Economic Review*, June 2003, with the title ‘Constructivist and ecological rationality in economics’.

extending much beyond the present domain of my discipline, is certainly fascinating. But I doubt whether it will be able to generate a wholly different methodology for economics itself.

In any case, positive economic theory never limited its scope to building a single, unified, all-purpose fundamental model. On the contrary it has long been used to live with a multiplicity of basic formalizations, each one being appropriate for a particular range of phenomena. Embodying in this theoretical environment the recent reconsiderations may be difficult in some cases, but raises no objection in principle.

A COMMENTARY TO PROFESSOR EDMOND MALINVAUD

JOSEPH STIGLITZ

Professor Malinvaud has done an excellent job not only in explaining the economist model but in defending it. I want to pick up on a few points where questions need to be raised about the standard economist model, although there has been a lot of work extending that model. Let me first explain that Professor Malinvaud has tried to put forward a positive model, that is to say a view of economic man that we can describe and from which we can derive a number of testable propositions. In Popper's terms it is a model that can be verified or rejected. In practice however, many of the empirical tests are not really tests of the economic model but tests of particular formulations of that model. When a particular formulation has been rejected, it is not a rejection of the overall economic model, but only of some of the extreme simplifications of that model the economists have sometimes used. Let us rather look at the essential ingredients of what we mean by economic man.

Essentially this man has well-defined preferences over outcomes; he is selfish; he is fully informed of the consequences of his actions and choices. In each context he does a calculus of the costs and benefits of the various options open to choice and he has infinite capability of making those calculations. In standard economic theory where the context implies a pure market economy, this model of the economic man leads to well-defined predictions, remarkably weak predictions however. This theory indeed puts a high emphasis on consistency more than on having very rich predictive powers of particular actions that individuals want to undertake.

This being said, what happens when you modify some assumptions, does it change the model in a very deep way or not? For instance, in the paper this morning, Professor Kolm, has asked some fair questions, like: what happens if you introduce some degree of altruism? I think a convincing case can be made that in many realms of behaviour you get better pre-

dictions than you do out of the model that presupposes selfishness. A second example where a change in assumptions leads to dramatic changes in theory arises when the hypothesis of perfect information is relaxed and replaced by the weaker hypothesis that individuals know that other individuals may find out information. This change has led to important research that are difficult to explain in simple terms, but imply that many propositions derived from standard economic theory fail to hold when perfect information is replaced by imperfect and asymmetric information across economic agents.

A third example Professor Malinvaud referred to is the analysis of bounded rationality, where individuals are not fully rational in their calculations but rather use rules of thumb. It is actually a very rich but in some ways not a fully satisfactory branch of modern economics. The interesting aspect is that an awful lot of the social institutions can only be explained in terms of bounded rationality. For instance, to give you an example, if you write down the efficient contracts between landlords and tenants in the sharing of risk, they are extremely complicated. The contracts that one sees in practice tend to be very simple such as: the landlord will get 50% of the profits.

It has been a real challenge to explain why the world is not as complicated as our theories say it ought to be. One explanation is that we have simple rules. If I propose to make a change in those rules, the other party infers that I must be doing it because I would gain from it. Since there is often a constant sum or zero sum view of the world, if I am gaining you must be losing, and therefore you reject my proposal. So, we see all over the place, persistence of rules that can only be described as consistent with bounded rationality.

There are actually three other areas that I think are in some ways still more important. One of these Professor Malinvaud has referred to and, in a way, has come up in a number of discussions over the last few days. It occurs where my behaviour depends on my sense of being treated fairly, and more generally when equity or fairness becomes an important determinant of behaviour. Now, fairness is a social construct, and its perception is related to a social context. There is a literature that has developed about how people, for instance on the exertion of effort in a job, will be affected by their perception of fairness, and about how employers, recognizing this, decide on the wages that they pay. However we form notions of fairness, they are in some sense different from notions of preferences. In particular, one try to change perceptions of fairness. This is an important consideration when you talk about the nature of the person, and it affects positive economics.

The second area of profound changes concerns the assumption of well-defined preferences. In fact we learn about ourselves over time and that learning process is a complicated one. An important case of the difficulties following from that concerns savings, for spending next year or for retirement. I am supposed to make a judgement about my preferences, the way economists put it, for consumption today, for consumption next year or still for my retirement. In other words, I have to decide the relative valuations I put on those consumptions. But, I may decide to save very little because I think that, in my old age, I will not enjoy life much. Then, now that I am coming to my old age, I may find out that in fact I was wrong. But I cannot go back and then learn it over again. So, whereas when I am buying two kinds of lettuces I can do experiments and find out what is my true preference, I do not know how I can find out my true preferences between consumption today and consumption in my retirement because I am only going to have one experiment. I do not even know how to think about that issue, that becomes very important and fundamental when we think about our social security system: we are supposed to be maximizing the well-being of people but we do not even know what our well-being is going to be. That problem is highlighted by some interesting experiments, which reveal that individuals do not have well-defined preferences: the preferences that they seem to reveal when asked depend on immaterial features of the question asked.

There is another aspect of this notion of well-defined preferences, namely that our sense of being is in some sense being created by the choices that we make, it is part of our identity. There are two points I want to make with respect to this sentence, the first is that we care not just about outcomes but about the fact that we have made choices. In the economist standard model, it makes no difference if I am given a bundle of goods x , or if I choose that bundle of goods, but for most of us it does make a difference: we do not like the idea that some authoritarian person has given us, even if they gave us the goods that we would have chosen; most of us do not like paternalism, the notion of consumer sovereignty has value on its own. So, our sense of ourself is not consistent with the standard economic model. But there is more to it than that: in a way our sense of who we are is affected by the choices that we make. We are signalling, not only to others but also to ourselves, what our identity is. Certainly, we can have different models in different spheres. But, even our economic choices are affecting our view of ourselves. Thus, some economic choices are imbued with another layer that affects our consciousness of ourselves.

There is still more to say on this point: increasingly in economics, there is a literature talking about how identity affects behaviour. That becomes important in economics because people can try to manipulate our identity, to deliberately affect how we think of ourselves, because that affects our choices. We can actually also try to affect our own choice of our identity. But since individuals are evolving and changing, our beings have some degree of autonomy outside ourselves, and the being that is being created by me is not entirely being created by me. Well all this, while a little bit abstract, is relevant because it does affect economic behaviour. It is a complexity that is relevant for describing many important aspects of behaviour.

Now Professor Malinvaud referred to a literature in economics that talks about time consistency: knowing that we are changing over time, we try to make decisions today that are consistent with our beliefs about what we will be like at some time in the future. In fact, we cannot constrain ourselves to be the person that we might want to be in the future. So, in the future we may not be that person. Can we try to constrain our future behaviour in some way or another? This is a serious and relevant question since there are indeed good examples of such self-imposed constraints, as some alcoholics know.

Another point has to do with the section that Professor Malinvaud skipped in his oral presentation, namely the behaviour of firms, which is indeed an aspect of a larger problem, that of collective decisions in organizations. There is a sense in which individuals often do not behave rationally in these social contexts. Let me explain what I mean. Alfred Marshall, who was one of the great economists of the nineteenth century, was asked what were the most important contributions of economics and what was the most important unsolved problem. He said that the most important contributions were his own and the most important unsolved problem was the theory of the large firm. He had explained how a small, a single proprietor, firm operated: a firm owned by an individual maximized its profit because it was as well the own income of the proprietor. But, in a large company, why does the manager behave in the way he does (This was before the 'theory of agency' had been developed). Marshall observed that in general the reward of the manager is not related very much to his behaviour and could not be explained by the standard economic model that he Marshall had formulated. Well, the answer, which I am slightly caricaturing was: in former English boarding schools you were inculcated for God, King and country and that in modern English boarding schools you were inculcated for God, King, country and company: you did these things out

of social mores. You felt you were supposed to work hard for the company and that is why you did it. So, in explaining economic behaviour, Marshall went back not to economics but to some version of sociology. The behaviour of the manager was not related to the hypothesis of the economic man. It was simply a social norm. Well, the modern economics has done a lot better explaining it but I do think that the rules and norms on which Professor Malinvaud has commented towards the end of his paper are far more important and in some ways far more complex.

Finally, let me just say that I think Professor Malinvaud is right that going beyond the standard economic model is going to be extremely difficult. But it is actually very important in describing a very large fraction of behaviour. It is important for positive economics, but it is possibly even more important for normative economics. Big policy issues that are on the table in political discourse, are often not on what kinds of policies, organizations, frameworks, will maximize the well-being of individuals with well-defined preferences. They are rather on what kind of society we want to have, how will these policies or frameworks shape individuals. These issues of shaping, forming preferences, how this gets done and how do we think about that, seem to me to be very much at the core of modern economic analysis.

CONCEPTIONS OF HUMAN BEINGS IMPLICIT IN ECONOMICS AND IN THE PRACTICE OF ECONOMIC POLICY

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Introduction

What are the conceptions of human beings implicit in the practice of economic policies? Do they have some impact on their results in contemporary societies? These are the central questions addressed in the second section of the paper. But in order to give deeper answers to them we thought it would be better to begin with some synthetic references to the conceptions of human beings implicit in the economic science per se that, very often, inspires economic policy making. Although these references are mostly hypothetical they help anyway to a better understanding of the central questions of the paper. The analysis is focused on the mainstream of Western economic science, i.e., the so called neoclassic-Keynesian synthesis. Only minor references to more 'heterodox' economic policies are included. At the end of the paper, a concluding section aims to link the two first parts. Its central question is if some agenda could be devised in order to avoid the consequences arising from what could be the key mistakes of the implicit conceptions of human beings dealt with in the paper.

1. HUMAN BEINGS IN THE ECONOMIC SCIENCE

The reasoning observed in this part of the paper is as follows. Since economists do not teach anthropology but economics, the answer to the question: 'what understanding or knowledge of man is contained in the subjects taught by economists?' may be quite different from what economists think man is not *qua* economists, but 'personally'. Lionel Robbins

explicitly distinguishes what he thinks personally from what he does as an economist (1935-84:149).¹ More recently, John Davis affirms: 'Indeed, economists often believe themselves attached to a variety of philosophical ideas irrespective of whether these ideas have a genuine basis in their thinking about economics' (2003:82). Personal philosophical ideas used by economists in their everyday lives, many times have little in common with the philosophical concepts which surface in their economic thoughts. Several philosophers of economics have brought this to light extensively. Davis' recent book (Davis 2003) is completely concerned with the anthropological question and he arrives at the conclusion that just as the early neoclassical theory did, today's mainstream has tended to vanish the individual. Therefore, trying to answer adequately the question posed, we are not much concerned with the economists' personal ideas of man (which on the other hand are quite acceptable), but with the anthropological premises on which the teachings of economists are based.

How is it possible that economics having been born as a branch of moral and political philosophy during the classical era, and with modern age economists having a 'personal' reasonable outlook of man, the conception of man underlining their theories is so restricted? The answer we are about to offer is that the pressure to become part of the catalogue of sciences have led economists to adopt a specific scientific framework in which a comprehensive vision of man does not fit. It is a framework proper of a positive science, in which the demands of exactness (an epistemological prejudice) impose a requirement of determination (in the sense of fixity) in the object (an ontological *a priori*). This determination, in the case of social sciences, and specifically in the case of economics, normally excludes or withholds essential features which are necessary for its very explanation, such as human freedom, intentionality in decisions, situations of uncertainty which are not overcome with any type of calculus, ignorance or change in aims or preferences.² It also tries to lay aside normative elements,

¹ The first edition is dated 1932. Here we use and quote that of 1935. The 1984 edition includes his Richard T. Ely Lecture delivered at the American Economic Association in 1980.

² As Athol Fitzgibbons says, 'macroeconomic science presupposes a state of knowledge that is inconsistent with the phenomena the science is supposed to explain' (2000:13). Freedom in this paper is an analogous term: its most inner meaning is a radical openness of mind and will towards reality. The second analogous meaning is *liber arbitrium* or freedom of choice, an inner capacity of Will to decide, a power to will. Of course, Will is conditioned in its decisions by sociological, psychological and physiological antecedents as

precisely those with which economics could make a valuable contribution (because rationality is a normative concept, not only a descriptive one).

In sum, beyond the notions of human beings that an economist himself may have, what is relevant in order to answer the question here considered is to determine what is the notion of humans which is subjacent in the particular form economic science adopts according to each economic thinker. The hypothesis here maintained is that there is an 'epistemological bias' in current economics that affects its human content. We will try to show that this problem has been manifested in the evolution of the notion of economics itself.

1.1. *The Problem*

A large choir of self-critics has arisen within the economics profession in the last decades.³ In this paper we follow the line of the argument of one of these, Sir Henry Phelps Brown. He has acutely pointed to one possible reason of the problems and misleading notion of humans underlying economic science, complaining about the smallness of the contribution that the most conspicuous developments of economics in the last quarter of a century have made to the solution of the most pressing problems of the time (1972:1).

He then quotes some affirmations of his colleagues:

'I find I've learnt a good deal in these last years – particularly how misleading most of my economic training has been', ... 'By far the best preparation for a useful career in economics after the university, is to go to an organisation working on practical problems, partly so as to understand how little use a great many of the academic gadgets are' (2).

well as by previous habits, however it is not totally and univocally determined by them. Decisions are not uncaused: they are caused by the person who wills conditioned as it were. In the human realm 'to be caused' is not equivalent to necessity. The former kinds of freedom are innate. Acquired freedoms are moral inner freedom – the capacity to act rightly – and external – political and economic freedoms, a power to do. These latter freedoms find their sources and fundaments in the former.

³ See especially the Announcement 'A plea for a pluralistic and rigorous economics', signed by 47 top economists (*AER*, 82/2, May/1992), and the 'Petition to Reform Graduate Education', signed by other 463 economics professors (*AER*, 83/5, Dec./1993). See also, for example, Bell and Kristol 1981, Leontief 1958 and 1971, Morgenstern 1972, Deane 1983, Blaug 1998.

Today, thirty years later, we may hear a lot of economics' students and professionals saying similar things. Phelps Brown adds:

'The human propensities and reactions it [Economics] purports to abstract are not in fact abstracted, that is to say drawn out of observations, but are simply assumed (...)' (3).

For him, the result is a distorted vision of humans, which does not allow for a causally grounded explanation, diagnosis and prescription (cf. 6, 7). However, is it not legitimate to make assumptions and to abstract in economics, as in any science? Hal Varian affirms: 'A model's power stems from the elimination of irrelevant detail, which allows the economist to focus on the *essential* features of the economic reality he or she is attempting to understand' (1990:2, our emphasis on the word *essential*). We agree. However, the very aim of capturing the essential imposes constraints. As Morgenstern affirms, 'The abstraction would be faulty if it bypasses a fundamental feature of economic reality (...) Radical simplifications are allowable in science so long as they do not go against the essence of the given problem' (1964:255). Hence, the crucial problem is: 'what are the *essential* features of economic reality?' As most philosophers of economics, Uskali Mäki, accepts isolation, abstraction and idealisation, but, borrowing the expression from Coase and Richardson, he adds that 'the way the world works' imposes a constraint on theorizing (1998:314). He presents the pairs 'primary and secondary factors, *essential* and accidental properties, key features and incidental features, major and minor causes, causally and less relevant factors' (312): models should contain the first component of each pair. Abstractions or assumptions cannot pass over these elements.⁴

In the same vein, Hoover (2001) says: 'The interest in idealisation is precisely that it isolates the essential, but whether something is essential is a question not of form, but of what reality is like. The danger is that without a notion of *essence*, idealisation might be reduced either to a fancy name for an arbitrary selection of *ceteris paribus* conditions or to a formal nesting relationship for theories' (2001:37). But for him, the second components of Mäki's pairs are also relevant: '... the secondary factors must matter somehow if they are to be factors at all' (1998:39).

⁴ Joan Robinson expresses it accurately: 'It is easy to make models on stated assumptions. The difficulty is to find the assumptions that are relevant to reality. The art is to set up a scheme that simplifies the problem so as to make it manageable without eliminating the essential character of the actual situation on which it is intended to throw light' (1971:141).

According to Phelps Brown this problem of economics has to do with the change of its modern definition: it has adopted a 'discipline – determined', and not, as in the classics, a 'field-determined' definition (1972:7). 'The economist's studies', he suggests, 'should be field-determined, not discipline-determined'. A 'field-determined' economics would make room to both rational and irrational behavior, to allocation of means and to study an appraisal of ends or preferences chosen. All realities falling under the common language rubric of 'economic', no matter if they were rational or not, unstable, unpredictable, uncertain or related to ends or values would be considered. This would suppose to acknowledge that a large portion of economics would remain outside models. Consequently, it would suppose to accept a wider notion of science than positive science, a prudential or 'practical' economics (in the classic philosophical sense of 'practical'). Instead the 'discipline-determined' vision (a reduced form of the logic of choice) would have stemmed from trying to fit economics into some epistemological premises – the imitation of the epistemology of the physical sciences. Let us develop on this, beginning by a historical overview.

1.2. A 'Field-Determined' Economics

For Aristotle economics was a practical, namely, a moral science. 'The economic' (*oikonomiké*) is for him the use of what is needed to achieve the Good Life (*Politics*, I). He considers 'the economic' as an analogical concept embracing a human action, a capacity, a virtue and a science. It is the sector of the human life related to material 'human' necessities (which were for him subjective and relative, but not arbitrary: *Nicomachean Ethics*, V, 5). A notion of humans as material-spiritual free and intelligent agents underlies this concept. This is a 'field-determined' notion of economics. According to Adam Smith political economy was '[a] branch of the science of the statesman' (*Wealth of Nations*). Thus, he also bears a 'field (wealth)-determined' notion of economics that belongs to the realm of practical or moral science. When Smith explains the work of markets in terms of self-interest, it is within a social and moral framework. However, Smith belongs to another philosophical context. The main characteristics of humans for Smith, benevolence, sympathy and self-interest, are human feelings. Thus, he holds a weaker notion of human will (sensitive) than the Aristotelian (rational). This has probably to do with the invisible hand working independently of the human will. Besides, the book that remained alive was *The Wealth of Nations* while the moral one, *The Theory of Moral Sentiments*, was

not of the concern of most of the economists. Those facts probably have connection with the progressive advancement of 'technique' as the predominant logic of human sciences after Hobbes. This notion was already paving the way to the positivist framework that economics will adopt later. As Davis says, 'Smith's "other" book, of course, has been largely forgotten, leaving the market and self-interest to be explained entirely naturalistically. This helped produce a vision of economics as a positive science long before Robbins narrowed the subject's policy space' (Davis 2003:182).

'Nassau Senior was the first economist to proscribe prescription' (Maloney 1990:187). Senior is the first economist to maintain the distinction between positive or neutral analysis, and policy recommendations in his *Outline of Political Economy* (1836). He delivered his presidential address to the Section F ('Economic Science and Statistics') of the *British Association for the Advancement of Science* in 1860. As Hutchison says, 'Section F had to assert its scientific respectability, and its worthiness to be included alongside the established subjects of natural science' (1962:9). According to Hutchison, Senior 'gives a brief restatement of his ultra - narrow view of 'Economic Science' and the economist's functions, according to which the subject is confined within the limits of a strictly 'positive' science with a narrowly economic subject-matter [wealth]' (13). That is, economics being tensioned by natural science is no longer a practical science and, in this way, it leaves aside essential human features belonging to the economic field. We will return to this point. However, he maintained a field-determined definition: 'Economic Science, or, to use a more familiar name, "The Science of Political Economy", may be defined as "The Science which states the laws regulating the production and distribution of wealth, so far as they depend on the action of the human mind"' ([1860] 1962:19). By the way, notice that he is adopting the 'laws talk', typical of positive sciences.

Alfred Marshall also maintained a field-determined definition: 'Political Economy or Economics is a study of mankind in the ordinary business of life; it examines that part of individual and social action which is most closely connected with the attainment and with the use of the material requisites of wellbeing' (1920-62:1). Economists 'deal with man as he is: not with an abstract or "economic" man; but a man of flesh and blood ... a man who is largely influenced by egoistic motives in his business life ... but who is also neither above vanity and recklessness, nor below delight in doing his work well for his own sake ... ' (22). However, he then reduces the scope of his human being when he affirms: 'But being concerned chiefly with those aspects of life in which the action of motive is so regular that it can be pre-

dicted, and the estimate of motorforces can be verified by results, they [the economists] have established their work on a scientific basis' (22). This basis means a simplification of motives to something formally tractable. Marshall was concretely committed with biology. However, we think that humans are more than biological beings. And as Phelps Brown adds, Marshallian possible predictions are not still achieved (4).

1.3. Towards a 'Discipline-Determined' Economics

The evolution described tells us about the quest for an easily manageable subject matter. Economics needs to create a determined, objective, and preferably observable subject because positive science is an exact study about this kind of subject. It needs to avoid subjectivism, introspection, oughtstatements, and even, when changeable, to fix the subject on a determined point.

Thus we pass through the modern currently accepted definition by Lionel Robbins: 'Economics is the science which studies human behavior as a relationship between ends and scarce means which have alternative uses' (1935-84:16). That is, it is the science of choice, namely, microeconomics. Economics becomes a 'discipline-determined' science. It is 'disciplinedetermined' because the subject is no longer a field related to the material necessities, production, distribution and so on. It is choice, every choice, as an aspect, point of view or perspective of approaching every human action.

The key to make human action fit into an exact frame is to consider ends or preferences as given. The exogenous character and the stability of preferences pave the way to build a deterministic scientific subject. Freedom is put into brackets.⁵ Menger titled 'The Starting Point and the Goal of All Human Economy Are Strictly Determined' to Appendix VI of his *Untersuchungen*. And he says: 'Economy is really nothing else than the way which we travel from the previously indicated starting point of human activity to the previously indicated goal' ([1883] 1985:217). It is properly speaking a technical way and enables one to formulate exact laws, which 'formal nature is no different from that of the laws of all other exact sciences and of the exact natural sciences particularly' (218-9). For economics, ends are given. 'Economics', Robbins maintains, 'is not concerned at all with ends *as such*. It is concerned with ends in so far as they affect the dis-

⁵ Neoclassicals and Austrians share the isolation of freedom. Mises speaks about an 'activistic determinism' ([1957] 1985:177 ff.). On Mises see Crespo (2002).

position of means. It takes the ends as given in scales of relative valuation, and enquires what consequences follow in regard to certain aspects of behaviour' (1935-84:30).

The rationality involved in this kind of action is called 'instrumental rationality'. This kind of rationality does not necessarily mean full rationality and thus, it does not necessarily preclude irrational behaviours – passions, emotions, traditions or habits. Its essence is to be a calculable and algorithmic way of going from one point to another, both fixed. Therefore, the current mainstream is trying to insert non-strictly rational motives into the formal frame proper of the positivistic mentality. Keynes manifested his understanding of this trend and mentality when he wrote, at the end of his famous review to Tinbergen's book, 'I have a feeling that Professor Tinbergen may agree with much of my comment, but that his reaction will be to engage another ten computers and drown his sorrows in arithmetic' (1938:318).

The problem is not to consider economy as a kind or aspect of human action. The problem really is the halfway consideration of human action, a physicalistic or technical view of it that stems from Weber (cf. Llano 2001: Chapter 2), and leaves aside – enchained – intentions and ends. Thus, the problem is not 'discipline-determined' economics in itself but the way in which the discipline is defined. We need to define a discipline that covers the complete field. That may rely specially on human action; the complete action. What economics needs in order to enlarge its scope is to 'liberate' the fixed extremes (means and ends) and make them endogenous and changing. This will mean a prudential science, an inexact one.⁶ However, this would hardly be accepted by a positivistic mentality. In the meanwhile, economists will go on making things more and more complicated within a misleading frame.

As Davis says, '[t]he [economic] theory of choice is about being instrumentally rational. Instrumental rationality is defined as the choice of actions that best satisfy an individual's ends or objectives *however* those

⁶ When we speak about 'instrumental rationality' we are in the field of Weber's classification of types of social actions: instrumental, value – rational, effectual and traditional (Weber 1978:24-5). Therefore, speaking about the instrumental aspect entails excluding the other three. Actually, Mises (1960:82) reduces the latter to the former. The strategy of the mainstream is to include the motivations of the three other kinds into preferences and then to apply an instrumental reasoning. However, this means that it considers these motivations as homogeneous and consistent, when in fact they are heterogeneous and often inconsistent. The right strategy is to harmonise the four kinds of rationality through a prudential rationality. This is not an algorithmic process: cf., e.g., David Schmidtz (1994:246, 251).

ends or objectives may happen to be characterized. Instrumental rationality is a rationality of efficient means, and *per se* is completely agnostic regarding the nature of the ends means serve' (Davis 2003:27).⁷ This shows us the connection of instrumental rationality with value neutrality.

Robbins says, 'Economics is neutral as between ends. Economics cannot pronounce on the validity of ultimate judgments of value' (1935-84:147). For Maloney this is actually a value-judgment: 'neoclassical economics studies the consequences, rather than the causes, of people's preferences: in choosing to do this it is saying that restricting economics' scope, and starting the story half-way through, is justified in the interests of greater analytical rigour' (1990:186).⁸ The way to resolve the value-free problem is not to cast aside values – what is impossible – but to reason about them, and thus rationally determine the set of them at the roots of economics. Robbins still held subjective elements. A new important step after him was Samuelson's theory of revealed preferences. As Davis expresses, 'mainstream economics emerged from neoclassical economics through a progressive realization that subjective inwardness was altogether incompatible with a scientific world view' (2003:26). Samuelson's aim behind his proposal of revealed preferences (1948) was to surpass this problem. Davis goes on: 'However, with the elimination of subjectivity, the very basis in which individuals had been understood as independent beings was also eliminated (...) No longer required as an intermediary between taste and action, choice then becomes a general all-purpose logic that could be applied to any sort of agent, single individual, multi-individual, human or otherwise' (2003:26). In this way, 'the mainstream has been slowly destroy-

⁷ In this way, the epistemological requirements are satisfied. As also Davis affirms: 'One reason that instrumental rationality theory has been attractive in economics is that having a single model of analysis makes possible a high degree of logical and mathematical determinacy in economic explanation' (Davis 2004:401).

⁸ Today it is widely accepted that values cannot be removed from social thinking. Leo Strauss had said many years ago: 'It is impossible to study social phenomena, i.e., all important social phenomena, without making value judgments. (...) Generally speaking, it is impossible to understand thought or action or work without evaluating it. If we are unable to evaluate adequately, as we very frequently are, we have not yet succeeded in understanding adequately. The value judgments which are forbidden to enter through the front door of political science, sociology or economics, enter these disciplines through the back door' (1959:21). As some authors have shown, the moral theory adequate to instrumental rationality is utilitarianism, traditionally connected with economics (Hausman and McPherson (1996:45); Boudon (1997:20); Casson (1988:8).

ing the individual in the quest for a particular kind of scientific status' (Hargreaves Heap 2004:404). In fact, for some authors, the best metaphor for representing the economic agent today is the computer (Davis 2003: Ch. 5; Mirowski 2002, with the suggestive title of *Machine Dreams: Economics Becomes a Cyborg Science*).

There are actually some aspects or situations in which human behaviour is automatic and resembles computer logic, aspects or situations that economics may explain and even predict. However, these are confined to a few fields and moments. As Boettke puts it, '[t]he problem situation of economic actors had to be simplified drastically so as to yield the precise formulations Samuelson sought. Samuelson's research program eliminated the conscious component from the economic choices facing individuals in a world of uncertainty. Choice was reduced to a simple determinate exercise within a given ends-means framework, something an automaton could master. The task of discovering not only appropriate means, but also which ends to pursue, was left out of the equation' (1997:20). An analysis of human action supposing given preferences can be completely formalized. Human motives are assumed as homogeneous and reducible to a hierarchical set of homogeneous preferences. However, this epistemological framework is clearly throwing out of the economic field essential features of human beings: freedom, human time, uncertainty (as different from risk), and heterogeneity.

For the mainstream, macroeconomics must also be reduced to microeconomics: we need to look for and to find the micro foundations of macroeconomics (Lucas). This is the way to give scientific foundations to macroeconomics. There are two ways of doing it: first, aggregation of all the individual actions, which is actually extremely difficult;⁹ second, to use the fiction of 'the representative agent'. The 'representative agent' is a misleading abstraction, for it is impossible to represent millions of decisions, that are depending on macro economically influenced expectations or conventions. The representative agent is then an 'economic homunculus', 'like a universal Turing machine' (Davis 2003:100).¹⁰

⁹ Impossible, for Kevin Hoover (2001).

¹⁰ The problem is not to try to 'micro found' macroeconomics, but the unreality and incompleteness of the microeconomics over which the mainstream tries to 'micro found' macroeconomics (cf. Fitzgibbons 2000:8). We cannot tackle here the issue of how to go from microeconomics to macroeconomics.

Lionel Robbins is the 'representative' economist. All modern economists share his 'discipline-determined' definition of economics – especially, with some nuances, Mises and Becker – which leads to this 'cul de sac'. However, Robbins was almost a humanist. That is, his concerns for the human being lingered and finally were dissolved by virtue of a misleading definition conditioned by an epistemological prejudice.

1.4. *Consequences and Therapy*

From Aristotle to nowadays analogies from medicine have been usually applied to human matters. Mark Blaug has recently affirmed: “Modern economics is sick. Economics has increasingly become an intellectual game played for its own sake and not for its practical consequences (...). If a topic cannot be tackled by formal modelling, it is simply consigned to the intellectual underworld. To pick up a copy of *American Economic Review* or *Economic Journal*, not to mention *Econometrica* or *Review of Economic Studies*, these days is to wonder whether one has landed on a strange planet in which tedium is the deliberate objective of professional publication. Economics was condemned a century ago as “the dismal science”, but the dismal science of yesterday was a lot less dismal than the soporific scholasticism of today. To paraphrase the title of a popular British musical”: No Reality, Please. We're Economists' (1998:12).

Economics shows nowadays two important epistemological problems.

1. It tries to analyse – and claim to fully account for – the behaviour of human realities not economic in character, such as family, education, crime or politics (the Chicago research program). As a logic of choice economics legitimately does this task. In such a way, economics becomes anthropology; a reductivist anthropology, that analyses which of these realities are impoverishing and misleading for they are limited to only an aspect of the related human actions.

2. It analyses economic realities in a restricted way, in spite of some efforts to broaden its scope. On the one hand, it is trying to add more variables – cultural, psychological, and so on – but constraining them within the same mechanical-like frame. On the other hand, it defines limited fields by imposing restrictions to particular areas (neoclassical applied analyses), or by bounding rationality (Simon). These seem like medicines that attack only one aspect of the sickness. 'The problem with contemporary economics, then', Boettke says, 'is that it artificially restricts the questions we can legitimately ask about the real world' (1998:183).

Given this situation, we may either:

1. Struggle for the rehabilitation of the old 'field - determined' definition of economics which allows for a methodologically inter-disciplinary study enabling the possibility of a rich anthropology. This is the common-sense position, for it even fits with the meaning of the term 'economic' in nowadays common language (as defined in dictionaries). We prefer this.

2. Accept that economics is Robbins's logic of choice and taught more than economics, complementing it with sociological, psychological, ethical, etc. analysis which would be integrated with the economic in a prudential way.

What is clear is that current economics has deficiencies in dealing with economic matters, and that it exceeds its field trying to deal with non-economic matters; distorting them. As a result, the 'economicism' of our times is shaped and fostered by economics. The conclusion of this first part is that a change in the epistemology of economics is needed in order to enable a richer concept of human being, one that conceives a person clearly identifiable, free, self-reflexive, and both socially and historically situated.

2. CONCEPTIONS OF HUMAN BEINGS IMPLICIT IN THE PRACTICE OF ECONOMIC POLICIES

Setting aside just for a while the crucial issues addressed in the previous section, we will try here to understand some of the conceptions of human beings implicit in the practice of economic policies. Three different points of view will be considered. First, what are the ways through which academic economics influences economic policy? The so called neoclassical-Keynesian synthesis and its evolution to more and more neoclassicism will be the core of the analysis. A short reference to the sociology of knowledge will help us to understand some reasons of its hegemony as a scientific paradigm and, to a lesser extent, as the matrix of economic policy making too. In the second place, we will refer to the 'sins of omission' in which economic policies incur, at least in part because of the influence of the neoclassical paradigm. The Washington Consensus is a very relevant and useful example to show these omissions. In the third part, we will analyze some of the 'sins of commission' of different economic policies, both orthodox and heterodox. Examples of the first ones will be trade policy and social security reforms, while biased fiscal policies and the state-owned enterprises will serve us as examples or heterodox policies.

2.1. How Economics Influences Economic Policy: Between the Neoclassical Theoretical Hegemony and Orphan Wise Practices Everywhere

The theoretical hegemony of neoclassicism as the rationale of economic policies seems clear nowadays in most of the world. Since the late sixties and early seventies it has gradually replaced the so called neoclassical-Keynesian synthesis that had prevailed since the thirties.¹¹ Of course, Keynes is not completely out of this mainstream. Some of his ideas about fiscal policy are embodied in modern policy-making and nowadays he enjoys some revival, not only as an icon but as a source of inspiration as well. But he is not the main character anymore; he is an escort with the very important but specific role of helping in case of recession.

The economic engine in hegemonic neoclassicism is not aggregate demand anymore, but omnipresent supply forces. This can be clearly seen in the theories of economic growth, very different indeed from the old theories of economic development; in the real cycles approach, opposed to the Keynesian vision of a pervasive insufficiency of aggregate demand; in the rational expectations models, in sharp contrast with the old, naïve beliefs in fiscal or monetary illusions; finally, in the non-accelerating inflation rate of unemployment (NAIRU), as opposed to cyclical or structural unemployment, as the goal of the economic policy. Of course, some alternative paradigms still have some life. In addition to the Marxist economics, less and less popular, we can mention the Austrian, the post-Keynesian, the institutional and the evolutionary theories or approaches to economics. But as far as the design of economic policies is concerned, they are just ideas of friends' circles that meet from time to time to maintain them alive.

Neoclassical hegemony is clearer in developed countries, but it is present in emerging and even less developed countries as well. It spreads to all economically relevant fields: academic research and teaching in the universities, businessmen's gatherings, international financial institutions and think tanks. But its major triumph appears to be in the realm of economic policies. In the particular case of emerging and less developed countries many academic centers exist that profess different varieties of Keynesian and Marxist economics. However, most of the times their members are disappointed

¹¹ The new lonely hegemonic neoclassicism was called New Classicism (Akerloff, 2002). However, we will maintain here the old name because the basic model was not changed and the rationale of the new name was just to differentiate the new way of thinking from that of the neoclassical-Keynesian synthesis.

when new governments elected with big popular majorities adopt economic policies with the seal of neoclassicism. As a way of exorcizing them, they are then called 'neoliberalism', a popular but misunderstood name.

This happens in spite of the Keynesian revival that is taking place as a consequence of the failure of 'neoliberal' reforms during the nineties, particularly in South America. This revival is partly shown in the new 'heterodox orthodoxy', the set of economic policies put in place by presidents Lagos in Chile, Lula in Brazil and Kirchner in Argentina. The three of them represent different varieties of social democracy, but the pillars of their economic policies and the reasons of their success are mostly orthodox, although with some Keynesian ingredients. Their orthodox components are fiscal equilibrium or surplus, inflation-targeting as the goal of the monetary policy and an open economy. The Keynesian component can be found in the intention of maintaining, at the same time, a depreciated currency to foster competitiveness. Of course, there is some conflict between the monetary and the exchange rate policies regarding the inflation rate. As far as this conflict is solved, this new sort of neo-classical-Keynesian synthesis will potentially replace the hegemony of 'neoliberalism' in South America in the years to come.

There are, however, other ongoing exceptions to the neoclassical hegemony that will lead us to find what we call *orphan wise practices of economic policy everywhere*. We have, in the first place, evident outliers from the paradigm as Cuba, North Korea or some Arabic countries, but none of them seem interesting because of their very clear failure regarding economic growth. More interesting are different sorts of non-orthodox economic policies that have been, and still are, successfully applied in China, India and other Asian countries like Malaysia – with its successful experiment of capital account controls – to whom we will refer later.¹² With the exception of Cuba and North Korea, still under the influence of Marxism, the noteworthy fact is that all the other 'deviant' economic policies have not been inspired in alternative theoretical paradigms. They are common sense (or nonsense) decisions of public officials, sometimes as a result of private lobbying, but most of the time devised as a sort of compromise between textbook economics and the social, cultural, political and institutional setting peculiar of each country. We will come back to these orphan wise practices of economic policy.

¹² Other experiments deserve still further examination, like the re-statization of utilities in Argentina or the renaissance of a comprehensive populism in Venezuela.

Even recognizing all the exceptions, the pervasive neoclassical hegemony could lead into the temptation of explaining it in terms of its role as the ideology best suited to the interests of the ruling classes or countries. But it is with the help of the finest sociology of knowledge built since the days of Karl Mannheim, and not with the support of vulgar Marxism, that we can try to explain or understand that hegemony. The first things we can thus discover are some undisputable achievements of neoclassicism and its predecessors,¹³ some of which would deserve homage. From Adam Smith onwards, neoclassical thinking, with its sound (and propagandistic) analysis of pacific exchanges among human beings, has done and is still doing a crucial contribution to the justification of peace. As far as we know, this idea goes back at least to Montesquieu (*De l'esprit de lois*, 1748),¹⁴ even before Smith's contribution. Later on, Benjamin Constant (1841) developed it eloquently.

We have arrived at the times of trade, an epoch that must necessarily replace that of war ... War and trade are nothing else than different means to get the same goal: to achieve what is wanted ... Trade ... is a way of willingly achieving those things that cannot be obtained through violence ... A man that felt the strongest would never have the idea of trade ... Experience, proving to him that war ... implies different resistances and failures would guide him to trading, i.e., a less cruel, more sure way of compromising the others' interests to achieve what is convenient to his interests ... War is more ancient than trade. The first one is the savage impulse, the second is civilized reckoning.

For these reasons, whichever had been the particular interests expressed or defended by neoclassicism, its contribution to the common good has been enormous, similar perhaps to that of political liberalism to the development constitutional democracy. Of course, the market is a spontaneous and remote invention of humankind, not of neoclassicism. But the ideological and theoretical developments since the days of Adam Smith have contributed, perhaps decisively, to the subsistence of the market as an institution in spite of so many attacks against it during the last two centuries.

Paid the homage it is also fair to recognize that neoclassical economics has been, once and again, used and abused to defend particular interests in conflict with the common good. Some of the orthodox economic policies

¹³ Some of these roots are analyzed in the contribution of Edmond Malinvaud (2005) to this Plenary Session.

¹⁴ Chapter XXI, How trade opened its own way through barbarianism in Europe.

analyzed in this paper have been very well suited to particular beneficiaries that promoted them. But it does not seem fair to say that these private benefits were the only or the main cause of neoclassical hegemony. We can find at least two additional reasons to think this way. The neoclassical-Keynesian synthesis, the new neoclassicism and its classical predecessors have all been the theories of a success, not of a failure. They have accompanied, almost on the exact dates, the unprecedented miracle of world economic and social development that had begun in the XVIII century, and they were able to explain it. Secondly the current neoclassical hegemony is also the result of the big failures of its two main rivals. Marxism, because of its very well-known devastating political, economic and social consequences, and Keynesianism,¹⁵ because of the frequent application of Keynes' lessons in such a biased way that they resulted in mega or hyperinflations and unsustainable public indebtedness in developing countries. So dramatic were the failures of the alternative paradigms that neoclassicism could have not dreamt of a more fertile soil to crop its theoretical and political hegemony.

2.2. *'Sins of Omission': the Case of the Washington Consensus*

In the original paper in which the Washington Consensus was coined, Williamson (1990) argued that the set of policy reforms that most of official Washington thought would be good for Latin American countries could be summarized in the following ten propositions.

1. Fiscal discipline.
2. A redirection of public expenditure priorities toward fields offering both high economic returns and the potential to improve income distribution, such as primary health care, primary education, and infrastructure.
3. Tax reform (to lower marginal rates and broaden the tax base).
4. Interest rate liberalization.
5. A competitive exchange rate.
6. Trade liberalization.
7. Liberalization of inflows of foreign direct investment.
8. Privatization.
9. Deregulation (to abolish barriers to entry and exit).
10. Secure property rights.

¹⁵ As we know at least since Axel Leijonhufvud (1967 and 1968), Keynesianism must be very carefully distinguished from the thought of John Maynard Keynes.

Ten years later, Williamson (2000, 2002), recognized some mistakes in this set of recommendations, particularly regarding interest rate and trade liberalization. But even recognizing the subtleties needed to rightly understand the debate, the fact is that these recommendations have been preached *urbi et orbi* by the IFIs during the nineties.¹⁶ Even the most recent IMF catalogue for Latin America is basically the same (IMF, 2005). Certainly, international financial institutions (IFIs) can show evidences of additional recommendations they made here and there. But any person that was in charge of economic policies in a developing country during the nineties perfectly knows that IFIs' recommendations were those of the WC and that, eventually, the proper time to get support for 'the other' policies would never arrive. In the following list we can see an overwhelming set of policies needed to get a sustained economic growth and omitted by the WC.

1. A growth or development strategy, as a deliberate and cooperative public-private effort, as it was put in place in every economically successful country, at least since the days of the British Empire.

2. Unilateral trade liberalization was recommended without any caveat about its limitations in a context of world protectionism – particularly in agriculture and food- regional trade blocks and export promotion policies. On the contrary, all of them were intriguingly omitted, as well as a careful analysis of the pace of the liberalization.

3. Although the liberalization of the capital account was not explicitly included in the original WC, it was part of the operations' manual of the IFIs during the nineties. Furthermore, the WC did not emphasize the convenience of opening the capital account well after all the effects of the liberalization of the current account have taken place.

4. No comprehensive human capital policy was recommended. On the contrary, it was advised a sort of poor-suited redirection of public expenditure toward very basic fields like primary health care and primary education.

5. Just when the IT revolution was gaining momentum, the WC omitted even to mention science and technology public policies, associated or not to industrial policies, like the Small Business Innovation Research Program in the USA (1982).

6. No reference to the need of developing public policies towards small and medium firms – like the ones promoted by the Small Business Administration in the USA – was included either.

¹⁶ All the second part of the paper has greatly benefited from Stiglitz (2002b).

7. The recommendation for privatizations was not accompanied by enough emphasis on the crucial role of regulatory agencies and the promotion of people's capitalism.

8. The introduction or generalization of value added tax (VAT) was advised *urbi et orbi*, ignoring that it is not a tax well suited to federal countries.

9. The very evident recommendation of developing social protection nets, to protect people from the severeness of trade liberalization and deregulation policies, was included very late in the IFIs manual.

10. The same delay was observed regarding institutional development and anti-corruption policies, lately included in what were called second generation reforms.

The omission of this set of policies is really intriguing,¹⁷ since at least some of them had already had acceptance in the theory and practice of economic growth. However, not only the practitioners are to blame for the omissions. First, because it seems clear that they have to do with the conceptions of human beings reviewed in the first part of the paper. Additionally, academic economics had spent too much time to react to the Great Depression and the short run approach of the Keynesian paradigm, limited to the economic cycle, and to avoid short term unemployment, remained hegemonic until the oil crisis in 1973. It is true that Roy Harrod (1939), Evsey Domar (1946) and Robert Solow (1957) had made very important contributions to the theory of economic growth. But only since the seventies mainstream economics reassumed the old, classical preoccupation with long run economic development.¹⁸ This was implicitly recognized by Robert Lucas (1988): 'Once one starts to think about (economic growth), it is hard to think about anything else'.

A typical sociology of knowledge hypothesis that can help to understand the omissions is that even when economic theories and policies were elaborated in developed countries, most of the omissions of the WC were particularly relevant for developing countries. The institutional frameworks and policies referred in the aforementioned list emerged endogenously in the real world of developed countries, some of them associated to the

¹⁷ Rodrik (2000b) presents an interesting analysis of the issues dealt with in this part of the paper.

¹⁸ Only two decades ago macroeconomic books began to include the systematic study of economic growth. Fortunately, most of them include several chapters at the beginning. Something similar happened with open macroeconomics, essential to the study of small or developing countries, but included in macro textbooks only in the early seventies.

Welfare State. Nothing comparable happened in the developing world and, to make things even worse, during the golden age of world development of the late fifties and the sixties the core recommendations regarding economic growth continued to be wrong. Neoclassicism is not to blame in this case, but a hybrid misleadingly called 'theory of economic development' that was demand-centered, with the Keynesianist approach transformed in growth policy and with the seal of the closed strategy of import substitution industrialization (ISI) even in countries where the domestic market was too small to make them viable.

Almost without transition these recommendations were replaced by those of the Washington Consensus. In the meantime, a growing influence of the new institutional economics¹⁹ had begun to take place and, accordingly, the toolbox of the hegemonic paradigm became limited to 'right institutions and right incentives'. However, the meaning of 'right institutions' was narrowed, setting aside the great diversity of institutional realities capable of harboring at the same time the market economy, a moderating state, mechanisms to improve the income distribution and a successful economic growth or, even better, economic development. This approach had been dealt with by a bunch of authors, from Michel Albert (1991) to Dani Rodrik. In the last twenty years it has shown all its light in the ad hoc institutional devices designed by the most successful emerging countries. They were inspired both in some of the recommendations of the WC and in some of its omissions and are clear examples of what we call orphan wise practices of economic policy. Chile, Ireland and Portugal are perhaps the blue chips of the WC, but it is important not to forget that the three of them have had a growth strategy and very active trade and even industrial promotion policies. Furthermore, in spite of the fact that the WC completely omitted to recognize the advantages of regional trade blocks, in both European cases the incorporation into the European Union was decisive. The Asian cases, including of course China and India, are even more convincing examples of institutional designs much more based on the omissions of the WC than in its recommendations. It seems evident that when the recommendations *and* the omissions of the WC are taken together the result is a more realistic (although implicit) conception of human beings than if we consider only the former. In fact, human beings appear then not as cybernetic individuals reacting to economic stimulus, but as persons with broad-

¹⁹ Particularly the developmens of Douglas North, Mancur Olson and Oliver Williamson.

er needs and interests, living in a specific society with its history and culture and having a variety of goals, not only the maximization of utility. Of course, this more personalistic conception is closer to that contained in the Social Doctrine of the Catholic Church. *The realism of this approach finds perhaps its clearer proof in the fact that economic policies in the real world are a combination of some pieces of economic theory and important doses of theoretically orphan but wise practices emerging from the history, culture and society of each country.* As it was mentioned at the end of the first part of the paper, academic economics have recently been trying to amend old mistakes through the inclusion of geographic, historic, cultural or social variables.²⁰ Unfortunately, this amendment has not yet completely reached economic policy-making, particularly in the case of the advices of IFIs. Once again, this seems to have direct relation with the ahistorical vision of human beings reviewed in the first part of the paper.

2.3. Sins of Commission

Omission sins are important, but sins of commission also matter. The first ones have allowed us to disentangle some aspects of the relationships between economic theories and economic policies. The study of the second ones will allow us to more directly approach the core of the paper, i.e., that some of the assumptions about human beings of the economic theories that inspire economic policies can have devastating effects. These will be more intense when the policy-oriented theories are put into practice in a fundamentalist way, i.e., without translating them to the particular history, society and culture of the country in question.

Orthodox Sins Trade Liberalization

We have already mentioned that this WC recommendation completely ignored the realities of a world context characterized by protectionism – particularly in food, textiles and agriculture – and regional trade blocks. But our interest here is different, i.e., its assumption of an almost instantaneous adjustment in the reallocation of resources. This recommendation was based on comparative statics and in copious cross-section economet-

²⁰ Perhaps the clearest example of this change can be found in the concept of ‘ecological rationality’, developed by the Nobel prize Vernon Smith (2003).

ric studies. Both of them basically compare benefits and costs of being open or closed to international trade. As such, they (mostly implicitly) assume that, given the new relative prices arising from openness, resources will instantly move from the (now) less competitive sectors to the most competitive ones. The reality is, of course, very different. The adjustments tend to be slower and they depend on a vast set of other economic signals beyond the reach of economic policy. In spite of these realities, we have very few studies analyzing what can happen in these long transitions, particularly in terms of unemployment and its political consequences. This policy mistake compounds when the country that opens faces world protectionism in its most efficient sectors. In this case, the idle resources of non-competitive industries that reduce themselves or go bankrupt cannot be sufficiently compensated by increased employment in the booming sectors. The result is a huge increase in unemployment.²¹

Fortunately, a more realistic vision about the relationships between trade and growth in developing countries have recently begun to develop (Rodríguez and Rodrik, 2000). For instance, Winters (2004) rightly points out the vast set of institutional, economic and social conditions that should be in place in order to have positive effects of trade liberalization on growth.²² This is good news for the rehabilitation of academic economics from some past mistakes, but it does not guarantee that its messages are going to be taken into account by the IFIs. The IMF last report keeps giving the advice of trade liberalization for Latin America without any caveat (IMF, 2005).

Reform of the Pension Systems

The reform of the pay-as-you-go systems into private, individual capitalization ones was another typical recommendation of IFIs during the

²¹ This was very clear in the case of Argentina, not by chance one of the countries most affected by agricultural protectionism.

²² Santos-Paulino y Thirlwall (2004) underline that trade liberalization push imports more rapidly than exports, thus frequently leading to balance of payments crises. Arbache, Dickerson y Green (2004) point out very complex effects of trade liberalization on wages. In the case of Brazil, it did not prove to be true the prediction of the standard international trade theory about the equalization of wages among sectors. The reason is that trade opening is used to being accompanied by capital and technology inflows that increase demand for qualified labor.

nineties.²³ Only a few countries accepted the proposal. In the case of Chile, it was a very clear success, while in the case of Argentina the results were mixed. The proposal has gained momentum once again because of the announcement of President George W. Bush to implement this reform in the USA.

Behind this proposal we can find again wrong assumptions about time. In the case of trade liberalization, the relevant time was the one needed to reallocate resources. Instead, the central issue here is about the assumption of the human capacity to foresee the distant future.²⁴ 'Sociologists and humanists ... have normally been more skeptical on this point. With his wonderful penetration, Tocqueville wrote more than a century and a half ago that conditions in modern secular societies foster "a brutish indifference to the future, an attitude all too suited to certain propensities in human nature"' (Llach, 2002).²⁵ Notwithstanding, based on the perfect foresight hypothesis, the pension system reform proposals made two predictions that proved to be wrong. The first one was that the evasion of payroll taxes, earmarked to the pension system, would be strongly reduced because, after the reform, workers would perceive those contributions as personal saving and not as taxes anymore. It was a very important point, because in the past it had happened in many countries that those taxes, legally earmarked to collective capitalization systems, were expropriated by the government for other purposes. The second point emerged from the necessity to incur in fiscal deficit during the transition period in which the government loses the income of active workers but remains paying the retirements to the pensioners. Strictly speaking, this is not a fiscal deficit, but the anticipated amortization of an actuarial debt of the government with future pensioners. It is true that the government would lose income, but at the same time it would *pari passu* reduce its obligations with the future retired. It was believed that, coherently, perfect foresighted capital

²³ In World Bank (2004) there is an *ex post factum* revision of this reform in Latin America.

²⁴ For the last decades, both the perfect foresight and the permanent income hypothesis have been relaxed through methodological devices like imperfect information, bounded rationality, ecological rationality and different forms of decision making under uncertainty. See the prominent contribution of Stiglitz (2002a) and also Guesnerie (2002), Kahneman (2003) and Smith (2003).

²⁵ Tocqueville predicted that in times of religious skepticism men would be more inclined to 'give themselves over to the satisfaction of their least desires without delay' (Tocqueville, 1835, 1840, p. 521).

markets would consider the transitory deficit as what it really was, i.e., a reduction of the actuarial public debt and, as a consequence, they would take it into account at the time of assessing the country risk. Of course, this did not happen, as did not happen either with the country risk assessment of OECD countries, where actuarial pension system debt is on average 200% of GDP (Raga Gil, 2002 and 2004; Llach, 2002).²⁶

'In the long run we are all dead', Keynes said. Regarding pension systems, people and markets have tended to behave with this Keynes' saying in mind more than in the way predicted by the neoclassical model. People have believed more in the magnificent promises of the Welfare State than in its eventual commitment to legal regulations or pension systems. Perhaps they were not wrong after all, because governments feel very frequently obliged to pay pensions even to people that had not previously paid for them. As a consequence, the historical process of development of the Welfare State happened in such a way that we did not have the opportunity to know if the perfect foresight-permanent income assumption really applied or not and if it was rational to under-save (Akerloff, 2002; Llach, 2002).

Gaining Confidence Through Contractionary Policies to Overcome Recessions

We can find again the problem of time in this frequent recommendation of the IFIs about how to deal with the consequences of sudden stops, i.e., financial and banking crises associated with capital flights in emerging countries. The prescription generally was 'more fiscal adjustment', either through tax increases, expenditures reductions or both. The hope here was that such adjustments would have an immediate, intense and positive effect on confidence, thus allowing the reversion of capital outflows into capital inflows, and that this positive effect would be more than enough to compensate the fiscally induced contraction of aggregate demand (Stiglitz, 2002b). It was a big bet to the confidence and the supply side, ignoring that aggregate demand also exists. We find here, once again, the implicit idea that time is almost non-existent, based distantly and crudely on the theory of rational expectations and the Ricardian equivalence.

²⁶ Additionally, it did not hold either the Ricardian equivalence (after David Ricardo), according to which when governments begin to run a deficit and this is financed through an increase in public debt, private savings should also increase because people would know that in the not so distant future taxes must be increased to service the public debt.

Heterodox Sins Keynesianism and Biased Fiscal Policy

Sins of commission, of course, have not been only of the neoclassical paradigm. It is not even necessary to evoke the evident failure of the Marxist-Leninist command economies – nor to their even worse, devastating human consequences. It is possible to find very relevant examples in the Keynesianist economic policies too. Its sins have been really crude and based on a wrong reading of Keynes. Its central idea is very simple. Economies live in a chronic state of idle capacity, particularly in the case of human resources, and for this reason it is almost always good for governments to run fiscal deficits, not only to prime the pump of economic activity but also to maintain it working. Two very concrete, historical results emerged from this recommendation. Either mega or hyperinflation, when the deficit was financed by the central banks issuing money, or unsustainable public indebtedness, when the financing came issuing bonds. Economic and social effects were devastating with both policies, from the German hyperinflation in 1923 to the Argentine crisis in 2001 and including in the meantime very frequent episodes, most of them in developing countries.

Regarding the central issue of this paper, what is really surprising is that the behavioral assumptions behind these recommendations have some analogies with those of a very rapid market adjustment aforementioned in relation to the neoclassical orthodox sins. Of course, there are some differences. While Keynesianism trusts mainly quantitative signals, the neoclassical preferences are for price signals. But beyond these differences, Keynesianism firmly believes that supply could (almost) always react in a non-inflationary – or at least, not very inflationary – way to demand increases. Something similar happens with neoclassicism that believes that confronted with market incentives, resources will move very rapidly, also allowing very fast adjustments to relative price changes. In the case of Keynesianism, if the market price signals are insufficient or wrong, the recommendation is to correct those signals through government intervention. But at the end of the day, social reality tends to be frictionless in both cases, not putting relevant resistance to the action of economic incentives.

The State as Producer

I expect to see the State, which is in a position to calculate the marginal efficiency of capital-goods on long views and on the basis of the general social advantage, taking an ever greater responsibility for directly organising investment (John M. Keynes, *General Theory*, p. 164).

One of the most enduring consequences of the Great Depression was the mistrust in the ability of market forces to guarantee economic prosperity. This mistrust was particularly intense regarding the capacity of private investment to fulfill the demand for public services and utilities. Coherently, since the World War most of the countries partially or totally nationalized them. The performance of state-owned enterprises was very uneven. Reasonably successful in Northern Europe and North America, they were a very clear failure in the developing world, not only regarding the efficient provision of services, but also because of their role as relevant sources of chronic fiscal deficit and corruption.

Although a vast economic literature had analyzed different kinds of market failures, up to thirty years ago the debate about the productive efficiency of organizations was poor. Positions in favor or against private firms, cooperatives or the state were based more on ideologies or commonsense opinions than in rigorous analyses. In the seventies, it began to develop an opposite academic literature, based on the new approaches of institutional economics and industrial organization, emphasizing state failures. This literature played some role in the legitimation of widespread processes of privatization, but their determinant factors were political, i.e., the will of Margaret Thatcher and Ronald Reagan and their governments and the dramatic ending of socialist regimes, that made evident the outstanding failures of state-owned enterprises.

We are now living some reversal of the privatization wave, mainly due to some evident mistakes, like the insufficient or wrong behavior of the regulatory agencies. The consensus seems to be, however, that the benefits of privatizations have clearly surpassed their costs. Perhaps the best evidence of this consensus is that cases of re - statization are the exception, not the rule, even after changes in the political orientation of governments in countries that privatized during the nineties. With the advantage of the historical perspective it is possible to say that the *urbi et orbi* recommendation of nationalizing public services and utilities was a heterodox mistake. It did not take into account that the majority, if not all, of the developing countries were not prepared to manage, or even to regulate, utilities. The resulting waste of resources was really enormous.

As a conclusion of this section it is important to remark, however, that the problem that underlies the discussion about privately owned vs. state-owned organizations is far from being solved. If it is true, as mainstream economics tends to think, that only or primarily economic, egoistic moti-

vations and incentives govern the behavior of human beings, serious difficulties arise to conceptualize not only good-performing public enterprises but any other collective entity as well.²⁷

3. FINAL REMARKS

The moral causes of prosperity ... reside in a constellation of virtues: industriousness, competence, order, honesty, initiative, frugality, thrift, spirit of service, keeping one's word, daring – in short, love for work well done. No system or social structure can resolve, as if by magic, the problem of poverty outside of these virtues (John Paul II, 'Address to the U.N. Economic Commission for Latin America and the Caribbean', *Origins* 16 (April 16, 1987, p. 775).

Interestingly enough, although the first and the second parts of this paper were initially written independently by the two co-authors, the conclusions they reached were at the end not only compatible, but basically the same. On the theoretical side, we concluded that the anthropological vocation of economics has transformed it in economicism, and even in economic imperialism. The problem here is that the results so obtained are misleading. They impoverish the reality, even after trying to include cultural, social, political or psychological variables in the analysis.

²⁷ See Le Grand (1997). Keynes clearly perceived the problem when he wrote: 'I believe that in many cases the ideal size for the unit of control and organisation lies somewhere between the individual and the modern State. I suggest, therefore, that progress lies in the growth and the recognition of semi-autonomous bodies within the State-bodies whose criterion of action within their own field is solely the public good as they understand it, and from whose deliberations motives of private advantage are excluded, though some place it may still be necessary to leave, until the ambit of men's altruism grows wider, to the separate advantage of particular groups, classes, or faculties – bodies which in the ordinary course of affairs are mainly autonomous within their prescribed limitations, but are subject in the last resort to the sovereignty of the democracy expressed through Parliament. I propose a return, it may be said, towards medieval conceptions of separate autonomies ... In England at any rate, corporations are a mode of government which has never ceased to be important and is sympathetic to our institutions. It is easy to give examples, from what already exists, of separate autonomies which have attained or are approaching the mode I designate – the universities, the Bank of England, the Port of London Authority, even perhaps the railway companies. In Germany there are doubtless analogous instances' (Keynes, 1926, p. 41-42).

On the practical side, we found that when those theoretical results or assumptions are directly traduced into economic policies in a fundamentalist way, i.e., without taking into account historical, cultural, social or political circumstances of the entity to which they are applied, they tend to produce wrong, and sometimes devastating, results. On the contrary, when this fundamentalism is avoided through the mediation of Aristotelian-Thomistic prudence, when the economic analysis is taken just as what it is and its assumptions are not confused with reality, economics can help a lot to better policy making. This is so because visions of the causes of economic prosperity and of economic life that are similar to those of John Paul II quoted here, are more realistic than the ones of mainstream economics referred in this paper. Definitively, they grasp reality better. Having said this it is also important to recognize that perhaps we are living a period of increasing individualization and economization of human life and a continuous growth of the sphere of individual and economic activities at the expense of free and social activities.²⁸ If this is so, if economicism really exists, would it not be the case that the 'economicist' current paradigm of economics do nothing else than reflect this reality?

This situation is increasingly understood nowadays by a good portion of the economic academy and profession. So intense are the underlying tensions around economics and its place in societies that it is even legitimate to question if we are living a Kuhnian situation regarding the neo-classical paradigm. Evidences against, or not explained, by it are growing (Stiglitz, 2002a). However, neoclassicism is a very powerful tool and its replacement seems distant. For our part, we do not pretend to have obtained clear-cut prescriptions about what to do. But it is possible to get anyway some general orientations. On the theoretical side, we should struggle for the rehabilitation of the old 'field-determined' economics which allows for an inter-disciplinary study and a richer anthropology. If that is not possible, the second best is to accept economics as logic of choice, but complementing it with sociological, psychological and ethical analyses, integrated with economics in a prudential way. These general orientations are truly essential to avoid the devastating effects of economicism when it is applied to policy making in a fundamentalist way.

²⁸ Economicism can be precisely defined in terms of a secular increase in the price of time that results in the secular growth of the economy at the expense of other social spheres (Lach, 2002).

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COMMENT ON LLACH'S PAPER

HANS TIETMEYER

Reflections on the conceptual foundations of economic thinking and political actions may have a cathartic function and be a source of intellectual renewal. Precisely because such reflections do not form part of daily work, they may exercise considerable leverage: what is involved are the foundations of economic and political efforts. Llach and Crespo have presented an interesting paper, which is concerned on the one hand with the conceptions of human beings implicit in economic theory, and on the other with the supposed and much-cited new orthodoxy in international economic and development policy, in the shape of the 'Washington Consensus'. These two subjects of the analysis appear disparate at first sight, but the authors emphasize that there is a close link between them.

I.

In the first section, an undue simplification of the human being and his reduction to the *homo oeconomicus* are deplored. As a result, major aspects of human existence which also have a bearing on economic actions are disregarded. It is claimed that the picture which economics paints of its scientific subject, the human being, is distorted and incomplete. The necessity of a limitation and simplification of the scientific subject as a prerequisite for its analysis (a 'discipline-determined definition of economics') is not acknowledged. Instead, the authors argue in favour of a 'field-determined definition', which declares everything that is directly or indirectly of significance for economics to be relevant to economic science. The fact that the subject thereby threatens to get quite out of hand (anthropology, sociology, psychology, cultural sciences, biology, technology, history, geography etc. etc. would have to be included) is accepted. At the same time, the consequent impossibility of arriving at a formal system of statements the logical

consistency of which is objectively verifiable, and which meets Popper's falsification criterion, is likewise accepted.

In the history of science there have been numerous approaches to a more 'holistic' way of looking at things. A parallel to the notions of the authors is provided, for instance, by the programme of the 'German Historical School', of which they may not have known. But since it played a major role for a particularly long period, and not only in Germany, it may be outlined briefly here. The object of the Historical School was to comprehend economic trends, in their historical uniqueness, as comprehensively as possible and from all points of view, but without primarily looking for the development of general laws or rules. It came about as a counter-movement to English classicism and dominated economic science in Germany from the 1840s until well into the twentieth century. The rise and decline of the German Historical School reflects not only the justification of the criticism voiced by Llach and Crespo, but also its weakness.

The architects of the German Historical School – just like Llach and Crespo – assumed that economic life is not conducted in isolation from political and social life, but rather in close conjunction with the web of culture as a whole. The lines of development do not run identically in accordance with universal rules, but assume diverse shapes in different societies and nations. Those architects rebelled against the one-sided and rationalistic doctrine of the classicists and formulated the 'historical method' of political economy. The chief thinker of the older Historical School, Wilhelm Roscher, developed this method in his programmatic book, Roscher (1843), as follows:¹

1. Political economy is a science that can produce results only in close conjunction with other social sciences. Particularly important in this context are the history of law, of politics and of culture;
2. A people is more than just a mass of individuals, and research into its economy therefore cannot be based on the mere observation of current economic structures;
3. Given the great mass of phenomena, the difficulty of identifying the essential underlying laws involved makes it necessary to compare all peoples with one another economically. The study of ancient peoples is particularly instructive in this context, since their destiny is already fulfilled.

¹ Cf. e.g. Haney (1949), p. 539 f.

4. The Historical School was very reluctant generally to praise or to blame economic institutions, because only very few of them were exclusively good or exclusively bad for all peoples at all times.

The younger Historical School was dominated by Gustav von Schmoller. Finally, Arthur Spiethof, Werner Sombart and Max Weber were the leading representatives of the third wave at the beginning of the twentieth century.

Llach and Crespo's criticism of *homo oeconomicus* coincides in major respects with the stance of the Historical School. In his *Grundlagen*, Roscher certainly recognizes self-interest as one of two psychological motives for economic action. For him, it is 'a powerful principle of creation, preservation and renewal'.² But in classic economic theory he sees no sign of the community-related, ultimately spiritual, dimension of human existence.

But then there are the demands of God's voice in us, of our conscience: whether we call them, with a merely philosophical retracing of the outlines, 'ideas of equity, justice, benevolence, perfection and inner freedom' or with their realization in everyday life 'the yearning for the kingdom of God'. No matter how much the divine image has been obfuscated among most human beings, the yearning for it has not disappeared completely among any of them. This fact keeps self-interest under control; indeed, it is transformed into an earthly comprehensible means to an eternally ideal end.³

The seemingly contradictory tendencies of self-interest and conscience act together, according to Roscher, in mutual limitation, generating *community spirit* in human social life:

It is on this community spirit that, in steps, family life, parish life, national life and the life of mankind (which last should coincide with the life of the Church) is based. It is only through this spirit that God's life on earth is realized...; only through it that self-interest is truly certain and lastingly expedient.⁴

Schmoller, too, thinks that human beings have been misunderstood, with respect to their underlying relationship to the community, by the individualistic approach of classical English economics. He believes that the

² Roscher (1897), p. 26, Roscher's chief book *Grundlagen* first appeared in 1854. Here and below, quotations are from the 22nd edition, edited by Robert Pöhlmann.

³ Roscher (1897), p. 26f.

⁴ Roscher (1897), p. 27.

wish to earn money, as an abstract principle, is insufficient. Nor does it suffice to adduce, as Roscher does, community spirit as another abstract principle: what is required, rather, is a psychological and historical analysis of the motives for human actions in general.⁵ The classical theory, he asserts, is based on an incomplete analysis of human beings.⁶

This brief glance back at the Historical School can at the same time shed some light on another assertion in the paper by Llach and Crespo. In 1883 there flared a disagreement between the Austrian Karl Menger and Gustav von Schmoller, conducted vigorously by both parties, on the epistemology appropriate to economics – known as the ‘dispute on methods’.⁷ Menger claimed that only the concept of a law, as in physics, could form the basis of a theoretical science. To evolve an exact theory, economics must study only one particular side of social phenomena, the economic side. It must proceed in an abstract manner, isolating and deducing, namely from the principle of individualism and the maximization of benefits. General and immutable laws of human action could be derived from that. Menger thus adopted the position which Llach und Crespo designate as ‘discipline-determined’. Schmoller, by contrast, drew attention to inductive research into historical reality and, in the field of economics, denied the existence of abstract, immutable laws, like those in the natural sciences. He claimed that it was the task of the economist to collect data and to derive there-from, by means of induction, systematic descriptions which remained within the framework of general history – hence his standpoint was ‘field-determined’.

Today we know that the main error of the two opponents lay in the exclusivity with which each advocated ‘his’ method. In the end, Schmoller actually acknowledged this, but the disagreement had a practical economic policy dimension at the time which is likewise reflected in the paper on which I am commenting. During the nineteenth century, Germany’s rapid development from a traditional agricultural society to an industrial nation led to radical changes in underlying structures and thus to what was known as the new ‘social issue’. Schmoller and many of his supporters believed that this development would have to be accompanied by active intervention by the state and by social reforms if revolutionary upheavals were to be pre-

⁵ Schmoller (1900), p. 33.

⁶ Schmoller (1900), p. 92.

⁷ The occasion was Menger’s book *Untersuchungen über die Methode der Sozialwissenschaften und der Politischen Ökonomie insbesondere* and Schmoller’s review.

vented.⁸ In contrast, the Austrian school, headed by Menger, continued to advocate classical laissez-faire liberalism.

Max Weber, rated by Joseph Schumpeter (1954) to be 'one of the most powerful personalities that ever entered the scene of academic science' likewise resorted to the method of the Historical School. His best-known work *Die protestantische Ethik und der Geist des Kapitalismus* (Protestant ethics and the spirit of capitalism), may in fact be regarded as exemplifying the methodological approach of the Historical School. But something else is also manifest: although Weber was a professor of economics from 1894 onwards (initially in Freiburg and subsequently in Heidelberg), in the relevant literature he is rarely described as an economist. As a rule, he is counted among the founding fathers of sociology. In the mass of the anthropological and historical references to be followed, he gradually lost sight of the original focus of his efforts – economics.

But nothing more was heard of the Historical School, even in Germany, in most of the time after World-War II and today it sometimes seems as though this combination of holistic approach and social policy commitment had never existed in economics. That is also true of the German-speaking area itself: the names of Roscher and Schmoller are normally unknown to younger economists today. No doubt this is not solely due to stronger Anglo-Saxon influences in Germany since the War. One must admit that the eye-witness Othmar Spann is right, at least in part, when he ascribes the decline of the Historical School to the fact they chose to be incapable of structured theoretical work:

the younger Historical School lost itself increasingly in economic history and economic description ... This went so far that the last generation of our economists positively lost sight of the theoretical tradition.⁹

This historical experience – especially in Germany – of the views put forward in the paper by Llach and Crespo now brings me to a number of critical questions. Is the *homo oeconomicus* really a conception of a human being implicit in economic science? Does economics have a conception of a human being at all? And is that its duty?

⁸ On this point see Nau (2000). Because of their stance on social policy, Schmoller and his supporters were on occasion mocked as *Kathedersozialisten* (socialist professors). Schmoller also played a major role in the establishment of the *Verein für Sozialpolitik* (Social Policy Association), a name that is still in use today by the Association of German-Speaking Economists.

⁹ Spann (1949), p. 164f.

At several places in the first section of their paper, Llach and Crespo draw attention to the fact that the conception of a human being presented by economists themselves (unlike that in economics) is indeed often 'human' and 'holistic', and that economists can obviously live with this contradiction. Does this not suggest that the *homo oeconomicus* is not a conception of a human being at all, but only an intellectual fiction designed to produce falsifiable hypotheses?

Economists are apparently guided by the methodological principle of the theologian William of Ockham (1285-1349): *Pluralitas non est ponenda sine necessitas*. They endeavour to make no more assumptions than are required to understand the subject of research. The *homo oeconomicus* is particularly simple. His actions can therefore be described and forecast precisely. It is then up to reality to falsify such a forecast or not. It has proved to be very fruitful to approach an economic phenomenon, as a *first* step, with an attempt to explain it in terms of being the outcome of interactions between rational and self-interest-oriented individuals. This is quite often possible, especially for instance in financial theory, in the development of valuation models from arbitrage calculations. Where it cannot be done, other facets of reality have to be included as well. Here, too, financial theory provides good examples. Many economically significant developments on financial markets cannot be explained without the assumption of limited rationality, such as those mentioned in the outstanding monographs by Shiller (2000) on 'Irrational Exuberance' and Shleifer (2000) on 'Inefficient Markets'. Incidentally, the award of the Nobel Prize to Daniel Kahnemann demonstrates once again that the Jury evidently does not underrate the significance of such a departure from perfect rationality. Moreover, the representative individual is increasingly being called into question as an intellectual starting point: in many recent papers, including ones on macro-economic issues, the heterogeneity of the players is taken very seriously.

It is true that many economists may sometimes appear ponderous and unimaginative when they have to give up assumptions that have not proved their worth. But that should not be blamed on the approach itself. It imposes discipline and counters the risk of 'anything going'. For much research, the *homo oeconomicus* can definitely provide a starting point for needful further analyses.

II.

In the second section of their paper, Llach and Crespo consider orthodox and heterodox economic-policy concepts. Here, they follow in Schmoller's footsteps, for whom economic policy was a self-evident focus of economic analyses. Besides a number of remarks about the failure of certain 'heterodox' approaches, at the heart of this second section the so-called Washington Consensus is criticized as the embodiment of 'orthodox' thinking – the authors speak of 'neo-classical' thinking.

The Washington Consensus is described in the paper as too simplistic, too one-dimensional. The authors identify two categories of sins. On the one hand, the list of propositions¹⁰ compiled by Williamson in 1989 omits a number of economic targets that the authors consider particularly important. They designate these as 'sins of omission'. Besides these, they also perceive some 'sins of commission'. Some of the propositions, they say, are simply counterproductive. In the authors' view, the Consensus leaves no scope for taking account of the particular circumstances in time and space. Wherever the demands of the Consensus were realized precisely, that resulted in failures. Successes were scored only when they were realized in a manner in line with the prevailing circumstances.

In my former official capacity, I had every opportunity of observing, especially in the 1990s, the shaping of opinions in the IMF and other international bodies. Without wishing to go overmuch into detail here, the shaping of opinions both among the staff of the IMF and in the political bodies involved was more sophisticated, more complex and more contradictory than is reflected in Williamson's list quoted in the paper. Moreover, it was notably dynamic, and changed in the course of time and experience. The crucial factor was and still is today what the countries affected made of it. The conditions set by the IMF were and are mostly the outcome of negotiations.

An example of this is *exchange-rate policy*. Item 5 on the agenda 'a competitive exchange rate' did not reflect the diverse range of opinions underlying it as early as 1989, as Williamson (2003) frankly admitted.

The fact is that in sections of the IMF staff, but also among many Anglo-Saxon economists, a 'doctrine of two alternatives' had emerged at that time: either freely floating exchange rates or a regime of completely fixed rates (ideally in the context of a Currency Board) were regarded as suitable for

¹⁰ Concerning this list and its history, cf. Williamson (2003).

preventing currency crises. However, this standpoint was not shared by all in the IMF bodies, and not by me personally either. After all, between these two poles quite a number of in-between solutions are possible, which may have their merits in specific situations. Exchange-rate policy only has to be consistent with domestic policy, that is what counts. In the real world there are, of course, not infrequently differences between the 'official' monetary regimes and the 'de facto' standards that constitute the framework for actual monetary management.¹¹ Notably over-rigidly fixed exchange rates may have serious drawbacks if the country concerned is unable to cope durably with the ensuing consequences for its own policies. After all, such exchange rates tie the internal and external monetary policy of the weaker country to those of the stronger land for good or ill. That may well result in serious conflicts with that country's domestic targets. The crises in south-east Asia during the 1990s were mostly a consequence of such untenable exchange-rate rigidities. And Argentina, too, clung for too long to the fixed link to the Dollar (mainly of its own volition) even though it could not maintain it in its domestic policies.

On closer inspection, the call for freedom of *capital movements* likewise turns out to be ambivalent. The orthodox doctrine rejects controls on capital movements as a source of inefficiencies and the reason for the cementing of obsolete structures. In essence, that is no doubt correct but the state of development of the economy also plays a role. Incidentally, a call for the abolition of *all* controls on capital movements does not feature on Williamson's list; but as a matter of fact the international financial organizations pursued that target too unconditionally at times, which was repeatedly criticized in the IMF bodies at the time. After all, nascent financial systems are often not yet resistant enough to be incorporated in the global financial system without any protection. To begin with, they need a sufficient degree of maturity. Things may be particularly critical if liberalized financial markets come up against a fixed-exchange-rate policy. If, for instance, expectations of a devaluation then arise, players on the financial markets are faced with a 'one-way bet'. Gigantic sums may be set in motion in no time at all, dooming to failure any attempt to maintain the parities. And that is particularly dangerous for countries that do not already have in place a sufficiently sophisticated domestic financial system.

¹¹ Cf. on this point von Hagen and Zhou (2004). While the former are usually designated as fixed or floating exchange rate regimes, the latter on closer inspection are mostly variants of managed floating.

Much the same is true of the hypothesis of the *liberalization* of foreign trade. It certainly makes good sense if both sides really open their borders to the movement of goods. But whether a complete opening actually makes sense for developing countries when developed countries retain their restrictions in their agricultural and industrial policies is quite a different question.

And even the slogan *fiscal discipline* is not always as unproblematic as it sounds. An often requisite rigorous reduction of excessive government spending generally has a really positive economic effect only if it is part of a consistent fiscal-policy strategy that is durably credible. Short-term *ad hoc* austerity measures *alone* usually fail to generate any new confidence among investors in the midst of a profound adjustment recession, and will hardly create any new economic dynamism. Austerity measures must take due account of both the initial conditions and the overall conditions. In this case, too, the erstwhile crises in Asia have taught important lessons in several respects: some decisions that made sense, and were correct, in the Latin-American environment merely exacerbated the situation in some countries of south-east Asia.

III.

This is not the right place to discuss, and evaluate in detail, the economic policy performance of the IMF as a whole. In my judgement, most of it has been good so far, though some of it has also been problematic. Alongside some justified criticism, one ought not to overlook the favourable overall development of the global economy and the catching-up process of many developing countries. And the much-cited Washington Consensus should not be made a distorted picture. The increased recourse to supply-side policies has in my opinion done a great deal to ensure that, in retrospect, the 1990s – despite of some serious crises – as a whole might well prove to be one of the positive decades in economic-history, also with respect to distribution policy.¹²

Yet the last part of Llach and Crespo's criticism is undoubtedly valid, and may be levelled at any policy that is 'pushed through' blindly and unimaginatively without regard to the ruling spatial, temporal and cultural

¹² Cf. on this point the Richard T. Ely Lecture given by Stanley Fischer (2003). This overall positive assessment doesn't overlook some serious critical points also mentioned by Joseph Stiglitz in his book 'Globalisation and its Discontents'.

preconditions. Salvation is not to be expected of soulless bureaucracy. Successful political action consists in the intelligent adjustment of timeless truths to the prevailing circumstances. That presupposes among all those responsible both the consideration of economic realities and relationships and a high level of intellectual flexibility.

If one goes through Williamson's list for the so-called Washington Consensus again, almost every point appears good and correct – in general. But each individual point easily becomes bad if it is to be pushed through everywhere alike, mechanically and without regard to the prevailing starting conditions. As I indicated above, that was a basic point in the work of the German Historical School. Perhaps their discoveries and methodological insights should not have been forgotten quite so thoroughly, neither among professional economists nor in practical economic policy. To that extent I am glad to concur in Llach and Crespo's findings.

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IS SCIENTISM A THREAT TO THE OBJECTIVES OF THE ECONOMY AND ECONOMIC POLICY?

JOSÉ T. RAGA

The paper presented by Llach and Crespo, is highly stimulating due to the objective of the study in itself and the courage shown in the adoption of a posture which, while by no means maximalist, can be said to go against the dominant stream of thought, both in the most pretentious research circles and universities in general. In these circles can be clearly seen the very real subordination of knowledge and its transmission, as well as the formation and dissemination of culture to the worship of scientific discovery which, often being sterile can only find justification within itself and the introspective satisfaction of the research activity in itself. In all this we find a common denominator of an anthropological nature, which might be defined as the loss of the existential significance of the human person in both singular and social dimensions.

Without in any way detracting from the merits of the paper and stressing my admiration for its underlying rigour, I dare to point out that, while the doctrinal line running through it is, in all probability, present in the majority of those who devote time and enthusiasm to economic research, it is fair to give recognition to the authors for taking the risky decision to confront with such clarity a matter of such complexity.

With Respect to the Scientific Nature of Economics and its Objectives

It is difficult to dispute the statement made in the paper that quite a few, perhaps most, economic researchers are more committed to highlighting the scientific image of their activity than to solving the economic problems facing humanity. This involves, on the one hand, the childish reaction to a certain unjustified feeling of inferiority with respect to the experimental sciences and their methodologies, and on the other hand, losing sight of the

objective common to all science and all knowledge – that of serving the human person.

With respect to the former, the exaggerated interest in forming part of what are known as *the sciences*, it is worth remembering, with a certain nostalgia, the words of J.A. Schumpeter. The author asks:

But is Economics a Science? The answer ... depends of course on what we mean by 'science'... If we define science according to the slogan 'Science is Measurement', than economics is scientific in some of its parts and not in others. There should be no susceptibilities concerning 'rank' or 'dignity' about this: to call a field a science should not spell either a compliment or the reverse.¹

Or is it the case that sciences, the natural sciences for instance, should be considered superior to philosophy and theology, which are the synthesis and basis of all knowledge? What is true, however, is that the thirst for recognition as a science has led to a desire for measurement in fields where this can only be attempted with enormous difficulty and with such limitations as to render sterile the results obtained. One of the main reasons for economic research's loss of social credibility resides in this misguided desire to dress it in scientific clothing, even where this is impossible and this ultimately leads to the self-complacency of the model designed.

It is also necessary to highlight a loss of direction with respect to the ultimate aim of scientific research and even that of science itself, which is none other than to serve man and his dignity. The recognition of this should be the driving force behind all scientific effort. If nuclear and chemical weapons were worthy of special attention and rejection at one time, now there are many weapons of a non-material nature which humiliate and enslave people: materialism, consumerism, hedonism, the trafficking of human beings, drug trafficking, etc. Economists could also make themselves heard in this respect rather than hiding behind the jargon of structure and perturbing euphemisms.

John Paul II established that:

Because knowledge is meant to serve the human person, research ... is always carried out with a concern for the *ethical* and *moral implications* both of its methods and of its discoveries.²

¹ Joseph A. Schumpeter, 'History of Economic Analysis'. George Allen & Unwin Ltd. Sixth Printing. London 1967, pp. 6-7. First Published in Great Britain 1954.

² John Paul II, 'Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic Universities *Ex Corde Ecclesiae*'. Rome, 15.08.1990, num. 18.

He had already stated before UNESCO that

It is essential that we be convinced of the priority of the ethical over the technical, of the primacy of the person over things, of the superiority of the spirit over matter.³

These are the basic postulates of an anthropological order if we are to have research that serves humanity and does not lose itself in arrogant vacuum constructions.

It is said of A. Marshall that, in his study, just opposite where he worked, he had an oil painting of a beggar and that when he raised his eyes and contemplate that image, he concluded that his work was devoid of sense as long as such beggars continued to exist. A very clear vision for an economic science committed to the real problems of the world, perhaps the world's greatest problems, those of poverty and exclusion.

Consistent with this vision are the words he uses in the prologue of the first English edition of his 'Principles of Economics', in relation to the function of economics.

... the function of the science is to collect, arrange and analyse economic facts, and to apply the knowledge, gained by observation and experience, in determining what are likely to be the immediate and ultimate effects of various groups of causes; and it is held that the Laws of Economics are statements of tendencies expressed in the indicative mood, and not ethical precepts in the imperative ... But, ethical forces are among those of which the economist has to take account. Attempts have indeed been made to construct an abstract science with regard to the actions of an 'economic man', who is under no ethical influences and who pursues pecuniary gain warily and energetically, but mechanically and selfishly. But they have not been successful, nor even thoroughly carried out. For they have never really treated the economic man as a perfectly selfish: no one could be relied on better to endure toil and sacrifice with the unselfish desire to make provision for his family; and his normal motives have always been tacitly assumed to include the family affections. But if they include these, why should they not include all other altruistic motives the action of which is so far uniform in any

³ John Paul II, 'Discourse to UNESCO' (Paris 02.06.1980), num. 22. Quoted in 'Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic Universities *Ex Corde Ecclesiae*' num. 18.

class at any time and place, that it can be reduced to general rule?⁴ John Paul II expressed his sadness that, in our time, The humanistic character of culture sometimes seems relegated to the periphery, while there is an increased tendency to reduce the horizon of knowledge to what can be measured and to ignore any question touching on the ultimate meaning of reality.⁵

The Tendency to Limit Economic Research

The question at the end of Marshall's text has yet to be answered satisfactorily. What reason exists for a rule of a general nature, in the words of the Cambridge Professor, to be ignored in economic research and be replaced by the construction of an abstract stage upon which universal selfishness is the supreme behavioural principle.

The only explanation is the predominance of materialism over all other considerations of a spiritual nature. The prevalence of what is measured and weighed over esteem for the practice of virtues, over generosity, over fraternity, over charity or if you prefer a term used more commonly nowadays, over solidarity. However, this artificial and abstract stage is incapable of explaining a great deal of human behaviour, and this includes behaviour related to economics.

In the words of John Paul II,

... The economy in fact is only one aspect and one dimension of the whole of human activity. If economic life is absolutized, if the production and consumption of goods become the centre of social life and society's only value, not subject to any other value, the reason is to be found not so much in the economic system itself as in the fact that the entire socio-cultural system, by ignoring the ethical and religious dimension, has been weakened, and ends by limiting itself to the production of goods and services alone.⁶

That is to say, as the fondly remembered Holy Father suggests, the anthropological deficit is responsible for this vice and any structural problem. By following this path, the research itself is stripped of content and the inves-

⁴ Alfred Marshall, 'Principles of Economics'. 'Preface to the first edition'. The Macmillan Press Ltd. Eighth Edition. London 1920, pp. v-vi.

⁵ John Paul II, 'Homily of John Paul II'. Jubilee of University Professors. Sunday 10 September 2000, num. 4.

⁶ John Paul II, Encyclical Letter *Centesimus Annus*. Rome 01.05.1991, num. 39.

tigator is enslaved within the limited boundaries he himself has build up on his scientific career.

Professors Llach and Crespo accurately analyse the scientific reductionism implicit in the abandonment of the wide field of research – *field-determined* – in order to occupy the limited space of the specific discipline, isolated and unconnected – *discipline-determined* –, emphasizing the human impoverishment, as well as scientific impoverishment caused by this decision. In our opinion, the real impact is of far greater magnitude than the benevolent premises of the authors and their conclusions.

It is true that at a macro level, economic research, like any other research, is carried out in the scope of an area of knowledge, in that of itself it involves the segmentation of that communication of knowledge to which the human heart by nature aspires: to find the ultimate basis of any specific knowledge. On a micro level, however, i.e., when we look at a specific researcher, the singular subject or individual who carries out a scientific job, the frame of the discipline once again appears extraordinarily limited. This is true to the point that, at the present time, and most than frequent, research of broad scope is the exception, and there is a general rule that having set out on a given line of research at an early stage in his career, the researcher will continue his activity inside the line for the entire duration of his scientific life.

The consequences are impoverishment, general and specific. General, because nothing outside this narrow line of research holds any interest for the researcher and specific impoverishment because nothing said or written more than ten years before will be of interest in the research, even if its objective were the same. The literature of the great classics and that literature constitutive of the basis of scientific knowledge is deserving of some consideration.

Therefore, in our opinion and in accordance with the path mapped out by professors Llach and Crespo, we believe ourselves to be in a position to state that we have moved from a state of – *discipline-determined* – to another far more limited state that might be described as – *topic-determined* –. Herein lies the roots of the inability to move towards a synthesis of knowledge in which the harmony of creation shines resplendent.

Integration of knowledge is a process, one which will always remain incomplete; moreover, the explosion of knowledge in recent decades, together with the rigid compartmentalization of knowledge within individual academic disciplines, makes the task increasingly difficult. But ... It is necessary *to work towards a higher synthesis of*

knowledge, in which alone lies the possibility of satisfying that thirst for truth which is profoundly inscribed on the heart of the human person. Aided by the specific contributions of philosophy and theology, university scholars will be engaged in a constant effort to determine the relative place and meaning of each of the various disciplines within the context of a vision of the human person and the world that is enlightened by the Gospel, and therefore by a faith in Christ, the *Logos*, as the centre of creation and of human history.⁷

Man, his essence and transcendence, does not permit the dividing up of that which is called upon to serve him. As John Paul II states,

Today the most attentive epistemological reflection recognizes the need for the human and natural sciences to enter into dialogue once again, so that learning may recover the sense of a profoundly unified inspiration.⁸

We cannot forget the same Pope's call to university professors on the occasion of the Jubilee:

You, my dear friends who are involved in scientific research, must make universities *cultural laboratories* in which theology, philosophy, human sciences and natural sciences may engage in constructive dialogue, looking to the moral law as an intrinsic requirement of research and a condition for its full value in seeking out the truth.⁹

Anything else would represent a preference for the abandonment of the consideration of the world in its true state. It would be to turn our backs on a reality that begs explanation, to wander aimlessly without our fellow man, without brothers, without beings with inalienable rights, on a stage with no opportunity to commit with others. In this world, into which we have placed scientific activity, a new field of economic research is sought on a daily basis, even made to explain phenomena lying outside the scope of economics such as: family relations, altruism, economics of religious practices, etc... however, it continues in its failure to provide an answer to the fundamental questions posed in the world of economic relations: poverty, inequality, marginalisation, illiteracy, insufficient basic utilities, etc.

⁷ John Paul II, Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic Universities *Ex Corde Ecclesiae*. Rome 15.08.1990, num. 16.

⁸ John Paul II, 'Address of John Paul II to University Professors of all Nations'. Jubilee of University Professors. Vatican City, Saturday 9 September 2000, num. 5.

⁹ John Paul II, 'Address of John Paul II to University Professors of all Nations'. Jubilee of University Professors. Vatican City, Saturday 9 September 2000, num. 5.

Man in the Drawing Up of Economic Policy

Where he is and what his role is when it comes to designing economic policy. The same anthropological deficit that we have hitherto criticised, in accordance with the parameters of the work of professors Llach and Crespo, is also to be observed when marking the space which, for reasons of dignity itself, corresponds to the human person in the framework of economic policy: both with respect to the ends and to the means.

As far as ethics or morals are concerned, it is clearly the case, and therefore unnecessary to explain at length, that any measure which might be implemented should recognise and extol the dignity of the human person. Inadmissible, even when their consequences are indirect, are those lines of action which humiliate or simply subordinate man, giving priority to material things. Not even from the most radical economic perspective can such hypotheses be accepted. The person is a combination of body and spirit¹⁰ and therefore, and also within the field of economics and economic policy, it must be acknowledged that there are needs to be satisfied both of a material nature and of a non-material and spiritual character.

Mises would say that

It is arbitrary to consider only the satisfaction of the body's physiological needs as 'natural' and therefore 'rational' and everything else as 'artificial' and therefore 'irrational'. It is the characteristic feature of human nature that man seeks not only food, shelter, and cohabitation like all other animals, but he aims also at other kinds of satisfaction. Man has specifically human desires and needs which we may call 'higher' than those which he has in common with the other mammals.¹¹

For this reason, any economic policy measure which tends towards welfare or perhaps what can better be described as 'the well-being', should take into account this broad range of needs to be satisfied that cannot be fully sated if only material goods are used.

Having said this, where does man fit into the drawing up of economic policy? The Second Vatican Council was emphatic in this respect:

¹⁰ St. Augustin assessed: *Quid est homo? Anima rationalis habens corpus ... Anima rationalis habens corpus non facit duas personas, sed unum hominem.* 'In Johannis Evangelium', XIX, 5. In the same sense, 'The quantitate animae' XIII, 22; and 'De moribus Ecclesia', I, 27, 52.

¹¹ Ludwig von Mises, 'Human Action. A Treatise on Economics'. William Hodge and Company Limited. London-Edinburgh-Glasgow 1949, pp. 19-20.

Man is not wrong when he regards himself as superior to bodily concerns, and as more than a speck of nature or a nameless constituent of the city of man. For by his interior qualities he outstrips the whole sum of mere things. He plunges into the depths of reality whenever he enters into his own heart ... there he discerns his proper destiny beneath the eyes of God.¹²

This superiority over the material universe implies dominion over all creation by express will of the Creator. For this reason, this relationship must dominate over the natural order of things: the harmony of all creation. Therefore, Leo XIII had no hesitation in stating that:

Nature ... must have given to man a source that is stable and remaining always with him, from which he might look to draw continual supplies. And this stable condition of things he finds solely in the earth and its fruits. There is no need to bring in the State. Man precedes the State, and possesses, prior to the formation of any State, the right of providing for the substance of his body.¹³

The social doctrine of the Church underline in this sense: The citizens and with them, man, must have control over their own development. Therefore, Pius XI also stated, forty years later that the Leonian encyclical, that:

... as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.¹⁴

Herein resides the anthropological nucleus for any economic policy measure and indeed for policy in general. Respect for the personal dimension, for the singularity and uniqueness of the human persons created at the image and likeness of God and consequently entitled of an inalienable dignity. A subsidiarity based on the respect for the will of the Creator which must be complemented by, but not substituted for, a solidarity through which commitment to one's brother is strengthened in a spirit of co-operation for the satisfaction of all needs. And the efforts of scientific investiga-

¹² Second Vatican Council, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*. Rome 07.12.1965, num. 14.

¹³ Leo XIII, Encyclical Letter *Rerum Novarum*. Rome 15. 05. 1891, num. 7.

¹⁴ Pius XI, Encyclical Letter *Quadragesimo Anno*. Rome 15.05. 1931, num. 79.

tion must be in accordance with this priority, the identification of scarcity, discomfort, the needs of those close and distant, with a view to contributing to their satisfaction.

A union of subsidiarity together with solidarity, which serves to solve the problems of economics when confronted with economic agents, in the light of public measures in various areas. As is stated in the Compendium of the Social Doctrine of the Church,

Solidarity without subsidiarity, in fact, can easily degenerate into a 'Welfare State', while subsidiarity without solidarity runs the risk of encouraging forms self-centred localism. In order to respect both of these fundamental principles, the State's intervention in the economic environment must be neither invasive nor absent, but commensurate with society's real needs.¹⁵

Allow us to end by congratulating and expressing our gratitude to professors Llach and Crespo for the valuable contribution represented by their paper to reflection on a matter so close to and so deeply rooted in the community, in terms of the individual as well as the family and society as a whole.

¹⁵ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*. Libreria Editrice Vaticana. Città del Vaticano 2005, num. 351.

CONCLUSIONS

EDMOND MALINVAUD

Thank you Mr Chairman.

Dear Colleagues, As you have understood, already when we decided to devote our XI Session to a conceptual analysis, I was aware of the risk that this session led us to deviate from our main task, which is to exhibit those contributions from social sciences that would be the most important for the social teaching of the Church. We might be too attracted by philosophical speculations which indeed are very interesting, especially for the eldest among us who contribute less to the active research in our disciplines. The subject we chose, *The Conceptualization of the Human Person in the Social Sciences* has been very stimulating during this session, while also increasing our knowledge. Therefore the risk to which I alluded is still there. We should be aware of it during this general discussion. I was aware of it when I drafted what I shall say today. I would like now to begin with an overview of the work of this session.

Of course, this overview will be confined to our subject-matter *stricto sensu*, Conceptualization of the Human Person. I noticed that this session allowed some authors and scholars to go beyond the subject, taking the opportunity to talk about scientific questions or social phenomena that were dear to their heart. This is normal, but I will not talk about that.

Concerning philosophy, you probably noticed a certain convergence among speakers to congratulate themselves on the fact that the classical notion of personhood has been revived. This was the main theme of Professor Berti. He was not contradicted by Rocco Buttiglione when he talked about the objective part of John Paul II's phenomenology and later about the important role of subjectivity in the reactions of individuals vis-à-vis this objectivity, as well as in their spiritual opening towards others.

Angelo Scola has chosen not to talk about the ancient roots of modern concepts whereas Minnerath insisted on them. Looking at the future and mentioning the link between Christian anthropology and sociology,

Cardinal Scola emphasized the fact that the challenge addressed by modern society to the Church is that the Church has to find a way to develop still more Christian thought on personhood.

Georges Cottier presented his reflections on liberalism and liberal ideology. He explained very well the reasons why he saw some menaces for the human person. The Social state advocated by this ideology, is claimed to be able to satisfy three goals: autonomy of the individual, freedom and equality. But there are no good arguments to show the compatibility among these three notions in an atheistic world.

You probably expect me to now review the conceptualizations in our four disciplines: law, political science, economy, sociology. But another discipline has emerged in our debate: psychology. When I think about it, this seems to have been positive. The economists feel the need to resort to psychology to review the conceptualization of agents and psychology has taken a great place on the time we devoted to sociology. Jon Elster's presentation concerned psychology; his text has shown how it is justified to add to the old distinction between rational behaviour and visceral behaviour, another distinction with three poles: interest, passion and reason.

The place of this reflection in the life of people has been shown magnificently by Margaret Archer who, remaining a sociologist, showed herself to be also a psychologist, a philosopher and a theologian. She has convinced us that the person was a judge of his or her social identity, and had the capacity to influence society's internal discourse.

Going on with sociology, I have noticed that our colleague Zubrzycki presented John Shotter's contribution as inspired by social psychology. I noticed also that the long quotation in epigraph of John Shotter's paper comes from Merleau-Ponty who studied the psychological approach to scientific practices. John Shotter, studying constraints imposed by the social environment on people reflections, concluded that, observing the surrounding society, the individual adjusts his behaviour to his environment.

Harré has suggested replacing the theory of roles by the theory of positioning, examining the system of rights and obligations which defines the norms according to which individuals interact with each other and thus influence the evolution of society. This is a new field of research which attaches upon the identity recognised to each person. Contribution to such a theory would be a task for social psychology and cognitive psychology.

I could go on like that but I won't do it. At this point I have to put an end to the review of the different presentations of this session for lack of time. I must give my apologies to my colleagues who talked about law, political sciences and economics. I will talk briefly about these disciplines

and this will enable me to approach afterwards some points which could be further discussed this afternoon.

As for law and political sciences, an overview has already been given by our colleague Herbert Schambeck. I confine myself to mention an impression which I drew from the discussions. In these two fields, historical and cultural differences seem to have a particular influence, even if international law and the promotion of human rights tried to limit the effects of this influence. As for international law, unfortunately we have to notice that its impact encounters so many obstacles that it could even have opposite results to what the original authors in the postwar wanted to achieve, whether they were inspired by the concern for liberty, which Professor Glendon emphasized, or by the respect of human dignity, which was stressed by Professors Kirchhof and Schambeck. As to the weaknesses of international organisations we heard the criticism of Janne Matlary and we appreciate the assessments made by Kirchhof and Skubiszewski.

Here it has been very satisfactory to learn about the different experiences with law and political science in the US, in Britain, in Germany and in Latin countries before examining the Moslem and Buddhist traditions in Asia. We shall remember that conceptualizations of the human person and their implementation into institutions went through different developments in different areas of the world.

I would like to now address a question to all authors of these presentations. When we talk about conceptualizations should we not wonder what are the sources and the explanations of their developments? For instance we could focalize on the different meanings of words used in the past and present political writings, on the difference between the decisions of courts and the implementation of written laws.

Since I talked so much yesterday about economics, I will not come back to it today. I will confine myself to a side commentary about the organization of our exchanges. The study of our discipline was made along a plan going from normative economics, to positive economics and to applied economics. Why is it that we see no echo of such a plan in our discussions about philosophy, law, political sciences, and sociology? The answer may be that a similar plan would not have been useful for the other disciplines. Why? Perhaps in these other disciplines conceptualization of the person appears as a purely positive subject (incidentally, when saying positive here I am not assuming the positivist ideology which was criticised by Georges Cottier). Isn't it true that reflection and teaching of the Church give a great place to normative morality? Is it not true that this teaching is meant for faithful who are troubled by political decisions in economic and social

fields? Is it not true that our contribution to the development of the Social Doctrine should result from confrontation of our positive analysis with the Christian principles? These are all the questions I would like to raise. Maybe they are just rhetorical. I am not so certain about it.

I have to come to the end of the time I decided to devote to my overview, which was certainly too short, too personal, too subjective. I apologize for all that and I would like now to pass over to the issues to be discussed this afternoon. You probably thought about what I said last Friday and about what has been written in note then circulated. I will tell you now what I think about future decision.

First of all, what is the assessment of this present session? For the first time we dealt with a subject which lies somewhat upstream from the substantial concerns we dealt with in the previous sessions. I think the experience has been positive. The presentations have been useful for us, at least for me. These presentations will be interesting for the readers of our *Acta*. They will be interesting also for us when we have to think about the follow-up to the session. I hope that these writings will be useful for those who, in the Church, have to think on how to enrich Christian teaching. After some additional work we should publish something interesting in the series of our *Acta*.

A more delicate question is to know how can the subject-matter of this session be integrated in the program of future works of our Academy. You have probably understood what I think about that: I think that we would be wrong if the *Acta* of this session should be later considered as having marked a turning point in studies of the Academy towards more speculative thinking, somewhat away from the study of the social problems of modern life. Since we know each other well, I gathered that you have different opinions on this point. What I have just been saying does not mean that I would be definitely against a sort of follow-up to this session. For instance it might be thought useful to have further studies in order to better explain some of our present conclusions. But as for the general thread of our future activities, personally I would not ask for long investigations along the way opened with this session, such as a program lasting for several years like those carried out on globalization, democracy and so on. I take this stand because I feel our mission is basically to keep a profitable dialogue with those who work, much more than we do, in the field. The utility of our discussions would be on the wane if we should decide to devote ourselves exclusively on a philosophical reflection about social sciences.

My October note draws several options for future works. The *first option* would be to leave some time to reflection, leaving to our next session

in 2006 all decisions about the follow-up beyond the publishing of our *Acta*. The *second option* would be to try and collect supplementary material, which would be worthy of being known by us and by readers of the proceedings, this without deciding on what to be done later on. I put this option in the list because it is a possibility, but I don't know really where it could lead us. I think that those who were more active for suggesting this option belong to the Italian delegation, which is unfortunately not represented now. Therefore we are missing a considerable part of opinions. The *third option*, would be an internal document of the Academy to remind ourselves of what we have done and what we have learned from the discussion on our present subject. When I am talking about an internal document, I mean that this would not be for publication, but only for our internal use. The *fourth option* would be to prepare a special publication of the Academy. We should then define the exact coverage and the goal of this publication, so that we could make it clear in the near future the sort of book we want to publish. The drafting of the document would involve of course some of those who have made presentations here. If we chose the latter we should talk already now about the goals and the purpose of this possible book.

I would like now to be more precise about my opinion on these four options. First of all, I already said that the second option in my opinion could not offer us much. On the contrary, I quite like option number three, in other words a short document for internal use of the Academy just to memorize what has been done. Probably it is the least attractive option: during the short history of the Academy there have been several calls to build good archives. I am sure they are being built, but I don't think the demand for using them is any great. It is indeed rare during a session to remind, or to hint at, what has been done in previous sessions. As for option number four, in other words the publishing of one document of the Academy, it could be very interesting but of course we need a certain consensus. A hundred per cent consensus does not exist in the academic world, but we should not underestimate the difficulty. Let us remember what was our experience with the two books *Democracy in Debate* and *Work and Human Fulfilment*. These are the two reference points we have when we think of a synthetic publication on the conceptualization of the human person.

I would like to recapitulate my proposals. Option number four is very interesting but very difficult. Option number three is possible but less interesting. I see no justification for option two, and maybe at the end of the afternoon we will accept option one, according to which we won't have anything on, until April. Thank you.

PRESENTATION OF THE NEW BOOK

PRESENTATION OF 'DEMOCRACY IN DEBATE:
THE CONTRIBUTION OF THE PONTIFICAL ACADEMY
OF SOCIAL SCIENCES'

MARY ANN GLENDON

I know speak for all of our members when I say that it is with enormous pride and pleasure today that we offer to the Church and the public the volume that represents the culmination of our years of study and debate on Democracy. In a sense, this monograph is what ancient scholars called a *florilegium*, a collective work in which individual contributions are blended in a whole that is greater than the sum of its parts. But we all know that our combined efforts could never have yielded such a rich harvest if were not for the brilliance, the leadership, and the generosity of time and talent provided by our dear colleague Hans Zacher. It is he who has made this project an exemplar of the very best that our young Academy has accomplished, and a model for our future work. His Final Report, published here, represents the crown jewel of the Academy's Democracy project, and I hope you will all join me in offering the author our congratulations and thanks.

Presently, I will turn over the platform to Professor Zacher, because it should really be up to him to make a formal presentation to you of the volume on which he labored so long and painstakingly. But because I am aware of his propensity for understatement, I would like to make just a few observations about the importance of his and our accomplishment.

To my mind, much of the strength of the Academy's work on democracy derives from our willingness, prodded by Professor Zacher, to face hard questions.

We have not hesitated, for example, to tackle the much-debated relationship between democracy and values, providing much support for the Church's view that 'a democracy without values easily turns into open or thinly disguised totalitarianism' (CA, 46).

Similarly, I believe we have helped to strengthen the case for the proposition that successful democratic institutions depend upon a public moral culture that celebrates freedom for excellence rather than freedom as license.

Nor have we failed to touch upon one of the most delicate questions for Catholics: the issue of democracy within the Church. One of the great merits of our Democracy project, I believe, is its reminder that democracy is a political principle, not a guide for all social behaviour. The democratic model does not afford a blueprint for all social institutions. Nevertheless, many values inherent in that model do have broad applicability, as emphasized by Pope John Paul II when he reminded a group of bishops in 2004 that '[A] commitment to creating better structures of participation, consultation, and shared responsibility should not be misunderstood as a concession to a secular 'democratic' model of governance, but an intrinsic requirement of the exercise of Episcopal authority and a necessary means of strengthening that authority'.¹

Finally, I would like to say a few words about the cover illustration for this volume. It was not so easy as one might think to find art work that was appropriate for the Academy's contribution to the study of democracy, especially since it would not have appropriate to privilege a particular model of democracy. So I consulted my daughter Elizabeth Lev, who teaches art history here in Rome. Among the suggestions she made, I was particularly drawn to a panel from a series of frescoes created by Lorenzetti for the council chamber of the free republic of Siena. The panel in question is titled: 'The effects of good government in the city'. After doing a little research on the painting, I discovered that it is not held in high esteem by many art critics who describe it as 'didactic art'. ('Didactic' is apparently an epithet to art critics, but not to a professor.) I was further encouraged, in any case, by a commentary which described the panel as showing that 'prosperity and activity in the areas of work, artisanry and education are the fruits of a civic life guided by the virtues in harmony among citizens'. That seemed to me to fit beautifully with professor Zacher's incisive explorations of the way in which successful democratic experiments both depend upon and foster a free, vibrant, and moral public culture. And I must confess that I found it delightful in this 14th century fresco to have a glimpse of a free republic where women as well as men appear to be flourishing as they go about their work and play.

¹ Bishops from Pennsylvania and New Jersey ad limina 2004.

DEMOCRACY IN DEBATE

HANS F. ZACHER

BACKGROUND

From the very beginning, Catholic Social Teaching has aimed at assisting Catholics in fulfilling their social duties. Beyond that, since the Second Vatican Council, the Popes address it to all men of good will. To strengthen this virtue, the Holy Father established this Pontifical Academy of Social Sciences.

The Academy was founded in January 1994. The first Plenary meeting was held in December 1994. There was some brainstorming about the way it should work. The general task was clear. Its statutes speak of *the aim of promoting the study and progress of the social sciences*.

And they continue:

The Academy, through an appropriate dialogue, thus offers the Church the elements which she can use in the development of her social doctrine.

How should that be done? Various solutions were tried experimentally. The Academy's first formal project was on 'The Future of Labour'. In this case, the work was ended by a discussion between the Academy's plenary and representatives of the episcopate. Beyond that, a selection of central texts presented during the Academy's meetings on 'The Future of Labour' was published. Thus the largest possible public was given the opportunity to understand the course of debate taken by the Academy.

The book introduced today shows another *one of the solutions* the Academy finally found and accepted to finish its work on a certain topic. It contains a *document which presents the essential results* of the Academy's discussions and *was adopted by the plenary of the Academy*. This document finishes the Academy's work on 'Democracy' – 'Democracy' having been the second project the Academy dealt with in a substantial way.

– *The next topics* were and are ‘Globalisation’, ‘Intergenerational Solidarity’ and ‘The Conceptualisation of Men in Social Sciences’. A formal way of finishing these related sequences of work has not been decided yet.

– ‘Democracy’ was, when we started work in 1994/95, an *easy choice*. There were so many reasons for selecting it as a subject. Let me offer a list of the main aspects:

– There is the *relevance* of ‘democracy’ for the many *countries which have democratic constitutions*. What should their people know about the opportunities offered to them and their duties to keep ‘democracy’ working in the right way?

– But there are also many people who live under *regimes which merely claim to be democratic*. What should the people concerned feel about legitimacy and loyalty?

– There are so many *difficulties* in making ‘democracy’ succeed.

For *historical reasons*: in post-colonial, post-communist, post-fascist, post-authoritarian countries.

For *economic reasons*: if poverty is common and severe, or the difference in wealth is scandalous.

For *religious or ethnic reasons*: if groups consider themselves too different.

Or simply for *moral reasons*: if there is no initiative, no common sense, no readiness to cooperate or to care for oneself, one’s own family or one’s own neighbourhood.

– There are such *bitter experiences*: if *values* are disregarded, neglected or suppressed. Majority rule can be as inhumane as dictatorship. And the informal rule of masses can be more dangerous than both of them. But is tolerance a solution? Is pluralism a solution? Is there not only one truth? And can anything else be accepted but a complete cosmos of values deduced from that one truth?

– There is a very new necessity to discuss ‘democracy’: *Globalisation*. ‘Democracy’ has a history within the paradigm of particular states – normally called ‘nation-states’. Now, transnationality and internationality have grown tremendously and are still growing. How can the values which may be materialised by ‘democracy’ be transferred to an international or transnational level? Or is globalisation simply and unavoidably a danger for ‘democracy’?

Finally there is a very central reason for a Pontifical Academy of Social Sciences to study the problem of ‘democracy’: the *long history of strangeness*

between the Catholic Church and Democracy, the long and painful time of divorcing the marriage of throne and altar, the late 'yes' of the popes acknowledging 'democracy' as a worthwhile way of human government. But also in present times and in the future there is no guarantee that there will not be a conflict between Catholic values and 'democratic' policies, or between Catholic authorities and 'democratic' governments.

That was about the background for our decision to discuss 'democracy' and to look for Catholic insights and possible recommendations.

THE APPROACH

To approach the subject in 1996, a *preparatory workshop* was devoted to a worldwide view on the experiences and opinions. Then, in 1998 and 2000, *two plenary sessions* of the Academy were especially dedicated to the subject of 'democracy'.

On this basis, the Academy wanted to draw profit from the critical opinion of *external experts*, until then not involved in the Academy's work. These were professors *Sergio Bernal Restrepo* (from Rome), *Michael Novak* (from Washington) and *Rudolf Weiler* (from Vienna). That procedure ended in 2002 with a *final discussion* including the external experts as well as the Academy's plenary. On this basis, the *final document* was drafted. This final document restricts itself to conclusions *basing on the Academy's work*. That means, however, not only the discussions and publications which were explicitly arranged under the title of 'democracy'. The final document reflects also the whole work of the Academy as far as it, in some way or other, refers to the topic of 'democracy'. It was *approved in the Academy's plenary meeting of 2004*.

The book forwarded here embraces

- the reports of the external experts,
- the final discussion of the Academy's plenary with these experts, and
- the final document.

But my remarks will concentrate on the final document.

THE FINAL DOCUMENT

This document

- starts with an *introduction*, which besides of outlining the whole project concentrates on two subjects:

– The first one articulates the very central approach of the document: Democracy is a *responsibility*.

– The second one concerns the central question which arises with principally all Catholic discussions on democracy: The *tension between the discernment of truth and the endeavour of a democratic community* of people with different standpoints of truth – people denying truth, people convinced of different ‘truths’.

– The *second part of the final document* examines the relationship between democracy and values. ‘This is’ – the document says – ‘the most profound and, not rarely, the most painful Catholic concern’.

– Democracy has time and again *betrayed central Christian values*.

– On the other hand, does not democracy offer the *greatest possible opportunity for Christians to convince* others of ‘their’ values, to promote the voluntary acceptance of these values, and *to enable others* to live ‘their’ values in freedom?

– And are not *elementary values like self-determination, participation, responsibility and equality already inherent in democracy?*

– The *third part of the final document* deals with the problem of *civil society*. Democracy cannot succeed without the *dialectic between governmental and legal structures* on the one hand and a *free vibrant civil society* on the other.

– The *self-determination promised by the term ‘democracy’* cannot be implemented merely through participation in governmental structures and procedures. The more important act of implementation occurs via the freedoms fostered by a democratic society.

– Nor can the *common good promised by the term ‘democracy’* be produced by the government alone. The common good is only possible as a joint achievement of government and civil society.

– The *forth part* takes up the relation between democracy and the manifold *transnational movements and interactions, supranationality, international cooperation and organisation*. This topic is closely related to the *globalisation* process. National democracy has lost and is still losing ground, whereas transnational, supranational and international processes and institutions increasingly take over their functions or influence the functions of national democracies. Is it not necessary to transpose the merits of democracy to a transnational, supranational and international level? Many ways have already been gone. There are successes and failures. To find more morally convincing, legally reasonable and politically promising ideas, it is necessary to mobilise competence, consciousness and responsibility.

- The document ends with some short *closing remarks* - I quote: *'Democracy will always remain an unfinished experiment, a work in progress. Catholic Social Teaching cannot complete it. ...*

- *The Gospel does, however, provide inspiration* and Catholic Social Teaching does have assistance to offer to those who must grapple with the unfinished tasks of democracy. ... *The Church's contribution includes supporting the endeavour to approach the essentials of a perfect democracy as far as possible, while maintaining openness in democracy's various forms and developments, alertness to their risks and opportunities, and creative sensitivity in seeking ways to minimise the risks and to maximise the opportunities'.*