Human Rights, Justice and Community: Dancing or Clashing Paradigms?

por D. Tom Farer

Conferencia pronunciada el 13 de octubre de 1998

Forum Deusto

© Universidad de Deusto - ISBN 978-84-9830-602-6

© Universidad de Deusto - ISBN 978-84-9830-602-6

Human rights, justice and community*

por D. Tom Farer*

Perhaps the defining feature of the modern mind is its capacity for critical introspection. To paraphrase Descartes: «I doubt everything other than my ability to doubt, therefore I am modern.» But bundled along by the relentless demands of the moving present, we are usually too furiously preoccupied to exercise this capacity. Hence the virtue of that social construct, the anniversary. The act of celebration forces us to pause, to note the passage of time and to reflect on what time has wrought and what it promises.

There is something peculiarly appropriate about a Jesuit university venue for celebrating the adoption fifty years ago of the Universal Declaration on Human Rights. For the Jesuit Order stands tall among the multitudinous groups, both religious and secular, who have struggled over the intervening years to instantiate the words of the Declaration in the quiddity of everyday life. And for their efforts, the brave talented men of this Order have paid a price. In the terrible years of state terror in Latin America, roughly from 1970 to 1985, I traveled there frequently to investigate human rights violations. In my experience, no

---

* Tom Farer es Decano de la Escuela Superior de Estudios Internacionales de la Universidad de Denver en Estados Unidos. Fue anteriormente Presidente de la Comisión Interamericana de Derechos Humanos, así como Rector de la Universidad de Nuevo México. En el gobierno de los Estados Unidos ha sido Consultor especial en el Consejo General del Departamento de Defensa y la Secretaría de Estado para Asuntos Interamericanos. Profesor en varias Universidades como Columbia, Harvard o Princeton, ha sido Senior Fellow del Consejo de Relaciones Exteriores y de la Fundación Carnegie para la Paz Internacional. Ha participado también en operaciones y resoluciones internacionales importantes. En cuanto a autor ha escrito 11 monografías y más de 70 artículos sobre derecho internacional y comparado, política exterior y derechos humanos.

© Universidad de Deusto - ISBN 978-84-9830-602-6

group surpassed and perhaps none equaled the Jesuits in providing profound and objective assessments of the situation in various countries. For their witness on behalf of the defenseless, some of these men paid a mortal price. It is fitting that we should honor their memory by dedicating ourselves to the cause for which they were cut down in the midst of life.

Dedication means action, action informed by critical thought. And that is the virtue of celebrating the anniversary of the Universal Declaration by means of the lectures this fine university has organized. I am sure that the word lecture was intended to denote collective reflection. My task, I believe, is simply to begin the discussion, not to pontificate with a show of omniscience about matters which like most issues of policy and morality resist confident judgment much less certainty. When asked well over a year ago to chose a title, I proposed «Human Rights and Community» because I thought that it suggestively encompassed at least one of the main controversies that have attended the five-decades effort to translate the Declaration's noble claims into practical programs for enhancing liberty and equality worldwide. Indeed, one can arguably summarize many of the controversies in terms of a debate about whether single-minded pursuit of all the rights enumerated in the Declaration could threaten community and hence the material and psychological basis for human happiness and solidarity. That debate includes conflicting views about the interpretation and priority of declared rights.

I think that the original vote on the Declaration foreshadowed two clusters of controversies. You will recall that while no country formally announced its opposition, within the idiom of the United Nations and under the circumstances, the abstentions recorded by Saudi Arabia, South Africa and the core members of the Soviet Bloc evidenced rejection of some parts of the Declaration. The Saudi abstention, and arguably the South African one as well, signaled a claim for the priority of the traditional pre-modern community of faith or culture and kinship in preference to those implicated in a scheme of inalienable individual rights. The Leninist Bloc's abstention, although more ambiguous, could be construed as a claim in favor of a particular vision of social justice, one now lying ruined in the historical dustbin. While that particular vision has lost its once formidable capacity to inspire or dismay, the perception of a certain tension between human rights and justice endures in respectable circles.

Since the topic's complexity resists brevity of analysis, I decided I could on this occasion do little more than acknowledge my concern

© Universidad de Deusto - ISBN 978-84-9830-602-6

and my intention to address it at length at some future point. I have certainly experienced that tension to which I refer, nowhere more clearly than in South Africa as that country began the transition from Afrikaner to majority rule. I happened at that time to visit the country for a series of lectures on human rights. And I discovered —among the students and somewhat older activists who had led the successful struggle, waged in the name of human rights, to smash the carapace of racist minority rule— I discovered a deep suspicion that the call for embedding human rights guarantees in a new constitution was a thinly concealed effort to protect the allocational advantages, the illicitly-secured gains of the white minority. Particularly suspect were the right to property —which appears in the Declaration but not, interestingly enough, in the Covenants— and any non-discrimination guarantees that could possibly be construed to inhibit a strong program for redistributing wealth and opportunity.

The metes and bounds of human rights

In order collectively to grasp the real substance of the supposed conflicts between human rights, on the one hand, and justice and community on the other, and to appreciate their potential for reconciliation, we need a collective understanding of just what it is we mean or ought to mean when we speak in terms of human rights. What John Dunn, the eminent British political theorist has said about democracy, arguably a human right in itself, could be said about human rights as a whole. «Democratic theory, he writes,

> «is the public cant of the modern world; and cant is the verbal medium of hypocrisy; and hypocrisy is the tribute which vice pays to virtue. All states today profess to be democracies because a democracy is what it is virtuous for a state to be.»[1]

«But,» he wryly interrogates us, «what is a democracy?» It is, he goes on to say, little more than a label states apply to themselves which, for a few of the historically literate, invokes a form of governance to be found in no modern state. Governments nevertheless apply it to themselves and their friends, he says, because

---

[1] John Dunn, *Western Political Theory in the Face of the Future*. (Cambridge: Cambridge University Press 1979, 1993 Canto ed.) P. 12.f

© Universidad de Deusto - ISBN 978-84-9830-602-6

virtually all rhetorical competitors as sources of legitimacy have faded from the scene. Divorced by the nature of the modern state and the practical conditions of modern life from its classical form, democracy in contemporary discourse no longer describes something much akin to that very distinctive form of governance attempted for a brief historical moment by a few city-states settled on a marginal fragment of the Eurasian land mass. Instead it is a kind of verbal play dough which can be molded thinly around the exterior of a great diversity of political arrangements. Operationally, then, it has become all but shapeless.

Could the same be said of human rights generally? Did the term once have a substantial, irreducibly distinctive content now grown flaccid from abusive application? Or was it from the outset a collection of propositions flexible enough to conceal the widely varying conceptions of human entitlements that animated its founders? Or, a third possibility, was it simply a hypocritical statement of intentions wildly at odds with the actual practices of its many nominal supporters and generally believed by them to have little potential practical effect? And whatever the conditions of its birth, has the term evolved into a particular set of claims that ineluctably challenge contemporary practices and preferences at least in certain states and societies?

Some international lawyers claim that over the years since its adoption, the Declaration has become part of the corpus of customary international law. I myself am happy to leave that issue to learned and inconclusive contestation in the law journals of the world. What can be said without fear of error is that at the time of its adoption, no state voting in favor imagined itself to be assuming legal commitments. Since the Declaration announced standards sharply at odds with their policies and practice, above all in their vast colonial possessions, a fair number of the developed capitalist democracies had to have seen it as aspirational at best. With respect to countries like Ethiopia with its absolute monarch and Nicaragua with its Somoza family dictatorship lounging behind the facade of periodic elections, the imputation even of distant aspirations seems far fetched. If no country had abstained, one might have concluded from the motley composition of its adherents either that the words of the Declaration were almost infinitely elastic or that the regimes represented at the United Nations saw the whole exercise as an innocuous bow to standards which states or other consequential actors were unlikely ever to take very seriously. Abstention was an implicit repudiation of either conclusion. The Soviet Union, Saudi Arabia, South Africa: All seemed to agree that the Declaration could not be squared with their behavior or policies and that,

© Universidad de Deusto - ISBN 978-84-9830-602-6

if it were endorsed unanimously, it could in some significant degree threaten their ends or means. I believe they were right.

While very few scholars claimed in the decade or so after 1948 that the Declaration either constituted or articulated legal standards, many saw it as a powerful statement of moral norms against which state behavior ought to be measured. They disagreed among themselves, however, on whether this could be said of all the rights enunciated in the Declaration or only those relating to political and civil entitlements as distinguished from economic and social ones. One of the most prominent and lucidly argued briefs in favor of a conception of human rights limited to the political and civil ones was authored by an English theorist called Maurice Cranston. What distinguishes human rights within the universe of ethical and moral discourse, he wrote, is their character as universal, categorical and imperative claims which impose corresponding duties of abstention on governments. Those claims are insensitive to context and immune to competing claims on behalf of community interests or the sum of collective happiness. And they are capable of immediate recognition and enforcement.

Only political and civil rights, Cranston argued, satisfy those defining features. Since the only duty of governments in relation to those rights is to refrain from abusive action, governments can satisfy their duty irregardless of the poverty of their resources and administrative capacities. That is clearly not the case with respect to economic and social rights. However good their intentions might be, many states lack both the resources and the competence to provide, in the words of the Declaration, «protection against unemployment» and «a standard of living adequate for the health and well-being of himself [sic] and of his family, including food, clothing, housing and medical care and the necessary social services.» Since so-called economic and social rights did not generate corollary duties which states could plausible execute, since they in effect demanded the impossible, treating them as rights in the sense of universal and categorical and imperative claims was absurd.

Another distinguishing characteristic of true rights was their infinite availability: Religious freedom or due process for one person did not diminish the pool of religious freedom and due process available for everyone else. In other words, political and civil rights did not present issues of allocation; economic and social claims did, since they were claims concerning scarce social goods. The conceptual moral arguments and concerns voiced by Cranston and others had political

© Universidad de Deusto - ISBN 978-84-9830-602-6

and ideological counterparts among laissez faire conservatives. To them, economic and social rights translated into massive state intervention in the economy which they opposed as a threat to civil liberties and to economic efficiency required precisely in order to enhance economic well being, or so they argued and do so to this day.

Concern about the practical consequences of translating economic and social welfare into the idiom of rights was not limited to political conservatives. Some liberals and social democrats warned against imposing rigidity on government economic policies and underscored the moral dilemma spawned by the need to save, that is to delay consumption, in order to grow. Questions of inter-generational equity, they said, were one of degree and needed to be resolved democratically. Different electorates would make different choices.

Another skeptical note on economic and social rights was sounded by some of the non-governmental organizations that gradually assumed a prominent role in the global human rights effort. Aryeh Neier, the founding director of Human Rights Watch, typified the view that treating the two sets of rights as conceptually indistinguishable and morally equivalent would impede the practical advance of the human rights movement. Being institutionally impoverished, human rights enforcement, they plausibly insisted, depended heavily on shaming, on the perception that violators were global pariahs and thus on an indisputable consensus about the substance of human rights and about their violation in particular cases. Consensus about substance was broadest with respect to political and civil rights, particularly the right to personal security. Moreover, because economic and social rights were by their nature matters of degree and, furthermore, under the terms of the Covenant on Economic, Social and Cultural Rights, governments were obliged to do no more than realize them progressively, there would rarely be a bright line distinction between compliance and non-compliance. So allegations of violation would often be controversial. Worse yet, legitimate controversy in some cases would in a sense infect the whole field of enforcement, making the process generally seem complicated and uncertain. By concentrating on behavior that unambiguously violated the most widely conceded normative restraints on states the movement could be more effective.

Advocates like Neier were equally concerned about governments using their alleged efforts to promote economic and social rights to justify violations of political and civil ones. That concern was hardly theoretical. As human rights advocates gradually breached the first line

© Universidad de Deusto - ISBN 978-84-9830-602-6

of rhetorical defense erected by delinquent regimes —namely that human rights was a purely internal matter at least as far as enforcement was concerned— harsh authoritarian regimes like that of the Iranian Shah, increasingly paraded their often notional campaigns against poverty to justify restrictions on civil and political rights. In short, they claimed that in the case of developing countries, individual rights not infrequently impeded the pursuit of economic and social justice and it, that is justice, enjoyed priority.

Putting aside for the moment the question of whether that claim of impediment, however disingenuous in particular instances, might sometimes have persuasive force, what I want to underscore now is the way the claim sounded by developing non-Marxist countries in the 1970s implicitly conceded the ultimate centrality of civil and political rights once countries managed to catapult themselves into the ranks of the developed. It was a kind of analogue to the Leninist vision of movement from dictatorship of the proletariat with all its necessary austerities to the final blissful stage of pure communism. If that is a fair reading of the claim, it follows that beneath their differences lay a common view of the Declaration which rendered it no less irreconcilable with traditional notions of community than Karl Marx's dreamy view of a world of infinite choice where an individual could at will be a butcher in the morning, a teacher in the afternoon and a surgeon at night. They are irreconcilable because the one thing a traditional community most certainly is not is a place marked by the celebration of individual choice, much less by the view that individuals regardless of their status, enjoy identical rights universally.

Human Rights and Community Solidarity

Communities of the kind that prevailed in most of the world for almost all of human history and continue to be championed particularly by so-called «fundamentalist» groups today are static, generally hierarchical and patrimonial, ideologically homogeneous, intolerant of deviance and rigid in conceptions of loyalty and membership. Rights and obligations are a function of status. Honor means fulfilling the duties attached to your status. The conception of human rights first declared two centuries ago in the American Declaration of Independence and the French revolution's Declaration on the Rights and Duties of the Citizen from which the Universal Declaration stems was a repudiation of the world of rank and status sanctified by faith

© Universidad de Deusto - ISBN 978-84-9830-602-6

and remains so to this day. By no plausible hermeneutical exercise can the traditional community of intolerant faith, of fixed hierarchies and furious anathemas, particularly in matters of sex and gender, and closed cerebral borders be reconciled with, for instance, Article 16's announcement that

> «Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and ... are entitled to equal rights as to marriage, during marriage and at its dissolution ... [and] marriage shall be entered into only with the free and full consent of the intending spouses . . .»

or Article 18's insistence that «Everyone has the right to freedom of ... religion [including] freedom to change his religion or belief, and freedom, either lone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance ... .»

or, as Salmon Rushdie can attest, Article 19's statement:

> «Everyone has the right to freedom of opinion and expression: this right includes freedom to ... impart ... ideas through any media and regardless of frontiers.»

To repeat: the problem lies not simply in the language but in the whole animating conception of the Declaration, namely that the highest good for any organized community is defending the equal liberty of individual men and woman to acquire moral insight and elaborate their unique personalities. Neither the animating vision of the Declaration nor the text itself is a recipe for anomie or a celebration of narcissism. Having enumerated individual rights, it does, after all conclude by affirming everyone's «duties to the community in which alone the free and full development of his personality is possible. Still, in contrast to the traditional community, consecrated to the perpetuation of its unchanging self in the name of God, the Declaration's community exists for the benefit of its members as they pursue their personal visions whether of God or only their idealized self.

Contemporary Critics of a conception of rights enthroning liberal individualism and particularly of its claims to universal moral hegemony come as in the past from both the political left and right. Both see liberal societies as very thin and pointless affairs in contrast to the claimed denseness of the traditional community. By dense they refer, apparently, to the paradigm of a multiplicity of stable ties and

© Universidad de Deusto - ISBN 978-84-9830-602-6

interdependent roles among a fixed group of people. At its core is the extended family with it members interacting in an intricate, unreflective graceful choreography of social and economic life. Everyone from the youngest to the eldest has a place with the locus of authority clearly fixed by tradition which assigns corresponding obligations, and it is a matter of honor to fulfill inherited expectations about one's performance in that place. Thickness consists of these stable interlocking roles reinforced by common ancestry, religion and custom. The order of the family ideally replicates itself in a wider world of hierarchy tempered by mutual obligation. Communitarians invidiously contrast this paradigm with the paradigm and manifest reality of liberal capitalist society where each individual is, from a communitarian perspective, an egoistic point of consciousness with often unconnected relationships radiating out rather in the fashion of spokes protruding from a hub in a broken wheel. Relationships in the home, the workplace, and the playing field will often be unrelated. One's very neighbors may be strangers. Lacking mutual reinforcement and without the density of common faith, custom and blood, relationships are relatively thin, brittle and transient.

Assuming for the moment the rough accuracy of this dichotomy and assuming, furthermore, that society can be steered toward one or the other social model, why prefer the communitarian? Its celebrants offer at least three reasons. One could be described as aesthetic, a distaste even a feeling of moral revulsion in the face of self-absorption, egoism, vanity. T.S. Elliott captured the underlying conviction in his play Murder in the Cathedral when he makes the protagonist realize that *choosing* martyrdom does not honor the Christian faith because it is by definition no less an act of vanity than choosing to win wealth or power. A second reason is that a communitarian society has or would have far fewer social problems such as crime, homelessness and misery in old age. And a third —sounding, paradoxically, in the tones of utilitarianism— is that the individual is happier in a stable environment with clearly-defined roles and opportunities to win respect for being, as it were, ordinary. By contrast, the person-centered society is isolating and stressful and boiling with envy.

A skeptic like myself is bound to interrogate this vision with at least four questions. One is whether in the epochs where society approximated the communitarian model it appears that people were relatively contented and life was rather serene. A second is whether there is evidence of greater happiness or less stress among people living today in traditional families and settled communities. A third is whether public policy offers a realistic means for reconstituting

© Universidad de Deusto - ISBN 978-84-9830-602-6

communitarian society or some functional equivalent. And finally there is the question of whether the communitarians draw an accurate picture of the individual and society in the regime of liberal capitalism.

Since the communitarians' bete noir is the liberal society that developed coincident with the industrial revolution in the sphere of economy and the French and American revolutions in the sphere of politics, presumably any period before then could be deemed representative of the world communitarian's invoke. However, since the generative intellectual forces from which modern liberalism stems include the high Renaissance and the Reformation, so one could argue that the rot of modernism began to set in centuries before the revolutions, in fairness to the communitarian thesis perhaps we should go back further, even to the high Middle Ages. One half of humanity, namely women, certainly had a well settled social position in Europe and it was, of course, one of institutionalized inferiority within both the family and the community irregardless of whether they lived in a village or a town. As noted in Derek Phillips' distinguished study of communitarian thought, «By law, a woman had no share whatever in the government of a town ... Whatever assets a woman brought with her to a marriage, the wife had no legal power to sell, pawn, or transfer any property without her husband's consent. She was under the guardianship of her husband, and could not draw up a contract or take a loan without his consent ... [for in respect to such activities she was classified with the deaf, the dumb and the insane].[2] To assume that the average woman was relatively content, of course we must first assume magnificent indifference to the raw reality of inequality.

What of their spouses, the legal superiors. What evidence do we have of their sense of well being, of relative serenity. Professor Ted Gurr of Princeton, a leading American authority on the sources and dimensions of internal conflicted, has pioneered in bringing quantitative data to bear on the subject. He has compared data for homicides in England between 1250 and 1800. «These data reveal that the homicide rate in the thirteenth century was more than twice as high as it was in the sixteenth and early seventeenth centuries, and that the latter rate was five times higher than it is today. Gurr concludes that "these early estimates of homicide rates ... sketch a society in which ... interpersonal violence was a recurring fact of rural and urban life."»

---

[2] Derek Phillips, *Looking Backward* (Princeton: Princeton University Press, 1993) p. 109.

© Universidad de Deusto - ISBN 978-84-9830-602-6

England was by no means peculiar in this respect. «In twelfth and thirteenth-century Siena, for instance, popular disturbances and riots led to a strict night curfew and to the creation of a large police force, with about one law-enforcement officer for every 145 inhabitants.»

Conflict was a common feature of mediaeval life not only between men, but also between families and between peasants and their lords. Referring to the village of Montaillou during this same period, the great French historian LeRoy Ladurie has written that it was characterized by unending conflict. Loyalty was to house rather than village and thus «militated against the growth of a civic sense of community.» And if we take Zola's La Terre as a faithful reflection of 19th Century peasant society, micro-loyalties, passionate selfishness and hideous violence still marked traditional communities hundreds of years later. With respect to them, the worst we can say of the effect of the French Revolution was that it had none.

The second question concerns the hypothesized superior happiness and reduced stress and alienation of people living today in traditional communal settings. Happily this is not a matter concerning which we are reduced to mere speculation informed by dogma. Two American scholars, Alex Inkeles and David Smith, responding to the widespread belief among critics of industrialization that it disrupts basic social ties, breaks down social controls and therefore produces a train of personal disorientation, confusion and uncertainty, initiated a study of 6,000 men in six developing countries (Argentina, Chile, India, Israel Nigeria and Bangladesh). They tested the attitudes of men who had achieved steady wage employment in urban areas with counterparts in more rural areas and they found that in general the former «felt more personally efficacious and less mentally distraught [and] were less alienated, anomic, and hostile to other groups in their society.»

> «The men who were classified by us as more modern were less rather than more prone to believe that possessions insure personal happiness; they were about as likely as the more traditional to urge that old people be treated with respect and consideration; they were as much inclined as anyone else to give support to a relative in need.»

One study is hardly decisive on this point. But there are a priori reasons to find it persuasive. We are, after all, comparing two sets of people who live in societies already invested by the modern world's system of market exchange and by its ideas and products. Urban employment in the modern sector provides a village man with resources

© Universidad de Deusto - ISBN 978-84-9830-602-6

to support his kin, to sustain religious rituals, in short as a matter of choice to sustain his cultural roots. And it liberates him from the hierarchic authority of traditional society. Unfortunately, in many countries this fully-employed man is exceptional. But the terrible trauma of those who have been urbanized without being absorbed into the modern sector is a function of economic failure not the plague of modernity.

The third question is hardly more than rhetorical. I think it is not entirely melodramatic to recall the recent effort of the Khmer Rouge to restore traditional society. Despite what might fairly be deemed extreme measures and high costs, namely the extermination of a substantial part of the national population, and working within a society that was still one of the more traditional in Asia, at least in its rural areas, they failed, although I suppose one could impute failure more to the Vietnamese intervention than to the intractable nature of the problem. Yet is it not intractable? Traditional society, like any other one, had both a structure of production and a corresponding world view. Both would probably have to change. Pol Pot appreciated that and set about logically dealing with both by trying to restore an imagined anthill life of exclusively rural and primitive cultivation and by trying as well to liquidate the literate on the assumption that they were bearers of the cultural plague of modernity. He assumed that with the plague agents removed and primitive cultivation restored, ideas would prove to be a dependent variable, that is they would acquire a form and content compatible with an isolated rural society.

One reason it is fair to invoke this extreme case is that it so nicely illustrates the policy logic and the problematique of right-wing communitarian nostalgia. The relative harmony and serenity alleged to prevail within its paradigmatic community depends, it seems to me, on its inhabitants being suffused with a sense of the naturalness, the sheer inevitability of its structures and customs. How can that sense prevail short of mass amnesia once people have witnessed other forms of social organization? Claude Levi-Strauss once compared the traditional Brazilian indian societies he studied as an anthropologist to a block of ice set in the middle of the road on a warm day. The tribe's cosmology, its totalizing explanation of the known world, the source of its sense of identity, of its coherence, could not explain the ways and views of the intruders from another world. They came like the sun and what they melted could not be restored.

Of course one might argue that there is a huge qualitative difference between the cosmology of isolated indigenous people and

© Universidad de Deusto - ISBN 978-84-9830-602-6

communities participating in universal faiths like Islam and Christianity, only the former being by their nature and origins too inelastic and particularistic to encompass the rational processes and discoveries of science. But religious belief is only one facet of the communitarian paradigm. Belief can, of course, be reconciled with contemporary science and technology, indeed it has been: The United States is both the highest tech country in its practices and, among the Group of Seven, by far the most traditional in religion with some three quarters of the population professing belief in a God actively present in everyday life. But the communitarian community is more than a locus of faith; it is a form of social organization constituted by traditional ideas about gender roles and, more generally, hierarchy. And neither the organization nor the ideas fit with the opportunities and demands of a post- industrial, consumer-oriented society with its flexible labor markets, relentless innovation, competition for talent, and hyper-rewards for individual creativity. To impose ideas and relationships at odds with the economic structure, if it can be done at all, must be done through a high degree of coercion in part because it is struggling against the zeitgeist, in part because it will inhibit productivity, and in part because, unless all societies make a simultaneous move toward communitarianism, the porosity of borders and the global reach of media offer a ready means of exit for dissidents, among them many of the most innovative characters, and of ingress for dissident ideas. Efforts to close the borders of the community will further inhibit productivity and complicate international relations at exactly the moment in world history where the need for institutionalized transnational cooperation is increasing exponentially.

Before contemplating that course, a rational person would, among other things, assess the accuracy of the communitarian's image of the liberal community. It is filled with pathology, conflict, bitterness and anomie. The aged decay in isolation; cooperation is minimal; civic spirit is in ruins and egotism in riotous display. In my remarks about question two, I hopefully raised some doubt about the adequacy of this description applied to developing societies. How does it fit the most developed?

Rhoda Edwards, author of *Human Rights and the Search for Community*, argues that modernized societies are not bereft of community but it is community of a different sort, «an impersonal one [in the sense that it is not] restricted to known members who have thick social connections with each other. The modern community is a community of obligation to strangers as well as friends ... The citizen

© Universidad de Deusto - ISBN 978-84-9830-602-6

joins community groups composed of people with whom she has little or not connections: She forms new associations designed to assist complete strangers ... raises funds for victims of illnesses she may never have encountered ... builds battered women's shelters even though she has never been battered; she helps refugees from places she has never visited find lawyers, housing and schools.» At the same time, traditional kinship relationships remain strong despite the fact that the market economy with its ramifying division of labor

require a degree of geographic mobility unknown to traditional society. Surveys show that relatives are endowed with «the deepest intensity and heaviest weight of all American personal relations» and that urban as well as rural Americans maintain «high levels of contact with relatives living near and far. Despite frequent allegations to the contrary, concern for children by their parents remains very high. The so-called latch-key child who returns at the end of the school day to an empty house represents a tiny fraction of the whole even in the case of mothers who work full time. In short, the pathologies of modern life are relentlessly exaggerated by the right-wing enemies of liberal, cosmopolitan society. Divorce is common, to be sure. But one reason is the legitimation and facilitation of exit for wives subject to severe abuse, an exit which under the circumstances is likely to enhance the welfare of children. Another is the increase in longevity. Today, for the first time in human history, couples are likely to live for twenty to thirty years after their children have become adults. In those cases, freedom of choice enhances the prospects of happiness without jeopardizing the preparation of children for adult life.

In developed societies, high rates of social pathology mark groups that have consistently experienced social and economic marginality as a result of their long exclusion from the majority community. In other words, the pathologies attributed by right-wing traditionalists to the ideology and practice of liberal cosmopolitans actually stem from the traditional community's instinct to guard its self-perceived homogeneity, stem, that is, from its belligerent exclusiveness. In the United States, the walls of exclusion for African-Americans were breached in the name of liberal values. But this occurred as the country left the industrial and entered the information age. Hence they gained full access to society at the very time that it was placing a premium on skills from which many had been excluded by virtue of their perceived otherness.

I do not want to paint an Elysian picture of contemporary society in developed countries. The movement from industrial to information age

© Universidad de Deusto - ISBN 978-84-9830-602-6

is also a movement to the age of the consumer. With basic needs satisfied for most citizens of developed countries, producers are forced to induce needs, to generate unquenchable appetites. Whether the sense of diffuse social obligation and civic responsibility that has constituted community in the modern liberal state can endure the subtle relentless stimulation of the appetites, the call to hedonistic gratification, remains to be seen. Marx claimed that it was the fate of capitalism to commodify all human relationships. Up to now liberal society has eluded his prediction. Time will tell whether he was simply premature. To this point, the case for pessimism is not compelling. And one of the most powerful replications for those who morosely make it is the extraordinary ramification of human rights organizations and the emergence of human rights as a permanent item on the agenda of international security. If society were engorged with hedonistic appetites and deadened to cries for help, these things could not have occurred.

When we turn back to less economically advanced countries, the case for pessimism is very much stronger in many instances, despite my remarks above about the relative psychological well-being of men absorbed into the modern economy. The source of pessimism, however, is not the impact of liberal values but the large-scale failure of countries particularly in Africa and the Middle East to absorb more than a small fraction of their work force. A country like Algeria, where half the population is under the age of twenty-five, offers secure wage employment to perhaps one in ten of new labor-force entrants. The desperate outlook in these countries and associated horrific violence may be seen to raise questions of justice which I must address on another occasion. On this one, I want only to conclude by considering the critique of liberal society that descends from the self-defined left wing of the ideological spectrum. In the short time available, I can hardly even begin to do it full justice and I therefore offer only the most schematic description and comment in the hope that I so doing I fulfill the lecturer's role of structuring and stimulating discussion rather than issuing Pronunciamentos.

The Leftist critique of liberal society

Grosso modo, the Leftist critique has three themes. One, owing its paternity to Foucault, indicts liberalism for constitutional betrayal of its liberating promises. In fact, these critics allege, it conceals behind its

© Universidad de Deusto - ISBN 978-84-9830-602-6

gleaming facade great pockets of repression that have been exposed by heroic essays in social archeology. It subtly represses, for instance, through its definitions of deviance and, in the case of women and people of color, through its insistent distinction between the public and the private, a distinction that leaves in place established systems of subordination and violence. In other words, the liberal community is considerably less attractive by its very nature than its devotees ever admit.

For me, at least, this critique rests on an inappropriately narrow conception of the liberal paradigm as it has evolved from its origins as a critique of the pre-modern order of caste and class. Even at the outset of its bid for ideological hegemony, liberalism was about equality and fraternity as well as liberty. It was not simply a recipe for laissez faire, for leaving alone the pre-modern world's vast residue of inequity. As for the concrete betrayals by specific liberal capitalist states of their legitimating ideology, they are just that, betrayals, as distinguished from morbidity embedded in their very nature. Admittedly that conclusion may simply reveal my own failure to achieve an external critical perspective on liberalism. So be it.

The second theme, one particularly connected to the issue of community, constitutes an assault on the epistemology and psychology of liberalism and its claims to universal superiority as an organizing cluster of principles for communal life. Actually, as the Italian scholar, Alessandro Ferrara's notes, the assault falls on liberalism's very roots in the conception of rationality and validity associated with the Enlightenment. The assault springs from what Ferrara refers to as «the discovery of the contextuality of knowledge and normativity. Such discovery can be described as the realization that the truth of propositions or the rightness of norms can be assessed only against the background of a shared conceptual scheme and, moreover, that there exists **an irreducible plurality** of conceptual schemes.» It follows, the attacking forces announce, that the liberal claim «to generate norms, rules, institutions and principles that are «neutral» with respect to values, culture or historical situation—i.e., ones that any actor, no matter how situated, must accept as valid,» is meretricious.

Operating as a discursive strategy in the rarified circles of high scholarship, contextualism coincides, paradoxically, with two more mundane campaigns. One, on the domestic political left, often summarized as «multiculturalism», is designed to defeat the hitherto regnant policies and practices of cultural integration in the liberal

© Universidad de Deusto - ISBN 978-84-9830-602-6

capitalist democracies. The other, on the global political right, is designed to resist pressure to conform to universal human rights norms particularly those relating to freedom of speech, religious freedom and democratic government. Precisely because contextualism offers aid and comfort, however esoteric, to publicists for Islamic fundamentalism and Asian Values, scholars who accept its basic insights but at the same time are imbued with egalitatian and liberationist instincts, such as Jurgen Habermas, have attempted to find transcultural ways of justifying the open society which are at the same time consistent with the contextualist thesis that the identity of a person as a political and social being is created within a community of language, meanings and practices. The effort continues amidst disagreement about its success within its own conceptual universe.

The contextualists—most of whom might be described as communitarians of the left—assume that globally there continue to be many diverse communities, many language games, as Witgenstein would have put it. This has been the historical reality, but is that reality changing in the face of the unprecedented globalization of communication and the austere homogenizing demands of a globally integrated system of production? Is it not possible that a global liberal intersubjective community of value and meaning is in the process of formation, linking all those who are able to integrate into the global economy in liberating ways? As Bill Gates is reputed to have told authoritarian rulers in southeast Asia competing for investment by Microsoft and eager to become themselves centers for technological innovation, you cannot compete in the information age if you are determined to restrict the flow of information and to inhibit the inquiring mind. Alongside the dual economies of developing countries there may be growing dual communities, one of which is cosmopolitan. Perhaps, as Samuel Huntington has argued, the great political conflicts of the next century will be «civilizational» in character. If so, I believe that the lines of political fracture will not run primarily between clusters of states like those of Asia and those of the old North Atlantic civilization, but rather within them.

The task of each national state is to heal its internal divisions by fostering general participation in the wealth and opportunity generated by the extraordinary technical enhancement of productive capacity. In order to accomplish that task, however, all states will have to learn better the habits of cooperation among themselves. A global economy we have; a global community we must seek.

© Universidad de Deusto - ISBN 978-84-9830-602-6

Resumen

Tras hacer un breve repaso a las circunstacias que rodearon a la aprobación de la Declaración Universal de Derechos Humanos en 1948, el profesor Tom Farer trata de terciar en el debate actual respecto a los derechos humanos que se está produciendo entre dos doctrinas filosóficas y políticas como son el liberalismo y el comunitarismo. Mientras que el liberalismo pone el acento fundamentalmente en el individuo, el comunitarismo, en cambio, otorga una mayor importancia a la pertenencia de los individuos a una comunidad concreta, que es la que le otorga sentido y le dota de una determinada identidad.

Desde sus comienzos, la Declaración Universal se enfrentó a problemas importantes respecto de su valor jurídico. Además de constatar que estamos ante una resolución de la Asamblea General de las Naciones Unidas, diferentes Estados cuestionaron desde el principio su pretendido valor jurídico, sobre todo en lo concerniente a los derechos económicos, sociales y culturales. Estos derechos, defendidos primordialmente por los Estados del bloque soviético, están condicionados por los recursos de que disponga cada Estado en cada momento, por lo que pueden ser caracterizados por las notas de gradualidad y progresividad. Incluso hoy en día se puede cuestionar la plena juridicidad de estos derechos, derechos que, en la mayor parte de las ocasiones, no son defendibles ante los tribunales.

En cuanto a la abstención de algún país respecto de la Declaración, en particular la de Arabia Saudí, responde a una concepción tradicional y premoderna de la comunidad y de los derechos humanos, frente a la concepción liberal individualista de los mismos. No obstante, aunque con algunos matices como puede ser la referencia del artículo 29 de la Declaración a los deberes que tienen el ser humano frente a la comunidad «puesto que sólo en ella puede desarrollar libre y plenamente su personalidad», la orientación general de la Declaración Universal se inclina hacia el individualismo liberal, teoría que es compartida por Tom Farer. Para fundamentar su preferencia por una concepción liberal de los derechos humanos, el autor va refutando diferentes argumentos aducidos por los defensores del comunitarismo. En primer lugar, Tom Farer no cree que en las sociedades estructuradas en torno a diferentes comunidades los individuos estuviesen más contentos y fueran más felices. En segundo lugar, en un mundo presidido por la globalización, no ve factible la reconstrucción de las sociedades comunitarias, como pretenden los comunitaristas. Por último, señala que el dibujo del indivi-

© Universidad de Deusto - ISBN 978-84-9830-602-6

duo y de la sociedad en un régimen capitalista liberal que llevan a cabo los comunitaristas no es adecuado y les hace llegar a diagnósticos equivocados. Por lo tanto, opta dedicidamente por una interpretación liberal de los derechos humanos en las sociedades actuales, al menos en las desarrolladas.

© Universidad de Deusto - ISBN 978-84-9830-602-6

© Universidad de Deusto - ISBN 978-84-9830-602-6