

# Philosophy and Human Rights

Enrico Berti

Università degli Studi di Padova  
Dipartimento di Filosofia

Reception date: 07-09-2010  
Acceptation date: 22-02-2011

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## Abstract.

It is common knowledge that modern political societies, and to even greater extent contemporary ones, are characterized by pluralism. The term is used to describe situations which contain within the same society individuals and groups associated by various religions, various cultures, and various ethical systems. This is the consequence of several historical phenomena of widespread influence, which began in modern epoch and has intensified in the contemporary era, such as secularization, emigration, the establishment of democratic regimes in an even-larger number of states. The thesis defended here is that the function of what Aristotle called the *endoxa* today can be performed by human rights, that is by the statements contained in the great declarations of rights found in national constitutional documents and in charters of the great international organizations, such as the United Nations, the Council of Europe, the Organization of African Unity, the Organization of the Islamic Conference, etc.

**Key Words:** Human Rights, Philosophy of Human Rights, *Endoxa*, Aristotle.

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## Resumen. *Filosofía y Derechos Humanos.*

Es sabido que las sociedades políticas modernas, así como a las contemporáneas aún en mayor medida, se caracterizan por el pluralismo. El término se utiliza para describir situaciones que contienen dentro de los individuos de una misma sociedad y grupos asociados de diversas religiones, culturas diferentes y diversos sistemas éticos. Esta es la consecuencia de varios fenómenos históricos de gran influencia, que se iniciaron en la época moderna y se ha intensificado en la era contemporánea, como la secularización, la emigración, el establecimiento de regímenes democráticos en un número aún mayor de estados. La tesis defendida aquí es que la función de lo que Aristóteles llamaba la *endoxa* hoy puede ser llevada cabo por los derechos humanos, es decir por las declaraciones contenidas en las grandes declaraciones de derechos contenidas en los documentos de constitución y en los estatutos de las grandes organizaciones internacionales, como la de las Naciones Unidas, el Consejo de Europa, la Organización de la Unidad Africana, la Organización de la Conferencia Islámica, etc.

**Palabras clave:** Derechos Humanos, Filosofía de los Derechos Humanos, *Endoxa*, Aristóteles.

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## 1. Contemporary Pluralism

It is common knowledge that modern political societies, and to even greater extent contemporary ones, are characterized by pluralism. The term is used to describe situations which contain within the same society individuals and groups associated by various religions, various cultures, and various ethical systems. This is the consequence of several historical phenomena of widespread influence, which began in modern epoch and has intensified in the contemporary era, such as secularization, emigration, the establishment of democratic regimes in an even-larger number of states. Secularization, understood as the emancipation of ever larger numbers of spheres of human activity (ethics, politics, economics, even the arts and culture generally) from the influence of religion, in particular in Europe from the influence of the Christian religion, is a phenomenon that began at the beginning of the modern era, has developed rapidly and is now nearly complete. It has made Christian ethics lose a large part of its past influence and has not produced an alternative, universally shared ethical system.

Emigration, because of economic factors, the most important aspect of which today is what is known as globalization, that is the interdependence of the economy of every single country of the planet on those of all the others, has induced a large part of the world's population to move from one society to another, losing some of their national, religious, and cultural connotations, while at the same time injecting entirely new ways of life and ways of thinking into the societies into which they have moved and taken their place alongside those who were already there. For example, the emigration of millions of people from North Africa and the Near East, generally Muslim, into the originally Christian Europe has led both Christian and Muslim practices, customs, and moral behaviour to live alongside one another in numerous European cities. Finally, the establishment of democratic regimes in Europe, North and South America, and in parts of Africa and Asia has required respect for freedom of religion, conscience, and behaviour for individuals and groups inspired by different religions and different moral ideas, creating in this way extremely diversified and heterogeneous ethical points of view.

In the meanwhile, in modern and contemporary societies, the need for a public ethic is ever more pressing, that is an ethic on which legislative norms and rules can be based, so as to provide not only for a civil life among individuals and groups, but also able to deal with problems raised by scientific and technological progress, such as the problems of bioethics, environmental ethics, and economic ethics. Since all legislation requires the consensus of the majority, and its effectiveness is greatly influenced by the consensus of the minority, this makes it necessary to identify a general foundation of values common to the largest number of individuals and groups possible of those that form the political society. Satisfying this need clearly contrasts with the religious, cultural, and ideological pluralism

that characterizes contemporary society, but it cannot be put off indefinitely and so calls for the prompt discovery of a set of common values.

## 2. Human Rights and the Contemporary Debate on Ethics

The problem that I would like to discuss is: is it possible today to identify a truly universalistic ethic, that is one not tied to a particular community or tradition, but shared by all, and at the same time not formalistic, that is capable of promoting defined values? The thesis that I propose is that this is the ethic implicit in what are called “human rights”, which clearly presuppose a defined conception of man, according to which every human being possesses defined rights, that is a defined content, which must be recognized, and the opportunity to realize this content must be guaranteed. It is a universalistic ethic, because – as we will see shortly – *de facto* it is shared by all, despite membership in a particular community, culture or civilization. But it is also a non formalistic ethics, because at its basis there is an idea of “common good”, understood as the full realization, for every human being, of all the abilities that he/she effectively possesses, that is a “fulfilment” or, what has been called a “flourishing life”<sup>1</sup>.

Anyway before addressing the topic of human rights, allow me to make a brief methodological digression. In the renewed interest in ethics that has characterized the philosophical culture of the second half of the twentieth century, produced, on the one hand, by evaluative and directional incapacity of the social sciences, on the other, by the emergence of always new moral problems as a consequence of scientific and technological development, one of the authors who has attracted the most attention among the moral philosophers is, as is well-known, Aristotle, thanks to its attempt to build a “practical philosophy”, endowed with this own rationality and at the same time capable of directing not only the praxis of the individual but also of society. In Aristotelian practical philosophy, which for various reasons I hold is no longer tenable, there is a methodological aspect that merits attention for the problem described above, that is the problem of establishing the foundations of a sufficiently widely shared public ethics.

In *Nichomachean Ethics*, in fact, the Greek philosopher describes a method that is convenient to adopt for solving the problems connected to the evaluation of virtues and vices. It consists first of all in the exposition of the most important opinions connected to each problem (Aristotle says *phainomena*, meaning by this term that which is considered to be true by various individuals or groups, that is “views”); then in the development of the “apories”, that is the deduction of the consequences that derive from the opposed solutions

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1 Exponents of this conception today are the philosopher Martha Nussbaum, and the economist Amartya Sen, from whom the quotations come. Cfr: A. K. Sen, *On Ethics and Economics*, Blackwell, Oxford 1988; M.C. Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy*, Cambridge University Press, Cambridge 1986.

of a particular problem; finally in the adoption of those opinions that are demonstrated to be able not only to resolve all the connected difficulties to their consequences, but also and more importantly “to allow to survive” the *endoxa*, either in their entirety, or at least the greater and most important part of them. This method, according to Aristotle, can furnish a type of demonstration, certainly not so rigorous as scientific demonstration, but in any case sufficient for the needs of ethics<sup>2</sup>.

The *endoxa* are defined by Aristotle himself in the *Topics* as opinions shared (or sharable) by all, or by the majority of men, or by those who are competent, and among these either by all or the majority, or by the most renowned. These *endoxa*, that we will call *endoxical* (as opposed to paradoxical) views, that is commonly held in public opinion (*en doxa*) – always according to Aristotle –, function as premises for dialectic syllogisms, that is for those argumentations that are not properly demonstrative, in the scientific meaning of the term, because they do not begin with necessarily true premises, nor are “eristic” ones, that is those assumed merely in the spirit of competition, to prevail at all costs in a discussion, even by trickery. Dialectic arguments aim to refute, or to establish a thesis, by using fair, logically corrected means, beginning from premises shared by the interlocutor and thus producing conclusions the interlocutor will hold and share equally<sup>3</sup>.

### 3. Human Rights as Modern Endoxa

My thesis is that the function of what Aristotle called the *endoxa* today can be performed by human rights, that is by the statements contained in the great declarations of rights found in national constitutional documents and in charters of the great international organizations, such as the United Nations, the Council of Europe, the Organization of African Unity, the Organization of the Islamic Conference, etc. In regard to the constitutional documents of the various states, there can be no doubt, having come into force, that they have been approved and so have received the consensus of the majority of the citizens or of their representatives and, in principle, must be accepted by all their citizens. But also international declarations, especially the Universal Declaration of the Human Rights approved by the General Assembly of the United Nations in 1948, are expression of a broad consensus. Even if in fact it is true that there were fewer member-states of the United Nations in 1948 than there are today, and if some (actually Saudi Arabia) have disassociated themselves, all the other states that have joined the organization since (today they are more than a hundred) have implicitly made the Declaration their own, and the states that may have had reservations about them for religious and cultural reasons have progressively moved closer to it.

<sup>2</sup> Aristotle, *Eth. Nic.* VII 1, 1145 b 5-7.

<sup>3</sup> Aristotle, *Top.* I 1, 100 a 1-b 25.

I am referring in particular to several documents, such as the Universal Islamic Declaration of the Human Rights approved in 1981 by the Islamic Council for Europe, the Declaration of the Human Rights in Islam, approved by the Islamic Conference in 1990, as well as the African Charter of Human and People's Rights, approved in 1981 in Nairobi by the Organization of African Unity. The Islamic declarations, though founded on the divine law (the *Shari'a*), in fact, incorporate the fundamental rights of the United Nations declaration, that is the right to personal safety, to freedom and to a dignified life; while the African declaration adds the rights of peoples to those of individuals, which are perfectly compatible with the contents of the Universal Declaration of the United Nations.

For these reasons, I think that today the declarations of human rights are shared, if not by all, certainly by the majority of men, and by the competent, who are the representatives of the citizens and the states, that is the politicians, or at least by the majority of them and the most renowned. Thus they correspond perfectly to the definition that Aristotle gave of the *endoxa*. Nor does oft heard objection or argument hold against them, that is the human rights, even if publicly proclaimed by all, are too often trampled by states which are members of the United Nations or by individual politicians, such as dictators, who govern within particular states. Unfortunately, it is true that human rights are still far from being respected for many individuals and even peoples throughout the world. The testimony of this fact by humanitarians organizations, like Amnesty International, sometimes is shocking.

In any case when human rights are violated, this is denied, or it is done covertly; the perpetrators do not attempt to publicly justify such violations, rather they do it and energetically reject accusations that they do it. In all this obviously there is hypocrisy, but there is also a recognition that one cannot publicly take a position against human rights, because a similar position would be unpopular, it would have a price in consensus and definitively weaken its perpetrator. So even those who violate human rights recognize that they are widely shared and supported. Such recognitions undoubtedly confers them with a prestige that certainly opposition to or divergence from does not have. For these reasons, it can be said that human rights, even if more in theory than in practices, more officially than in daily action, are widely shared and so function as modern *endoxa*.

#### 4. Human Rights and Public Ethics

If what was said above is true, then it is possible to use human rights as premises from which one can argue in order to build the fundamental rules of public ethics. Naturally one must account, as Aristotle suggests, for widely varying opinion, those that derive from various religions, cultures, ideologies; to determine their consequences, to evaluate their internal contradictions, and especially to check if they are compatible or not with all the human rights, or at least with the most important ones, such as the right to life, equality, and freedom. The rules that are able to satisfy these requirements can furnish the basis for

draft legislation designed to secure consensus, and so to be translated into law, while those that are unable to secure consensus can be abandoned. In this way a *corpus* of rules shared, or sharable, by all can be assembled.

A thesis of this type has been sustained by John Rawls in his important book, *Political Liberalism*, in which he has tried to find a happy median among the various ethical concepts that characterize pluralistic societies in what has been termed “overlapping consensus”, that is that part of values, or norms, that are common to all the various conceptions, even if they do not fully exhaust them, and so they allow other parts to survive that characterize more specifically and particularly various groups<sup>4</sup>. Naturally it is still possible that each of the conceptions is justified in different ways, for different reasons, the values that overlap with those of the other conceptions. This was already noted by Jacques Maritain in 1948 discussing the Universal Declaration of Human Rights, when he observed that one does not need to ask “why” individual states adhered to the declaration, because these “reasons why” would be varied and even contradictory; instead one needs to be satisfied with the “what”, that is with the fact that certain fundamental rights were points of convergence<sup>5</sup>.

If the function of human rights is to furnish the premises for arguments that lead to a public ethic, and thus to a legislation, which is able to obtain consensus, it is useless to ask “why”. This question is certainly of interest to philosophers, who are always looking for the reasons and the grounds of human rights, but it is completely irrelevant to practical ends, which are the only important ones from not only a political and legislative, but also an ethical point of view. Legislative assemblies, indeed, are not composed of philosophers, nor are the populations that they represent composed only of philosophers. The important thing is the dialectical use, that is the argumentation, that uses the human rights to convince others of the goodness of certain solutions. For this end there is no need to go back to the foundations. We can be satisfied by reference to shared premises, that is the “greatest common denominator” that forms the basis of the overlapping consensus, from which one can begin to deduce, or to argue, or refute the proposed solutions, leaving it to the philosophers to look for their foundations.

This is not to say that human rights will not prove themselves to be useful for the latter end, that is a philosophic use of human rights may be possible. Instead of going to their foundations, that is asking directly what human rights are based on, whether they are based on divine law, or a presumed natural law, or on the culture of some peoples, on history, etc., once again it is convenient to begin from human rights and proceed upwards, that is backwards, trying to discover what they imply, or what in reality they hide. In this way one will be able to, if not on a whole anthropology, at least to shed light on some great values implicit in the principal human rights, which is certainly of interest from a general philosophical point of view.

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4 J. Rawls, *Political Liberalism*, Columbia University Press, New York 1993.

5 J. Maritain, *Man and the State*, The University of Chicago Press, Chicago 1951.

Let's cite a few examples. The equality invoked by all the declarations of rights, from the French declaration in 1789 to the universal declaration in 1948, when they affirm that, "All human beings are born free and equal in dignity and rights", it means that at least implicitly they recognize that there is something that links all human beings, despite differences of race, colour, gender, language, religion, national or social origin, wealth, etc. Well, this is what used to be called "human nature", which is something modern philosophy does not want even to hear mentioned. Freedom of thought, of conscience, of religion, of the press, of association, that all democratic constitutions and all international declarations recognize, implicitly means that they recognize man's ability to remove himself, at least in part, from the material influences to which they are subject (heredity, environment, education, sexual stimuli, conscious and unconscious psychological tendencies, social and economic influences), and this is what the ancients called a rational or spiritual nature.

Finally once the most contested of all rights, but today universally recognized, that is the right to property, that all the declarations from 1789 to 1948, have proclaimed (see Article 17: "Everyone has the right to own alone or in association with others. No one shall be arbitrarily deprived of his property"), has profound philosophical implications. Because, indeed, it remains valid despite any change that occurs in the life of the individual, change of religion, of party, of opinion, of citizenship, it bears witness to the recognition of a permanent and immutable substrate in the individual, on which his personal identity depends. This corresponds to what ancient and medieval philosophers called "substance", another term abhorred by modern philosophers but which has revealed itself to be indispensable in practical use.

If all the above mentioned implications are brought together, the result is that man is an individual substance with a rational nature, that is the result is none other than the definition of "person" proffered by Severinus Boethius (*rationalis naturae individua substantia*)<sup>6</sup>. With this observation I do not intend to hold, obviously, that today one can simply re-propose the classic definition of human being, without accounting for countless knowledge which has been acquired by scientific anthropology and modern and contemporary philosophy. Nor do I intend to hold that human rights form a complete ethical code containing the solution to all the new ethical problems raised by scientific and technological development. I hold simply that they are an extremely useful starting point, because of the wide-spread support which they enjoy, for who wants to go forward operatively with the search for sharable solutions, obviously through developing all the ethical implications contained in the provisions of human rights through argumentation, discussion, confrontation. What is the task of ethics as a philosophical discipline, if not to argue, discuss, and confront?

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6 I developed this point more fully in the article, *L'etica alla ricerca della persona*, "Il Mulino", 40 (1991), pp. 579-588, reprinted in E. Berti, *Soggetti di responsabilità. Questioni di filosofia pratica*, Diabasis, Reggio Emilia 1993.