Dynamic nature of human rights:
Rawls's critique of moral universalism

Sanja Ivic[1]

ABSTRACT: Human rights do not represent an absolute truth. Otherwise, they would represent ideology, which is contradictory to the basic idea of human rights itself. Consequently, there is a need for redefinition of the main presuppositions of modern conception of human rights represented in the *Universal Declaration of Human Rights*. This paper argues that Rawls's conception of human rights is significant for the refiguration of human rights. It represents the path towards postmodern idea of human rights and the recognition of difference.

KEYWORDS: Human rights. Universality. Modern. Postmodern. Right. Good.

Introduction

In the further lines the conception of human rights presented in the *Universal Declaration of Human* Rights and in Rawls's political theory will be compared. It will be argued the *Universal Declaration of Human Rights* represents modern conception of human rights, while, on the other hand, Rawls's conception of human rights represents postmodern account on human rights. A number of authors argue that the *Universal Declaration of Human Rights* is Western-imperialist. Rawls's idea was to offer "thinner"

---

[1] Sanja Ivic is Research Assistant at the Institute for European Studies in Belgrade, Serbia. She has obtained her MA degree at Erasmus University Rotterdam in the Netherlands. She is currently completing her PhD thesis: "EU Citizenship - Towards the Postmodern Conception of Citizenship?" at Belgrade University. She is a member of the Steering Group of the global project "Pluralism, Inclusion, Citizenship". Her research interests include: European studies, migration, ethics, political theory and hermeneutics. She has participated at various international conferences.

conception of human rights, which would be acceptable to different societies. Consequently, it would make human rights more familiar to different cultures and peoples, which would lead towards better implementation of human rights. Rawls's conception of human rights is more open for diversity than the conception of human rights represented within the *Universal Declaration*. However, Rawls's theory of human rights as well as human rights within the framework of international law, neglect some significant aspects of human rights. Both approaches mostly emphasize normative dimension of human rights.

The *Universal Declaration of Human Rights* was adopted after the horrors of the World War II. Some authors refer to Holocaust as "a symbolic representation of evil in the late twentieth century and as a foundation of supranational moral universalism."[2] On the other hand, Rawls's theory of human rights, which he introduces in his *Law of Peoples*[3] is also inspired by ideas of peace and justice. Rawls argues that there are two main ideas, which motivate the *Law of Peoples*. "One is that great evils of human history – unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation, and poverty, not to mention genocide and mass murder – follow from political injustice, with its own cruelties and callousness."[4] The other idea which motivates the *Law of Peoples* is that by establishing "just basic institutions" political injustice can be "eliminated" and the "great evils" found in human history can disappear.[5] However, Rawls rejects the idea of moral universalism.

1 Modern Conception of Human Rights

Modern idea of human rights is founded on the idea of universality of human nature, i. e. reason. Human rights presented in the *Universal Declaration* as well as the entire idea of human rights origins from modernity. "Human rights law is a product of the cultural project of modernity. It has been a product of establishing the principle of subjectivity, i. e. of a men-centered view of the world and of the related legal underpinning which is part and parcel of modernity."[6] Modern idea of human rights gives priority

---

[2] LEVY; SZNAIDER; OKSILOFF, 2006, p. 5.

[3] Rawls argues that by the "Law of Peoples" he "means a particular political conception of right and justice that applies to the principles and norms of international law and practice." (RAWLS, 1999, p. 3).

[4] RAWLS, 1999, p. 6-7.

[5] Ibid, p. 7

[6] TIBI, 1993, p. 25.

to individuality over collectivity. It mostly refers to the freedom of individuals. On the other hand, modern idea of human rights is ahistorical and it denies contextuality and particularism. According to Wang, modern idea of human rights is "monolithic and imperialist".[7]

It is asserted by the Article 1 of the *Universal Declaration of Human Rights*[8] that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit and brotherhood. " Consequently, universality of human rights is founded on reason. The modern philosophical thought is based on the idea of universality.

Kant ascribes universality to moral rules, which he derives from the pure reason and will. He postulates the principle of universality by his categorical imperative: "Act only on that maxim through which you can at the same time will that it should become universal law."[9] The conception of rational agency is presupposed in Kant's account of moral worth. Kant argues that "rational beings alone have the faculty of acting according to the conception of laws, that is according to principles, i. e. have a will. Since the deduction of actions from principles requires reason, the will is nothing but a practical reason."[10]

Gaut argues that Kant equates "humanity" with "rational nature"[11], i.e. "rational agency".[12] According to Kant, the main characteristics of humanity is the capacity for setting an end. An end is the object of free, rational choice, which is set by practical reason. Kant's core idea is that the categorical imperative, as a supreme law of morality, must be valid for all rational beings with absolute necessity, and not merely under certain contingent conditions. However, Kant argues that this "systematic union of rational beings by common objective laws, i.e. kingdom which may be called a kingdom of ends"[13] is certainly only an ideal. Consequently, it can be argued that even if we consider humanity as an objective end, which means that every rational being must have it, this does not mean that all rational beings would have the same rational choices, insofar as they are rational.

---

[7] WANG, 2002, p. 175.

[8] The *Universal Declaration of Human Rights* was adopted by the United Nations General Assembly (10 December 1948 at the Palais de Chaillot, Paris).

[9] KANT, 1969, p. 18.

[10] Ibid, p. 35.

[11] This is also asserted by Article 1 of the *Universal Declaration of Human Rights*.

[12] GAUT, 1997, p. 170.

[13] KANT, 1969, p. 71.

In his *Groundwork of the Metaphysics of Morals*, Kant finally reduces the conception of morality to the idea of freedom. Thus, freedom makes categorical imperative: "The question then: How a categorical imperative is possible can be answered to this extent that we can assign the only hypothesis on which it is possible, namely the idea of freedom: and we can also discern the necessity of this hypothesis, and this is sufficient for the practical exercise of reason, that is, for the conviction of the validity of this imperative, and hence of moral law."[14]

Kant equates freedom with autonomy of the will.[15] Kant's moral philosophy is based on the distinction between "morality" and "legality". The action is moral on the ground of the reasons why an agent performs it, not on its effects. For these reasons, Kant's idea of autonomous subject and human nature cannot be perceived as one of philosophical foundations of the *Universal Declaration of Human Rights*. Kant considers an action moral not only if it is done in accordance with the law, but it must be done in the spirit of the law. It must be and agent's inner maxim. If an agent performs an action which externally looks like obeying the moral law and his inner maxim is based on hypothetical imperatives, in that case the will is not autonomous and the action is not moral. It is just legal. Hence, morality presupposes autonomy of the will for Kant.

Some authors argue that human rights cannot have a metaphysical foundation. They cannot have one authoritative ground. Rorty criticizes traditional philosophical justification of human rights as derived from human nature and the reason. Human nature is described in essentialist terms and it is not perceived as constructed.

Article 2 of the *Universal Declaration of Human Rights* states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." However, the question is how these concepts are defined. A number of authors argue that the concepts such as "race", "sex", "political" and so forth employed in the *Declaration* are based on modernist assumptions. Modern political thought argues that those concepts represent ahistorical and static categories. However, postmodern authors argue that those concepts are socially and historically constructed.

---

[14] Ibid, p. 81.

[15] Kant defines the autonomy of the will as "the property of it by which it is a law to itself independently on any property of the objects of volition." This is contrasted with heteronomy, according to which "the will does not give itself a law, but the object does so in virtue of its relation to the will." (KANT, *Groundwork of the metaphysics of morals,* p. 71)

According to Scott, politics is a "gendered concept". "Gender is one of the recurrent references by which political power has been conceived, legitimized, and criticized. It refers to but also establishes the meaning of the male/female opposition. To vindicate political power, the reference must seem sure and fixed, outside human construction, part of the natural or divine order. In that way, the binary opposition and the social process of gender relationships both become part of the meaning of power itself; to question or alter any aspect threatens the entire system."[16] Thus, the power is also constructed.

According to MacKinnon the term "sex equality" represents a contradiction, it is an "oxymoron". She argues that gender neutrality is defined and measured by male standards. MacKinnon asks the question how to get access to women to everything that have been excluded from. According to MacKinnon, the answer is in conforming normative standards to existing reality.[17]

On the other hand, the Article 2 is open for different interpretations and can be easily violated. Charlesworth and Chinkin give example of: "Peruvian law that prevented a married women from taking legal action with respect to matrimonial property was held to discriminate against women."[18]

Article 23 of the *Universal Declaration* guarantees "equal pay for equal work." Janet Rifkin argues that law is powerful as both a symbol and a vehicle of male authority because it serves to mystify social reality and block social change.[19] Eisenstein argues that within law, women are treated in four ways: 1) "as different from men-reproducers and gendered mothers"; 2) "as the same as men, like men, and therefore not women"; 3) "as absent but as a class different from men"; 4) "as absent, but as a class the same as men".[20] All these accounts of equality ignore "the underlying structures and power relations that contribute to the oppression of women"[21] and represent universalist modern point of view. Increasing the women's presence in law does not solve the problems of oppression, because it does not itself transform the law and its structures. "We also need to understand and address the gendered aspects of fundamental concepts such as "economy", "work", "democracy", "politics", and "sustainable development".[22]

---

[16] SCOTT, 1988, p. 49.

[17] MACKINNON, 1987.

[18] CHARLESWORTH; CHINKIN, 2000, p. 215-216.

[19] RIFKIN, 1996, p. 422.

[20] EISENSTEIN, 1988.

[21] CHARLESWORTH; CHINKIN, 2000, p. 231.

[22] CHARLESWORTH; CHINKIN, 2000, p. 231.

American Anthropological Association criticised the basic ideas and concepts of the *Universal Declaration of human Rights.*[23] In this critique the respect of the cultures of various human groups is emphasized.[24] It is argued that human beings cannot be understood apart from their cultures and societies. Consequently, the *Universal Declaration of Human Rights* should respect cultural differences. "There can be no individual freedom, that is, when the group with which the individual identifies himself is not free." [25] Subsequently, the nature of human rights is contextual: "Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of the culture must be to that extent detract from the applicability of any Declaration of human rights to mankind as a whole."[26] Thus, the rights of mankind cannot be reduced to the standards of the single culture.

According to Wang, human rights and their understanding represents a process which is closely tied to certain cultures and societies. The *Universal Declaration of Human Rights* can also be perceived as a dynamic category. It should be perceived as a "living instrument". Thus, its articles should not be followed statically. There are different generations of human rights and their development is a continual process.

However, conception of universalist human rights which are granted to every individual is perceived by modernist authors as static. They argue that third generation of human rights contradicts to the idea of human rights itself. Civil and political rights represent the "first generation" of rights. These rights are based on liberty. Economic and social rights, which are based on equality, represent the "second generation" of human rights. According to Donelly, the "third generation" of human rights is based on fraternity. These rights are: the right to development, the right to peace, the right to healthy environment, to humanitarian assistance and "to share in the exploitation of the common heritage of mankind."

Donelly argues that the third generation of human rights is contradictory to the idea of human rights itself. He argues that human rights are based on human dignity. This can be argued for the first and second generation of human rights. However, the third generation of human rights is based on solidarity. According to Donelly, solidarity cannot be the ground for human rights. He emphasizes that human rights are by definition ascribed

---

[23] AMERICAN ANTHROPOLOGICAL ASSOCIATION, 1947.

[24] Ibid, p. 539.

[25] Ibid, p. 541.

[26] Ibid, p. 542.

to every human being. On the other hand, solidarity is founded on membership and represents a relationship among groups and persons. Donelly also emphasizes that human rights are ascribed to individuals, while third generation of human rights represents the rights of peoples and groups. Donelly argues: "The idea of collective human rights represents a major and at best confusing conceptual deviation. Groups, including nations, can and do hold a variety of rights. But these are not human rights. Whatever their relative importance (individual) human rights and (collective) peoples' rights are very different kinds of rights and should be kept distinct. (…) Thus the *Universal Declaration*, after concluding its enumeration of rights, explicitly notes the existence and importance of individual duties (Article 29)."[27]

It is paradoxical that Donelly who argues about universality of human rights rejects the most universal human rights such as those of the third generation of rights. The right to peace, healthy environment and development have the potential to be accepted by all cultures and traditions without any differences in the interpretation of these rights.

According to Wang, the first and the second generations of human rights are modern because "both of them emphasize some aspect of the idea of human rights"[28], but they deny the demands of non-Western cultures. Wang argues that the third generation of human rights is postmodern because it values diversity. It includes non-Western cultures and their rights to development, peace and healthy environment.

Postmodern[29] conception of human rights is not based on the idea of universality. It rejects foundationalist approach and is open for various interpretations. Postmodern idea of human rights emphasizes unity between universality and particularity, between individuality and collectivity, between identity and difference and so forth. It is based on the idea that have to be understood in the context of various cultures. It emphasizes dialogue between various values and beliefs.

2 Rawls's Idea of Rights as a Postmodern Conception of Human Rights

The significance of John Rawls's human rights theory is in that he does not derive human rights for single metaphysical, authoritative source, such as reason or conception of human nature. Rawls emphasizes that the

---

[27] DONELLY, 1989, p. 143-145.

[28] WANG, 2002, p. 172.

[29] However, the term "postmodernism" is vague. Some authors who are considered as proponents of postmodernism, such as Derrida, reject this label.

conception of the person he employs in his political philosophy, is a moral conception. Rawls argues that this conception of person has to be distinguished from an account of human nature given by natural science and social theory, because it is a normative and political conception, and not metaphysical and psychological.[30]

Rawls's theory of human rights represents a political conception, and it is not founded on any particular comprehensive doctrines. His conception of human rights is "thin" and it is not based on any authoritative foundation. Consequently, it differs from the rights presented in the *Universal Declaration of Human Rights*.

In Rawls's theory of global justice the peoples are fundamental, not individuals. "The term 'peoples', then is meant to emphasize these singular features of peoples, as distinct from states, as traditionally conceived, and to highlight their moral character, and the reasonably just or decent, nature of their regimes."[31] Rawls considers peoples as moral actors. However, this morality is derived from the political conception ant it does not have metaphysical character.

According to Rawls human rights in the Law of Peoples represent "a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide."[32] Rawls argues that human rights have special role in the Law of Peoples. "They restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy."[33]

Rawls leads down human rights to a minimum, and argues that this is the part of his conception of the political liberalism as neutral (which neither denies or accepts any comprehensive doctrine). In the *Law of Peoples* Rawls states what the basic human rights, which every society should respect, are: "Among the human rights are the right to life (to the means of subsistence and security and security); to liberty (to freedom and slavery), serfdom, and forced occupation, and to a sufficient measure of liberty of conscience (to ensure freedom of liberty and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is that similar cases be treated similarly)."[34] Rawls maintains that those human rights

---

[30] RAWLS, 1993, p. 18, note 20.

[31] RAWLS, *Law of peoples*, p. 27

[32] Ibid, p. 79

[33] Ibid, p. 79

[34] Ibid, p. 65

cannot be perceived as the part of only the Western tradition – "they are not politically parochial".[35] Therefore, it cannot be argued for Rawls's conception of rights that it is exclusively "individualistic" and "subjective".

Rawls's move from "moral and comprehensive pluralism" based on reason to the "freestanding pluralism" based on reasonability[36] represents his attempt to take into account "the other", "the difference", not in instrumental, but in a substantive way. He argues that: "If all societies were required to be liberal than the idea of political liberalism would fail to express due toleration for other acceptable ways (…) of ordering society."[37] This means that Rawls's liberalism presented in his *Political Liberalism* and the *Law of Peoples* represents a shift from the conception of liberalism as a universalist doctrine to a conception of liberalism as a particularistic doctrine.[38] Rawls's denial of a foundational role for any comprehensive liberalism (based on comprehensive doctrines which represent different religious, moral, and theological beliefs – different conceptions of what a good life is) and his shift to the "freestanding liberalism" represents the denial of a "political master narrative".[39]

Rawls's liberalism presented in the *Law of Peoples* is not totalizing. His idea is that liberalism should not be applied to whole life, but only to the part of life. Rawls argues that peoples can agree upon the basic principles of justice (while there is a variety of conceptions of good, or comprehensive doctrines). This means that the consensus about the rights can be achieved. Still, there is a possibility of different justifications of those rights. Rawls argues that human rights as he described them in his *Law of Peoples* can be interpreted in two ways. First, they can be seen as the part of the liberal political conception of justice as "liberties secured to free to all free and equal citizens in a constitutional liberal democratic regime".[40] On the other hand, another way to perceive those rights is from the associanist perspective "which sees persons first as members of groups, associations, corporations, and estates"[41] and this is a conception of justice held by a decent system of

---

[35] Ibid, p. 65

[36] According to Rawls, moral personality has two powers: the capacity for a sense of right and justice (the capacity to be reasonable) and the capacity for a conception of good (the capacity to be rational). The reasonable is an element of the idea of society as a system of fair cooperation. (RAWLS, *Political liberalism,* p. 108)

[37] RAWLS, *Law of peoples*, p. 54

[38] BRIDGES, 1994.

[39] BEGGS, 1999, p. 129.

[40] RAWLS, *Law of peoples*, p. 68

[41] Ibid, p. 68

social cooperation.[42] Thus, the same norms have different argumentation, they can be justified and interpreted differently in different societies, and thus they can be in accordance with tradition of different societies. Therefore, Rawls's conception of liberalism accepts the possibility of different conceptions of justice that are equally consistent with a political interpretation of liberal doctrine, because it is founded on reasonable conception of justice which cannot be valued by cognitive standards of truth and falsity.[43]

Rawls's main idea presented in the *Law of Peoples* is, that because the reasonable pluralism is the characteristic of every democratic society, it must be based on the overlapping consensus. Rawls's overlapping consensus represents his idea that proponents of different comprehensive doctrines (which, thus, have different conceptions of good) can agree to same basic principles of justice in the name of political stability.

3 Modern and Postmodern Ethics of Human Rights

It can be argued that universalist notion of human rights presented in the *Universal Declaration of Human Rights* is based on universalist ethics. Human rights ethics is based on the priority of right over the good. The "right" is considered as universal and based on reason, while the "good" is perceived as a historically and culturally contingent term. This ethics gives priority to the conception of humanity perceived as universal and essential, over the conception of humanity as contingent and historically and socially constructed concept.[44] Human rights ethics described by the *Universal Declaration of Human Rights* employs essentialist terms.

This distinction between the "right" and the "good" can be compared to distinction between the prescriptive (normative) and justificatory dimension of human rights. Rawls's conception of liberalism is often perceived as the deontological liberalism, founded on Kant's deontological ethic, based on categorical imperative, which advocates priority of right over the good. The justice (which represents the domain of "right") is prior to all

---

[42] Rawls argues that threre are two criteria for decent hierarchical societies. Firstly, these societies should not have aggressive aims. Secondly, these societies should secure a minimal set of human rights, *bona fide* moral duties and obligations that are imposed upon all members within the people's territory, and a sincere and not unreasonable belief on the part of the judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice.

[43] BRIDGES, 1994.

[44] Ibid, Chapter II

the interests found on the cultural and religious diversity, or conception of a good life (which represent the domain of "good").

The "right" is independent of "good' and other values, which, according to Sandel, shows that Rawls's ethics is deontological, and not teleological.[45] According to Rawls, principles of right are the product of collective choice (original position, overlapping consensus), while the principles of good are founded on the choice of the individuals in the real world. Thus, every individual has right to choose her on principles of good, her metaphysical, religious or philosophical doctrine, and, thus, her conception of good life. But while the "good" individuals can choose, the principles of "right" are applied, regardless to the choice of individuals. This means that if the principles of good of an individual or group oppose to the principles of justice established by public reason in the overlapping consensus – justice prevails. Therefore, the principles of justice are not compatible with all conceptions of good life (i.e. comprehensive doctrines).

Rawls's critics argue that those arguments represent Rawls's deontological ethics – unlike the "right", from the moral point of view the "good" is contingent and arbitrary. In the *Political Liberalism*, Rawls explains what his conception of priority of "right" over the "good" means: "This priority may give rise to misunderstandings: it may be thought, for example, to imply that a liberal, political conception of justice cannot use any ideas of the good at all, except perhaps those that are instrumental; or else those that are a matter of preference or of individual choice. This must be incorrect since the right and the good are complementary; no conception of justice can draw entirely upon one or the other but must combine both in a definite way. The priority of right does not deny this."[46] Rawls emphasizes that political conception of justice uses the political conception of good: "... the priority of right does not mean that ideas of the good must be avoided: that is impossible. Rather, it makes the ideas used must be political ideas: they must be tailored to meet the restrictions imposed by the political conception of justice and fit into the space it allows." [47] Rawls also explains the nature of this political conception of good: "To find a shared idea of citizens' good appropriate for political purposes, political liberalism looks for an idea of rational advantage within a political conception that is independent of any particular comprehensive doctrine and hence may be the focus of an overlapping consensus."[48]

---

[45] SANDEL, 1982, p. 138.

[46] RAWLS, *Political liberalism*, p. 173

[47] Ibid, p. 203

[48] Ibid, p. 108

In his theory of human rights Rawls also does not , separate the "right" from the "good", he does not advocate an universal conception of justice, he leaves room for the "thin" conception of good by arguing that peoples can agree upon norms, prescriptive principles of justice (which is the domain of "right"), but still they differently justify and interpret those norms in accordance with their comprehensive doctrines (which is the domain of "good").

Human rights described by the *Universal Declaration of Human Rights* can be differently interpreted. "Consider a particular right, such as the right to political participation. In further specifying the right to political participation, we can begin by distinguishing electoral from non-electoral forms of participation. Within the realm of electoral participation, we can distinguish (…) elections where voting is a right from those where it is a privilege or even a duty; elections that serve principally to mobilize popular support for government policy; and so forth."[49]

Freedom and equality, which are established by the *Universal Declaration of Human Rights*, are differently interpreted by different nations, states, cultures and traditions. On the other hand, different peoples can agree upon human rights norms, but they can disagree upon the justification of these norms. "This formulation suggests that we might agree on human rights norms, but agree to disagree on their foundations (…) This means abandoning the traditional ideal of a philosophical justification for human rights that derives them from a single authoritative source."[50]

The ethics based on priority of right over the good points to only one conception of human nature. Therefore, it can be argued that it is imperialist and fixed.[51]

Rawls argues that peoples in the Society of Peoples should be able to agree upon eight principles of justice: "1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples;

---

[49] DONELLY, 1989, p. 117.

[50] Ibid.

[51] Poststructuralist philosophers argue that the main concepts of human rights (family, equality, difference, man, woman, etc.) are still regarded as fixed, not as historically and socially constructed. According to these philosophers, there are some fundamental problems which are based on the metatheoretical presuppositions of these rights. Poststructuralist philosophers Derrida, Foucault, Irigray, Kristeva, etc. argue that meanings are socially and historically constructed. Consequently, they are always open to rereadings and reinterpretations. They argue about symbolic oppression, which can be perceived in Western discourse and law. This symbolic oppression is reflected in binary oppositions male/female, being/non-being, public/private, nature/culture, etc. which are immanent to Western discourse and law.

2) Peoples are to observe treaties and undertakings; 3) Peoples are equal and are parties to the agreements that bind them; 4) Peoples are to observe the duty of non-intervention; 5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense; 6) Peoples are to honor human rights; 7) Peoples are to observe certain specified restrictions in the conduct of war; 8) Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime."[52] However, Rawls argues that these eight principles are not based on any fixed foundation. They are open to different interpretations and explanations.[53]

Rawls's conception of human rights presented in his *Law of Peoples* opens the room for hermeneutical approach. Rawls's didn't explicitly argue about the possibility of applying hermeneutics to his theory of human rights. However, he claims that these rights can be differently interpreted. On the other hand, Rawls introduces his theory of human rights as "thin", in order to provide possibility for different justification of these rights. Rawls's theory of human rights is founded on his conception of political liberalism and the fact of reasonable pluralism. This means that Rawls's principles of human rights value "the Other" and "the diversity", that they are multicultural, and thus, non-Western imperialist. Values the other – does not impose values.

Rawls argues about different possibilities of interpretation of these rights, "The role of human rights connects most obviously with the latter change as part of the effort to provide a suitable definition of, and limits on, a government's internal sovereignty. At this point I leave aside the many difficulties of interpreting these rights and limits, and take their general meaning and tendency as clear enough."[54]

Rawls in his *Law of Peoples* argues: "Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves (as I believe they are), it is surely ceteris paribus, a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way political society is expressed and fulfilled.'[55] Thus, Rawls presents only prescriptive dimension of rights. However, he does not specify justificatory dimension. This allows possibility for different interpretations of these rights, which means that it cannot be argued that they impose Western notions of rights.

---

[52] RAWLS, *Law of peoples*, p. 37

[53] Ibid, p. 37

[54] Ibid, p. 27

[55] Ibid, p. 61

The idea that there should be made a distinction between the norms of human rights and interpretation and justification of those norms is also presented by Charles Taylor.[56] According to Taylor, the main discrepancies between the human rights perceived from the perspectives of different cultures, are not based on the legal norms, but on different interpretations of those norms. Taylor argues that in order to reconcile those differences, the Western discourse of human rights and the discourse of human rights of other cultures should be examined. Taylor states that first the consensus of some modes of rights should be accomplished, which would lead to the "fusion of horizons"[57] : "Because, for a sufficiently different culture, the very understanding of what is to be worth will be strange and unfamiliar to us. What has to happen is what Gadamer has called a "fusion of horizons". We learn to move in a broader horizon, within which what we have formally taken for granted as the background to valuation can be situated as one possibility alongside the different background of the formerly unfamiliar culture. The "fusion of horizons" operates through our developing new vocabularies of comparison, by means of which we can articulate these contrasts."[58]

Gadamer's term "fusion of horizons", which he introduces in his *Truth and Method* and is one of the key terms of his hermeneutics and he does not use this term in a political context. However, one of his main ideas is that hermeneutical understanding is based on dialogue (even the interpretation of the text is a dialogue between the reader and the text). According to Taylor, individual identity is based on dialogue – in regard to actual dialogues with others. "Dialogue" is one of the main concepts of his political philosophy, so when he uses Gadamers's term "fusion of horizons" he talks about "cross-cultural dialogue that transforms human understanding".[59] Rawls does not explicitly argue about the fusion of horizons of different peoples who accept some basic principles of human rights, but it seems that his idea was that this is the task of international policy. According to Rawls, the task of the international policy is to bring all societies accept Law of Peoples and his theory of human rights. However, he is not talking about liberal or Western imperialism, since, as it is said, Rawls advocates thin conception of human rights, and when he uses this term he is referring to norms (prescriptions) of human rights, and not to justification of these norms.

---

[56] TAYLOR, 1994.

[57] This concept is introduced by Gadamer in his Truth and Method. "Fusion of horizons" (Horizontverschmelzung) represents the process of expanding our horizon in which we collectively come to accept certain beliefs through the interaction of conversation.

[58] TAYLOR, "The politics of recognition", p. 67

[59] Ibid, p. 67

Pluralism embraces not only diversity of comprehensive doctrines, but also "the fact about the principles, institutional arrangements and practices that best realize the meaning of its public political culture."[60] Above all, the concept of reasonable pluralism points to the different understanding of the meaning of this "public political culture", even if it is based on the shared principles and ideas, because those principles may be differently interpreted and justified: "Indeed, even if we possess a shared fund of implicitly recognized basic ideas and principles, we may nonetheless place different emphases on different aspects of this fund, understand the relation between these aspects in different ways, stress different dimensions internal to them or understand the fund itself within different contexts of interpretation. Where these circumstances hold we may come to understand the meaning of the fund differently as well.[61] Thus pluralism (the diversity of "good") requires a hermeneutical approach to issues of justice.

Conclusion

In this paper two conceptions of human rights were presented. The one is the conception of human rights inside the framework of *Universal Declaration of Human Rights* and the other is Rawls's theory of human rights. It is shown that these two conceptions are different. The *Universal Declaration of Human Rights* is based on the authority of reason and represents modern idea of human rights, while Rawls's conception of human rights does not have determined ground, because it is a political conception. Consequently, it can be perceived as a postmodern conception of human rights. These two conceptions of human rights are based on the two ethics. The *Universal Declaration of Human Rights* is founded on the ethics of priority of right over the good, while in Rawls's human rights theory, the "right" and the "good" interweave. Rawls's conception of human rights leaves room for hermeneutical approach and values the "Other" in a more substantive way than the *Universal Declaration of Human Rights*. Rawls's idea of human rights is criticized by a number of authors, however, it leads to the more substantive idea of rights and citizenship, because it values diversity.

---

[60] BEGGS, 1999, p. 42.

[61] Ibid, p. 42

IVIC, Sanja. A Natureza Dinâmica dos Direitos Humanos: a Crítica de Rawls ao Universalismo Moral. *Trans/Form/Ação,* (Marília); v.33, n.2, p.223-240, 2010.

RESUMO: Os direitos humanos não representam uma verdade absoluta. Caso contrário, eles representariam a ideologia, o que é contraditório em relação à própria idéia básica de direitos humanos. Consequentemente, há uma necessidade de redefinição dos pressupostos principais da moderna concepção de direitos humanos representada na Declaração Universal dos Direitos Humanos. Esse artigo argumenta que a concepção de Rawls de direitos humanos é importante para a reconfiguração dos direitos humanos. Ela representa o caminho para a idéia pós-moderna de direitos humanos e para o reconhecimento da diferença.

PALAVRAS-CHAVE: Direitos humanos. Universalidade. Moderno. Pós-moderno. Direito. Bem.

Bibliography

AMERICAN ANTHROPOLOGICAL ASSOCIATION. Statement on human rights. *American Anthropologist,* v. 49, n. 4, p. 539-543, 1947.

AMNESTY INTERNATIONAL REPORT. 2008. Disponível em: <http://thereport.amnesty.org>.

BEGGS, D. Rawls's political postmodernism. *Continental Philosophy Review,* v. 32, n. 2, p. 123-141, 1999.

BRIDGES, T. *The culture of citizenship*: inventing postmodern civic culture. Washigton, DC: Suny Press, 1994. Disponível em: <www.cvrp.org/book/Series01/1-26/contents.htm>.

CHARLESWORTH, H. No principled reason: the challenge of human rights law for religious traditions. *Eureka Street*, v. 7, n. 9, p. 24-31, 1997.

CHARLESWORTH, H.; CHINKIN, C. *The boundaries of international law*. Manchester: Manchester University Press, 2000.

DONELLY, J. *Universal human rights in theory and practice*. Ithaca: Cornell University Press, 1989.

EISENSTEIN, Z. *The female body and the law*. Berkeley: University of California Press, 1988.

GAUT, B. The structure of practical reason. In: CULLITY, G.; GAUT, B. (Ed.). *Ethics and practical reason*. Oxford: Oxford University Press, 1997. p. 161-188.

KANT, I. *Groundwork of the metaphysics of morals*. London: Longmans, 1969.

LEVY, D.; SZNAIDER, N.; OKSILOFF, A. *The holocaust memory of a global age*. Philadelphia: Temple University Press, 2006. Disponível em: <http://books.google.com>.

MACKINNON, C. *Feminism unmodified*: discourses on life and law. Cambridge: Harvard University Press, 1987.

PATNAM, R. (Ed.). *A review of universal human rights*. New York: St. Martin's Press, 2000.

RAWLS, J. *A theory of justice*. ed. rev. Cambridge: Harvard University Press, 1999.

RAWLS, J. *Law of peoples*. Cambridge: Harvard University Press, 1999.

RIFKIN, J. Toward a theory of law and patriarchy. In: WEISBERG, D. K. (Ed.). *Feminist legal theory*: foundations. Philadelphia: Temple University Press, 1996.

SANDEL, M. *Liberalism and the limits of justice*. Cambridge: Cambridge University Press, 1982.

SCOTT, J. W. *Gender and the politics of history*. New York: Columbia University Press, 1988.

TAYLOR, C. *Conditions of an unforced consensus of human rights*. 1996. Disponível em: <www.law.nyu.edu/kingsburyb/fallo1/intl_law/protected/unity/rtf/charles20%taylor.rtf>.

TAYLOR, C. The politics of recognition. In: GUTMANN, A. (Ed.). *Multiculturalism*: examining the politics of recognition. New York: Princeton University Press, 1994. p. 25-73.

WANG, Z. Toward a postmodern notion of human rights. *Educational Philosophy and Theory,* v. 34, n. 2, p. 171-183, 2002.