THE SUBJECTS OF HUMAN RIGHTS: HUMAN INDIVIDUALS AND THE HUMAN COMMUNITY

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The recognition of the human rights of the individual should be complemented by the recognition of rights belonging to humanity as a whole. Human rights should not continue to be regarded as constituting a binary relation between an individual and the State, but as necessarily a ternary relation between the individual, the State and Humanity as a whole. The need to recognise humanity as a whole as a subject of human rights derives its relevance from the problems of developing human rights enforcement in the Mediterranean region, partly due to Arab-Muslim objections that the current legal treatment of human rights is based on a concept of man as an atomistic individual. Humanity as a whole would have a special type of legal personality; similar to that enjoyed by the type of human association that Roman law termed a *universitas*. The implications of this argument are illustrated by the paradigm case of property, where the human right to private property would carry with it the correlative duty not to trespass against the Common Heritage of Mankind. This notion that humanity as a whole is a subject of human rights could be further generalised to provide a rational foundation for the rights of future generations and environmental rights. The key issue of representation has to be tackled, since some individual or grouping (such as the UN General Assembly) must be considered as the representative of mankind as a whole. The philosophical foundations of this thesis rest on the claim that humans are part of an organically linked whole, including both ancestors and successors. This is both a biological and a cultural reality. Its neglect has led to such bad consequences as the disintegration of the most fundamental values of non-Western cultures under the pressure of imposed Western legal ideas, which over-emphasise the pursuit of individual interests. This conceptual framework may assist in the construction of a platform for the Euro-Mediterranean dialogue on human rights envisaged in Barcelona.

1. Introduction: Putting the argument into focus

The main concern of this paper is putting forward the argument that the recognition of the human rights of the individual calls for the recognition of complementary rights belonging to humanity as a whole both in the light of the philosophy of man and for the sake of justice.

However, before considering the substance of the argument, it will probably be useful in the first instance to give some slight indication of why the argument is of topical importance generally throughout the world and more particularly in the Mediterranean region. Moreover, also in a preliminary way, the question of the collective rights of humanity as such (conceived of as the obverse side of the single coin - human rights - of which the more visible and established side is that of the individual) needs to be distinguished from that of group (human) rights, whatever the kind (or level) of the group (family/ethnical, cultural/voluntary, political). Although, in order to highlight the differences, the nature of the group issue (based on the strength of the analogy between physical and moral personality) is evoked through reference to a few major contributors to its discussion, it is not pursued beyond notice of its existence and importance.

On the contrary, the central theme of the paper - the indissolubility, except at traumatic cost, of individual and specific human rights - will be picked up and illustrated with reference to the theme of property and its converse and allusion to that of life and the genetic system. Then the philosophic grounds of the thesis will be laid out as concisely as possible, with a recalling of its particular relevance to the Mediterranean context in conclusion.

2. Topical and Mediterranean relevance

Although there appears to be universal acceptance of not only the Universal declaration of human rights adopted by the United Nations in 1948 but also of the two international covenants related to human rights adopted by the United Nations in 1966, this appearance is deceptive to a considerable degree.

In fact as long as there is no tribunal entrusted with the implementation of the agreed principles, it cannot be said that there is effective respect of human rights.

This assertion is made without any wish to deny the unquestionably beneficial effects of the mere declaration of principles stressed by, for instance, M-A Sinaceur in his fascinating article on "Islamic Tradition and Human Rights":

> *"For them to be proclaimed in declarations should ensure that they are honored as a promise made, which would be broken alike by failure to fulfill and by indifference. It is in this declaratory character that the contemporary aspect of Human Rights is seen at its most dynamic and productive. Herein it derives its mystic sustenance. And it is for this reason that proclaimed Human Rights are the concern of each and every one; they apply a constant pressure to facts in order that they may give rise to rights; they provide a norm against which the efficacy of legal codes may be gauged; and they compel the authorities to substantiate their faithfulness to the principles they profess. A continually renewed reflection on Human Rights is therefore necessarily bound up with a view of such rights as based on values that it does not suffice to lay down in written form, as it were lex lata, but that have to be guaranteed by recognizing by law the existence of a parallel lex ferenda which points to the need for their reformulation and the emergence of new rights."*[1]

Moreover, it is unlikely that there will be universal assent to the constitution of any tribunal similar to that set up by the Council of Europe but with worldwide jurisdiction or even with a limited pan-Mediterranean scope, before there is agreement on reviewing and improving –not rejecting or cosmetizing– the present system of exposition and codification of human rights.

The desired modifications are as various as their proponents, but it is probably true that there is one central and very widely felt difficulty. This is the firm belief that the present system has been conceived on the basis of a concept of man as an atomistic individual:

undoubtedly the prevailing concept at the time of the European Enlightenment which provided the philosophic basis for the development of the current legal treatment of Human Rights.

The ground of an exclusively individualistic concept of man as an objection to the present U.N. codification of Human Rights is advanced often vehemently by Arab-Muslim critics. As Professor Joseph Mallia has written: "The ideal of a greater solidarity, the duties of the individual towards his community, the affirmation of a social function of property are frequently advanced as needed correction of a liberal and individualist vision of human rights." [2]

Perhaps the institution of two covenants i.e. the addition of a second group of so-called "economic and social" (including cultural) rights to the first group of so-called "civil and political" rights was really an attempt at meeting the criticism that the original U.N. Declaration presupposed a defective over-individualistic or at least one-sided concept of man. However the adjunction of "social and economic" rights to the "civil and political" rights of the individual does not really do anything to meet the central philosophical point of the criticism of the Enlightenment concept.

This criticism is not essentially that a human being is also a social and economic animal besides being a civil and political individual, but more basically that human beings do not only exist unlike other animals as relatively autonomous individuals, but that like all other animals, they exist also as members of a biological species. For instance in the case of human beings, it is deemed appropriate to speak of a species consciousness as well as of an individual consciousness. The implications of this double belonging of the human being, to himself and to the species, which in itself is not contested by any school of thought of which I am aware, admittedly need some considerable spelling out. [3]

At this stage of discussion it is only necessary to acknowledge that the species being of the human individual is not sufficiently recognized through the recognition of economic and social rights as well as of civil and political. Indeed, it has been cogently maintained that there was no valid basic reason but only grounds of contingent convenience for dividing human rights into these two kinds at all. [4]

The concrete contention which is being advanced here is that the criticism of the Enlightenment based approach is not to be met either by the reformulation of the terms of the usual declarations nor by the addition of other individual rights but rather by the acknowledgement of a complementary dimension of *specific* rights of humanity. This complementary dimension might be susceptible to formulation as a set of obligations or responsibilities of individual human beings to the species as a whole. It seems, however perverse to seek to formulate them as a "third generation" of individual human rights (as so-called "environmental" rights have often been referred to, following the chronicler style description of the social and economic rights as the "second generation" of human rights). There should rather be recognition that human rights should have two sides to them: the individual and the species that of each part and that of the whole humanity.

3. Excursus on moral (or collective) Personality

It is necessary to make here another preliminary point. Humanity as a whole is a grouping (if it is even permissible to use that term about a whole) of a different kind from those which have traditionally been said to have a "legal personality", where obviously the word "personality" is not being used in its usual everyday sense (meaning characters, classifiable by psychological traits) but in a special technical sense meaning "subject of rights and duties", by analogy with individual "natural" or "physical" persons.

Roman law did not only recognize the type of human association which was called a *societas*, consisting of a partnership between individuals who promised each other to condition their respective actions in terms of an agreement reached between them. It also recognized a second type of human association called "Universitas", consisting of the "incorporation" of individuals in a collective entity with its own proper identity and capable of acting on its own. This type of association was deemed to constitute an "artificial" person and be the subject of rights and duties. [5]

It does not, of course, follow immediately that such a "person" should be the "subject" of what are today termed "human rights". However the complexities of this issue with regard to corporations as against physical human beings are perhaps better discussed in connection with the question about the rights of such collectivities as "peoples" vis-a-vis states.

In the present context only a few remarks need be made, mainly to separate this related issue from the main argument being pursued here. Of course states or analogous political entities are rightly considered *sui generis* among human associations, both by natural law as well as by social contract and other political theorists. Indeed some notorious political philosophy practitioners have considered them to be "organic", in some logically analogous sense of the word, and comparable to such primal human groupings as family and tribe in the context of discussions about human "rights". But leaving aside, at least for the moment such metaphysical theories, even well known liberal philosophers of Law such as Ronald Dworkin (the "integrity" theory) require:

> *"a particularly deep personification of the community or state... The community as a whole can be committed to principles of fairness or justice or procedural due process in some way analogous to the way particular people can be committed to convictions or ideas or projects, as if a political community really were some special kind of entity distinct from the actual people who are its citizens... I attribute moral agency and responsibility to this distinct entity. For when I speak of the community being faithful to its own principles, I do not mean its conventional or popular morality, the beliefs and convictions of most citizens. I mean that the community has its own principles it can itself honour or dishonour, that it can act in good or bad faith, with integrity or hypocritically, just as people can... I really mean to attribute to the state or community principles that are not simply those of most of its members."* [6]

Nevertheless, because of the distinction between human beings and persons, Dworkin is clearly not to be taken as quite assimilating States to Human beings. He is using metaphorical language. It is quite another matter with human groups, which are, so to say, intermediate between the individual and the state. For instance, Professor Nathan Glazer, of Harvard University, has written a celebrated article entitled "Individual Rights against Group rights".[7] In it he argues that the Civil Rights Act of 1964 in the USA, like almost all human rights declarations, is formulated " as if the problem of discrimination is one of action against individuals". In that way it does not really provide adequate redress in a situation which is one of the violation of the (human) rights of groups.

Glazer also points out that it is not only in the language of the U.S. constitution (notoriously written under the influence of the unilaterally individualist concept of man typical of the Enlightenment) and other related legal instruments that " the problems of group prejudice" are tackled "by guaranteeing the rights of individuals"; it is also in that of liberal philosophers such as John Rawls. In his famous *A Theory of Justice*,[8] Rawls eliminates the consideration of group rights by reducing them to individual rights.

An analysis of Rawls's position is quoted from an article by Vernon Van Dyke.[9] Van Dyke argued that freedom of religion cannot be reduced to freedom of the *individual's* conscience belief and practice. It involves the freedom of a *group* as such, precisely because any *universitas* type of group has features which cannot be assigned distributively to its individual members, as perhaps no philosopher of Law has emphasized with as much stress as Dworkin. Glazer points out that in some countries (Canada, Belgium, India, Malaysia) approaches based on group rights have been adopted.

Perhaps the answer to Glazer's query as to why the American approach has stuck so strictly both to the language (and associated procedures of vindication) of *individual* rights is precisely the belief that human rights were exclusively individual and could not belong to a group. The consequence, however, is that an individual often does not have the means to vindicate what is essentially a group right.

Glazer is actually of the opinion that groups have "human rights" only when their status is comparable to that of the state (or the family) in the sense that they are deemed to be of a kind not geared to contingent dissolution or, in other words, that they are entitled to preserve their identity when the conservation of its essential features are not ensured by the ordinary rights of common citizenship.

Clearly the issue of group rights assumes importance proportionately as cultural pluralism increases and comes to be increasingly respected as a positive human value. On this issue, the two positions can be summed up as follows:

The "individualists" who wish not to depart from the Enlightenment tradition maintain that there is a contradiction between respect for the individual and respect for the identity of cultural (possibly ethnic) groups.

The "Communitarians", on the other hand, hold that the identity of a human being is not constituted either by himself on his own or by his belonging to mankind as a whole but by his belonging to an intermediary group or community (such as a "nation" or "culture") hence, that there is a (human) right attributable to the group as such (a " droit de la communaute a la difference", as the French Canadians often put it), when for example there is a minority group besides a majority within the state (as against the other claimed alternative that used to be expressed in the dictum: every nation has the right to become a state).

To conclude this excursus, two quotations will have to suffice. Hans Joachim Tuerk has written:

> *"It would be fatal to consider the universalistic and equal respect for every individual and the recognition of group identities and particularities as an alternative. We must not choose between universal and particular values. We have to hold to them both. And this is not only a question of political opportunity, but also of ethics, which consists of universalized norms as well as of particular values and habits".*[10]

Charles Taylor has distinguished two forms of ethics and politics:

> *"These forms do call for the invariance of certain rights, of course. There would be no questions of cultural differences determining the application of habeas corpus, for example. But they distinguish these fundamental rights from the broad range of immunities and presumptions of uniform treatment that have sprung up in modern cultures of judicial review. They are willing to weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favour of the latter. They are thus in the end not procedural models of liberalism, but are grounded very much on judgements about what makes a good life, judgements in which the integrity of cultures has an important place".*[11]

Anyhow, it should be clear that neither human associations which are unquestionably voluntary in kind, nor others like states, are on a par with humanity itself in relation to human rights. This is self-evident because the very concept of a human right is essentially that of a right appertaining to a member of humanity as such, generally exercised precisely against violations by human associations such as states. What is being argued here is that individual human rights are always qualified by the part-whole relationship which exists between a human individual and the human species, even though this relationship (not necessarily subordination) has all too often been ignored both by Enlightenment and by contemporary liberals.

4. The Paradigm Case Of Property

At this point, I think that the best way of progressing the argument is through illustration, and perhaps the clearest illustration comes from the sphere of the right of property, although it can also be almost symmetrically illustrated from the right to life.

Philosophers, aware of humanity's identity as a single species of animal, have generally felt the need to justify (or at least explain) the general human practice of private appropriation of natural/cultural resources. These resources have come to appear to belong to three kinds.

The *first* kind consists of things which are deemed to be extensions of the human body (signs of the incompletion of the human individual) such as clothes, tools and houses; because of the nature of their use, such items should be private property of every human individual (sometimes possibly family).

A *second* kind consists of things about which there could be debate as to whether they are best used and managed by individuals (or private groups) or the State or partnerships between them or as "commons".

But there is a *third* kind of thing the proper management of which clearly requires that it should never be privately appropriated (or made subject to state sovereignty) because it can only be properly used on behalf of mankind as a whole.

There has been international recognition of this third kind of resource at least in the Law of the Sea Treaty (Montego Bay, Jamaica 1982). The Treaty declares such resources to be "The Common Heritage of Mankind"- a phrase which, through the Treaty has thus acquired a technical and legal meaning.[12] Article 137 of the Treaty lays down, first that "no state or natural or juridical person shall appropriate any part" of the Area designated in the Treaty as being the Common Heritage of Mankind. Secondly "All rights in the Resources of the Area are vested in mankind as a whole on whose behalf the Authority (set up by the Treaty) shall act..."

A great authority on International Law, the late Jean Rene Dupuy, Professor at the College de France, declares that this article undoubtedly made humanity as a whole a subject of ("sovereign") rights at international law.[13] The point which I am trying to make here is different. It is that the (human) right to private property (over certain resources) should be seen to carry with it a correlative duty: not to trespass against the Common Heritage of Mankind. In other words, the declaration of the (human) right to private property requires complementing with the declaration of the non-appropriatability of resources belonging by nature to the human species as a whole, if the two-fold being of humans, individual and specific, is to be duly recognized.

The principle of non-appropriatability of certain resources - declared moreover to be appropriately manageable only by a representative of humanity as a whole duly appointed according to International Law - has been so far most clearly enshrined in the law of the sea, but it is also invoked in other international conventions such as the so-called Moon Treaty, which was actually signed before the five-year long negotiations on the law of the

sea were terminated. Besides there have been several other resources which have been claimed to belong to the Common Heritage of humanity.

Obviously there are many resources which at one time or another in history have been made subject to private or public ownership or to national sovereignty but which would otherwise have fallen under the definition of Common Heritage. For instance in a famous debate in the French Parliament, Mirabeau presented an argument to the effect that underground mineral resources should not be privately appropriated. However there can be no practical question now of reversing the past.

There are nevertheless many other resources which are still available for certification as belonging to the human species as such, including not only so-called "extra-territorial spaces"(ranging from the atmosphere and outer space to Antarctica) but also non-spatially determined resources (ranging from the genetic heritage to certain intellectual resources).

Unfortunately there has been a quite understandable reluctance on the part of some powerful states to allow the further determination of which resources should be declared to fall under the concept of Common Heritage under International Law. Nevertheless, it seems logically clear that the principle applied to the seabed should on the ground of consistency if on no other ground be extended to at least those resources which qualify even more manifestly than the seabed as not appropriable if they are to be rationally managed.

Their recognition as such would raise the principle of the vesting of all rights over certain resources "in mankind as a whole on whose behalf" a legal representative "shall act", from application in just one concrete instance (the seabed) to a level of generality. Its incorporation in the system of human rights would result in the system taking account of a more complete and acceptable picture of the reality of human beings.

Professor Alexander Kiss, President of the European Council on Environmental Law and Vice-President of the International Council on Human Rights, has written that the concept of the Common Heritage and that of the Rights of Future Generations (which has been derived from it) "appear bound to be situated at the final meeting place of Human and Environmental Rights". He explains that: "the protection of the environment is not conceivable except in function of the future which has to be preserved for future generations". But it seems to have emerged out of the UNESCO sponsored discussions on the Charter for the Rights of Future Generations that the only solid, rational foundation for them is the recognition that there are *specific* human rights, besides individual.

Professor Kiss has noted a similarity of development between Human Rights and the Right to the Environment, actually resulting in a convergence, in a text of the Subcommission on the protection of minorities of the UN Commission on Human Rights. This text, after declaring that human rights, environmental health and security, sustainable development and peace were interdependent and indivisible, goes on to spell out the constituent elements of an "ecologically sound environment" to which it is declared every

person has a right. (It actually even speaks of "fundamental rights of persons or *groups*" inhabiting certain areas in relation to those of all other persons).

Professor Kiss concludes that the similarity and convergence of the two domains (individual human rights and environmental rights) is due "to the fact that a world-wide consensus has been reached on the fundamental character of the two domains for humanity and on the need to protect them". However, Professor Kiss, after having duly noted that, following the Stockholm Conference Declaration of 1972, which hardly amounts to more than an awareness raising exercise, the first foundation stone to be laid in the construction of international environmental law was Part X11 of the 1982 Law of the Sea Convention, goes on to note that no international legal instrument (unlike many national constitutions) has so far accepted the inclusion of environmental rights among human rights, not even the Rio declaration of 1992.

At first, they were proposed as a subdivision of the right to health, but more recently they have generally come to be proposed as having a procedural, and not substantive, nature - that is they are couched in some such formula as that " every person has a right to the conservation of the environment". Perhaps the most explicit text, the Sofia declaration of 1995, however, still does not use the formula explicitly, but spells out its threefold application in the rights ascribed to every individual to have relevant information, participation in decision making and access to judicial or administrative redress.

The almost palpable reticence and hardly concealed embarrassment with which this "new" human right is enunciated may perhaps have a similar explanation to the answer previously suggested to the query as to why there was such a sense of juridical straining and such an ineffective provision of remedial possibilities in the attempts to reduce group to individual rights. It is not being realised or admitted that the species is just as entitled to the epithet "human" as the individual and can just as logically be considered the subject of "human rights".

In reality, the "preservation" of the environment cannot be legally or logically secured in terms of rights of (living) individuals. In fact, Professor Kiss began his article by asserting very categorically that the protection of the environment was inconceivable except in terms of the rights of future generations. More precisely, it can only be justified in terms of heritage concepts, i.e. of the duty to transmit to successors what has been received from ancestors; besides, the most plausible way out of the difficulties of attributing rights to the dead and the unconceived is the recognition of the biological unity of the species and its complementary nature with regard to its individual components.[14]

5. The Parallel Case Of Life

It is not, I think difficult to see how the parallel argument concerning life is to be developed. Each individual has the (human) right to the safe guarding of his individual life: but the health of the genetic system itself (its species-affecting properties in

particular) is something to which it is humanity as a whole which is entitled against possible abuse by individuals.[15]

6. The Key Issue Of Representation

An important point to note in the quoted article from the Law of the Sea treaty is that when attributing a right and responsibility to humanity as such a representative of humanity is very clearly identified ("the Authority"). It has been said that a human right could be defined as being the right to have the possibility of possessing rights.[16] It would not be possible to attribute rights to a subject that would be incapable of exercising them. Hence a representative with some power of initiative has to be appointed. Without wishing to labour the point in the present context I will only allow myself to point out that according to Thomas Hobbes, in *Leviathan* (1651) the means by which "a multitude of men are made *One* person", is the institution of "representation" of the many by *One* i.e., the constitution of the sovereign whom Hobbes calls "the person of the Commonwealth". The point of interest here is not that the coming into being of a "representative" of the multitude marks the passage from brutish to civil (i.e. really human) existence but that humanity as a whole would, according to Hobbesian theory qualify to be considered a person if and only if someone were to be appointed as its representative, and Hobbes allows that "someone" to be an assembly. Consequently even in Hobbes's conceptual framework, if, say the United Nations general assembly were recognised by universal consensus and acceptance as the "representative" of humanity, it would by that very fact qualify both as the subject of rights and the possessor of the *essential* human right –viz., the ability to exercise rights in a manner analogous to that of an individual (natural) person. Hobbes is, of course, the reputed founder of what had been classically called "possessive individualism".

7. The Argument In A Nutshell

It hardly needs saying at this point that concrete illustrations of the practical implications of the thesis that human rights should not continue to be regarded as essentially a binary relation between an individual human being and a *sui generis* human group, namely the State, but as necessarily a ternary relationship, involving an individual, the State and Humanity as a whole, cannot today be simply accepted as sufficient support for the thesis. It has become necessary today to proceed in the matter of human rights, from merely (possible) pragmatic agreement on what is to be defined a human right in International Law to some degree of philosophical agreement about the *rationale* if progress is to be made. In 1948, it was possible to some extent to by-pass philosophical disagreement (at the time mainly between the Western establishment and Marxist powers, with Marx's own criticism of the Enlightenment formulation of human rights at the back of their minds). But a stage has now been reached in the world-wide conversation about human rights, involving non-western world-views and anthropologies on the one hand, and the setting up of tribunals with judiciaries in need of clear criteria for the interpretation of principles, on the other, when dissatisfaction is bound to result if there is

only vague agreement about the existence of a right without any general agreement about its fitting into a broad conceptual framework capable of trans-cultural acceptance.

It is therefore now necessary to provide in as small a nutshell as possible the philosophical argument, which is the basis for asserting that an individual human right is bound to carry with it a collective counterpart. Mohammed Allal Sinaceur has written that: "the value (of life) is absolute because the individual is in axiological terms, mankind as a whole, in itself and in the infinitude of its actualisation". Sinaceur is trying here to bring out the non separation of the individual human being and the total community of human beings which is a characteristic of Islamic thought as it is also of other non-western world views (e.g. the coincidence of atman and Brahman in Hinduism).[17]

However the relationship between the human individual and the human species cannot be simply one of identity. It is true that all animals other than the human appear to be governed by a stronger species preserving instinct than humans and that even humans are a biological species; therefore they do not exist together like a box of matches with the existence of one match completely independent of the other. Their reflexive power however, enables human beings to put individual above species interest. Nevertheless, the double pull is internal to the human being. It is therefore defective to fashion a system of human rights which does not take into full account the fact that a human individual is whatever the degree of autonomy possessed, part of an organically linked whole, including both ancestors and successors.

Not only are human beings physically constitutive of a single species, but their solidarity is especially manifest in the cultural sphere. Whatever the merits of individual genius in discoveries and innovations, hardly any progress in knowledge would be possible without the inter-generational transmission of information. Quite generally in calculating the desserts due to human individuals justice requires recognition of the fact that the bulk is due less to individual creativity than to the heritage of the species. That, in brief, is ground enough to sustain the assertion that the enunciation of human rights, if the epithet "human" is to be deserved should be in the form of a diptych, balancing the individual with the specific.

An argument with the simple appearance (even if two-phased) of that just formulated with deliberate extreme brevity is likely to seem to some banal and to others Hegelian. Banal, because the existence of the human race as a distinct species is taken by many to be a self-evident fact, as also its irreducibility to the aggregate of its individual members, whose present numbers are approximately known; however H.C. Baldry, the classical scholar, wrote a whole book to trace the emergence of the idea, in a very complex and gradual manner, from early glimmerings in Homer to the fullest perception of it reached in ancient times in Cicero. In fact it was probably easier to realise that a human being was distinguishable among known animals by his rationality than by the other necessary criterion of proof-the ability to procreate with other human beings if we can go by the history available to us of how the human species came to be distinguished from the gods on one hand and animals on the other, by the Ancient Greeks.[18] It was always a

temptation to assume that there could be a human being on his own in virtue of having a "mind" or other immaterial characteristic, and occasionally one finds that it still is, but today it has become so easy to be convinced that part of what it means to have a human mind is belonging to a definite animal species that its assertion seems banal to some.

On the other hand, the philosophically erudite will be reminded of the dialectic by which Hegel sought to integrate the free individual into an organic Totality. Hegel avoided speaking of the rights of man, but spoke of those of the individual, by which Hegel wished to denote neither an abstract universal nor an embodied specimen, but man as part of the "concrete life of the State."[19] It is certainly not necessary to follow Hegel any further along this path in the present context, but it might avoid some real danger of confusion to re-emphasize at this point that the group which has been proposed all along the present discussion as necessary for the significant completion of individual human rights is not the State, national or universal, nor anything mystical, but simply humanity as a biological species with precisely those specific traits which distinguish it from the many other species who belong to the same (animal) genus.

8. The Bad Consequences Of Its Neglect

The consideration of human rights as not so much a bilateral relationship between individual citizen and State but rather as a multilateral relationship, involving at least a third actor, namely humanity, but also possibly other groups ranging from natural associations such as family and clan to cultural associations such as religions and other voluntary organisations, is not only of theoretical interest, but of very practical concern.

Many anthropologists and social observers have illustrated by numerous case-studies the fact " that imposed Western legal ideas have contributed to the disintegration of the most fundamental values by pursuing individual interests at the expense of consideration of the collective".[20] They first illustrate how, in the West, from the Age of the Enlightenment onwards, there occurred "a transition from a legal system which protects the interests of the group, the clan, to a legal system which protects the interests of the individual". For instance, in family law, while as late as 1924, it could be said in a legal textbook that: "family relations do not bring about rights proper to the individual. The focus is on the duty to use rights for the benefit of the family. The rights are given to make possible the fulfillment of the duties and obligations to the family", in 1993, it is said in a doctoral thesis, that the law has "changed significantly mainly by exalting the "primacy of the individual", which has "brought about a marked distillation of the family principle; the development now tends towards "a sum of individual rights."

The authors of the study then point out that although Western laws of the same individualist tendency were imposed by colonial rulers in territories as different as Greenland and Tanzania, yet in both these countries: "the family and the clan are still coherent groups which generate and uphold their own rules." Moreover, "decisions are still taken in the interest of the whole."

On the contrary, "where the state has introduced individual rights, without providing the services and fulfilling the obligations once secured by collective rights and obligations, the result has been disaster for some."

However, the two anthropologists do not recommend any "return to the precolonial situation" nor the "abolition of individual rights" but attempts "to find a third alternative". Perhaps the integration of individual and specific human rights could be the answer, although it would be too complex to seek to illustrate here the family-species nexus which makes specific human rights relevant to family issues.

9. Conclusion: Return To The Mediterranean

Finally, to return to the Mediterranean perspective, the issue of Human Rights implementation has been placed squarely in the contents of the Barcelona (1995) baskets. As Professor Mailla said: "It is not a question, definitely, of 'imposing' Human Rights (i.e a Western version on different cultures) but of rethinking them out together as a shared vector of evolution and a platform of dialogue."[21]

A conceptual framework that might be of some assistance in the construction of such a platform of dialogue is all that this contribution was intended to provide. It consists of an essentially simple idea suggested by the Mediterranean context to produce an exemplary result in the global context. As Sinaceur has brilliantly written:

> *"...When values that have originated in one mode of discourse are allowed to take up their abode in another without losing any of their clarity or distinctness, then new paths are opened up that can be explored in all their ramifications without fear of going astray or losing one's way: for by this means communication among all systems, all spheres, is grounded in the foliated structures of each civilisation"*[22]

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1 In Philosophical Foundations of Human Rights, UNESCO, 1986

2 In Jose Vidal- Beneyto and Gerard de Puymege (eds), La Mediterranee : Modernite Plurielle, UNESCO, p.260

3 The Kantian concept of "self-ownership" has been devastatingly attacked by Professor G.A. Cohen of Oxford University, in his book Self-ownership, Freedom and Equality, Cambridge University Press, 1995. It is not implied in the use of the word "belonging" in the present context.

4 For instance by Nicos Valticos in "Faut-il re crire les Pactes Internationaux Relatifs aux Droits de l'Homme?" in S. Busuttil, Mainly Human Rights,Studies in Honour of J.J. Cremona, Fondation Internationale, Malta, 1999, pp. 279-291.

5 See, for instance, Micheal Oakeshott, On human conduct, Oxford, 1975.

6 Law's Empire, Harvard University Press, 1986, pp. 167-8.

7 In Eugene Kamenka and Alice Erh-Soon Tay (eds), Human Rights, Arnold, London, 1978, pp. 87-103.

8 Cambridge, Mass., 1971. Rawls actually discusses "natural duties", but says next to nothing about natural or human rights.

9 'Justice as Fairness: For Groups?' in the American Political Science Review, LX1X (1975), pp. 607-14.

10 'Justice as Fairness: For Groups?' in the American Political Science Review, LX1X (1975), pp. 607-14.

11 Multiculturalism and "the Politics of Recognition". An Essay by Charles Taylor, with commentary by Amy Geutman, Steven C.Rockefiller, Michael Walzer and Susan Wolf, Princeton 1922 (with an

additional contribution by Jurgen Habermas, in the German version, Frankfurt am Main, 1993), p 61.

[12] See Arvid Pardo: The Common Heritage: Selected Papers on Ocean and World Order: 1967-74, University of Malta Press, 1975.

[13] As quoted by Elisabeth Mann Borgese in The Oceanic Circle, United Nations University Press, Tokyo, 1999, p. 121.

[14] "La protection de deux valeurs fondamentales de l'humanite': les droits de l'homme et l'environmement" in Mainly About Human Rights, op.cit. pp. 109-118 see also: E.Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity, Transnational Publishers, Inc., Ardsley Hudso, N.Y. 1989; L. Vischer (ed.), Rights of Future Generations, the Right of Nature, Studies from the World Alliance of Reformed Churches, no.19; M. Golding, "Future Generations, Obligations to" in Encyclopaedia of Bioethics, W.T. Reich (ed.) Vol. I, the Free Press, 1978, pp. 507-512; R.I. Sikora and B.Barry (ed), Obligations to Future Generations, Temple University Press, Philadelphia, 1978; E. Partridge (ed.), Responsibilities to Future Generations, Prometheus Press, N.Y. 1980.

[15] See Emanuel Agius, "Patenting Life", in What Future for Future Generations? Ed by E. Agius and S Busuttil (eds), Foundation for International Studies, University of Malta, 1994, pp. 99-118, for an extensive development of the basis for this argument.

[16] For instance, by Professor Vittorio Mathieu in "Prolegomena to a Study of Human Rights from the standpoint of the International Community", in Philosophical Foundations of Human Rights, op.cit.

[17] Gandhi has written that in the India of My Dreams, Bombay, 1947: "Life will not be a pyramid with the apex sustained by the bottom, but it will be an oceanic circle whose center will be the individual..... till at last the whole becomes one life composed of individuals.....sharing the majesty of the oceanic circle of which they are integral units."

[18] The Unity of Mankind in Greek Thought, Cambridge University Press, 1965.

[19] See Bestrand Binoche, Critiques des Droits de l'Homme, Presses Universitaires de France, 1989m pp.82-94

[20] Rie Odgaard and Agnete Weis Bentzon, in "The Interplay Between Collective Rights and Obligations and Individual Rights" in The European Journal of Human Rights, 10, 2, December 1998, pp 105-116.

[21] Op. cit. p.263.

[22] Op. cit. p.219.