

Natural and Philosophical Foundations of Ethics

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Guilt and fear today have developed an unexpected quality: they contribute powerfully to the survival of humanity. The feeling of guilt proceeds from an elementary awareness: although the unequaled progress of science and technology in the twentieth century has undoubtedly ameliorated the conditions of human life, it also has given rise to an infernal logic of genocide and crimes against humanity, in which almost all nations, directly or indirectly, have participated and participate still. This awareness is joined to another, which is itself accompanied by a primordial fear: for the first time in history, science and technology have endowed humanity with the power to destroy itself and the planet, without furnishing humans with the means of escaping their destined role as sorcerer's apprentice, for no science can tell us what to do with science. It is this double feeling of guilt and fear that pushes contemporary man to search feverishly for ethical foundations capable of furnishing discreet regulatory principles to underpin decisions and actions. From the point of view of contemporary humanity, ethics must be able to confer meaning and perspective on an existence which apparently has neither: "Now," writes Hans Jonas, "we shiver in the nakedness of nihilism in which near-omnipotence is paired with near-emptiness, greatest capacity with knowing least for what ends to use it."¹

The "greatest capacity" is brought to bear as much on nature as on life, as attest sufficiently on the one hand the mastery of nuclear energy and the many uses – positive or negative – to which it may be put, and on the other hand the exploration of the human genome and the diverse manipulations – benevolent or malevolent – to which it may give rise. The supervision exercised by the

United Nations in the domain of nuclear proliferation, and that of governments in the field of genetic manipulation, are still precarious and often devoid of coherence. As for "the greatest abyss," it was dug by two ideological currents, whose effects we continue to feel: that of "the death of God," that is to say the rejection of all metaphysics and, *a fortiori*, any reference to religious revelation (the philosophical myth of the "superman" is its remote cause); and that of the "death of man," that is to say the end of humanism and the decline of the Subject (structuralist thought is the proximate cause). Deprived of its transcendent and transcendental references, contemporary thought seeks to found *ethics* on *natural* bases as a substitute, mindless of the double ambiguity which weighs on both the concept of ethics and that of nature.

The widespread use today of the term "ethics," to the detriment of "morality," raises the problem of the definition of the two terms and the relationship between the realities they designate. Etymology is, in this case, of no help at all, for both the Greek *ethos* and the Latin *mores* signify the customs of a people and their attendant values. History is more helpful: ethics and morality refer to two currents of thought, which Paul Ricoeur has clarified, better than anyone, in reserving "the term 'ethics' for the aim of an accomplished life and the term 'morality' for the articulation of that aim in norms characterized by a striving for universality and a recourse to constraint."² This distinction refers in turn to the contrast between a teleological perspective, derived from Aristotle, and a deontological perspective, derived from Kant, two traditions that Ricoeur reconciles by affirming "1) the primacy of ethics over morality; 2) the necessity to pass the ethical aim through the filter of norms; 3) the legitimacy of turning from norm to aim when norms lead to a practical impasse."³ To affirm the primacy of ethics over morality is thus simply to make a practical choice; it is to prefer using praxis and the intersubjective dialogue it presupposes at every instant in order to measure an action's motivations by the yardstick of the moral imperative, instead of starting from that imperative which, because formal, is in constant danger of degenerating into a code of prescriptions and obligations, imposed from outside the subject. But for those theoreticians who reject the moral imperative, the ethical aim, unconcerned with norms, tends to have no other end than itself.

There is no moral philosophy or ethical theory that, at its origin, does not refer to the concept of nature for its ultimate foundation. But neither is there a signifier that covers such a diversity of things signified. Should the norm of action conform to exterior Nature, that is to say to the order of things? This order and norms will be different, and so will be the norm, depending on whether nature is considered in the perspective of transcendence – *Deus ultima ratio* – or in that of imminence – *Deus sive Natura*. But today ethical thought turns to the natural condition of man, renewing various concepts that have marked the history of thought. The value of these theories is relative to the idea that one has of man, and of that which is specific to him. It is nonetheless true that, through the most diverse theories, the search for ethical first principles, whatever the “anchoring-place” one assigns them – matter, desire, reason – attests, either on the level of presupposition, or on that of implementation, to the permanence of that which Kant called the ineradicable “metaphysical disposition” of man, as well as the resurgence, manifest or occult, of the transcendental Subject. Starting from this invariant it will be possible, at the end of the road, to elucidate the foundations of ethics.

The “Natural” Foundations of Ethics

Man is not as far from the animals as he thinks; culture is not so opposed to nature as we believe. To take note of this fact is to deal a decisive blow to the self-congratulatory transcendent Subject, and to its corollary, humanistic universalism; it is to school oneself in realism and modesty. This is the implicit thesis underlying the naturalist current, of Anglo-Saxon inspiration,⁴ which today enjoys real prestige in the domain of ethics. In principle, the objective is simple: to subordinate as much as possible that which should be to that which is, duty to fact, in attempting to find, in biological nature, the origin of that which we judge to be moral. The methodology is strictly positivist, taking into account no other reality than that of observable fact, and rests on the traditional profession of scientific faith, which is in fact a metaphysical position. As a matter of fact, as Kant noted long ago, any doctrine concerned with the

totality of the real – whether materialist or idealistic, sensualist or spiritualist, stoic or skeptical – is, in essence, the expression or objectivization of the metaphysical need that inhabits every rational and free being. The fact remains that ethical naturalism, through its scientific discoveries, broadens the field of biological determinism, obliging the philosopher to re-situate, by reason of the information given, the domain of freedom and reason, and to redefine the problematics of meaning and value. This perpetual dialogue with science – whether we speak of hard science or social science – is, in fact, the essential task of contemporary philosophy.

The various theses of ethical naturalism have a common objective: they aim to show that the rise of social behavior, which is at once cultural and ethical, results from the process of evolution of living beings, and may be explained, in the final analysis, by the mechanisms of natural selection and genetic adaptation. Michael Ruse sums up this objective well: “I would like to assert that we now have good reason to suggest that human morality is a product of evolution But I would also like to assert a stronger thesis: human morality, that is, the sense of good and evil, and of obligation, is in fact the fruit of evolution. It is the final product of natural selection and of its action on random mutation.”⁵ The starting point for this reasoning is biological “altruism”: we now recognize that “in nature, more is often obtained through cooperation than through conflict.”⁶ The similarity between animal and man is that minimal degree of “altruism” represented by parental affection, which is inborn and not acquired. The difference between man and animals is also to be found within the evolutionary process. Human social instinct, with all that it implies about cultural acquisition and ethical norms, is thought of in terms of selective advantage and genetic adaptation: “We work together in an ‘altruistic’ fashion because our genes make us do so.”⁷ Thanks to reason, which itself appears in the course of evolution as an advantage of selection and an instrument of adaptation, “morality occurs as a kind of contract ... a contract that our genes impose on us.”⁸ The function of ethics is thus essentially a function of adaptation. In the final analysis “we have innate dispositions not only to be social, but also to be moral. We have therefore a dimension of freedom which permits us to react to different situations.”⁹ But

freedom is, here, defined by a "certain flexibility,"¹⁰ and reasoning is reduced to calculation.

The neuro-sciences record the results of the evolutionary process on the brain. "We should not be surprised," writes Antonio Damasio, "by the idea that the cognitive and neuro-sciences can discover the neural bases of reasoning and social behavior. Neither should we be surprised that on the basis of this discovery, we can comprehend the neural bases of social conventions and ethics."¹¹ Jean-Pierre Changeux defines the program of research in this domain thus: "To make use of all available means, theoretical as well as experimental, in order to describe how the brain constructs 'representations' of the world (physical, social and cultural), how it links them in reasoning, how it elaborates intentions, how it tacitly simulates consequent behavior, and publicly communicates the results by language, how it selects among them in order finally to act."¹² This program can doubtless illuminate the contribution of hierarchical groups of neurons to the cognitive functions which permit the elaboration of values, but it leaves unanswered the question of *why* we must elaborate values, and it leaves intact the problem of ethical first principles, that is to say moral imperatives. Moreover, Changeux takes precautions that to me seem confused: "Today, it is more than ever necessary to reaffirm the distinction, dear to David Hume, between 'that which is,' scientific knowledge, and 'that which should be,' the elaboration of moral norms. It is no less indispensable to have access to 'that which is' in order to decide 'that which should be.'"¹³ To decide "that which should be" aims, here, at the concrete moral act, but not at the imperative which is its foundation and its ultimate justification.

In attempting to avoid all metaphysical postulates, ethical naturalism finds itself in a dead end and its proponents come up against a dilemma: either deny the existence of a foundation for ethics, or identify a foundation other than biological makeup, without elaborating upon it. Michael Ruse perfectly represents the first tendency: "At the normative level," he says, "everything happens as if we had drawn up a contract. On the meta-ethical level, we move towards the idea that there are no foundations for normative ethics. We should thus adopt the position of 'ethical skepticism' ... in emphasizing that skepticism bears on foundations not on norms."¹⁴ And

again: "Morality can only function if people really think that it has an objective foundation." But, if "we think that ethical norms are objectively true," it is "because our biology makes us think precisely that."¹⁵ The second tendency is shared by many thinkers from many disciplines. As a case in point, Marc Kirsh asserts that "science will furnish us with no ethics: facts are morally neutral,"¹⁶ and that culture and ethics are not epiphenomena of our biological makeup. Jerome H. Barkow considers it "useless for us to look for moral direction in the structure of the brain, in cytology, or in the biology of evolution."¹⁷ Rather, he is content to remark that particular ethical systems are the products of history. Anne Fagot-Largeault is convinced that "it is not nature which creates norms: it is human freedom."¹⁸ But it is perhaps René Sève who reestablishes the real "place" of meta-ethics in invoking the "fact of reason," of that reason which, at its base, is equivalent to the need for self-transcendence: "Man has an ethical necessity to consider his existence from a global point of view, thus as super-personal and outside of time."¹⁹

The "Empirical" Foundations of Ethics

Ethical "naturalism" and "empiricism" have in common only the refusal of every metaphysical presupposition and the adoption of a frankly materialist position. But for contemporary philosophers empiricism is making a reappearance: "Empiricism," Gilles Deleuze points out, "is in no way a reaction against concepts, nor a simple appeal to lived experience. It undertakes on the contrary one of the most prodigious operations of concept creation that we have ever seen or heard of But precisely it treats the concept like the object of an encounter, of a here/now Only the empiricists may say: concepts are things themselves, but things in a wild and free state, beyond 'anthropological predicates.'"²⁰ The concept is not a representation, but a revelation. It is the medium through which appear the relationships, real and possible, between the individual and nature, with others and with the self. Reason, like the concept that it produces, has only an instrumental function: it permits the exploration of the field of desire, which is the ultimate source of ethics, that is, of values.

Desire is essentially desire for joy. This is the most fundamental aspiration of man, that which gives meaning and value to existence. But the path to joy varies from one author to another. For Deleuze it is creative power that leads the individual to joy, in so far as he or she lets him- or herself be filled, consciously and unconsciously, with vitality and desires, rejecting all idealistic logic. Under structuralism's influence, Deleuze believes "in a world in which individuations are impersonal, and singularities pre-individual: the splendor of 'ON.'"²¹ He elaborates: "Neither empirical particularities nor universal abstraction: Cogito for a dissolved I."²² Robert Mizrahi, for another, stays within the phenomenological perspective of the subject. The point of departure is the same: "Desire ... is in essence desire for joy,"²³ but the notion of joy coincides, here, with that of happiness. If joy refers to a moment of existence, when new values flower, happiness goes beyond the here/now of joy and the pleasure which it encompasses, and concerns the totality of existence. For another thing, "the field marked off by the notion of happiness is not affective subjectivity, but the subject as action, as sense and relation, all this being given as well as qualitative content."²⁴ This is a deliberately eudaimonist philosophy, which is "like the rediscovery of possibilities which have never ceased to be ours;"²⁵ for "eudaimonist philosophy is an ethic concerning the totality of the existence of individuals."²⁶

Paradoxically, it is by the path of nihilism that other thinkers attain joy. Despair is the point of departure for Andre Comte-Sponville's thought, a despair that must be conquered by the systematic refusal of hope which is first; for if God does not exist, if the soul does not exist, the "I" is nothing, "and the only refuge is this nothing itself."²⁷ "What I like about materialism," the author affirms, "is despair. To believe in nothing."²⁸ But this despair is the price paid for joy, or more exactly for bliss, for "the happy man is he, as we say, who 'has nothing left for which to hope.'"²⁹ "Despair and bliss. History has no other end, when all is said and done, than death, and no other goal (since we are alive) than pleasure, to which even war is subjugated."³⁰ It is in this sense that "materialism is always the philosophy of desire."³¹ For Marcel Conche and Clément Rosset, joy resides also in the acceptance of the world as it is, of life in the rough. The former aligns himself with Lucretius'

thought, which he interprets in the following way: "Because the universe has no structure, because man is only an accident of nature, because the world is perishable and the soul mortal, because there is no finality, but only blind causality and chance preside over all the creations of nature ..., the wise man ... may consciously and calmly experience pure joy and, without being eternal, live in eternity like a god."³² The latter affirms: "There is in joy an approbative mechanism which tends to go beyond the particular object which gave rise to it, to affect indiscriminately every object, and leads to an affirmation of the jubilatory character of existence in general. Joy appears thus like a sort of blind acquittal accorded to anything and everything, an unconditional approbation of every form of existence, now, past or to come."³³ For these two authors the only value is the "flavor" of existence, in which we must take pleasure, without expecting anything else.

All these philosophies present themselves explicitly as personal "arts of living," of individual "wisdom" but, because they are philosophies, they postulate at the same time a right to universality. It is perhaps Robert Mizrahi who explains this postulate best in his treatise on happiness. He asserts "the universal character of the desire for joy" or for happiness, while stressing that "universality here does not lead to formalism ... the universal, here, is always singular."³⁴ But the universal can be singular only if we are discussing *formal* singularity, that is, simply the right of every individual to realize the desire for joy, for, as Kant noted, the *empirical* contents of such a concept – joy, happiness or pleasure – are relative to the interests of each: how then can they be made universal? Mizrahi responds: "It is not for me, as an individual author, to suggest the different concrete forms possible for a socialism of happiness, the future particular structures of a happy society, are by definition and implication democratic and must be studied by groups of individuals, and not by individual authors." Again, it is important for the members of these groups, and these groups among themselves, to agree on the criteria for the "individuation of the eudaimonic universal."³⁶ But they can do this only by referring to a regulating principle, which is precisely the moral imperative inherent in reason, and which has no other content than reason itself, conceived as the necessity for liberty and equality oriented

towards the common good. We here see a formulation of the Kantian imperative of duty, the ultimate foundation of morality.

In a book with a significant title, *Le crepuscule du devoir: l'éthique indolore des nouveaux temps démocratiques* [*The Twilight of Duty: The Painless Ethics of the New Democratic Times*], Gilles Lipovetsky claims to have discovered the nature and function of these desire-based ethics: "For the first time," he writes, "we see a society which, far from exalting the higher commandments, euphemizes and discredits them; devalues the ideal of abnegation by systematically stimulating immediate desires, the passions of the ego, and materialist and sensual happiness ... democracies have fallen into the hereafter of duty, they act not 'without faith or law' but according to a weak and minimal ethic, 'without obligation or sanction;' the march of modern history has given birth to a new genre: *post-moralist* societies No reconstruction of heroic duty, but a reconciliation of heart and head, of virtue and self-interest, of the imperatives of the future and the quality of life in the present. The ethical effect, far from being in confrontation with individualist post-moralist culture, is one of its exemplary manifestations."³⁷

The Rational Foundations of Ethics

Leafing through the works of philosophers whom I have characterized as ethical "empiricists," I realize that all of them feel obliged to "settle the score" with Kant, by invoking Spinoza, Nietzsche, or ancient wisdom. It is because, as Jacqueline Russ puts it, "Kant opens, in a certain way, the field of contemporary ethics: reason is given free reign in the sphere of morality and sketches out what must be done, independently of any speculations and of any metaphysical or theoretical knowledge Kant's universalist formulation is part of the horizon of contemporary thought Kant is therefore one of the great sources of ethical thinking in our times."³⁸ We cannot, in the domain of ethics, ignore the categorical imperative; we can, however, reject it, but at the same time we lose all possibility of establishing the theory of values that we have elaborated on the basis of reason, that is to say, the possibility of any claim to its universality. That is what the philosophers

who search for the foundation of ethics no longer in desire but in reason itself, as it manifests itself either in discourse or in consciousness, have understood. Karl O. Apel and Jürgen Habermas on the one hand, Hans Joans and John Rawls, on the other hand, situate themselves explicitly in the direct line of the Kantian heritage, while trying to amend it and complete it, and adapt it to the concrete needs of contemporary society.

Karl O. Apel demystifies the pretended neutrality of the science which positivism and scientism claim to represent. The scientific discourse presupposes an *a priori*: that of a “community of reasoners” to which the scientist necessarily addresses himself, even when alone, and whose approbation he seeks. This community, by right unlimited and exempt from violence, implies the mutual recognition of its members as individuals and partners, with equal rights of consultation or discussion. It is the obligatory and ultimate benchmark, not only of scientific activity, but of all human activity endowed with meaning. “According to our heuristic approach,” Apel affirms, “it is at this level of intersubjective comprehension of meaning and of the validity of terms ... that an ethic is presupposed.”³⁹ Obvious as it is, the reference to Kant is here filled with ambiguity: Apel tends to amalgamate the speculative conclusion of the *transcendental deduction* – the pure subject, that – as Kant put it – “consciousness of the identity of oneself [which] is at the same time a consciousness of a ... unity of the synthesis of all phenomena,”⁴⁰ as a “place” of objective judgment, that is to say universal and necessary – and the second formulation of the categorical imperative – the respect of the other as a person and as an end – thus evading the specific and autonomous order of practical reason.

Jürgen Habermas’ point of view is situated halfway between the transcendental perspective adopted by Apel and the pragmatic perspective suggested by facts. This is because Habermas is more sensitive than Apel to the critique of Kantian formalism advanced by Hegel and retained from the latter the idea that the transcendental Subject is essentially intersubjectivity: “Consciousness ... is to itself its own notion.”⁴¹ It is at this concrete level of the real, and of the discourse that expresses it, that Habermas seeks to “found moral principle on reason in a pragmatico-transcendental

manner."⁴² In the ethics of discussion, according to the author, "it is the process of moral reasoning that takes the place of the categorical imperative. It establishes the principle according to which only norms that can find agreement among all those concerned insofar as they participate in a practical discussion have a claim to validity."⁴³ This ethics of discussion and of consensus is oriented towards the consequences of action, and thus presents itself as an ethics of responsibility. But, functioning as a "rule of argument, comparable to a principle of induction,"⁴⁴ the principle of universalization is never explicitly linked to the original fact of reason, to the *Factum der Vernunft* which, for Kant, is the foundation of the moral imperative. Thus it seems that, for Habermas, "the absence of ultimate foundation guarantees a permanent debate," which is able to keep in check all tendency towards dogmatization.

John Rawls and Hans Jonas directly acknowledge Kant. The first proposes a theory of justice designed to replace the doctrine of utilitarianism, deeply rooted in the Anglo-Saxon tradition. It starts from a hypothetical assembly of *free* individuals – equivalent to the classic concept of "state of nature" – called upon to establish a new social contract, that is to say to formulate the founding principles of a just society. From their deliberations emanate two principles which Rawls presents as categorical imperatives: 1) All individuals should be able to enjoy, in equality, the maximum of fundamental freedoms; 2) To be just, socio-economic inequalities should benefit all citizens, "the advantage of the more favored (being) compensated by a diminution of the disadvantage of the less favored."⁴⁶ As for Jonas, sensitive to the fragility of man, who has become in a sense the "object" of technology, and to the necessity of protecting him against his own inventions, he makes every person responsible for the future of humanity as such. He writes: "An imperative adapted to the new kind of human action ... would be formulated more or less thus: 'act in such a way that the effects of your action be compatible with the permanence of an authentically human life on Earth;' or simply: 'do not compromise the conditions for the indefinite survival of humanity on Earth;' or again, once more formulated positively: 'include in your current choice the future integrity of man as the secondary object of your will.'"⁴⁷

The Genesis of the Moral Imperative

Kant did not invent the categorical imperative: he was able to discern its historical emergence and to define its conceptual tenor. The imperative's emergence is closely linked to the evolution of the concept of natural law. It is hardly possible to retrace here the complex and confused history of the polemics aroused by this concept from antiquity to the French Revolution. It is enough to note that it marks a progressive passage from *objective* natural law – which is based on the concept of a presumably orderly world, governed by an eternal law, the immutable work of Providence, to which man gains access by “participation” – to *subjective* natural law, which issues from the transcendent Subject, that “consciousness of the self, one and identical in all consciousness,” and which is nothing more, but also nothing less, than practical reason itself in the form of the exigency of equality and freedom.⁴⁸ The fact that natural law found its most adequate formulation in a particular time and in a given culture does not relativize it, for this formulation only makes explicit an aspiration which itself is as old as humanity. As a matter of fact, even in distant times when society justified slavery in the name of the “nature of things,” that is to say in the name of a sacred order of the world, natural law, in the form of the right to equality and freedom, was demanded by oppressed peoples or by their defenders, as is shown by numerous events throughout the course of history.

It is in the period of the Enlightenment that the passage from objective natural law to subjective natural law is finally completed. Anxious to liberate man from the double absolutism of throne and altar, the men of the 18th century finally recognized, man alone as the principle of individual and collective morality, man in general, the abstract individual specified by reason. “There is ... a primary form of reason,” affirmed Montesquieu, “and laws are the links between it and different beings and the links from these latter among themselves.”⁴⁹ Montesquieu sees the multiplicity of positive rights governing nations as the diversified expression of natural law, issued from that primary form of reason: “Nations, which are in respect to the universe what individuals are to the State, govern themselves by natural law and by the laws

they have made for themselves."⁵⁰ Natural law ultimately stands as a moral imperative inherent in consciousness in general. Montesquieu invokes "the law of natural light, which has us do unto others as we would have them do unto us."⁵¹ And he elaborates: "If you want to know if the desires of each are legitimate, examine the desires of all."⁵² The principle of universality is paramount, which guarantees the equality and freedom of thinking beings.

The principle of universality also serves as the foundation to Rousseau's approach: "The rules of morality," he asserts, "are not dependent upon the customs of peoples."⁵³ They are thus not the result of an inductive approach, but are deducted *a priori* from reason. If, in the order of things, "we only begin to become men after we become citizens,"⁵⁴ in the order of reason everything is inverted: "Let us first find this faith and this morality, it will be that of all men, and then when we need national formulae, we will examine the foundations, the relationships, and the conventions, then after having said what a human being is, we will then say what a citizen is."⁵⁵ In the realm of politics, the principle of universality takes shape, for Rousseau, in the notion of the general will, which is the foundation of the social contract. In fact it was not Rousseau who was its inventor but Pufendorf who, already in the 17th century, wrote: "No one would deny that the general will is expressed in every individual as a pure act of understanding that reasons in the silence of passions about what man may require of his fellow man, and what his fellow man may require of him."⁵⁶ But Rousseau introduced an essential distinction between general will and the will of all: "There is often," he asserts, "a great deal of difference between the will of all and the general will; the latter is only concerned with the common interest, while the former is concerned only with private interest, and is merely the sum of individual wills; but take from these same wills the extremes which cancel each other out, what remains is the general will."⁵⁷ "It must arise from each and apply to all."⁵⁸

It is indeed the principle of universality inherent in reason that prevailed during the French Revolution, a revolution that was supposed to usher in a society of absolute freedom. However, it was the *will of all* that was at work here, not the *general will*. And if that society of absolute freedom of which enlightened reason dreamt,

founded in generalized suspicion and terror, it was because, in the revolutionary ideology, the free will of each was believed to coincide exactly with the will of all, as if the individual were immediately universal. Concretely, this signifies that each wants to impose his will on all others. Thus, the State of absolute freedom could lead only to a bloody dictatorship. Kant, and Hegel after him, drew a lesson from the French Revolution: absolute freedom, as it arose in revolutionary ideology, is a metaphysical ideal which cannot exhaust itself in *reality*, but can only invigorate it; it expresses a *should-be* which cannot be translated into the element of *being*, but can only guide it. Individual will is not universal, it must be universalized; it is not free, it must free itself, and that imperative indicates an infinite and eternal task, never to be finished.

The merit of the French Revolution was to have revealed this ideal as an irrepressible aspiration for humanity in general, inscribed in the rational consciousness of each individual: "Little does it matter," writes Kant, "if the Revolution of a people that we have seen take place in our time succeeds or fails, little does it matter if it amasses miseries and atrocities ..., for I say that in the minds of its spectators (those who are not themselves directly engaged in the game) this revolution has produced a sympathy of aspiration which borders on enthusiasm. This sympathy in consequence can have no other source than the moral character of the human race."⁵⁹ Hegel offers an explanation for this moral disposition. It is only an orientation towards the common good because it is the condition on which the possibility of mutual recognition between humans rests: "Self-consciousness," he affirms, "is consciousness of the self for a consciousness of the self," it is the desire for the desire of the other. This signifies, on the one hand, that intersubjectivity, far from being a secondary link, is the structure of consciousness itself; on the other hand, the ultimate need of every man is to be accepted, esteemed, and approved by the other, by all others.

Natural Law and Human Rights

Since the Enlightenment, the status of natural law has become clearer, thanks in particular to the philosophers of German Ideal-

ism. Kant asserted that natural law was a moral imperative inherent in rational thought, the role of which was to regulate both the life of individuals and of nations. As for the concerns of the individual, the three formulations of the categorical imperative furnished him with the mental schemata capable of regulating moral action. In the case of nations, what is required and possible is that each give itself a republican constitution favoring the judicial *freedom* of its citizens, that is to say "a constitution which is founded primarily on the principle of the freedom of the members of a society (as people), secondly on that of the *dependence* of all (as subjects) with regards to a unique and common legislation, and third on the *equality* of all (as citizens)."⁶¹ Hegel carries Kant's thought to its conclusion, in showing the concrete effects of natural law on the positive laws that govern nations.

Eric Weil, who, it is said, liked to call himself a "post-Hegelian Kantian," defined natural law as "the principle of the equality of thinking and free beings."⁶¹ This basic principle is necessarily formal, that is to say, abstract and indeterminate. It acts upon historical reality only insofar as it develops concrete and determinate content, in the form of a group of secondary principles which can serve as a frame of reference for all legislation claiming to be just. These principles were expressed during the Enlightenment, the French Revolution, in the Charter of Rights of Man and of the Citizen; they are expressed today in the Declaration of Human Rights drawn up in 1948 and in its supplements. These principles are always capable of being further perfected, as the gap between the declarations of 1789 and 1948 shows. Universal but evolving, human rights is the middle term between natural law, universal and immutable, and positive laws, which are concrete and various. They express our historical consciousness of the exigencies of a natural law that itself transcends history. To the extent that the positive law of a society is open to the injunctions of natural law as expressed in human rights, the particular culture of a society tends to embody the universal that it carries potentially within itself, that is to say to create, in an original synthesis, values fitted to the principle of the equality of thinking and free beings.

No culture can claim to incarnate the universal by itself. The opening of a culture to the universal takes place concretely through

its confrontation with other cultures, facilitated by the globalization of communication and information. In this context, the universal, as the natural horizon of rational consciousness, becomes the regulating principle that presides over the differential comparison of cultures, in order to discern what, in each, is good or bad, better or worse, closer to or further from the exigencies of natural law, as well as to help identify the choice of the cultural models most apt to furnish additional freedom and responsibility. In addition, it is my view that the intercultural relationships currently being established between the countries of the North and the South, and the acculturational process that results, are not only to the benefit of the latter: "Through direct or indirect contact with advanced industrial societies, developing countries have the opportunity to discover modernity and the values it brings, such as rationality, freedom, equality, secularity and, above all, the critical sense which is at the historic root of democracy and remains its guarantor. In contact with the societies of the South, Westerners have the opportunity to measure the gap separating their stated values and the dryly legalistic manner in which they live them. In so doing, they may be able to relearn various dimensions of life that the techno-economic civilization tends to obliterate, such as family and group solidarity, affective stability and continuity, permanence and warmth of hospitality and, more generally, a qualitative differentiation of space and time accorded to the diversified rhythms of existence."⁶²

Kant was not wrong in thinking that the implementation of the categorical imperative was essentially the task of the individual, of each and every individual. In fact, the opening of a particular society and culture to the universal can only occur if the affected citizens, fully aware of the exigencies of natural law and human rights that make it explicit here and now, require the positive laws that govern them to evolve as a function of these exigencies. Natural law sets itself finally as a critical authority: "Humanity," writes a contemporary philosopher, "is not defined by political society alone, it is also defined by the permanent critique of the society in which it lives."⁶³ It is to the extent that each individual assumes this attitude that he or she may surpass socio-cultural identity to develop his or her identity as a human. "I am a man before being a Frenchman,"⁶⁴ said Montesquieu, and adopted the

following motto: "If I knew something that was useful to me and prejudicial to my family, I would reject it from my mind. If I knew something that was useful to my family and not to my country I would seek to forget it. If I knew something that was useful to my country and prejudicial to Europe, or was useful to Europe but prejudicial to the human race, I would regard it as a crime."⁶⁵

Let me conclude on a more personal note. After reading my book *Cultures and Human Rights* a colleague, who is a pre-historian, wrote to me: "What torments me is the question of whether, at least among the elite of our societies, we have not passed over into the purely conceptual, with human rights as our only mental horizon (the same 'human rights' that have so much trouble inspiring people), so that the mythical is seen as the regressively pathological, reserved for the sects and ayatollahs. Can we hope for anything new from the 'figurative' side, as the Platonic solution to Myth intervenes not only before but afterwards, when philosophy comes to steady it." Other friends, Jews and Christians, criticize me more directly for saying nothing of the biblical sources for human rights. My response is the following: "In the Bible, the idea of eternal laws written by God in the order of nature and in the heart of man refers to the notion of Union, which does not stop at the bilateral relationship between God and the Jewish people but attains universality, since, through the chosen people, it is offered to all the nations. It even attains a cosmic dimension since it implies God's gift of nature to man – the Earth, the heavens, the stars, the animals, the plants etc. The aim of the men of the Enlightenment was to identify the universals of God directly in human reason. The ensuing secularization of natural law and human rights had the advantage of being obligatory for everyone – on one condition: that he or she wishes to act like a human – while their Jewish, Christian, or Muslim conceptions obligated, strictly speaking, only the respective adepts of these religions."

"Subjective" natural Law offers another advantage: it sensitizes religion to the danger of that kind of dogmatism which consists of considering only its own respective "believers" to be complete persons. It is precisely this kind of aberration that, during the Inquisition, justified the persecution of "infidels" and the punishment of Christians judged to be deviant. An analogous error may be found

in the traditional Muslim legislation that considers the Jew or Christian a second-class citizen whose status is “protected.”

Human rights are thus a requisite minimum for any religious legislation that strives to be humane. On the other hand, it is certain that the secularization of human rights, while conferring upon them an absolute universality, also impoverishes them in attaching them to a single transcendental Subjectivity that dissociates them from every super-rational or transcendental source. The role of faith is thus to deepen or enrich them, as the evidence of the moral philosopher Emmanuel Levinas or that of Paul Ricoeur shows. To take just one example, the biblical notions of “justice” and of “love for one’s fellow man” go much further than the simple judicial respect for the individual stipulated by the Declaration of the Rights of Man.

The “subjective” natural law or its equivalent, the moral imperative, is the requisite minimum for religion which, nonetheless, may be able to perfect it with the addition of a spiritual or mystical dimension. It is also the minimal standard demanded by all ethical research that seeks foundations in reason. Man is not essentially a “biological organism” nor a “desiring machine.” Rather he is defined by the faculty of the unconditioned or of the infinite that is reason. A finite being, man is inhabited by the idea of the infinite, which he develops on the basis of this very finitude. He has then a choice between the infinity of *repetition*, which Hegel called “bad infinity,” and the infinity of *integration*, or “good infinity.” The first option consists in investing reason in the game of impulses and passions; the second of accepting impulses and passions in the order of reason. In the first case, reason is reduced to its computational function and freedom to the operations of free will; in the second, reason is the power of self-transcendence, and freedom the principle of autonomy.

Notes

1. H. Jonas, *The Imperative of Responsibility*, Chicago, 1984, p. 23.
2. P. Ricoeur, *Soi-même comme un autre*, Paris, 1990, p. 200.
3. *Ibid.*, pp. 200f.
4. See M. Kirsch, “Introduction,” in: J.-P. Changeux (ed.), *Fondements naturels de l'éthique*, Paris, 1993, p. 14, as well as the bibliographical references, *ibid.*, pp. 63f.

5. M. Ruse, "Une défense de l'éthique évolutionniste," in: J.-P. Changeux (ed.), op. cit., p. 44.
6. Ibid., p. 46.
7. Ibid., p. 49.
8. Ibid., p. 54.
9. Ibid., p. 52.
10. Ibid., p. 62.
11. A. R. Damasio, "Comprendre les fondements naturels des conventions sociales et de l'éthique, données neuronales," in: J.-P. Changeux (ed.), op. cit., p. 122.
12. J.-P. Changeux, *Raison et Plaisir*, Paris, 1994, pp. 22f.
13. Idem (ed.), op. cit., pp. 8f.
14. M. Ruse, "Une défense de l'éthique évolutionniste," in: ibid., p. 62.
15. Ibid.
16. M. Kirsh, "Introduction," in: ibid., p. 28.
17. J. H. Barkow, "Règles de conduite de l'évolution," in: ibid., p. 88.
18. A. Fagot-Largeault, "Normativité biologique et normativité sociale," in: ibid., p. 218.
19. R. Sève, "L'éthique comme besoin," in: ibid., p. 110.
20. G. Deleuze, *Différence et Répétition*, Paris, 1968, p. 3.
21. Ibid., p. 4.
22. Ibid., pp. 3f.
23. R. Mizrahi, *Traité du bonheur II. Ethique, politique et bonheur*, Paris, 1983, p. 16.
24. Ibid., p. 29.
25. Ibid., p. 331.
26. Ibid., p. 30.
27. A. Comte-Sponville, *Le Mythe d'Icare. Traité du désespoir et de la béatitude 1*, Paris, 1993, p. 45.
28. Ibid., p. 25.
29. Ibid., p. 22.
30. Ibid., p. 95.
31. Ibid., p. 65.
32. M. Conche, *Lucrèce*, cited ibid., p. 94.
33. C. Rosset, *Le Force majeure*, Paris, 1983, p. 78.
34. R. Mizrahi, op. cit., p. 20.
35. Ibid., p. 336.
36. Ibid.
37. G. Lipovetsky, *Le Crépuscule du devoir*, Paris, 1992, pp. 14f.
38. J. Russ, *La Pensée éthique contemporaine*, Paris, 1994, p. 16.
39. K.O. Apel, *L'Éthique à l'âge de la science* Lille, 1987, p. 95, cited in: ibid., p. 60.
40. I. Kant, *Critique of Pure Reason* (transl. by F. Max Müller), London, 1915, p. 89.
41. G.F.W. Hegel, *The Phenomenology of Mind* (transl. by J.B. Baillie), New York, 1967, p. 138.
42. J. Habermas, *Morale et Communication*, Paris, 1986, p. 403.
43. Idem, *De l'Éthique à la discussion*, Paris, 1992, p. 17.
44. Idem (note 42), p. 99.
45. C. Bouchindhomme in his "Introduction" to ibid., p. 16.
46. J. Russ, *La Pensée éthique contemporaine* (note 38), p. 89.
47. H. Jonas (note 1), p. 11.
48. On this topic see S. Abou, *Cultures et Droits de l'homme*, Paris, 1992, pp. 78-88.

49. C. Montesquieu, *L'Esprit des lois*, vol. I, 1, Paris, 1970, p. 3.
50. Ibid., vol. XXI, 21, p. 267.
51. Ibid., vol. X, 3, p. 160.
52. Ibid., vol. XV, 9, p. 208.
53. J.-J. Rousseau, *La Nouvelle Héloïse*, in: *Oeuvres complètes*, vol. II, Paris, 1970, p. 243.
54. Idem, *Le Contrat social* (first version), in: *ibid.*, vol. III, p. 287.
55. Idem, *Lettre à Beaumont*, in: *ibid.*, vol. VI, p. 287.
56. Cited by A. Philonenko in his article "Rousseau" in: F. Châtelet et al., *Dictionnaire des oeuvres politiques*, Paris, 1986, p. 698.
57. J.-J. Rousseau *Le Contrat social* (in a version ed. by M. Halbwachs), Paris, 1948, p. 145.
58. Ibid., p. 154.
59. I. Kant, "Le conflict des facultés," in: *idem, Philosophie de l'histoire*, Paris, 1947, p. 171.
60. Idem, *Vers la paix perpétuelle*, Paris, 1958, p. 91.
61. E. Weil, *Philosophie politique*, Paris, 1971, p.35.
62. S. Abou, *L'identité culturelle*, Paris, 1995, p. 247.
63. A. Jeannière, "Anthropologie sociale et politique," in: *Travaux et conférences du Centre Sèvres*, vol. 16, Paris, 1989, p. 9.
64. C. Montesquieu, *Cahiers, 1716-1765*, Paris, 1941, p. 10.
65. Ibid.
66. S. Abou, "L'universel et la relativité des cultures," in: *L'Idée d'Humanité* (Actes du Colloque des Intellectuels Juifs), Paris, 1995, pp. 58f.