

Metaphysics of Human Rights

**1948-2018.
On the Occasion
of the 70th Anniversary of the UDHR**

Edited by
**Luca Di Donato
Elisa Grimi**

Series in Philosophy



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Introduction

Luca Di Donato, Elisa Grimi

This volume was occasioned by the 70th anniversary of the 1948 Universal Declaration of Human Rights. Enriched by the contributions of eminent scholars, it aims to be a reflection on human rights and their universality. The underlying question is whether or not, after seventy years, this document can be considered universal, or better yet, how to define the concept of “universality.” We live in an age in which this notion seems to be guided not so much by the values that the subject intrinsically perceives as good, but rather by the demands of the subject. Universality is thus no longer deduced by something that is objectively given, within the shared praxis. Conversely, what seems to have to be universal is what we want to be valid for everyone. Paradoxically, we are witnessing a kind of inversion of method.

The 1948 Declaration of Human Rights was a sort of miracle – a miracle that was as unexpected as it was beneficial. It happened in the wake of the tragedies of the wars that involved most of the world, and in an age in which the ideological conflicts between nations (and within nations) were powerful, divisive and not unconnected to the wars themselves. Instead, the declaration entailed a collaboration among exponents from countries around the world, from the East to the West. It embodied a convergence of different cultural perspectives in the belief of the importance – or better yet, the necessity – of finding common principles that were essential for the very survival of civilization. The response was arduous, sought-after, and it required extensive work, but in the end, it was collective.

In the wake of the Second World War, the interpretations of human rights were many and varied. In some countries, the realization of what was at the time the latest generation of rights – social rights – appeared to be incompatible with an unconditional respect of the more ancient, civil and political rights. Elsewhere the respect for the rights of the individual seemed an indispensable cornerstone. It appeared preferable to sacrifice the “substantial” equality of citizens if attaining this meant limiting the freedom of individuals. Caught between these opposites, numerous countries established judiciary and political systems in which the constraints of solidarity were not so absolute as to eliminate their citizens’ freedom. This was done especially through post-war

constitutions. In the meantime, however, the 1948 Declaration turned out to be less universal than it might have seemed. Not all countries signed it, and some of them created alternative declarations.

If it is an undeniable historical element that the cultural context played a crucial role in each country's decision to sign the Declaration, a further element that increasingly obstructs a full acceptance of the Declaration has recently made an appearance.

We are witnessing a disproportionate growth of the list of rights that aspired to be acknowledged. And such an acknowledgement seems to often depend on the strength of the group that is championing it, rather than on actual intrinsic reasons that support it. It has sometimes happened that the affirmation of a right is a direct consequence of the expression of a desire, more than the ascertainment of the possession of a title that justifies it. Today, the practical disagreement on what is or isn't really a right, on what is really owed to human beings as such and what is instead a desire of an individual or group (however legitimate it may be) highlights a *need for justification*, whose alternative is a simple imposition of the more powerful "right."

This volume aims to return to a reflection on what can be considered "universal," and why. Several scholars have tackled the theme of human rights from different angles. Some have retraced the philosophical foundations of human rights, others have tried to delve into the epistemological, ontological, and moral questions that are entailed in the process of justification of human rights, others have proposed arguments that are more in touch with current problems such as the respect of rights in the struggle against terrorism in a multicultural society, the priority of an international agenda for the protection of rights, or their role in dialogue.

We are aware that this research is a drop in a vast ocean, but at the same time, we remain persuaded of the importance of a reflection that returns to the origin of the concept of human right. It is vital that we go back to discussing this. In addition, we believe that having paired philosophical ideas with applied themes, in the effort of underlining the connection between the two, helps to shed light on the goodness of its underlying theoretical framework. We hope that this work contributes to advancing philosophical, juridical and pedagogical research. Finally, we would like to thank all the authors for the precious scientific contribution they provided for the realization of this volume.

The authors wish to express their sincere thanks to the "Centro Studi e Ricerca J. e R. Maritain" in Trezzo sull'Adda (Milan), Italy, for supporting this publication, and in particular to the irreplaceable Dr Eleonora Mauri, without whose tenacity this book would not have been possible. This volume is

dedicated to the memory of professors Roberto Papini, Piero Viotto and Antonio Papisca, who have trained some of its contributors in rigorous thought. We would also like to thank Catherine Godfrey, Lucrezia Di Leo, Olga Rachello and Maeve Anne Sullivan for the translation and revision of some of the texts published here.

Preface

Gennaro Curcio,

Secretary-General of Institut International Jacques Maritain

The seventieth year of the Universal Declaration of Human Rights brings reflections, studies and publications. The multiplicity of detailed studies and the vastness of the analysis perspectives reveal the breadth and complexity of this case. The only approach capable of reaching a relevant and fruitful proposal, which holds together the plurality of points of view and then the plurality of cultures represented by rights, refers to an idea that celebrates the person first of all as a subject of duties and then as a subject of rights. To fit in a perspective focused on the person and his duties towards humanity it also helps to configure a truly universal right as it is capable of considering the particularities of each people and of every culture.

In the typically Western perspective, where rights are no more than claims of freedom, this reflection refers to a necessary and selfish reconfiguration, expressed through the “legislative” approval in which desires take the place of new rights. Therefore, if it is correct to reconsider the Charter of Rights on the basis of requests coming from society, which is profoundly different from 1948 - the context in which rights were first defined - it is even more essential to opt for an interpretation that examines and safeguards diversity and minorities’ dignity.

In the dichotomy of this approval, between new and old rights never approved in certain areas of the world, the dialogical relationship between the plurality of cultures - which is the true essence of intra-culture - becomes fundamental. Compared to multi-culture and inter-culture, intra-culture involves the person in an authentic relationality that engages ontology. Although similar, and often used as synonyms, the terms refer to three distinct outcomes of the inclusive dialectic among people. Multi-culture recognizes the existence of diversity without being able to value it; in it, reality is a multifaceted mosaic, which is closed within the borders of its pieces. Inter-culture tolerates the different, but shows detachment and diffidence. Intra-culture, on the other hand, includes otherness, establishing a relationship of mutual and sympathetic understanding among people. Intra-culture appreciates pluriformity and cancels distances; it

therefore becomes the most favorable context for dealing with the articulated discourse of human rights.

The Maritainian fellowship - the idea of people from different cultures who follow together the world's ways - characterized by dialogue and mutual solidarity, lends itself to the review of Declaration. In honest and authentic dialogue, people recognize themselves as equal in dignity, undisputed basis of human rights, and positively evaluate differences characterizing existences. In the common path towards the *bonum honestum*, a plurality of cultures is not an obstacle to overcome or an enemy to be defeated, but rather the particular story of every person on his way through the world.

Intra-culture, therefore, focuses on person discourse of human rights. The update requires a reversal of perspective. If a practical agreement was enough in the middle of the last century to guarantee the universality of rights, seventy years later - today - the same pragmatic approach must help to grasp the detail. The universally valid shield is knowledge and cure's particular which is present in every diversity, no matter if it is cultural, religious, racial, related to social status or to the way of living. Looking at particular and diversity, it is possible to avoid misunderstandings among people, enhance solidarity among people and guarantee civil friendship. Attention to detail leads to consider the person in the concreteness of her existence. Equality, in the new reconfiguration of rights, is not secured by universality but by differences: therefore having rights means to receive, from society, the approval of goodness in our life. In this way, the universality of rights is an aim to achieve and not a starting principle or the preliminary condition of validity. A sensitive universalism which cares about differences and particularities as an assumption for the codification of non-absolute but relative rights referred to human needs.

Maritain's anthropology and its immense contribution to the agreement on the foundation of human rights is based on an "open" metaphysics of being. An ontological "construction" which establishes intra-culture in the intrinsic relationship between individuality and personality - following Thomas's *actus essendi*. A relationship that enthusiastically builds a different culture, able to grasp existence's transcendence in the immanence of relationality, of dialogue and of interest to history's *concretum*. The metaphysical basis is grasped in fellowship.

In civil friendship, person contributes to the historical ideal of a common human civilization by relating to otherness with the pre-eminence of his duties over rights. It is usual to consider pre-eminent rights instead of duties, authorizing the continuous claim of freedom's rights to even harm other human being's dignity. The repositioning of person as society center and the rediscovery of its ontological - before axiological and teleological - value,

reconfigures the circular relationship between rights and duties, imparting respect for human dignity to guarantee person's safety. The meeting with the other reveals the responsibilities of each one and invites a reciprocation of good acts, thanks to empathy and relationality, that eventually reaches the *bonum honestum*. The moral obligation deriving from others imposes a responsibility and care's duty towards the person who is often needier and in greater difficulty. Duty does not go with right but precedes it. In the logic of duty's pre-eminence, the ethics of love, responsibility and reciprocity replaces the selfish claim of rights accepting the other as a person.

The pragmatic approach of Maritain is still valid today. Ethics of solidarity, which is innate in duty, refer to ontology and to concrete human action. Ethics and anthropology interpret man in ontological terms and push to "dare" for the best good. Love, in his audacity, is the best form of government. It encourages people to make connections in life, and guarantees peace and solidarity in safeguarding all people's dignity through the logic of the pre-eminence of duties on rights.

May this book provoke new answers to the central question of the human being, re-centering - even in a political moment like this - the person on the strong value of a duty's culture for a lasting and profound peace.

The hope is that after seventy years the Declaration cannot be forgotten, but can lead us back to the fundamental values of being a "person".

Interview to Vittorio Possenti

Luca Di Donato

Question. Professor Possenti, a reflection on human rights accompanies a large part of your academic activity. During your studies, you have alternated between an exploration of foundational metaphysical themes (rooted in classical Greek-Roman and medieval thought), and an in-depth study of the problems of political philosophy and law, remaining all the while attentive to the suggestions of modernity and contemporaneity. How did you develop this dual attention?

Answer. At the beginning, the issue of human rights was there but inactive in me and it only began to emerge in 1977 when I proposed to the publishing house “Vita e Pensiero” (Milan, Italy) to re-edit two works by Maritain. These works had already been printed by the Edizioni di Comunità in the 1950s but had been sold out for a long time. These two works were “*Les Droits de l’homme et la loi naturelle*” (Human rights and natural law) and “*Christianisme et Démocratie*” (Christianity and democracy), both of which date back to 1942. The proposal was accepted and I prepared an introduction for the first volume. Almost simultaneously, there was a strong drive forward on the focus of human rights by both John Paul II and, in general, by a broad international alliance. Subsequently, several meetings took place in Budapest, Klingenthal and Moscow, urged to do so by the Holy See and the countries of the Soviet orbit. I took part in these meetings and they were mainly focused on human rights among Catholic and Marxist scholars: a returning theme of these meetings was religious freedom, soon followed by a discussion on the European common house.

In my writings, practical-political questions about this research are not disjointed by deeper reflection, which I do in order to elaborate an adequate justification of rights and duties. For many years, I have given critical attention to the concept of law in radical legal Positivism (specifically looking at Kelsen’s pure theory of law and practical reason), attempted by Nihilism in its various manifestations, in union with an urgent request of renewing political philosophy after the period of Behaviorism and Positivism. The treatment of Speculative Knowledge (metaphysics, ontology, gnosiology) has been fundamental for me from the beginning, and it remains a primary task

within my work. In metaphysics and religion lies the deep life of the spirit and of the peoples and perhaps it is in an age like ours, which declares itself to be post-metaphysical and anti-metaphysical and which can remain in the grasp of theoretical nihilism, that we need this life more than ever. In recent years, I have argued that the modern philosophical cycle in its antirealist side from Descartes to us, has been concluded. Moreover, the philosophy of being may foster a new beginning of thinking.

Q. According to you, can the theories inherited from classical thought, such as gnosiological and ontological realism, the stability of essences/natures and the concept of natural law, still shed light on the delicate issue of human rights nowadays?

A. I am persuaded of that. In particular, I refer to the natural law as the *Moral Law of Human Nature*, and not to the *natural* law in the sense of laws discovered by physics. It is expressed in *fundamental vital inclinations* and it is learned through a very rough path. It is known for *inclination, sympathy and connaturality*, and it is not primarily mediated through theoretical argumentation, although that anyways remains necessary as a confirmation. Maritain has deepened these aspects in a particularly noteworthy way, paying attention to these forms of knowledge, which have been ignored by Modern Rationalism from Descartes onwards, and, in a certain way, recovered by phenomenological trends.

Knowledge about the implications of natural law inscribed in human beings *will never end*, and for this reason – despite an almost totalitarian opinion that considers it as a dead and useless data, mere remnants of a barbaric and dogmatic age – it is intrinsically equipped with dynamic force and the capability of subverting the status quo (See Antigone, Saint Paul to the Romans, Thomas Aquinas, etc.).

Undoubtedly, this approach encounters considerable difficulties due to the widespread refusal of ontological and universalist thought. Moreover, it is influenced by post-metaphysical ideology, following the idea that metaphysics has been forever destroyed in Europe and that it won't ever be reborn. Despite this beheading of philosophical thought, which has been reduced to ethics and such related subjects, Habermas, one of the major supporters of post-metaphysical ideology, does not dismiss the element of the universal. On the contrary, at some point in his career, he wrote *Die Zukunft der menschlichen Natur: Auf dem Weg zu einer liberalen Eugenik?* (The Future of Human Nature: Are We on the Path to Liberal Eugenics?). With this work, he embarked upon on a very demanding path for a soi-disant post-

metaphysicist, as very few concepts of the history of philosophy are so laden with metaphysics as that of human nature and its universality.

Q. However, the expression “human rights” is a legacy of the modern age. Indeed, the western world only paid attention to this term in 1789, with the “Declaration of the Rights of Man and of the Citizen” at the beginning of French Revolution. What are the philosophical concepts that preceded and accompanied this declaration? Can we find out about their lights and shadows?

A. A historical-analytical examination of the above philosophical concepts and their development would require more than a little dedication. In the first instance, it is possible to approach this topic by examining the primary concepts used by the main modern declarations, without failing to suitably recognize the importance of the American Declaration of Independence of 1776. It starts with the phrase “life, freedom, the pursuit of happiness”, in which the supreme rights are expressed. In 1789, freedom and *equality* were emphasized: “Men are born and remain free and equal in their rights”. These are identified in a group of four rights: freedom, property, safety and resistance to oppression. It is worth emphasizing that the right to life does not appear.

With the Universal Declaration of Human Rights in 1948, article 1 was reformulated in broader terms than what had been previously affirmed in 1789: “All human beings are born free and equal in dignity and rights”. It is broader due to the addition of the primary concept of dignity. Since then it has been used widely. Later on, in article 3 the primary rights are life, freedom, and personal safety. This last right takes the place of “the pursuit of happiness”, as originally included in 1776, while recovering the 1789 aspect of “safety”. This was perhaps due to the slaughters endured during the Second World War, and the consequent demand that mankind be defended from murder, torture, and both psychological and cruel physical treatments. In that situation, it would have seemed almost derisive to refer to the concept of happiness. Before 1776, it is important to remember the writings of J. Locke and the Liberalism that comes from them. According to these theories, the primary natural rights are: life, freedom, civil equality and property. They talked about natural rights, and not human rights, as it will appear later.

Q. The Universal Declaration of Human Rights of 1948 (UDHR) and the subsequent effort to put it into practice, are themselves part of a deeply changed context. What has contemporary thought given to the reflection on human rights?

A. Due to the huge amount of writing on rights, it is a difficult topic to think about it. In a nutshell, I would say that contemporary thought has underlined

two focuses: firstly, the idea that we must consider human rights seriously in order to find unity between them from the beginning, and avoid conflict between them and, secondly, that we must extend the guarantee of human rights to countries that partially adopt them and put them into practice. The first task is very difficult because it is easy to focus on one or more rights at the expense of others, as I think has happened due to an excessive emphasis on freedom rights. The second task, meanwhile, can be achieved by positivizing rights and giving them national and international legal guarantees. It is well understood that rights have become a fundamental focus point of the political agenda.

For over half a century, in western countries we have lived in the age of rights which has caused an inflation of them, that seems unstoppable. This situation has led authors and groups of influence to speak of an age of “insatiable rights” and of silence on duties. Nowadays, it is a common idea that we need to fundamentally rethink the age of rights and the notion of law that can often become a weapon pointed against the other and the weak. In Italy, two books published simultaneously (G. Zagrebelsky, *Diritti per forza*, Einaudi, Torino 2017, and V. Possenti, *Diritti umani. L'età delle pretese*, Rubbettino, Soveria 2017) denounce the elephantiasis of rights. They have benefited a modest part of humanity, where desires and claims continue to grow, often at the expense of the disadvantaged.

Both works consider that the people who hold greater responsibilities are not the declared enemies of the rights, who today are few, but rather those who fulfill positions of power and use the issue of rights to their own personal advantage, are the true enemies. Given global interconnection, this attitude can even cause damage far away from the place where those who exploit the rights in their favour live. No human being with common sense and awareness can think about obtaining his rights – we are talking about this and not of mere claims – without taking into account how he belongs to a society and without evaluating the repercussions that would result from his demand to his rights. Today, it appears necessary to avoid a merely rhetorical discourse on human rights, hoping that the 70th anniversary of the Universal Declaration does not become an empty celebration. It is time to create a new perspective in which the right loses or attenuates its offensive character, makes an alliance with duty, knows how to distinguish between claim and right, and practices the injunction of duty and the penalty that occurs when the duty is not fulfilled. For years, many qualified voices have risen to recall the duties and responsibilities of the man, especially when looking towards

future generations. The documents mentioned in the footnote, which date back to decades ago, should become a constant reference for our reflection.¹

It must be considered that it highly matters if one starts from rights or duties. Starting with rights leads to an emphasis on asserting my needs, undertaking a struggle in which the needs of others are put aside and where the limits of general compatibility are easily overlooked. Starting from duties implies taking into account these limits, seeing one's own needs in relation to those of others, considering the general framework and what it does or does not allow, and questioning whether what I do for the common good is comparable with what I receive. Rights, on their own, make the strong and assertive emerge, even in the presence of legal limits imposed by law. On the contrary, a priori suspicion thrown on duties comes from the fact that they remind us of inconvenient demands and that having duties can be seen as an attack on freedom and individual autonomy. If we consider the duty seriously, it means to adhere to the principle of responsibility, which requests to account for what you do.

Q. Do you consider the integration of Declaration of 1948 necessary and in what sense?

A. The 70th anniversary of the Universal Declaration will be a valid occasion for a general reconsideration. Various signs give us hope that 2018 will not pass in vain. Of course, I do not expect a new declaration, but instead the widespread awareness that in a not so distant future, the integration of the dictate of 1948 will be necessary following two lines: a widening of its duties (almost absent) and a specification regarding ecology, the question of

¹ On the question of duties and responsibilities see the “UNESCO Declaration on the Responsibility of the Present Generations towards Future Generations” (November, 1997), especially the preamble and 12 articles dealing with the needs of future generations, the perpetuation of humanity, the conservation of the earth, the environmental protection, the human genome and the peace. See also the “Universal Declaration of Human Responsibilities”, by the InterAction Council (1997), in the preamble and 19 articles in which, noticing that “Whereas the exclusive insistence on rights can result in conflict, division, and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos”, they asked for a declaration that balances the notions of freedom and responsibility. Finally, it is significant to mention the five articles of “A Bill of Rights for Future Generations”, proposed by Jacques-Yves Cousteau to UNESCO and approved in 1991. A decade ago, I expressed the opinion that a broad integration of the text dated back to 1948 was necessary to introduce the question of responsibilities and duties. Today I reconfirm the assumption at the time.

responsibility towards future generations, the resource depletion, the issue of peace and the nuclear weapons. On all these issues, there is a fundamental imperative prior to any declaration of rights, which can be formulated through the words of H. Jonas: «Act so that the effects of your action are compatible with the permanence of genuine human life» or expressed negatively «Act so that the effects of your actions are not destructive of the future possibility of such life».² The responsibility towards the future is already stated in the preamble of the Universal Declaration: “to save succeeding generations from the scourge of war”, and today refers to the new needs we have just mentioned.

Nowadays, we see extensive demands from great Powers, according to whom their own country and its claims must be placed first in all cases. It is no longer possible to speak in an absolute way about the right to one's lifestyle if this implies – as it does imply – an aggression without responsibility towards the consumption of resources and a sort of enforcement of one's own lifestyle (consumerist lifestyle). Those who reason in this way, seem to ignore the difference between *exclusive* and *inclusive goods* and the corresponding rights and duties. The former goods are necessarily limited because they imply consumption, non-renewability and conflict for their acquisition; the latter goods are unlimited because their use does not involve their consumption or destruction (let's think about the goods of culture, art and spirit for example), meaning that they can be shared indefinitely.³

The term “common goods” means that they belong to everyone and that they must be owned by everyone. Therefore, they are not liable to private exclusive appropriation. Examples of such are air, water, sea, which are energies available for everybody and nobody can make them their own, consume or pollute them at their own will. They are *universal common goods*, which are much more than public goods and much more than private goods. Private goods are for one person only, while public goods are present within a political society and, therefore, belong to many people, while common goods belong to all without distinction.

We no longer think about the future as the “age of coming” under an ideology of progress and human perfectibility. We tend to worry when we think about us, our children and in general about future generations: what

² Jonas, H. (1993). *Das Prinzip Verantwortung*, (The Imperative of Responsibility), Torino: Einaudi, p. 16.

³ On the differences between exclusive and inclusive goods see Possenti, V. (2013). *Il Nuovo Principio Persona (The new principle person)*, Roma: Armando.

will happen? This gives rise to a new feeling of responsibility and duty, that was much weakened in the age of individual rights, and of the affluent and consumerist society. We benefit to the detriment of future generations as we frantically consume resources that are consequently taken away from them. We have to stem this habit and we can and must stop it. We can this by focusing on the consideration of duties and responsibilities as something original, something that has its own coherence and its own independent importance. An obligation tells us *what we must do and what we must not do*, while a right unbound by other elements ends in saying: *I want*. The obligation must enter into state law and international law as a limitation of subjective claims and as an independent source of justice, even where there are no subjects present that can be judged as future generations.

Q. Reading your books, I think two themes are particularly significant in the present day and age: the distinction between right and desire, and the great topic of political unification of the world. Why do right, need and desire not necessarily coincide? What challenges does this distinction pose for the current practice of human rights? Recognizing that sometimes an interest, a need or a desire do not constitute by themselves a right, can cause the suffering of individuals or of the categories that bear that interest, need or desire. How can we safeguard the demands of justice on the one hand, for which not every request just and necessary, and on the other hand, the demand for equal opportunity?

A. I will devote attention to the political unification of the world later. Right, desire and need do not coincide: one can desire everything without needing anything. Moreover, desire can be both legitimate and not: one can desire the misery of others even if this is not a right; one can desire great careers and prosperity without establishing a right, that is something which is necessary due to a subject.

A similar subject can be applied to the so-called “right to have a child” with heterologous fertilization and/or surrogate motherhood, in which the primary rights of some parties are manifestly violated. These rights are the right of the minor to know his origins, the right of the biological mother of not being considered an instrument of production, and the right of the child once more, of not being considered an object that is purchased. Likewise, the duties of the clients to not treat the woman as an instrument and the child as an ordered gift-package are disregarded. Therefore, we are witnessing a commodification of basic human relationships, which are usually unrelated to commodification, and which are instead being managed as mere economic exchange. Literally put, there are no rights over people but over things and

objects; rights can be claimed over persons only if they are seen as goods that can be purchased at a certain price. Where everything is deconsecrated, everything becomes a commodity.

A very sensitive area is abortion. In some countries and legal institutions, there is a high pressure to introduce an unlimited right to abortion, claimed as a universal right of women (under the guise of their complete self-determination), which in turn cancels the foetus' unconditional right to life. It seems clear that, if it does not adopt urgent corrections, this kind of society will only evolve towards an eternal war waged against the weak and towards the triumph of injustice.

The relationship between right and desire is particularly delicate in today's *capitalist and deconsecrated societies* of the West. In these societies there is an extreme solicitation of the desire for material goods, image, success, and evasion, operated by media, advertising and information systems that push beyond every limit, unleash the self and convince people that they are entitled to have everything. What emerges is how lots of people are deeply manipulated nowadays, even if they believe they are autonomous, self-determined and independent. Contemporary global capitalism and the market that corresponds to it with its strong financial extensions, are obscure without enormous solicitation and pressure on the desire it exercises over people. Indeed, the main purpose of them is to generate more money and this reduces everything to commodity.

What forms of good life promote today's societies? Media and advertising, which now pours out of capitalist societies everywhere, does not present icons of good life, but models in which the desire meets consumption. The new secular religion of desire transforms everything you desire in a right. In this trend, one cannot oppose a libertarian and narcissistic instance, which indeed favours it, but rather an ethical and personalistic assumption.

The criteria for equal opportunity is delicate and difficult to define. It can be understood as equality in basic education in the sense that young people receive enough preparation to live in the society and carry out useful work there. Equality of opportunity can also be understood as the absence of barriers (formal or not) that prevent competent people from accessing professions, jobs and high-quality positions. It cannot mean equality in terms of outcome, unless the system is an extremist egalitarianism that aims for the equality of wellness, income or wealth among all people. Among the opportunities of citizens belonging to the same country, are morally justifiable those inequalities, which depend on their decisions and behaviours, provided that an equal set of initial opportunities are assured and, to a lesser extent, those ones which depend on differences in their abilities.

Finally, let us consider the problem of happiness, something about which we care a lot in western countries: is there *a pretension* for the right to happiness? It is necessary to distinguish between the right to happiness and the right to the pursuit of happiness: the former does not exist, it is an empty and deceptive word, while the second represents a legitimate aspiration and can be considered a right. In any case, what meaning can the right to the pursuit of happiness have for a mother who sees her child killed by war, violence, hunger? She will demand justice for the child and for herself. Generally, the oppressed people do not ask for happiness, but for justice.

Q. What are the perspectives, obstacles and critical issues of global political unification after the constitution of the UN?

A. From 1945 onwards, the situation has evolved and international treaties and conventions have covered many dynamics under voluntary agreements. The unification of the world under *one global political authority*, guarantor of peace and human rights, is still far away: the UN is an association of States which reflects mostly the interests of the big States that have no intention to give up their sovereignty. This is particularly evident in the right of veto which the five victor Powers hold⁴. We still essentially live in a condition of anarchy, which inevitably causes a sort of structural disorder for those States who don't act under a common government but are led by the reason of state and the baleful myth of sovereignty. The specific interest of a State become the guiding law of its activity, especially in its relationships with other States and handling of war. It seems unrealistic to hope for a deep reform of the UN in the foreseeable future, in terms of a revolution that legitimizes it as headquarters of a planetary-oriented political authority, which goes beyond the sovereignty of the States including a worldwide police and mandatory jurisdiction. In crucial moments, state sovereignty remains very strong and the events of the last twenty years show that the UN have often approved the interests of Superpowers, or were overrun when it represented an obstacle to their

⁴ See Possenti, V. (2014) *Pace e guerra tra le nazioni. Kant, Maritain, Pacem in terris, (Peace and Wars among Nations. Kant, Maritain, Pacem in Terris)* Roma: Studium. The UN is based on a deal that establishes the perfect equality of all its members as defined in the *Pactum Societatis* by Hobbes. At the same time, it denies the deal by introducing the right of veto, which is exclusive of the five great Powers making some "equals more than others". Sturzo was, among many others, against the right of veto attributed to the five Powers. See Sturzo, L. (1992) *La comunità internazionale e il diritto di Guerra, (The international Community and the Right of War)* Roma-Bari: Laterza.

aims, especially in connection to the issue of preemptive war. The path of multipolarism and similar agreement is, of course, possible but unfortunately not decisive, because an agreement can often be reversed according to the interests of that or the other State (think about the agreement on carbon dioxide emissions).

Q. The future of the UN appears to be strongly connected to the arms race, the nuclear issue and the capacity it will have (or won't have) to intervene effectively. Can the Catholic Church offer a major contribution at this vital point?

A. Undoubtedly. The Church's action has been dynamic and constant in its support of the *suspension* of the arms race, especially nuclear arms, and of *reduction of arms* (Treaty on the Non-Proliferation), which is contemplated in Article 6 of the 1968 Non-Proliferation Treaty, but has almost never been started. On the contrary, after a modest reduction in the 1990s, we are now witnessing a modernization of these weapons which increases their power in the context of increasing tensions in international relations.

Given this situation, a number of States have established a goal, with the ultimate aim of the *abolition of nuclear weapons*. On December 23rd, 2016, the UN General Assembly called an international conference which was brought to a conclusion on 7th July 2017 with the adoption of a legally binding *Treaty on the Ban of Nuclear Weapons*. This will enter into force once it has been ratified by at least 50 States (the Vatican has already ratified it). It also concerns "effective measures relating to the cessation of the nuclear arms race and nuclear disarmament". The "threat of use" of weapons is prohibited, thus gathering many of the demands of international civil society. In this way, the logic of deterrence, i.e., the *balance of terror*, is rejected. To appreciate the moral and political rationality of the teachings of the Church from the end of the Second World War, it is enough to recall certain speeches by the various Popes and the position of the Council. It seems that the primitive objective concerning the prohibition of the nuclear weapons use is to evolve towards the idea that *their possession is morally unacceptable*.

On October 19th, 1953, Pius XII, while greeting the participants of a conference of the International Documentation Office of Military Medicine, declared: "We again expressed the desire that any war not justified by the absolute necessity to defend oneself against a very grave injustice affecting the community, and capable of being prevented only by granting a free hand in international relations to brutality and unscrupulous conduct, should be condemned on an international level. Therefore, defense against any injustice whatever is not sufficient reason for a nation to have recourse to the violent

method of war. When the harm wrought by war is not comparable to that caused by «tolerating injustice» one may be obliged to «suffer injustice»!⁵

Ten years later *Pacem in terris* resumed: «In this age which boasts of its atomic power, it no longer makes sense to maintain that war is a fit instrument with which to repair the violation of justice.» (aetate hac nostra, quae vi atomica gloriatur, alienum est a ratione, bellum iam aptum esse ad violata iura sarcienda, n. 67).

The same topic was resumed immediately after by the Council, which in *Gaudium et Spes* (paragraphs 79-82) deals with the duty to mitigate war, the limits of legitimate defense, total war, the arms race, the absolute condemnation of war and international action to avoid it. It is necessary to point out that the document *does not consider* legitimate defense to be an absolute criterion when the military actions are those of a total war with the use of scientific weapons. It is added: «Any act of war aimed indiscriminately at the destruction of entire cities or of extensive areas along with their population is a crime against God and man himself. It merits unequivocal and unhesitating condemnation» (n. 80).

In several speeches and messages, Pope Francis promoted the idea that the possession of nuclear weapons is itself morally wrong. «The integral nuclear disarmament is both a challenge and a moral imperative. A concrete approach should promote a reflection on an ethic of peace and multilateral cooperative security that goes beyond “fear” and “isolationism” which usually prevail nowadays. Achieving a world without nuclear weapons involves a long-term process, based on the awareness that ‘everything is connected’ within the perspective of an integral ecology (see *Laudato si’*, 117, 138). The common destiny of mankind demands the pragmatic strengthening of dialogue and the building and consolidating of mechanisms of trust and cooperation, capable of creating the conditions for a world without nuclear weapons».⁵

«Recently, for example, in a historic vote at the United Nations, the majority of the members of the international community determined that nuclear weapons are not only immoral, but must also be considered an illegal means of warfare».⁶

⁵ “Message to the UN conference whose aim was a legally binding instrument on the prohibition of nuclear weapons leading to their total elimination”, 23rd March 2017.

⁶ Speech at the conference “Perspectives for a world free from nuclear weapons and for an integral disarmament”, 10th November 2017.”

Q. Another topic you often write about is the relationship between science and philosophy. Can natural and social sciences establish new rights? Is an epistemic relationship possible between the empirical science methods and prescriptive behaviours considered right or proper? Is there a relationship among empirical observation, statistical analysis and the formulation of regularity between phenomena, on the one hand, and on the other the statement of an *ought to be*?

A. This point requires special attention in relation to its critical issues. First of all, it is necessary to practice a sort of lexical and conceptual fast in relation to the philosophical language of modernity. It has used and abused the terms of foundation, especially starting from Kant's "Grundlegung zur Metaphysik der Sitten" (*Foundations of the Metaphysics of Morals*). As a philosophical realist, I believe that human reason for the essential *does not found anything at all*, but rather *recognizes* something (See my *Le ragioni della laicità*, Rubbettino 2007). Even if the difference seems subtle, one thing is to *produce a foundation* of human rights, another is *to look for their justification*, considered already present in reality and in human being.

For this reason, I would prefer to speak about the justification of human rights. In my opinion, their best justification is to be found in *the conception of human being*, seen not only as part of animal and bodily life and not even as a mere crossroad of social relationships (therefore different from Marx's sixth thesis on Feuerbach: "*human essence is the ensemble of social relations*"). This means that a constant human nature exists and it is identified by a specific ontological difference which is the reason why humans differ from animals and have a special ontological and axiological value.

Neither a foundation nor a justification of human rights can originate from social or natural sciences. Social sciences (economics, sociology, and cultural anthropology for example) can provide precious elements for factual contexts and can lead to a reflection on rights but they can't give a justification. A justification requires the transition from the empirical to the ethic and normative element.

Considering the connection between the empirical observation, the statistical analysis and regularity of phenomena on the one hand, and the statement of an *ought to be* on the other, the question is not univocal. Theft, for instance, is empirically rather rare, so the prohibition to steal seems to work. On the other hand, we find strong empirical recurrences throughout the history of a clash among big states or empires in the fight for hegemony, and this has been considered as a natural event for long ages. Anyway, today the moral sense urges so that the misfortune of a war can be avoided. In this case, a moral progress takes place, considering war not as natural fate but as a choice.

Q. In your opinion, in which direction should we work to guarantee a future and a hope for the practice of human rights?

A. We should speak about an ethics of responsibility and future as proposed by H. Jonas. Just to give a meaning to what we have said until now, I would make a list of duties for present and future human beings: I) Don't forget your duties; II) Constantly reconsider the notion of the other and its content; III)⁷ Don't abandon the specific difference between man and animal; IV) Work to spread the "principle person" worldwide since, nowadays, large countries still do not consider it important; V) Set a limit to power and technique, which is a deep ambiguous power; VI) Protect the environment.

An ontological and axiological consideration of human rights should lead to a better integration amongst duties, balancing them and considering the rights of both the strong and the weak. Another sore point is to understand the statute of being another: there are real others who are not recognized as such, so that they get hardly any appropriate social representation. In this, as in other cases, social communication is precious, but it cannot be a one-way communication. This implies that we avoid focusing on the *subjective preferences* of an ego-centered on itself. In the spiritual and ethical-political sphere of the West there is a wide use of preferences, often because there is no clear border between them and the real rights-duties.

Preferences are not able to take up the challenges raised by biotechnologies. Among the various cases, I remember the adoption of cognitive, physical and psychic enhancement techniques which can cause problems not only to the individual "enhanced man" but to the equality of human beings. This can happen when some subjects, groups or communities use this enhancement to dominate over the non-enhanced.

Q. Is there a possibility of cooperation in a divided world? Is a practical agreement on human rights (and duties) possible?

A. The issue can be treated in the light of Maritain's speech at the Unesco International Conference that took place in Mexico City in November 1947, when the Cold War had already begun, and only a few months before the Berlin Blockade (1948). The title of the speech is completely clear: *The Possibilities of Cooperation in a Divided World*. The philosopher was head of

⁷ See Possenti, V. *Specismo, antispecismo e questione della persona* (Speciesism, Anti-speciesism and the matter of the person) soon to be published in *Doctor Communis*.

the French delegation at the time. The divisions at that time were partly different from the ones of today, but Maritain's method still remains valid.

Taking into account the different philosophical justifications of human rights, Maritain believed that they had reached a fine synthesis among the several perspectives and justifications during the preparations of the UN statement. In the extraordinary historical conditions of 1947-48, it reached a fairly broad consensus. He observed: «Although *indispensable*, rational justifications are *powerless* to create agreement among men. They are indispensable because everyone believes instinctively in the truth and wishes to give consent only to what is true and rationally valid. Rational justifications are powerless to create agreement among men, they're basically different and even opposed» because the philosophical traditions they derive from being in conflict with each other⁸. A Christian and a Rationalist will give different justifications for human rights ("And God forbid me from saying that it does not matter to know which of the two is right! It matters essentially"), yet they can agree on a certain number of basic rights, such as those of the 1948 Declaration.

The element on which Maritain's speech is based is the *practical purpose* of UNESCO (and of the UN). This promotes the search for an agreement within diversity, which involves common principles and a common practical thought: «agreement among its members can be spontaneously achieved, not on common speculative notions... but on the affirmation of the same set of convictions concerning action»⁹.

The author refers to the practical ideology and principles of fundamental action implicitly recognized, by free people, believing that there is «a sort of unwritten common law, at the point of practical convergence of extremely different theoretical ideologies and spiritual traditions» (*Ibidem*). They «constitute a kind of essential paper for an effective common action, and that would be very important, for the good and the success of the work of peace...» (p. 39). According to Maritain, this paper is recognizable in the future Universal Declaration: «This is why I believe this new declaration of human rights, to which Unesco contributes, is one of the greatest works undertaken by the UN» (p. 40).

Twenty years later Maritain takes up the speech of 1947 in *Le paysan de la Garonne* (*The Peasant of the Garonne*), quoting its fundamental steps, including

⁸ Maritain, J. (2003). *L'uomo e lo Stato* (*Man and the State*) Genova-Milano, p. 76.

⁹ Maritain, J. (1976). "Possibilità di cooperazione in un mondo diviso", "Il filosofo nella società" (Possibilities of Cooperation in a divided World), (*The Philosopher in the Society*), Brescia: Morcelliana, p. 38. Next quotes are referred to this text.

a list of *basic conditions* which make a practical agreement among men with different world-views possible and fruitful.¹⁰ He adds that the method of practical agreement firstly suggested to *achieve peace*, can and must be applied if necessary, to achieve objectives of great importance for the good of human kind. It is reaffirmed that the oppositions of theoretical nature do not make practical collaborations impossible. Without them, wars of all kinds could break out. He also specifies that a deviation in the opposite direction (that of relativism in which everything is equivalent) would also be dangerous and even more catastrophic, because it would ultimately overshadow truth itself, and neglect or forget our speculative convictions (p. 110).

Seventy years after, I would add that practical agreement on the table of rights has decreased in relation to various factors: the libertarian hermeneutics of rights and the Christian one tend to differentiate; the emergence of new 'real others' that were not conceived at the time; the call to responsibility and duties is still extremely defective almost everywhere; technological and biotechnological developments raise a series of issues that require a primary philosophical study, which the libertarian school cannot offer. Perhaps the agreement on climate and environment will be less difficult, despite the present issues and the reluctance of large countries, while the path towards nuclear disarmament and the recognition that possession of nuclear weapons is *immoral in itself* appears arduous.

¹⁰ Maritain, J. (1969). *Le Paysan de la Garonne* (The Paesant of the Garonne) Brescia: Morcelliana, p. 107.

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any actor omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either

alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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