

INTERCULTURE

Interculture intends to contribute to the discovery and emergence of viable alternative approaches to the fundamental problems of contemporary Man, in both theory and practice. Its approach is meant to be integral; which means:

1. **Intercultural**: undertaken in light of the diverse cultural traditions of contemporary Man, and not solely in the terms of modern culture;
2. **Inter and trans-disciplinary**: calling on many 'scientific' disciplines, but also on other traditions of knowledge and wisdom (ethno-sciences) as well as on vernacular and popular knowledge;
3. **Dia-logical**: based on the non-duality between mythos and logos, theoria and praxis, science and wisdom, wisdom and love. "Wisdom emerges when the love of knowledge and the knowledge of love coalesce" (R. Panikkar)

THE INTERCULTURAL INSTITUTE OF MONTREAL

The Intercultural Institute of Montreal (formerly Monchanin Cross-Cultural Center) is an Institute for Intercultural education, training and research, dedicated to the promotion of cultural pluralism and to a new social harmony. Its fundamental research focuses on social critique and exploration of viable alternative approaches to the contemporary crisis. Its activities, which draw inspiration and sustenance from this research, aim at a cultural and social mutation—radical change—through gradual education and training. Its research and action have, from the very start, been undertaken in light of diverse contemporary cultures. It attempts to meet the challenges of our times by promoting cultural identities, their inter-action in creative tension and thus their eventual emancipation from the final and most subtle colonialism: hegemony by the mind. The Centre's cross-cultural research and action is carried out through its programs in the four following sectors: public education, training of professionals, services and research.

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INTER culture

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THE RIGHT OF CONQUEST I

The might of right and the right of might
ÉTIENNE LE ROY

A shameful legal system
CARLOS FREDERICO MARES DE SOUZA FILHO

The African: An image created by the Occident
ULRICH SCHMIDTKE

The duty to civilize: the Gulf War
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INTERCULTURE's goals are :

- 1) to inform on contemporary cultures from their own standpoints as living realities
- 2) to explore the issues that are raised at the frontiers of knowledge by the plurality of cultures and their interaction, both at the world level and that of specific societies
- 3) to identify and facilitate communication among institutionally-affiliated and independent scholars, from all disciplines and cultures, who explore alternatives to the contemporary social crisis

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The Right of Conquest I

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INTRODUCTION

The might of right and the right of might

by Etienne Le Roy*

"The argument of the strongest is always the strongest." So wrote fabulist Jean La Fontaine, three centuries ago. By the same token, the maxim "Might makes right" might well serve as the strongest opening salvo for this issue of *Interculture* -- envisaged since 1989 in an international context which, since August of 1990, has veered into sheer horror.

Our initial objective had been to unmask what Western societies hide beneath the discreet euphemism of the "right of conquest." In the Québécois context of the Journal offering us the hospitality of its pages, the right of conquest has been used as a judicial argument, making it possible for one to invalidate the legal commitments that had bound together Native Nations and representatives of European societies (political and commercial). Since these legal acts looked like diplomatic agreements between sovereign authorities, at least at the time of the first agreements, the judicial argument of the right of conquest had to be based in such a way as to enjoy superior force over diplomatic actions, as long as the agreements were to be considered as treaties. At the end of the 18th century -- and whenever it was useful to invoke, as the Virginians did in 1776, the superior and inalienable rights of Man -- it became possible to hold the right of conquest as a general principle of law, not of the law of Man, but of the *jus gentium*. Under the qualification of *jus gentium* and at the origin of natural law, we should recall, the European doctrine of law included all legal situations not covered by the state of persons, by customs or by the functioning of corporations. Under the *jus gentium* fell, in particular, the relations between nations on land and sea, as Grotius emphasized in one of his treaties.

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From this perspective, we had thought of asking people to contribute articles on how international law, then internal law -- in particular jurisprudence -- had jumped onto the bandwagon of this 'right' of conquest. What arguments had been made on both sides? In what robes had this right of the mightiest draped itself? What had been the reaction of the despoiled and of the exploited? How contemporary is this issue today? -- on Indian reservations, in the northwest territories, or in the favellas of the Third World, for example.

In actuality, unforeseen events took over after a year during which our project had found but a limited echo. The invasion of Kuwait on 2 August 1990 lent a tragic character to our question, which succeeding events have only amplified.

The right of conquest was no longer an historian's question, nor did it belong any longer to a scientific problematic, even if the Iraqi side continued to appeal to history and the Western side, to invoke its "war of law and order."

But it is a terrible curse for law to be thus associated with such blind and bloody violence.

The anthropologist that I am is not only horrified by the primary forces at the heart of any war, but astonished to see law associated with war, as if to justify in advance the latter's legitimacy by whatever means. The might of law is not meant to be simply window-dressing. Law is not made to dress up power struggles but to insure the continuous vitality of societal relations, both within States and internationally.

Pierre Bourdieu writes, with a certain depth: "...the more a situation is pregnant with potential violence, the more one is required to give it forms, the more improvisation must be replaced by expressly regulated conduct through the methodical forms and even codification of ritual... To codify is to shape and give shape. Form carries its own virtue. And cultural mastery is always a mastery of forms."¹

Especially since 15 January 1991, when the war machine broke loose, we are struck by the lack of cultural mastery among those who have pretended to be the defenders of law, in the "good law" sense that is appreciated only by those who pretend to be its apostles.

At this point our project shifted its footing, and new articles came to bolster our viewpoint. How could we set the foundations for a new mastery of these social games (C. Liauzu refers, in his article, to the "go-game") within a perspective that is necessarily intercultural, since, in spite of everything, we are dealing with a meeting -- even if a conflictual one -- of cultures.

What are the forms that will make it possible for us to surpass confrontation and find again the foundations for a dialogue, a logic of peace, after so long having been spoon-fed a logic of war?

¹BOURDIEU, Pierre. "Habitue, code et codification." *Actes de la recherche en sciences sociales*, Vol. 64, Sept. 1986, p.41.

How can we put things "in shape" (*mettre en forme*), if we do not, each of us, agree to "shape up" ourselves (*mettre des formes*), to play with Bourdieu's language? The first requirement would be to recognize that no society can pretend to have access to universals, neither in the name of reason, nor of *umma*, nor in any other way. Only if the universal is no more than the result of our long conquest of ourselves and a renunciation of our pride, can we begin to rediscover legal forms worthy of the contemporary challenges.

The following texts are an invitation to reflect on such things, each in its own way and according to modalities which may, admittedly, spark some reactions. Carlos Frederico Mares de Souza Filho remains the closest to our initial project, as he considers the fate reserved for the Native peoples of Brazil through the use of legal norms that are a shameful prostitution of law. Ulrike Schuerkens complements these descriptions by focusing on the different ways in which the colonized peoples of Africa were treated by three powers: Germany, France and Great Britain. We then allow Claude Liauzu to freely express anguish as he comments on the Gulf crisis and questions the "duty to civilize" as reported in the Western media. He does so in what used to be called a committed text. Two academic studies follow from Maghreb. One is from a Moroccan jurist who gives us an inkling into the unsatisfactory character of the social legal system of which he is a specialist, and who shows how legal talk modeled on the West hides reality. This local reality is studied in depth by an Algerian economist, Hassan Zaoual, who rediscovers in the *Hisba* a procedure to regulate social exchange, one in keeping with the nature of the problems of Maghreb society.

Finally, the anthropologist Bernard Hours synthesizes all these issues with a reflection on the recent manifestation of the "duty to intervene." Linked to social intervention in a context of hygiene or of exodus of populations due to civil wars, the duty to intervene has been proclaimed as an equivalent of the rights of Man, but in such a way that it reproduces the judicial argument of the right of conquest before the Canadian jurisdictions or before the Queen's Council.

It apparently consists of a superior principle deriving from natural law which necessarily applies both to national positive law and to international regulation. If a convention could ratify its obligations for the governments and its rights for charitable organizations, its invocation is enough for the faithful to legitimize their actions and to provide them the 'right' to meddle in the internal affairs of a country. But by whose name and in the name of what? Man, the State, Reason? What is the guide (*auctor*) for basing law on authority (*auctoritas*) rather than on power (*potestas*)?

Beware! It may finally be in the name of the right of the mighty to pacify, cure or educate. The actions of the new civilizers might ultimately be found in their own ethics. Behind the pretense of having a monopoly on love or technique or rationality, and eventually imposing this or having people pay for it, there is the risk of incommunicability. If one civilization always pretends to impose its knowledge and know-how, at the risk of doing away with all the other knowledges and know-how so precious to mankind, why could or should not other civilizations in turn oppose these or, indeed, seek to impose their own values?

What sort of cycle would we then be entering, if among civilizations we were to find all the excesses of the private wars characteristic of the Middle Ages? Which peace of God should one invoke to put an end to reciprocating aggression in the name of the law of Talion?

In order to avoid all forms of autism and the incurable challenge of civilizational exclusivity, we must rediscover the paths of dialogue and of a truth of Man beyond the falsifying languages of modernity. For indeed, all these arguments so commonly invoked -- right of conquest, duty to civilize, duty to interfere -- rest upon fictions whose contemporary meaning must be examined.

These arguments are all set in a specific historical and cultural context: modernity. They spring up as legal arguments in the 16th century and are questioned at the very moment when the finitude of this modernity is perceived in the vacillation of our moral consciences. For if we speak today of post-modernity in the realm of our social and political institutions, it is because we are conscious that the mythologies that have been the basis of our State invention, as also of our legal market system, are no longer convincing for either the governors or the governed.

This post-modern malaise contributes to the sense of an overall crisis whose paroxysmic character we feel so acutely today, but which equally begins to reveal the new potentialities challenging our societies if they wish to attain maturity. For while we rediscover that Reality is always complex and that we can not abdicate by putting our responsibility to judge and decide into any other hands, particularly those of the State, we find ourselves already in the midst of rethinking the conditions for the exercise of our freedom.

Thus however disturbing these articles may be, they seek to clear the way and to prepare for a dialogue which will be truly intercultural, that is, as R. Vachon has shown, at once diatopical and dialogical.

To take into account the diversity both of our cultures and of their underlying logics is no easy challenge for a legal science which has too often been characterized by its idealism. Yet since the issues are so urgent, perhaps we should follow James the Taciturn by not waiting to hope before acting, or to succeed before persevering.

A shameful legal system

by Carlos Frederico Marès de Souza Filho¹

I Introduction

Nothing is more dramatically comparable to the reality of the rights of people, slaves, peasants, women and other disenfranchized segments of Latin American society than Kafka's tale, "Before the Law." A man spends his whole lifetime at the door of the law, waiting to enter, but meets up constantly with an impediment, a safeguard, a momentary interdiction, a threat, until he dies. At the time of his death, he sees the doorman close the door and asks why he closes it. He discovers that the door had been open especially for him all the while. Since he had not entered, there was no reason to keep it open any longer.

Just so, the oppressed face an obstacle, a difficulty, an impediment or a threat whenever they come before the door of the law, but the law continues to affirm that the door is open, that the law makes all men equal, that the State always offers its opportunities, services and possibilities for intervention to all, in the form of a blind isonomy. The State and its Law does not succeed in facing up to the social differences and injustices it causes; it only perpetuates them.

From the Law's viewpoint, social reality is homogeneous. It does not concern itself with the deep differences engendered by economic and social conflicts of interest. The legal system transforms these into individualized issues; it isolates the problem and tries to solve it through dissociation, as if there were not deep links between the particular issues and the other interests which generate and buttress these very conflicts. When the State legislates, it accomplishes a political act. It does not deal with land conflicts, for example, as a clash of interests between classes, social segments or sectors of society. Everything is reduced to individual challenges. The law, general and universal, becomes concrete only in particular conflicts: it can therefore be unjust in its application while still maintaining a general aura of justice.

¹ Director of the Department of Indigenous Law, Brazil. Translated from the French by Robert Vachon.

In matters of private law, the distance between what is just and legal -- recognition through the hegemony of ownership -- gives the impression that there is only a conflict between individuals of different social classes, on the one hand, and the State on the other. In penal law, things are not as clear, because the relationships are not established directly between unequals, but between the State which represents justice and an individual presumed to be innocent. But, in a contradictory way, it is in the application of punishment that one may verify the deep class content of law. While private law applies to the legal relations of the minority who make and undo contracts, seek patrimonies, question inheritance and seek indemnity, penal law applies to the great majority of the people. For the latter, it is known as an instrument of intimidation. Private law is the law of the powerful, penal law is that of the oppressed. The first protects belongings and the second discourages actions that are socially reprehensible.

When one studies how Brazilian law is applied to indigenous and black people, these contradictions stand out even more starkly. Law is that which is forgotten so that rights remain unrecognized, or else that which can be disputed so that people are led to forget the very injustices they are suffering.

II The law concerning indigenous people

In Brazil live 250,000 Native people, distributed in more than 180 ethnic groups, who are organized very differently. Each of these groups has its own legal system -- unwritten, but strictly adhered to.

The State and its legal system, however, denies even the possibility that people with differing legal systems may live together in the same territory, since the state legal system is held to be unique and omnipresent. However, Brazil, with its numerous indigenous Nations, more or less in contact with Brazilian society, stands as an exemplary proof to the contrary.

Family, ownership, inheritance, marriage, crime and other offenses, bring about in an indigenous society a legal system recognized by the whole community and which carries its own system of sanctions. Their variety corresponds to the importance of the transgression and of the community, according to the needs of the group.

It is easy to notice -- since it is quite visible -- the existence of an indigenous legal system within penal laws, as reported by Alcida Ramos: "...when a criminal action is done, a corresponding punishment is applied: ostracism, expulsion or even death."² No less visible are the rules of marriage, where the options of individual freedom are almost non-existent.

Each unique mindset on law and society brings with it specific conceptions of land and of people. The relationship with whites or with other communities are understood on the basis of cultural values that produce certain norms which must be followed, and also sanctions. The explanations given to human phenomena, including the invasion of their lands by whites, are provided

² RAMOS, Alcida Rita. "Sociedades indígenas", San Paolo, Ed. Atica. 1986.

by their own socio-cultural system. Hence the great variety of reactions each indigenous group has displayed to these invasions or to the presence of strangers on their lands.³

The existence of an indigenous legal system and its recognition dates back to the beginnings of European invasions of the American land. Brother Bartolomé de Las Casas has written a vast and significant work in defense of this principle. More significant, however, is the fact that it was neither accepted nor understood. Highly contested, but with much passion, Las Casas wrote around 1500: "Whichever nations and peoples, however faithless they may be...are free people, and...we shall recognize no superior [powers] beyond them except those that they freely designate, and this superior or these superiors shall have the same full rights and powers of a supreme prince in his kingdoms, those that the emperor now possesses in his own empire."⁴

The rare jurists who have treated the Brazilian legal system make reference to the pre-Columbian legal system as if indigenous nations existed only until the advent of the Brazilian state. Such an ethnocentric interpretation rests on the fiction of the unicity of the state legal system: the indigenous legal systems are admitted only while there was no Portuguese or Brazilian state. The State alone can bring a unitarian conception of law and its exclusive or at least primary source, namely law. Whatever the case may be, in all these analyses and studies there is a marked misunderstanding and even ignorance, even today, of indigenous groups and nations, some of which have had hardly any contact with the Brazilian society. As a case in point, it is interesting to analyze Professor Joao Bernardino Gonzaga's book, which admits the existence of a legal system among non-organised peoples. The very title of the book (*The Indigenous Penal Legal System at the Time of the Discovery of Brazil*)⁵ discards the possibility that these norms and structures are still utilized today. Furthermore, the book reveals European society's prejudice with regard to American peoples; terms such as primitivism, lack of social organization, etc., are loosely used. But the great equivocation in the analysis of indigenous law is the search for the ever-elusive common denominator between all nations, refusing to see or to credit the deep social and cultural differences between each of the indigenous peoples who lived and are still living in Brazil. Joao Bernardino Gonzaga refers expressly to this fact by noting that it is very difficult to study the indigenous penal law precisely because the existing groups are "irreconcilable." He does, however, propose to nail down some common ideas between them.

This resolve to put all indigenous peoples in the same category is a constant fact in the history of the relationship between colonizers and indigenous peoples. The term "Indian" has been imposed on each one of these nations, as

well as a single language, by which the missionaries wanted all peoples to understand each other. The dimension of prejudice, discrimination and ethnocentrism is clear in this attempt to unify the language, the culture and the legal system. In spite of it all, it is obvious that different languages, cultures and legal systems still survive today, even if with difficulty, within Brazilian society. Presently there are still more than 170 linguistic groups in active practice of these differences, each of whom organize their lives according to legal norms which have nothing to do with the state legal system. Because they constitute stateless societies, their forms of power are legitimized through mechanisms quite different from the formal and legal procedures of the state. State law, however, cannot admit that the body of rules which organizes and sustains an indigenous society may be "law," and much less, that the State could accept it without destroying its own legal structure as the only source of law. But in practice, and in a "shameful" way, modern Brazilian law, in keeping with the rules of Convention 107 of the OIT, accepts the habits, customs and traditions of indigenous communities in their family relations, inheritance and offences. Indigenous law, even within the territories and intimacies of the community, is only a secondary source of State law, tolerated when law is silent or non-applicable.

Each indigenous nation's legal system, indissolubly linked to cultural practices, is the result of a way of life not only accepted by the inhabitants, but notably accepting of differences. On the other side, the Brazilian legal system is the result of a wholly divided society where primacy goes to the few who dominate, and to individualism. Another important difference is that the legal system of each indigenous nation is "stable," since it is born out of social consensus and not subordinated to a body which changes its usage according to formal modifications. State law has recourse to a legislative body as its formal modifying agent, which constantly makes modifications.

This possibility of tampering with it, this "instability" of the Brazilian legal system, is what is most visible to the indigenous person when the latter meets white society and with it, builds his first intellectual legal constructs. The indigenous vision of State law has been translated poetically and eloquently by Paiafé when there were discussions about building a railroad to transport minerals from Serra de Carajás in Amazonia. It had to and did really cut the land of his people: if law does not protect the indigenous legal system (with respect to their lands), the white man should invent another legal system. Paiafé is right, State law is law because its source, matrix and legitimacy is law. Law is created -- or invented -- by a group of humans who, in theory, represent all societies, but in practice, often legislate against the interests of the whole nation. No matter what, in a society which is divided and unjust like ours, law is an invention by some against others. What Paiafé, in his naive statement, would like in reality is that it be the invention of some in favor of others.⁶

Studies of these diverse legal expressions are rare. They are mostly generic studies, and consequently shallow, often marked more by a feeling of

³ MELATTI, Julio Cezar. "Índios do Brasil", San Paolo, Ed. Huicitec, 1980.

⁴ LAS CASAS, Bartolomé. "Obra Indigenista", Madrid, Alianza Editorial, 1985: "Cualesquier naciones y pueblos, por infieles que sean, (...) son pueblos libres, y que no reconocen fuera de sí ningún superior, excepto los suyos propios, y este superior o estos superiores tienen la misma plenísima potestad y los mismos derechos del príncipe supremo en sus reinos, que los que ahora posea el imperador en su imperio."

⁵ GONZAGA, Joao Bernardino. "O Directo Penal Indígena à época de descobrimento", San Paolo, Editoria Loyola.

⁶ MARES DE SOUZA FILHO. "Índios et Negros: no cativoiro da historia", Rio de Janeiro, Col. Seminarios, Ed. AJUP, 1988.

"sympathy for one of the races that has contributed to the formation of the Brazilian people", as Clovis Bevilacqua asserted,⁷ than by their scientific spirit.

On the other hand, the bare fact that these peoples exist -- along with their distinctive realities and their own legal systems -- leads the mechanical reasoning of State law into perplexity. For the State, the very notion of an indigenous society is incompatible with the notion of a State: How does one situate the idea of indigenous territory at the individualistic limits of the right of ownership? How can one regulate the notion of "people" except by reducing this to a private legal personality? How does one impose the democratic representation of a State society on human groups whose power is necessarily exercised through consensual communitarian acceptance?

In order to answer such troubling questions and to fill such gaping holes, State law begins to create legal rules which make these human groups meet its own agenda. Few Latin American States have done so. Brazil is one of them. But elaborating laws is not enough because there is a wide gulf between a legislative decision and its execution, even more so with its judicial application in conflict situations.

The case of Brazil is exemplary. Since 1988, its constitution has a chapter on indigenous peoples which recognizes their rights, their lands, their customs, and their languages, yet the executive arm of the State does not respect their customs, ignores their languages and, in matters of justice, is either silent or its decisions ignored.

But it is the Brazilian legislation on slavery which best reveals the omissions of the State and of its law with reference to these peoples.

III The Silent Enfranchisement

A study of the Brazilian law on slavery, especially regarding the slaves themselves, is as interesting as it is revelatory of how ashamed the legal system is when it deals with topics that illustrate the injustices of society.

Manuela Carneiro da Cunha, in a brilliant study "On the silence of laws and legislation relative to the enfranchisement of slaves in Brazil during the 19th century,"⁸ tells us, as do the historians, travelers and chroniclers of that era, that the slaves could oblige their masters to enfranchise them on condition that they pay the price at which they had been bought. But it was difficult for a slave to demand this right so widely recognized that it should, said Koster in 1816, be consecrated by law.

While indeed largely recognized, this right became law only in 1817, with a lengthy regulation published in 1872. Until then it was a matter of practice, not of positive law. While this allowed the masters not to respect their slaves, it also

⁷ BEVILACQUA, Clovis "Instituições e costumes jurídicos dos indígenas brasileiros ao tempo da conquista" in *Criminologia e Direito*, Bahia, Livraria Magalhães, 1986.

⁸ CUNHA, Manuela Carneiro. "Antropologia do Brasil", São Paulo, Ed. Brasiliense, 1986.

contradicted conventional judicial practice right up until 1871, when a law allowing slaves to be free was enacted. One must ask some questions about such a silence and remember that in 1824 and 1830, respectively, the Imperial Constitution -- the first in Brazil -- was promulgated, and thereafter the Criminal Code. Both are silent on the existence of slaves. There is no recognition that this was an enslaving society, and its legislators acted as if slavery did not even exist.

Professor da Cunha concludes her study: "The silence of law was certainly not forgetfulness... There were ideological sources for such a political function... Imperial Law had to face the contradiction of describing the laws of an enslaving society and of conciliating personal subjection with the language of libertarianism."

IV The legal recognition of indigenous peoples

Instead of trying to hide the existence of indigenous people in Brazil, as did the "shameful" enslaving legislation, the indigenist legislation does not omit recognizing the existence of indigenous peoples, but does not recognize their difference and bans their integration. An exemplary case in point is the history of the fundamental law of October 27th, 1831, which declared the end of Indigenous Slavery and the subjection of the old slaves to a civil tutor. This law declared that all Indians who were living under the yoke of a master would be liberated immediately. The law constitutes the declaration of freedom of the indigenous peoples, and a formal recognition that -- even if it was banned -- there was previously a legal slavery. However, the solution proposed by this law to make amends for the prejudice caused to indigenous peoples who had been captive was to declare them "orphans" so that the judges could send them where there was work to be done. Indian freedom did not mean the possibility to become Indian again, to return to their banned culture and to their relatives. They had become free men and women, capable of becoming salaried workers, of learning a trade like any other poor white man. However strange it may be, this reasoning which made orphans out of Indians is comprehensible.

The Indians, uprooted from their lands, aggressed in their culture, dispossessed of their responsibilities and of their religious beliefs, were perfectly comparable to children who had lost their parents and who, integrated through work that would make them forget that they were Indians, would discover other parents in the "soft, just, human and peaceful" society offered to them.

Textually, the head of the Justice Tribunal of the State of Maranhão, on October 25th, 1898, asserted "the judges of orphans have special attributions with regard to the Indigenous persons and their goods, the latter being orphans according to the law of October 27th, 1831."⁹

⁹ "O Direito", vol. 79, Rio de Janeiro, 1899, p.781.

V The cunning of the 1940 Penal Code

In 1940, the Penal Code has elaborated with full respect for legal technique a status for Indians which omits the words Indian or sylvicole, but admits a conception of their inferiority. This is a magic formula to soften the sentences eventually imposed on Indians in keeping with the limited capacity given them by the Civil Code. Article 22 says expressly: "Is exempt from any punishment, whoever, at the moment of the act, was totally inept at understanding or accepting its criminal character, due to mental sickness or to an incapacitated, incompatible or retarded mental development." This article would be bypassed by anyone seeking a reference to Indians in the Penal Code. But in the long preceding explanation of the motives behind the law, signed by the Minister Francisco Campos (and which is part of the law), one may read: "Within the commission, it had been proposed to speak in generic fashion about 'mental disturbance,' but the proposition was rejected in favor of the more understandable formula. It refers to incomplete or retarded development and must be understood as a lack of ethnic acquisitions, because the word mental refers to all psychological faculties, congenital or acquired, from memory to conscience, from intellect to will, from reasoning to moral sense, thus dispensing with an express reference to deaf-and-dumb and to non-adapted forest dwellers."¹⁰ Why not say expressly that the forest dweller or Indian are unable to understand the offensive character of an act? Nelson Hungria, a member of that commission and one of the most respected penalists of his day, says as much in his commentaries on the Penal Code: "... the Commission had understood that an explicit allusion to them (the Indians) could falsely lead foreigners to think that we still are a country infested with pagans."¹¹

Strange preoccupation for a penal code! -- one must not, in making a national law, imagine the existence of Indians "infesting" civilization. The sense of shame weighing so heavily on the Brazilian Penal Code of 1940 has the same aspect and the same foundation as the 19th Century slavery law, namely a fear of showing to the world the natural reality, its injustices and shortcomings. The Penal Code does, however, express the idea that Natives will someday accede to the joys of living in the "peaceful, just, soft and human" white society. Then penal law will be thoroughly applied to them and the jurists will no longer have to be ashamed during international conventions. This legal episode reveals the underlying ethnocentric idea that the dream of every Indian is to give up his status. For it is incomprehensible to continue claiming to be Indian after long and friendly contact with white society. Yet even this is not the worst of it.

VI Punishment outside the law

Much worse, in fact, was Decree 5,484 of 27 June 1928, twelve years before the penal code which regulated "the situation of Natives born on national territory" -- and which dealt with applying punishment to Indians who committed crimes. Of the 50 articles, five dealt with crimes committed by Indians. The

¹⁰ "Código penal brasileiro", São Paulo, Ed. Sugestões Literárias, 1979, p.32.

¹¹ HUNGRIA, Nelson. "Commentários ao código penal", vol. 1, tome II, Ed. Forense, Rio de Janeiro, 1958, p.336.

Decree had established that those Indians committing crimes who had less than five years of integration in civilization would be picked up (upon a requisition from an inspector of Indians) by reform or disciplinary homes and establishments, and do whatever time (no more than five years) deemed necessary by the inspector. The Decree also said that if the author of the crime had been living in "society" for more than five years, the common law would be applied but with punishment being reduced by half, not in a cell but in a disciplinary jail, which meant in penal institutions set up especially for Indians.

This situation, certainly brought about by the good will and humanity of indigenists in the Twenties has rapidly become an instrument of oppression. Jails have been set up and punishments meted out that are no longer controlled by the judiciary, so that the official indigenist agency -- then the SPI (Service for the Protection of Indians), an arm of the executive -- has been exercising the judicial function, chastising according to the inspector's criteria and bringing about the fiscalisation of punishments. Since the Penal Code of 1940 had not dealt with this topic, it has allowed this practice to continue until the Sixties, when too many preposterous acts of corruption, disobedience and injustice were committed by the SPI. Bowing to pressure from civil society and the national and international scientific community, the military dictatorship discovered that it was better to close down the SPI and some instruments of visible oppression like indigenous jails. It created in 1967 a new department, the FUNAI -- Fundação Nacional do Índio. And after 20 years, the latter was as corrupt and discredited as the SPI.

VII The law now in force

In 1973, the Brazilian State published the Statute of the Indian, through law 6,001 of 19 December 1973. Article 56 foresees that in the process of condemnation, the degree to which the Indian is integrated will be taken into consideration: "In the case of the condemnation of an Indian for a penal infraction, the punishment should be attenuated and, in its application, the degree of integration of the forest dweller shall be taken into consideration by the judge."

The Indian Statute also establishes that the seclusion and detention terms of the Indians will be done, if possible, within a special regime of semi-freedom, in a place close to the prisoner's habitat. The interpretation given by exegetes and tribunals is that this does not apply to all Indians but only to those not yet integrated into "civilization".

Finally, the Indian Statute allows "...that sanctions be applied by tribal groups on condition that these sanctions not be cruel or open the door to capital punishment." This applies only when the sanction addresses members of the same group.

Conclusion: Ideology and the law

Underpinning this entire conception is the integrationistic ideology to which the Brazilian State and its legal system has always accommodated itself as a direct consequence of the dominant thinking pattern. This is the reason why it is

so difficult for commenting exegetes and jurists to understand why Indians should have privileges for the simple reason that they are Indian. In the dominant world view, the only justification for attenuating sanctions and the application of law to Indians is the fact that their penal judgment is incomplete due to their lack of understanding of social rules and, in the extreme, their ethnic or mental inferiority. The dominant ideology cannot understand that Indians belong to another culture and to a different organization. The Indian status remains misunderstood.

The federal Constitution of 1988 does recognize a difference. Article 231 of that Constitution states that "... their customs, languages, beliefs, traditions and original rights on the lands they traditionally occupy are recognized, the Union being responsible to protect these and to see to it that all their goods be respected." In spite of this clear guarantee, the State continues to take over indigenous lands and to ignore their rights and their ways of life. This is not the Brazilian State of the last century, nor that of the Empire, which declared a war of conquest on Indians, but the State of 1990, which sits by passively while the Yanomani succumb to sickness, invasion, and pilfering from all sides.

Thus the State, despite its own laws, has held to a dramatically cruel policy of genocide toward Indians while invariably holding forth a pluralistic, liberal, and democratic discourse. It has elevated to the rank of a system a shameful legal stance which only apparently liberates the Indian from slavery. It is always a matter of at once presuming inferiority and simulating integration. This continuing discrepancy between the discourse and the practice illustrates just how effectively all the babble effaces the one essential: Justice.

The duty to civilize: the Gulf War

by Claude Liauzu*

Spring 1988, the Rushdie affair; August 1990, the Gulf War; beyond their diversity, both events seem to draw upon the deepest springs of two worlds, the Orient and the Occident. Both events give the impression of being a phenomenon which is total, in which not only economic and geopolitical relations are at play, but even more so the very understanding and image (representations) cultures have of themselves and of each other.

The purpose of this study is to analyze these notions at an historical period when international relations presents new aspects, where tensions are shifting from an East-West line to a North-South axis.

Our focus therefore will be on the symbolic content of the conflict and, deliberately, on the most acute critical moments from August to October.

I would like to delineate a kind of mental Atlas. The conditions are presently set for what threatens to be a continuing source of North-South strife, blending the innermost depths of civilizations with global disorders.

I Geopolitical games

"If it can be demonstrated in this first major crisis of the post cold war that the industrialized world still has the will (with the Soviet Union as a partner) and the capacity to put an end to such adventures, then the principles that preside over the collective security of nations will have won a great victory... If we fail, the new multipolar world will have entered in the era of all-out danger... If, in this new post-Cold War world, we, with the Soviets at our side, are unable to stop this kind of ambition, then truly our planet risks becoming a very dangerous place..."¹

* Claude Liauzu, November 1990. Translated from the French by Robert Vachon.

¹ *Le Point*, August 13th, 1990. Interview by Charles Khrauthamer.

This is a very clear definition of the character and the stakes of the present situation. The rivalry between the two blocks is replaced by a series of North-South tensions that are full of danger, as analyzed by Maurice Bertrand in a series of texts published in *Le Monde Diplomatique* (March 1989, February 1990, September 1990).

One can in effect sketch a list of danger spots that could spark major ruptures in the world system: conflicts around basic resources or key places, breakdown of certain states (the Shah's Iran...) that play a determining role due to their resources or position, or to the contrary, assertion of expanding regional powers such as Iraq.

Iraq's military expenditures in 1988 constituted 64% of its GNP; the Middle East by itself makes up half the arms market in the Third World. Iraq's debt has risen to \$70 billion and the cost of reconstruction in the wake of the war with Iran is \$300 billion. In short, all the conditions were set for Iraq to become a predatory State.

In this last hypothesis, some ten countries enjoy chemical armaments and soon an arsenal of nuclear devices and missiles which modify the strategic facts of war: China, India, Israel, Iran, Iraq, Pakistan, Korea, Turkey, Taiwan, Brazil, Argentina.

We have indeed entered the new era that Mr. Bertrand calls "electronic and nuclear," as opposed to "an industrial and Clausewitz era." Z. Brzezinski speaks of a "technotronic era."

The arena is no longer the old bipolar competition between East and West, but a much more complex environment. Conflicts of limited intensity, that is, confined by the two giants within limits that did not threaten them directly, have been replaced by tensions which risk reaching vital sectors of the North and thus breaking out into a world war.

Another latent paroxysm lies in the growing contradiction spawned by an acceleration of integrative processes on a planetary scale. Economic integration is taking place through the establishment of a world market, dominated by transnational societies and by a growing concentrationism. All this is at the expense of a great part of the Third World.² The debt has grown ten-fold between 1970 and 1985, and in 1989 is up to \$1,275 billion while the private financial flux is moving away from the P. E. D. We know that on the eve of the Iraqi coup the dollar precluded all re-equilibrium among producing countries except for the Emirates and Saudi Arabia.

The social consequences of this situation are very dangerous. The population of the poor countries will move from \$4 to \$8 billion in the next 30 years, with reduced possibilities of insertion into the market, in the universe of the city and of work. "Contained chaotic situations," as Olivier Dillfus calls them,

² Centre des Nations Unies sur les firmes transnationales. *Les sociétés transnationales dans le développement mondial*, 1989, et programme de recherche de l'OCDE.

are probable. In order to survive, this human mass has and will have as solution nothing except communitarian, local, ethnic or confessional solidarities, enclosing them in archaism and the private clientelism of the state. Uprisings of the disinherited will multiply, finding in religious and identity myths their mobilizing force. Finally, massive migrations seem unavoidable.

Such a world would be what Alain Joxe calls "The Empire of Disorder."³ Management of the system will require the use of violence in order to preserve the fluidity of the indispensable economic, technological and information flow. But order could not be assured by political conquest or control, as was the case with the age of nation-states and of their imperial expansion. It would have to rest on knock-out operations using hyper-sophisticated logistics and shock troops.

What alternative have we to these dangers except the definition of an effective international legal system? But how can one found such a legal system without modifying the relationships between the government technobureaucracies and the ever-passive citizens of the North, without developing the democratic stirrings in the South? We are far from all that. The opinions of industrialized societies and of Third World societies are determined with reference to what resembles a moral rearmament, not unlike the Homeric insults which led to the Trojan War.

An analysis of the reciprocal images that the West and the East have of each other in the Gulf War may give us some measure of understanding with regard to this growing continental drift.

II Occident versus Orient: Toward a war of the worlds?

On the Western side -- specifically the French -- it is relatively simple to catch the chimera of public opinion; we have an abundance of polls and freedom of the press. But the research here will have to go beyond such snapshots and focus on the relation between the attitudes facing off in this event, and on the deeper representations and their structures. It will try to pinpoint the main aspects of PAF and PIF (*Paysage audiovisuel français et Paysage intellectuel français*).

Study of the Arab world is undoubtedly more difficult. Reactions are not the same in Egypt, whose emigrants are hard hit by Iraqi cynicism after having been subject to equally cynical Kuwaiti exploitation, in Syria and in the countries of the new Saladin (sic). Reactions are not the same either in the palaces as in the humble homes, nor in Islamic circles -- largely financed by Saudi Arabia and certain Emirates -- nor among the masses influenced by them. The FIS (*Front Islamique du Salut*) and the MIT (*Mouvement Islamique Tunisien*) have broken up due to opposition between Saudi followers and partisans of the anti-West struggle. Hence the decision to focus one's analysis primarily on reactions to the West, which seems to be the crucial problem in the actual "logic of war" (an expression used by the President of the French Republic during a press conference).

³ JOXE, A. *Le cycle de la dissuasion (1945-1990)*, La Découverte, 1990.

A poll published by *Liberation* (27 September) confirms that this logic is permeating the minds, since 41% of the answers consider the war to be probable, and 20% very probable. Undoubtedly, opinions have changed, and since it is impossible to foresee the outcome of the crisis, we have taken here the "higher hypothesis" in hopes that it is too pessimistic. It has the scientific merit of allowing the sound and the fury on both sides to resonate.

1. The oriental limit

This conflict comes on the tail of a long series of tensions between East and West since the Iranian revolution: the embassies issue, in particular that of the American embassy, the Lebanese implosion, terrorism, the Israeli raid on Bassorah, the great Bertha Iraqi affair during the spring, the American raid against Libya, the Israeli raid against the PLO in Tunis, the long list of interventions in Africa (Chad, Central Africa, Gabon, Rwanda...) and in Latin America (Malouine, Panama, Grenada...), and the like.

Is there mithridatization, an immunity built up by gradual doses of the poison? The situation seems to carry war "like the cloud carries the storm." This is what emerges from an inquiry made in 1987 by SIRPA (*Service d'Information et de Relations Publiques des Armées*) and the Association of History and Geography Professors. Among 25,000 college students, 58% felt that the risk of war was high.

Before the Berlin Wall came down and the East rallied to the West, the students' evaluation of the displacement of tension zones was right on the mark. To the question regarding the elements that could trigger a Third World War, they answered: fundamentalism (26%), terrorism (22%), a new petroleum shock (3.2%), and the bulging demography of the Third World (3.2%). Inversely, only 3% consider the aggravation of underdeveloped countries as an important cause of war. De facto, neither oil shocks (that is, the lowering of rates among producing countries) nor suffocating international debt have influenced our opinion.

Finally, the enemy first in line is the Arab. For the time being we are less concerned by the "yellow peril" than by the "demographic pressure of the Arab world," "the growing threat coming from the South," the "galloping danger" coming from population growth (*Le Point*, 13-19 September 1990). As such, public opinion reproduces ideas aired by the media, or rather the media feed on the dominant stereotypes, prejudice feeding prejudice. Thanks to the polls and to the group narcissism created by the polls, we are close to accepting that our fantasies are genuine information about reality (Serge Daney, *Liberation*, 31 October 1990).

Communication played a major role in acceptance of the war. Paul Virillio shows us how it intervenes as an actor in the crisis. The regime of "news temporality" brings about a situation of "all against," which ends by suppressing any question about what it is all for or against.⁴

⁴ *La machine de vision*, ed. Galilee, 1990 and "Rebonds" in *Liberation* of 29 Sept. 1990.

Immediacy, directness, catapults us into "a practical time frame which allows no critical distance, in a time lapse which distinguishes between neither before, nor after -- attack or defense -- with the risk of total confusion which this presupposes."

In mid-August, the evening news reader was promising his listeners that he would inform everyone instantaneously of "every development concerning the situation" during the following broadcasts. In such "tele-action," where the partners are present in "a situation of absolute inter-activity before the eyes of everybody... the image is one among many. The war is seen too quickly. Everything is already there, already seen, and, who knows, may already have taken place."

To this one must add the globalization of information and the mirror effects that it causes. In a neighboring area -- not outside our subject, since it deals with the growth of the FIS -- one has no trouble imagining the repercussions of a TV broadcast in Algeria. Each camp is sort of comforted in its certitudes, in the obsession that there is a plot; here, the contemptible and pathetic character of politics beyond the Mediterranean, and there, the contemptuous character of the Western judgments on the Third World and on Islam.⁵

Each camp tries as well to use the other's media as a Trojan horse. Bush insists on talking to the Iraqis, while Saddam Hussein insists on appearing on French TV (2 December 1990) to call upon French opinion in ad hoc language.

2. Big Oil and International Law

"Primary imperialism...exploitation of Arab resources..." For Southern opinion, beautiful talk hides an adoration of oil, Big Oil. The disparity of riches and GNP per head between rich and poor countries, between the West and the Third World is a leitmotif of nationalistic discourse. This is understandable if one compares the Arab debt (\$208 billion) with the financial possessions of Arabia and Kuwait (\$670 billion).

The echo comes as defense and illustration of the market: "As long as dictators are an obstacle to the functioning of the free market, there is but one answer: self-defense." (*Le Point*, 13 August 1990, p.47)

Beyond the ideological triumph of liberation and the haunting recession, one finds one of the oldest and strongest foundations for the right of expansion and of conquest: "The earth has been given mankind; when part of it lies fallow, all of mankind is deprived. Superior races have the right to ask less advanced races to account for the riches that they leave in a non-productive state." (Paul Bourde)

The scenario of the discovery of America is played all over again, but in a world now subject to the finitude of an interdependent planet. For the Middle East

⁵ According to a poll of 13 September 1990 in *Le Nouvel Observateur*, 49% considered that an Islamic government in Algeria would be dangerous for us.

is not an empty space. Hence the popular stereotype: They have oil while we have ideas. These are the same arguments once given against nationalizing the Suez canal. This passage, ancient dream of the Pharaohs, so necessary to circulation, has been opened by our genius. If the canal has not become the "nuptial bed" of the East and of the West, as hoped by Enfantin, it has been the demonstration of the technological power, the spirit of enterprise and of creativity, which are the monopoly of our modernity.

Hence Saddam Hussein's armaments are only a "panoply" (Serge Joly, *Libération*, 9 August), "nuclear hardware" or "fantabulous gadgets." He should not therefore play in the backyard of the great. Thus Jacques Juillard, worried about the Bush-Gorbachev meeting, asks himself if it will be possible "to convince an underdeveloped country of 17 million inhabitants." (*Le Nouvel Observateur*, 13-19 September).

Such a worry in the face of a possible Munich is quite common (B. H. Lévy and Daniel Sibony, *Libération*, 9 & 31 August). But Munich, which is a European city, an episode in European history, has no corresponding equivalent in the Arab world, which cultivates rather the syndrome of the way of Damas. "It has been 43 (if not 731) years that the notions of 'international law and rights' have no meaning for the Arab peoples, supposing that they were ever aware of the existence of these!" A Moroccan prisoner of conscience since 1974, Abraham Serfaty, certainly not suspect of complacency towards a dictator, expresses in measured fashion in *Le Monde* the deep feeling of the Arab world. UN decisions that have remained dead letter, absence of sanctions towards other aggressions... the list is inexhaustible.* We risk finding two factions -- one of the established order, the other the victim of that same order -- standing in opposition on the basis of an international law whose principles have not yet been established and whose effectiveness depends on Darwinian power relations. The victims would then reject such a notion of law and rights as dupery in the name of proletarian nations, the skinny against the fat.

Le Point underlines the easily "inflammable" character of the "half-starved." Substantivizing the adjective in this manner goes a long way toward transforming a factual situation into a state of nature, right up to a war of the two worlds. Pandemonium threatens to break out. Thus a Tunisian weekly like *Réalités*, asserts that "Israel can live only for war," that "peace would be the worse catastrophe for Israel." (17 August 1990)

Multi-stage rocket, Pandora's box, all the more so since it functions in a mimetic fashion. "Primary delirium," "latent need to settle accounts," "warrior fanaticism and hysteria"... chosen pieces, excerpts from the anti-oriental literature? No. These quotations are taken from the progressive Tunisian review *Maghreb*, aimed at the West, which reiterates "the conquering and bloody folly... the death instinct." (B. H. Lévy and D. Sibony)

* The procrastination and hesitancy of the UN Security Council in the face of the Jerusalem massacre, the laborious compromises are so very different from the expeditious decisions concerning Iraq and their immediate application.

III Two worlds at loggerheads

1. A robot portrait of the adversary

"The tyrant of Baghdad is a kind of Nazi," "a crackpot" (B. H. L.) who suffers from "narcissistic delirium" (D. Sibony). During a TV broadcast, have we not asked a psychoanalyst to establish his diagnostic directly on the basis of a few film strips? It would seem that Saddam Hussein is not crazy!... No more than Nasser whose "vociferations" and "provocations" also reminded us of Hitler's.⁶

A gallery of the portraits of Arab leaders brings out the basic personality and mental structure of the enemy: Abd-El-Krim was the fanatic and plundering tribal band leader who was opposed to the participation of Morocco. Ben Bella, Fellagha leader, led an army of road blockers and purse-snatchers.

Neither has Saddam Hussein any credibility: He has no respect for his given word, mark of a genuine officer, nor has he the truthfulness of Bush. The CIA's former boss dubbed him "renegade" on August 8th.⁷

What undergirds all these character traits of the dictator is the archetype of oriental despotism which, ever since the 18th century, is at the heart of our political vision of the other. Psychology of an individual or psychology of peoples? The question is hardly asked.

2. Democracy against hysterical half-starved peoples

The Palestinian, for J. F. Kahn, is no more than "a partisan of Arafat." The resistance in Beirut (to the Israeli invasion) has nothing in common with our resistance: "Fanaticism is not courage" (Lily Marcou, *Le Monde*, 28 July 1980). Just as the nationalization of the Suez canal was proclaimed "amidst the cries of an hysterical mob," so Saddam Hussein's coup "excites" the crowds because he plays on sentiments, passion, irrationality.⁸ Such is the nature of the Arab soul; it is amenable to all such extremes. *Le Point* (like our political strategists) gravely asks such questions as: Which burns the most, Islam or Nationalism?⁹ The *Nouvel Observateur*, which in July had begun a campaign against the financiers of fundamentalism (namely from the Gulf and Arabia) has toned it down. In the

⁶ Claude Liauzu, *La gauche française au miroir algérien*, and see annexe *Le Bled*.

⁷ Saddam Hussein has replaced Kadhafi the "mad dog" in our imagination. *Le cinquième cavalier* (a novel by Harris and Sedouy) describes a chief of state who is armed with the nuclear bomb, and *Alamut*, by Vladimir Bartol on terrorism in our imagination.

⁸ Excitement refers to feelings, sensations aroused, enervated state of tension. The hysteria that is lent to women in the male discourse is transposed to the Arab male.

⁹ Do not the overlapping of Islam and Nationalism or the quest for an alliance of the one against the other and the reversible character of alliances spark and manifest further confusion of the Western conscience with regard to that complicated Orient? Thus, in a remarkable and courageous work, Charles-André Julien, an eminent specialist of Maghreb and a representative figure of socialist thought, underlines how valuable could be an agreement with the "pan-islamic" current (which is no less opposed to the West) against Nasser's Arab nationalism in *Afrique du Nord en marche*, 1950.

same way, the Iraqi urgency has displaced from our media the news of the F15 which had been front page news.

If there is some truth in such representations it is the apprehension brought about by the mobilizing power of the popular myths. In fact, Saddam Hussein has played remarkably well on the various ideological registers, both Arabic and Islamic: yesterday he was the shield for secularity (!) against Iran, he is now denouncing the proximity of non-Islamic armies near the Holy places.

The eschatological tone of certain discourses also requires our attention, for Iraq's action has a considerable symbolic impact: it refuses to be on the wane, a decline which has been haunting the Arab consciousness for two centuries and which is imputed to Western domination. Hence, the democratic currents which are always suspected of occidentosis* undergo a populist subversion which diverts the aspirations to dignity in favor of a Raïs (in Arabic: Head, Leader, equivalent of a Duce, Führer). "If one is to call tyranny the fact of claiming -- even through force -- one's dignity, of protecting one's honor and identity, well, I prefer to be called a tyrant... Each time an Arab politician has dared to lift his head in opposition to the Western will to make us into subjects, he has been dubbed a fool, a tyrant, a terrorist... Every Arab who is proud of being one must support him so that he may accomplish the work begun by Nasser." These testimonies from two Tunisian intellectuals, which appeared in *Réalités*, undoubtedly express the dominant view (17 August 1990).

The West, by supporting an Arabia which has never recognized the 1948 Universal Declaration of Human Rights, or the emirs "who lavish upon themselves luxury cars, beautiful women, the best champagnes, in their imperial suites" (*Réalités*), contributes to perverting the struggle for justice into a temptation to pillage.¹⁰ Paul Vieille, in his analysis of the political categories in the Iranian revolution, surely an example which has wider validity, insists on the importance of the notion of justice (Harhe) in popular culture. This polysemic notion refers, beyond such and such a right or beyond the Western notion of human rights, to the necessity of a symbolic life lived against oppression, against humiliation.¹¹ Furthermore, the forces of the left would be sacrificed to this other great myth, that of the Arab nation, and would back out in case of conflict before a sacred union. Today the Arab citizen, even while he disapproves of the Iraqi military intervention in Kuwait, even while he has never approved the policy of the Iraqi regime -- neither in its denial of all democracy, nor in the genocide of the Kurdish people, nor in its expansionism -- is side by side with the besieged Iraqi people and their leaders, no matter how painful may be the latter choice. He is opposed to the American war, to that first modern and devastating war that the whole North is preparing to wage or to allow his "world police" to wage. (Abraham Serfaty)

* Such is the title of an essay which appeared in the 1970s, denouncing the mimicry of the West by Third World intellectuals.

¹⁰ In the school manuals of Kuwait, the French Revolution of 1789 occupies only 2.1% of the pages, against 12% in Syrian manuals.

¹¹ On the notion of justice and equity as the one of the levers of popular mobilization in Iran, see Paul Vieille in *Peuples Méditerranéens*, 1990.

No doubt many Arabs are ready to take up arms. Is it so in the West?

3. To die for Kuwait City?

"Between the master of Iraq and the Western nations now joined by the Soviet Union, the conflict of values is obvious. For the former, national interest comes before individual interests. For the latter, the rights of individuals come first" (Jacques Julliard).

During the controversy of the veil, Jacques Julliard had also underlined the opposition between belonging to a community, "that house of intolerance," and our political culture founded on the individual and on human rights.¹² In the same *Nouvel Observateur*, a campaign had been waged against a "school Munich" and had insisted on secularism.

For, with the series of crises that we have undergone and those coming up, there is more and more doubt about the capability of the West to resist.

The polls teach another lesson: how hesitant people are to engage in a military confrontation. According to C. S. A. (*Libération*, 28 September), 45% of the French, against 46% who do not wish to do so. Many other interpretations of this hesitancy are possible. Awareness of the cost of all conflict? Refusal to die for an exotic Danzig (obvious among the young), for a cause where things are not that clear? Maybe the new aspects of war make us lose our historical moorings. If conquest is replaced by police operations, if the destruction of the sources of disorder is the job of commandos, the notion of national service and of the patriotism linked to it are no longer reference points. Only 20% of the people polled -- against 76% -- would accept to participate in combat, while 50% approved of air raids on military targets.

Our societies seem to have trouble moving from the culture of the Clausewitz age to the era of technotronic and professional war. But there is a large consensus around the stakes. In case the conflict were unavoidable, 63% assign a maximum objective: liberation of the hostages from Kuwait and the fall of Saddam Hussein.

The logical link between these often contradictory aspects of polls is what I would call "the duty to civilize."

IV Wars of civilizations

1. The duty to civilize against the barbarians

Le Point of 13 August says it well: The redeeming target is "an Orient where, since the Crusades, soldiers from the North have always had to pay with a defeat and often with their lives, their pretext being to impose ethics and principles which reflected their Western values, but which were foreign to the history, the culture and the inhospitable roughness of the land of the Orient."

¹² *Le Nouvel Observateur*, Nov. 28, 1989.

That is the summary of the Vulgate which was born with the assertiveness of our world hegemony. This frankly biological or cultural racism which has accompanied our modernity and which is one of its tendencies, threatens to dominate both our consciousness and our unconscious.

A few years ago, a request destined to back up an intervention in Chad and written by B. H. Lévy and Yves Montand, justified such a move with a preoccupation for salvaging at least the few remnants of democracy still present in that African land.

The duty to civilize rests upon the trilogy of Reason, Democracy, and Progress, which defines the West in opposition to the barbarian or the savage, to backwardness and underdevelopment.

Is this the explanation of the particular sensitivity, according to the polls, on the part of the management and intellectual professions and of their radical position with regard to other socio-professional categories? They seem to be three times more numerous than farmers in preaching the war of rights. Similarly, how else explain the quasi-unanimity among the media if not because they think they are expressing a universal truth, replaying constantly the philosophical scene of the *philosophie des lumières* by supposing that their words are the world reality.

The convergence between PIF and PAF, left and right fusing in the Rushdie affair, in the veil affair and the Gulf crisis thus sends us back to the founding myth of modernity and to the particular role that intellectuals play in the consensus congealed around that myth. For with the globalization of communication, the latter is part of the international system; the ideological flux intervenes in the power struggle and the value system of both market and democracy spills over barriers and borders. We have seen it happen in the East.

2. Arabs and Arabism

As for the barbarians, one may doubt they will answer the call of J. F. Kahn "Come to us who, in one century, have realized more progress, dispensed more happiness, accumulated more knowledge than you, poor miserable ones, in twenty centuries" (*L'événement du jeudi*, no. 226).

Proud of their 14 (and not 20!) centuries of history, they also refer to their founding myths, those of the expansion and grandeur of Islam and its dynasties, of which Baghdad has been one of the greatest.

The West, as Abdallah Laroui so rightly says, "is a question which shakes the Arab being to its core." That the epic of the origins, of Allah's and Saladdin's horsemen is reactivated, is not at all surprising. That there should be a return of all that has been repressed and suppressed after the long duel between Islam and Christendom, the trauma of two centuries of European domination marked by the dismemberment of the Ottoman Empire, colonization and liberation struggles. "More than any other historical universe, the Mediterranean unceasingly tells and

relives the story itself. To have been is a condition for being" says Fernand Braudel.¹³ Especially when the present no longer has the brilliance of the past.

Both sides, the East and the West, refer to their respective identities as antinomial. Thierry Hentsch has seen this clearly: "Occupied, visited, exploited, fantasized, the Orient has remained somehow insubordinate and not understood. Silent or loud, the refusal has been dogged. An ever-recurring barrier and closure that Western power has never succeeded in overcoming."¹⁴

3. Civilization therefore amounts to war

"How could civilizations be anything else but exclusive worlds? They cut across time and overcome duration." Thus, for Fernand Braudel, the Mediterranean is the territory that is disputed by "three persons of interminable destiny who have always been there," who "stay in place, impenetrable", "Where they were at the time of Caesar and Augustus, they remain at the time of Mustapha Kemal and of Colonel Nasser... immobile or quasi-immobile." The domain of Islam would be "the Near East civilization plus the former Punic space." Such reasoning in term of historical players (nations, civilizations), of quasi-telluric memory, of immutable structure, brings us almost of necessity to consider present-day civilizations "naturally" conflictual. Their conflicts would be the "millennial boundaries" of history. Civilizations "are therefore war, hate, an immense shadow... They fabricate hate and feed on it... they find in combat their reason to be." (p. 156)

Islam is "the cat facing the dog," one might say a counter-Occident. What enemies! What rivals! Islam is "the counter-Mediterranean extended to the desert."

On the other side as well, civilization is presented as a closed entity. In the "Empire of Disorder," the duty of civilizing carries war in its bosom. The Third World specialists and the historians -- those guardians of the sacred chalice of identity -- maybe more than others, have to take up urgent mediating functions. Could their true vocation consist, from now on, in explaining and making sense out of both the plurality of these types of historicity -- of which the West is one case among others -- and that immense phenomenon, accelerating since the 16th Century, of the movement from the ancient World Empire to a globalization of societies?

The exploration of these multiple temporalities becoming our contradictory modernity, of the common destiny of increasingly independent societies, would contribute to an ever more sorely needed solidarity between North and South.

¹³ Fernand Braudel, *La Méditerranée*, Flammarion, 1986.

¹⁴ *L'Orient Imaginaire*, Seuil, p.219.

THE RIGHT OF CONQUEST II

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