# "Poverty as a violation of human rights": a liberating force.

## What is at stake? What are the prospects?[*]

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[*] Fuller details may be found in Eberhard 2002a, 2002b, 2004 and 2005.

Taking human rights seriously implies, at a basic level, guaranteeing every human being the means to live a life worthy of a human being. In the face of today's phenomena of mass pauperization, it seems essential to recognize the urgent need to combat poverty, all the more so when we realize that "mass poverty" is not just a feature of many countries: it is a feature of our whole world, the world to which our discussions of human rights as "universal" are supposed to apply. The gap, in absolute as well as relative terms, between the "haves" and the "have nots" keeps on growing wider ; as we watch, more and more people are being shut out from our "global village".

It is already more than ten years since Upendra Baxi (1991: 152-153), writing from an Indian perspective, noted that "*The problematic of needs is acutely disturbing for the received models of human rights thought and action. It often gets translated into a conflict between 'bread' and 'freedom'; freedom usually wins with the liberal conceptions of rights, despite the awareness that without 'bread', freedom of speech and assembly, of association, of conscience and religion, of political participation – even through symbolic adult suffrage – may be existentially meaningless for its 'victims'.*

*But the issues are not really 'bread' and/or 'freedom' in the abstract, but rather who has how much of each, for how long, at what cost to others, and why. Some people have both 'bread' and 'freedom'; others have 'freedom' but little 'bread' or non at all; yet others have half a loaf (…) with or without freedom; and still others have a precarious mix where 'bread' is assured if certain (not all) freedoms are bartered. The problem of human rights, in situations of mass poverty, is thus one of redistribution, access and needs. In other words, it is a problem of 'development' (…)*" (Baxi 1991: 152-153)

In this quotation, Upendra Baxi summarizes a number of issues at stake in human rights-inspired efforts to eradicate poverty. He emphasizes the inevitable link between the legal, political and economic approaches to human rights in social contexts featuring mass poverty; and he also warns of the gulf that opens up between the theory and practice of human rights when we fail to give the issue of poverty its due weight. Thus, taking human rights seriously urges us to consider their connection with the way markets work and the way development happens (Kothari 1990b; Latouche 1991; 1998; Sachs 1997a; Terre des Hommes, France 1998). He also points out that there is a twofold link between the fight against poverty and human rights: though our present meeting is concerned more with recognizing poverty as a violation of human rights so as to look more thoroughly into the ways in which vindication of those rights can become liberating, we should not forget the other side of the "human rights and poverty" coin: human rights protection mechanisms call for considerable resources, which are simply not available in many situations. So, if protective activity through courts or other institutions is found to be essential, we have really only covered half the ground if we merely promulgate rights without wondering whether they can be applied, or what the preconditions are for their implementation. We should never shirk considering how our legal policies are likely to be accommodated in the great variety of social and cultural contexts; and to do this it is important to broaden the scope of our thinking to take into account not only political and economic circumstances but cultural ones as well.

What I should like to emphasize in my contribution is the intercultural issue hidden behind the complex web of problems surrounding human rights and poverty: this must, it seems to me, be taken into account if any efforts to eradicate poverty by means of a liberating vindication of human rights are to be effective. This intercultural refocusing will give us a new angle on the issues that were so clearly identified in United Nations General Assembly Resolution 57/211 entitled "Human Rights and Extreme Poverty" (4 December 2002). We may restate them here as the starting point for our argument.

The resolution first observes that "*since the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights and might, in some situations, constitute a threat to the right to life, its immediate alleviation and eventual eradication must remain a high priority for the international community*", and that " *(…) democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing, (…)*"; it then reaffirms (Paragraph 2, which we think brings together all the issues found in the other points), that "*it is essential for States to foster participation by the poorest people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty, and that it is essential for people living in poverty and vulnerable groups to be empowered to organize themselves and to participate in all aspects of political, economic and social life, in particular the planning and implementation of policies that affect them, thus enabling them to become genuine partners in development*". Paragraph 4 stresses the importance of surmounting extreme poverty as an essential means to the full enjoyment of political, civil, economic, social and cultural rights, and reaffirms the interrelationship among those goals, while Paragraph 5 reasserts that the existence of widespread absolute poverty inhibits the full and effective enjoyment of human rights, and weakens democracy and popular participation; Paragraph 6 recognizes the need to promote respect for human rights and fundamental freedoms in order to address the most pressing social needs of people living in poverty, not least through the design and development of appropriate mechanisms to strengthen and consolidate democratic institutions and governance.

This diagnosis reveals that an essential precondition for tacking the Herculean task of eradicating poverty is that all citizens, including those most completely excluded at present, must be given their place in the life of the *civitas*. The eradication of poverty will depend on participation by the "poor" in "development", "democracy" and "governance".

There are many non-Western situations in which, for most people, all modern mechanisms such as the institution of Justice, the Welfare State with its system of social security, and a system of access to modern health care are still remote or even non-existent.[1] The fragility of the living conditions of the most underprivileged is paralleled by the exclusion of large swathes of the population from public life: that life is still often monopolized by modern institutions and modern language, which know little and care less about other world views, ways of thinking, languages and customs. We sometimes find that the intrusion of modern processes such as the market or development aggravates the destabilization of "non-modern" modes of life and makes the situation of certain groups even more precarious. It seems essential, if we are to take the need for participation seriously, to take some interest in the practices, the logics and the world views of these vulnerable groups which are being left on the sidelines of the modern system without any real hope of one day making their way in.[2]

If we want to combat poverty and exclusion, we must make an effort to understand traditional arrangements for solidarity, mutual aid, and social living, and to allow ourselves to learn from them. At the very least we need to learn to regard them as assets rather than merely as obstacles to Western-style development. Likewise we need to show some sensitivity to the various guises in

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1      The reasons why I have based this article mainly on considerations drawn from non-Western contexts are, firstly, that those are my particular areas of reflection and, secondly, that it seems to me of primary importance to interculturalize the ways we approach living together, which at present continue to rely essentially on Western thinking. However, I am very well aware of the challenges which arise in the West as well, especially in connection with the forces driving pauperization in the former Eastern bloc countries.

2      We may indeed wonder why the "modern" viewpoint should necessarily be taken as the universal one in every instance of living together? The basis of all real intercultural dialogue for the purpose of developing a shared horizon of action requires first of all a recognition of and respect for the perspectives involved in other views of the world.

which Law can appear, meaning by "Law" that phenomenon which establishes forms and puts into forms or "patterns" our living together according to our respective worldviews. Our modern institutions and "human rights" thinking stress an institutional approach in which "the law" appears above all as a set of general, impersonal rules and standards; but we ought to be aware that other societies have other ways of intertwining "the biological, the social and the unconscious for the reproduction of humanity" – to borrow Pierre Legendre's splendid formula. If we are prepared to concern ourselves with these other forms of Law, which in some countries represent the submerged part of the legal iceberg, we may be able to link them in with approaches that are more institutional, more "classical", as a jurist would say.

I shall start by setting out the issues involved in an intercultural approach to human rights that aims to attain the human rights ideal in non-Western contexts and in those lacking the material resources of richer countries. Then I shall tackle the issues of development and governance, which depend on real participation by everyone in our shared life on this earth. This will eventually lead me to reflect on what might be gained from adopting a liberating approach powered by the notion of "poverty as a violation of human rights", i.e. an approach really designed to ensure everybody's participation in framing visions of society that are attuned to the need to eradicate poverty and exclusion and in which  States, open to the intercultural challenge, will have an essential role to play.

## 1.    Human rights in a context of cultural diversity and poverty

In this presentation I shall be emphasizing the importance of taking into account the human and cultural resources that make possible the cultural preservation and transmission of respect for human rights in many non-Western contexts. I should like, however, to draw the reader's attention to a deeper level, which I shall not be developing here, a level at which "human rights" and the issue of poverty are opened up to intercultural dialogue.[3]

The anthropology of Law teaches us that it is not only values (and therefore legal and ethical content) which can vary between one culture and the next; the very way in which Law is conceived and thought about, the forms by which societies reproduce themselves and resolve their conflicts, and the underlying views of society and of the world – these can be different as well. Therefore, we have to appreciate that if we are to take local resources seriously we need the wider horizon of a real intercultural dialogue which offers a mutual enrichment of our several human traditions – and that includes our Western tradition of human rights – and acceptance that even if the destinations are similar our vehicles and routes must be allowed to differ from one context to another.

Let me illustrate what I mean with an Indian example. We may indeed observe quite generally that in India nowadays efforts to achieve "social justice" have become a mainstream activity; this is due in no small part to militant campaigning for human rights as much by the Indian State as by pressure groups. However, the human rights movement remains for the moment the preserve of those who already belong to what sociologists call the "modern world" of government and judicial power structures. Other groups, like the majority of the *Dalits* (previously known as Untouchables),[4] remain on the periphery. This state of affairs "*is unlikely to change soon unless*

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[3]    For examples of such approaches, see Eberhard 2002a, Rahnema 2003, Vachon 1990.

[4]    Perhaps I should give a (simplified) explanation of Untouchable status (so-called "untouchability"). The Indian social structure of caste is organized on the principle of purity/impurity. The relative positions of the various castes (jâti) depend on their relative degrees of purity. Caste membership is hereditary, and marriage within one's caste is the rule. This system is accompanied by an intellectual division of Indian society into four conditions or *varna* (literally "colours"): at the top, the Brahmins or priests, followed by the Kshatrya or warriors, then the Vaisha: these make up the "twice-born" who have access to the Veda. Next come the Shudra, the servants or humble people. And then there is yet another category, quite outside the varna, lower still and more "impure": the Untouchables (see Dumont 1979: 93) Their official classification is "scheduled castes", and they

*human rights advocates translate their concerns into popular terms and for lived social conditions, and unless they are ready to first educate themselves about the people's relevant experiences, expressions, and expectations.*" (Khare 1998: 195-196).

In the case of struggles for recognition of the rights of Dalit women, R. S. Khare notes that although it is evident to us that their concerns are human rights issues and can be dealt with as such since discussion of human rights is a feature of the Indian situation also, it nevertheless remains the case that at bottom they themselves do not mould matters in these terms but rather in terms of *dharma/karma*;[5] part of a world view more centred on divinity and the cosmos than on human kind. But these notions of *karma/dharma*, far from being fixed, are actually being reinterpreted in the light of egalitarian ideas conveyed by "human rights" and the whole of Indian secular politics – or perhaps it would be truer to say that what we are witnessing a reciprocal reinterpretation of these notions and symbols, while the centre of gravity remains anchored, in popular Indian thinking, in the traditional Indian concepts. According to R. S. Khare (1998: 179-180), *"Popular culture finds the issues of justice and injustice deeply related to karma and dharma. Yet the relationship is far from simple or unconditional when examined against the people's everyday practical needs and quests. In the traditional Hindu ideology, karma and dharma form the undisputed and complete basis for all the justice or injustice encountered in life. Karma and dharma are thus considered to be the bedrock of justice. In life, however, a quest for justice, or at least an escape from intolerable injustice, takes a far more pressing and practical turn. Unless it is totally hopeless, people either revolt against or run away from the unbearable situation. They do something to remedy the situation. This they do as part of their dharma, for to fight injustice is also part of one's dharma. An injustice that causes torture and extreme hardship is not endlessly suffered simply as a fate, a fruit of one's (or a community's) past bad karmas. In such a practical view, justice (nyaya) becomes the core of dharma, modifying one's passive acceptance of the karma-assigned condition. (…) By definition, injustice could never triumph over dharma, because dharma was self-evident justice, and it was the very source of all creation and the cosmos. (But) Dharma decidedly triumphed over injustice 'only when injustice overflowed' (…) In such a system, as Dalit reformers complain, injustice is tolerated until it accumulates enough to trigger the balance of dharma to set itself right. Such dharma is, however, considered today a necessary but insufficient compass of social justice for the oppressed, until it also becomes sensitive to people's lived pain and suffering, here and now"*.

The older *Dalits*, especially, continue to see moral obligations and prescribed duties in terms of the principles of *karma* and *dharma*, and give much importance to the role of the divine (*bhagvan*), which remains the supreme power that determines action in all calculations of *karma* and *dharma*, but whose will is always a mystery for humans (Khare 1998: 180). Whatever may happen at the human level, cosmic and divine justice will always have the last word. R. S. Khare also notes that *Dalits* tend to argue not so much in terms of a division between justice and injustice but rather, against a background of the concepts we have just been explaining, in terms of gradations of their life experience between these two extremes: some of these degrees are accepted as a matter of course, others are tolerable or can be negotiated, while others again are intolerable and unacceptable (Khare 1998: 186).

We are accordingly invited to dive into a "pluriverse"[6] in order to understand the complexity of the dynamics of emancipation, the role that human rights can play in them, and the originality of the

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make up some 16. 5% of the population of India, over 160 million people. In addition to being at the bottom "ideologically" they are also the most exploited and the ones who are in the most precarious situations socially and economically.

[5]      For definitions of these, see Lingat Robert, 1998; Eberhard 2002: 195-198.

[6]      See Eberhard, "Justice, human rights …" op. cit.: 79 ff.

various human situations, each of which enriches us in our effort to understand what humanity is. "*Though exasperating to a modern social reformer and a human rights advocate, this deeply-ingrained cultural lexicon of karma-dharma and divine justice complex is shared widely by ordinary Hindus, Buddhists, Jains, and Sikhs in India. It is the people's jurisprudence, shaping the prevalent notions of social fairness and justice. It goes through periodic cycles of rigidity, reform, flexibility, as various saints, reformers, and leaders try to explicate it from time to time. It encounters petitions, protests, and upheavals, as well as a rising devotional faith in the 'intervening power' of the divine will*". (Khare 1998: 180-181)

If we are ignorant of these different universes of meaning and action or ignore them, we shall not be able to understand the concerns of those whom human rights are intended to benefit, and so shall exclude them from the "human rights game". The question of dialogue among differing world views therefore arises not only in dealing with the global framework of thinking about human rights, where the need for intercultural dialogue among humanity's traditions is becoming more and more acutely felt. It also has considerable importance for anyone undertaking practical action on human rights and seeking the effectiveness that comes from taking into account the views, customs, resources and strategies of the people actually involved.

But quite apart from the fact that if the protection of human rights is to be effective it must be open to intercultural dialogue (in order to address the need of its intended beneficiaries and not completely exclude them from a "social game" that has been redesigned for modern players only), modern human rights protection calls for massive material resources. The Western "rule of law", which makes it possible for institutions to translate human rights into grassroots realities, requires a very heavy investment in bureaucratic and administrative infrastructure, which the great majority of countries in our world simply cannot afford. This is not a moral judgement but a recognition of facts. If we remember that in many countries officials (including those of the machinery of justice) are under-paid or not even paid at all, that the number of judges is notoriously inadequate, that they lack training, that the basic infrastructure (e.g. official gazettes) is minimal or non-existent, we begin to see that to argue only in terms of an institutional approach to human rights is really not enough. Jacques Vanderlinden (1996: 87) does not mince his words in the following observation about Africa: "*Whatever angle you look at it from – the scientist's, or the practitioner's – the bankruptcy of African countries' state-based law has become a truism (…) It is closely related to the disintegration of its sponsoring authority, the African State*". And he goes on: "*Where there is no State, there can be no state-based law amounting to anything more than a pious wish or a cloud of dust thrown in the eyes of half-attentive observers or sanctimonious hypocrites only too happy to swallow whatever appearances they find convenient*".

In such situations, therefore, it would seem self-evident that we have to have recourse to other, non-modern resources if we are to make progress towards attaining the human rights ideal of guaranteeing everyone a life worthy of a human being. These may be material resources, human resources or resources in the form of ideas. The transformation of various material, intellectual and spiritual endowments into resources that can help us on our way towards an intercultural *praxis* of human rights is in my view fundamentally connected with the attitude of dialogue. For as long as we regard other views of the world and other cultural practices as "backward" or opposed to civilization and progress, they cannot be positive resources in the search for a proper life for all; on the contrary, they will appear as so many hindrances. The essential resource therefore seems to me to be our own basic attitude, which must be one of dialogue.

In African situations it does seem helpful to turn to resources such as custom which continues to organize social life or the emerging common laws of practice, and to make them work together with the provisions of the national and international legal order which are no less real and unavoidable and which can also be a resource, so as to move towards achieving the rule of law, and thus

enabling the human rights ideal to become a reality.[7] Étienne Le Roy speaks of this process as a "radical reform" which is a " *(…) taking into account, beyond the play of institutions, of the basis for a society's functioning, which can both provide a framework for the lives of Africans and anchor them in the values and practices that are shared by all. It hinges on a rediscovery of these endogenous practices and at the same time on new consideration of the values which could guide these societies' futures towards construction (or even reconstruction)*". (Le Roy 2004: 258)

## 2.  Participation as a precondition for the eradication of poverty: the issues at stake

In my introduction I mentioned Upendra Baxi's thoughts on the need to consider the issues of development and politics when reflecting on human rights and poverty, and their concurrence with the diagnosis outlined in the United Nations General Assembly Resolution on Human Rights and Extreme Poverty, which emphasized the need actively to involve the excluded in economic and social life. What I intend to do here is to introduce the intercultural dimension into the argument yet again: what kind of development, what kind of participation would really enable everyone to take part in a jointly-designed project, and hence to support a dynamic process of poverty eradication?

In order to answer this question, we have to reconsider the way we approach the concepts of "development" and "governance" which mark out the area within which today's thinking about citizens' participation in shared living takes place. We shall then be in a position to consider the responsibilities of national governments and the international community in the eradication of poverty in connection with human rights.

### Development

Development, if thought of as the organic growth that enables a living creature or a society to develop to its mature state, can be regarded as a desirable ideal for everyone. However the term is not a neutral one : it has a history. At the end of the Second World War, the invention of the concept of "development" created in its wake the emergence of an "under-developed" world – one which therefore had to "develop". The matrix of thought is deeply Western, and "development" was able to take over the role which the idea of "civilization" had played under colonialism. It was by comparison with the Western model of development that, around the time of the end of the Second World War, a lack of running water or electricity could be declared a feature of poverty that needed eradicating. For the sake of "civilizing" perhaps; but also, let us not deceive ourselves, for the pragmatic purpose of opening up new markets.

While the Marshall plan indubitably produced success stories in Europe, both at macroeconomic level and in terms of the fallout in social benefits for Europeans, the advantages of development for the rest of the world have not been so easy to detect.[8] It has led in many situations to a gradual replacement of poverty by misery (peut être que "destitute" est effectivement mieux en anglais, mais si "misery" passé je le préférerais car ca reste plus prêt de la racine française du mot "misère" qu'utilise Majid Rahnema), to use the terminology of Majid Rahnema (2003). Many of those living in developing countries are no longer poor[9] only by our standards, while still living a life which makes sense to them and enables them to satisfy their needs in accordance with their own vision of the world and of society. They have become miserable (idem que pour ma remarque ci-dessus) :

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[7]   See Le Roy (1990b : 118-120) for an illustration of how an intercultural approach to human rights could work, given an agreement to build on the various resources available; the author describes the emergence in Senegal of a negotiated way of settling conflicts and a new "community culture".

[8]   On the many faces of "development aid and its issues" see Sogge 2003.

[9]   For a discussion of the notions of poverty, needs and standard of living in the age of globalization, see Rahnema 1997, Illich 1997 and Latouche 1997.

that is, their situation is such that they can no longer ensure their own survival in terms of their own values, aspirations and resources,[10] and on top of that they have seen themselves marginalized in terms of the new, modern mode of life which has been set up before them as a model. Their "under-development" marks their exclusion from the modern, developed model of social living. In India, for example (but the situation there illustrates a more universal tendency), "*The logic of classification and loss of class implicit in modernization excludes (…) three quarters or four fifths of the population*" (Heuzé 1993: 43). "*In the Indian context, the reference to 'modernity' means (…) the introduction of polarities never known before. One is or is not 'modern'. That which is not modern is traditional (backward) and this implies that it is fossilized, that it 'belongs to history'. The progressive outlook imagines and imposes a linear time, and everyone is labelled according to a place along that line. (…) just recently, whether or not one makes the grade in town has become important.[11] Nobody wants the 'people at the bottom of the heap' to be around any more, the fringe people who have long been the main feature of the urban landscape; at any rate, nobody wants to see them any more. The lesson many people draw from this is that modernization, in the concrete form, for example, of the introduction of property deeds, has often accentuated all sorts of dispossession. Though yesterday's Brahmins and despots did not lack arrogance or authoritarian reflexes, at least they hardly had any ambition as regards economic development. Nor did they interfere with local living arrangements*". (Heuzé 1993: 44).

Although there is now an attempt to move towards sustainable development which takes account not only of economic measures but also of social and environmental development issues, this still does not always mean that attention is paid to the exclusion from the new model of everyone who does not speak its language or share its world view. Even now, the cultural dimension and its social consequences for human beings are not generally covered in our reflections, which are still rooted in the (Western) myth of development. Indeed, we are only beginning to wonder whether it might not be the modern conception of "development" itself, and all it implies, that is the problem – or at least part of the problem; we still cannot see "alternatives to development"[12] that other world views have to offer. Let me be clear: these alternatives are not Utopias, they are real situations; but we have to allow ourselves to see them if we are ever to be capable of engaging in dialogue with them. And that dialogue should at the very least involve recognizing them, encouraging them and thinking about how they fit together with – could be made to interact with – contemporary development processes, whose value would thereby have to be regarded as relative. The object of the exercise would be to repair the crockery smashed when purely economic considerations were allowed to impose a neoliberal development that aggravated poverty and intensified exclusion for the benefit of a minority. If we are to take these real-life alternatives seriously we have to remember that people have a right to participate in the design and implementation of their social model. At present this approach is seen primarily in terms of "governance" and "civil society".

### Participation required for the eradication of poverty: bringing "governance" and "civil society" back into perspective?

In the contemporary processes of globalization, the State no longer has a monopoly of legal regulation: national freedom of action is circumscribed by the emergence of supranational rights at regional or world level, and also by the emergence of local rights connected with ongoing

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[10] One of the effects of development has been to create under-development. Even the World Bank and the International Monetary Fund (IMF) have been forced to admit that, statistically, the number of poor people in the world has not stopped growing in absolute and relative terms, and the gap between rich and poor is still widening. Development seems therefore to benefit the developed above all, those who are at the centre of the power structures – at the expense of those regarded as "under-developed".

[11] It should be kept in mind that three quarters of the population of India live in the countryside.

[12] See for example Vachon 1990 and La ligne d'horizon 2003.

decentralization (Arnaud 1997). State action would appear to be becoming more oriented towards "governance", meaning the efficient running of society, and increasingly disregarding "government" which is more hierarchical, more top-down … but also more political. In the words of the Commission on Global Governance, governance is "*the sum of the many ways individuals and institutions, public and private, manage their common affairs….a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people or institutions either have agreed to or perceive to be in their interest*".[13] Governance is to some extent presented as preferable to government, and this is because it looks like a more participatory and therefore a more democratic process, in the sense of a direct form of democracy rather a representative one where the electors' role is merely to vote periodically in elections for those who are to govern them. But who, exactly, is going to participate? And in what?

In his historical analysis of the way in which the concept of "participation" has been used in the sphere of development, Majid Rahnema notes that we should be careful to distinguish between spontaneous participation and participation that is manipulated – or even remote-controlled – in cases where the participants, without being forced to do anything, are encouraged to take a particular decision by centres operating beyond their control (Rahnema 1997: 116). Although the concept of participation was slightly subversive to start with, and in the 1950s produced campaigners who pointed out the need to take the realities of local situations into account when drawing up development programmes, it was gradually co-opted by governments and development institutions which as early as the 1970s were being faced with explicit evidence of the failure of their programmes and beginning to feel the need for some transmission mechanism for their activities. This, according to Majid Rahnema (1997: 117-120) was for six main reasons: the concept was no longer regarded as a threat; it had become a politically attractive slogan; it had become an economically attractive proposal; it was now perceived as an instrument for greater effectiveness, as well as a new source of investment; it had become a good means of fundraising; and lastly, a broadened conception of "participation" was enabling the private sector to become a direct player in the development business.[14] Clearly, then, we must know what exactly we mean when we speak of "participation" in the context of governance.

Bonnie Campbell (1997b) emphasizes this point in her critical analysis of structural adjustment plans (SAPs) and their implementation in African countries. In view of the SAPs' failure and their "political non-feasibility" at the start of the 1980s, a major effort went into devising a political legitimacy for such programmes. By the end of the 1980s this effort was being based on the concepts of "empowerment" and "consensus-building", and then most of all (from the 1990s onwards) on the idea of "participation". However, as Bonnie Campbell makes clear (1997b: 219-220), " … *this is an 'empowerment' designed to ensure and facilitate development, which as we have seen appears as a pre-defined end result, not any real participation in the exercise of power with a view to taking part in forming and putting into practice a vision of society. (…) In this sense, "participation" means (1) a means of getting local support and local cooperation, and (2) a means of establishing popular legitimacy – but legitimacy for those who introduce an SAP, not those who resist or oppose it. It is in this same technical and functional sense that we are to understand the limited scope of the notion of 'accountability', which appears at first sight to be reasonably broad: 'Accountability at its simplest means holding public officials responsible for their actions'. But this notion was never subsequently spelled out in detail, and therefore lacked political effectiveness as regards a broader interpretation. In order to have an operational effect in political terms, it would*

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[13]   Quoted (in French translation) in Froger 2003: 12. Definitions are available at http://www.gdrc.org/u-gov/governance-define.html

[14]   It is interesting to contrast and supplement this approach with the "planning" approach by Arturo Escobar (1997).

*have to have been made clear who was to be held accountable, for what, by what mechanisms, to what extent and according to what standards. This lack of precision becomes easier to understand when we realize that what is involved is essentially budgetary and economic accountability (…): 'Similarly, the Bank is rightly concerned with financial and economic accountability, but political accountability is outside its mandate.' (…) It is this kind of consideration which leads us to conclude that the notions of 'empowerment' used by the Bank in the 1980s and 'participation' in the 1990s do not arise from a concern for real participation but are connected rather with a concept of 'populist managerialism'".*

So the underlying idea of this semantic area surrounding "governance" seems to be not so much greater political participation as more effective management of society – a shift from the political myth of living together to an economic myth crystallized in the ideology of development. "Good" policy arrangements, or "good governance" as understood by the International Monetary Fund (IMF) or the World Bank, is what works effectively in terms of macroeconomic profitability, what does most to reduce the role of the State … and of politics. The question of choice among different "visions of society", which is perhaps the fundamental political question, is emptied of all content – the only concern is to "manage" a situation as effectively as possible with a view to introducing a form of development in keeping with the "natural laws" of the market[15] … The idea underlying the "best practice" which the World Bank wants to inculcate is one that "*closely links international aid to a much greater opening up of poor countries' economies not only to international trade but also to direct foreign investment (…) in the form of local subsidiaries set up (or local firms taken over) by the big multinationals (…)*" (Gaudin 2002: 78). Paradoxically, "good governance" tends to empty governance of all its liberating potential and all its promise of greater participation by civil society in the common weal. By its prescriptive nature it actually sets up road blocks in the way of participation, and ensures countries' *de facto* supervision by the international financial institutions. The opportunity of participation offered to civil society by the process of governance is once again thrown into doubt. I must point out, though, that the World Bank and the IMF have no monopoly in defining "good governance". There is no good reason why more explicitly political requirements should not be included; and we are free to wonder, if we prefer, what specific contributions the idea of "governance" might make to a modern rethinking of the issues involved in living together in dignity and peace, rather than taking the ideological path of some "good governance" that has been defined for us beforehand. In its more liberating interpretation, which sees governance not merely as neoliberalism's transmission belt and a way of reducing the role of the State and politics in order to strengthen that of market economics even further, but as a more participatory way of organizing our communal life, the role of civil society becomes clearly crucial; for it is by mobilizing civil society that we may change course and move towards a more participatory way of dealing with the problems of the *polis*, and so head for a more alive, "hands-on" type of democracy.

Here again, though, things are by no means as clear as they may seem at first sight. The concept of "civil society", defined as an autonomous sphere in contradistinction to "the State", takes us back to *societas*, a gathering of individuals connected by a social contract (Dumont 1991: 98-99), and to *civitas*, the political society or *polis*. We find ourselves in a particular (Western) construction of the relationship with what is political, legal or social. Our first thoughts when "civil society" is mentioned are of associations, non-governmental organizations, grass-roots movements, etc.: but what about more traditional political, social, economic and legal structures such as the mutual aid networks organized in terms of family, religion, or caste, which are not necessarily moulded in modern forms?[16] Either these are disregarded, or just the tip of the iceberg is glimpsed when (or

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[15]    See Gervais 1997, Osmont 1997, Campbell 1997a.
[16]    On the difficulty of taking traditional structures or dynamics into account when arguing in terms of "civil society", see for example Mandani & Wamba-Dia-Wamba 1997, Sall 1997.

rather if) they take part along with others in "modern games" – for instance an NGO activity. Basically they are ignored, just as they themselves ignore modern ways of doing things, as Babacar Sall (1997: 252-245) observes in the case of Africa, where "*(…) the political and economic circumstances are such that none of the words deriving from the dominant modern sector ('development', 'democracy', 'State') have any meaning in social life any longer, precisely because they have failed to improve its vexed relationship to fundamental needs. What matters, consequently, is not the long term, the programme or the sense of history, but the daily imperatives of food and health. What we have is a situation of controversy and upset, where social life has been depoliticized and political life desocialized but where their divorce, or the swallowing up of one by the other, has not completely incapacitated the overall system. There is manifestly a structural dissociation between these two main centres of gravity, which leads to a situation in which society gets on with what it thinks, says and does without reference to politics, and vice-versa. (…) this desocialization signals not just a divide between government and society, but a renewed, selective takeover of State structures by dominant groups which appropriate them and use them as weapons to get the upper hand in long-running disputes between themselves and other competing social groups. Seen in this light, the ideological registers of the modern State in Africa, its partisan system, its bureaucracy, its rituals and its methods of legitimation may all be seen as the result of a virtual enactment of the dominant universalism imposed by the "democratic" powers. Yet only in rare cases have they actually got an effective grip on the body social, because the essential workings of social, cultural and economic life go on outside the institutional framework established by the State*".

This last thought of Babacar Sall leads naturally to the question underlying the issue of "participation". In situations such as those described above, where the essential workings of social life take place outside the modern mould, is it reasonable to expect real popular participation to be dependent on a mass conversion of the population to modern ideology? Or should we perhaps be wondering whether it is not at least partly up to imported modern institutions to adapt themselves to the expectations, needs and viewpoints of their supposed "beneficiaries"?[17]

If we are aware of the diversity of views of what society should be[18] – to say nothing of the diversity of ways of implementing these views – and if we really take "civil society" and its idea of "participation" seriously in order to identify the responsibilities of each in our community, then we have to concern ourselves with the submerged part of the iceberg of society's legal and political regulation, in a broad sense; and we cannot do this without introducing an anthropological strand into our thinking about rights and law, and exploring the great range of juridical behaviour by couching our questions, not in terms of modern institutions, but on the basis of specific issues affecting the whole of society (see for example Le Roy 1990b, Vanderlinden 1996).

## 3.     Towards a liberating approach to "poverty as a violation of human rights"

In Section I (Values and principles) of the United Nations Millennium Declaration (A/55/L. 2) we read: "*We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can*

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[17]     In this connection the reader might be interested in Étienne Le Roy's latest work *Les Africains et l'Institution de la Justice* [Africans and the Institution of Justice] (2004).

[18]     Also see Eberhard (1999) for my doubts about speaking in terms of a "project for society" in certain contexts, since this concept also is probably too modern to be interculturally useful.

*globalization be made fully inclusive and equitable. These efforts must include policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation*".

While the international institutions appear, from this viewpoint, to have an important role to play in regulating globalization so that it does not amount merely to an expansion of the neoliberal market, it also seems essential to rehabilitate or even entirely recast the role of the State. National governments have a primary responsibility for, and can play a determining role in, combating poverty by means of a liberating approach to human rights, i.e. an approach which really encourages everybody to help choose from among the different views of society and ways of implementing them. This means taking into account the intercultural aspects of the process.

Though the State is obliged by globalization to deal with other powers whose activities compete with or at least supplement its own, so that the exercise of its sovereign authority is re-shaped thereby, it nevertheless remains a key player. Reasserting the role of national governments would seem an elementary part of any reflection aimed at reducing poverty; and we can by no means subscribe to neoliberal demands that the State's powers be curbed: if the State has been (and is) incapable of fulfilling its basic functions in many non-Western situations, this is not the moment to undermine its foundations even further. In some cases we may legitimately wonder whether it might not be "more government" rather than "less government" that is needed – though keeping in mind that it is above all *different* government, government that succeeds in embodying a certain legitimacy, that we want. It is not accordingly that the State should be stronger in the sense of "more totalitarian", but rather in the sense that it should be able to ensure a minimum level of service in practice, while functioning so as to complement other social resources.

Moreover, this talk of weakened States taking less and less responsibility hides yet another real feature of the situation. While on the one hand many governments, in both North and South, seek to escape the unpopularity of their policies by blaming "globalization", it is still the State which acts as transmission belt between the global and the local (see Ost & van de Kerchove 2002: 168 ff). It is the State which actually implements the structural adjustment plans, by enacting legislation and using its monopoly of legitimate violence. To use Shalini Randeria's analysis (2002), we may distinguish at least three forms of State: those which are strong enough, where we are simply watching the emergence of a more pluralist, complex and fluid political and legal arena in which the State will still be a central player, though in relative terms only; those where the State has practically lost all its autonomy and amounts in fact to a mere transmission belt for "global forces"; and lastly those in between, such as India, Brazil and other big countries of the South, which have a not inconsiderable measure of independence in practice, but evade their responsibilities at times by involving globalization as they open up their countries to the world market and in doing so weaken the position of their own people, sacrificed on the altar of "macroeconomic development" which is often the opposite of self-development or self-sufficiency.[19] The strong and intermediate States need to be confronted with their responsibility for choosing a vision of society which takes all their citizens' aspirations into account; while the weakest States are the ones which the international community will have to watch so as to make sure that instead of becoming even weaker they are allowed to build themselves up, on the basis of actions which their own peoples regard as legitimate.

Any move to tackle poverty as a violation of human rights therefore depends on reasserting the role and responsibility of States with regard to the choice of a vision of society, in collaboration if

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[19]    These analyses gain from being put into perspective by Bertrand Badie's reflexions on States 'between ruse and responsibility in a world without sovereignty': *Un monde sans souveraineté. Les États entre ruse et responsabilité monde sans souveraineté* (1999). See also de Senarclens (2002), who analyses the changes to and reconfigurations of the State's role under the new power relationships that emerge with globalization.

necessary with international institutions such as the World Bank or the IMF. These, for their part, must aim at real participation by all citizens in social life and are therefore asking that those citizens' practices, thoughts and world views be taken into account

We should remember that the rule of law (or *"État de droit"*) rests on three pillars: first, general impersonal rules and standards built into the hierarchical structure of the legal system and presumed to be known to all and to exist prior to any particular dispute; second, the obligation on the part of the source of authority (the State) to respect its own rules; and third, "the insistence that the law shall conform to society's values, in keeping with the ethical judgements that are shared by the greatest number" (Le Roy 1999: 266). This third pillar is the one we have to rely on as we shift from thinking only in terms of a "transplanting of the modern model of the rule of law" throughout the world towards thinking in terms of setting up more than one "rule of law", in the sense of a situation in which the law that prevails (Le Roy 1999: 264) is one built on the world views and practices of the people involved. This requirement is not only "ethical" in that it alone meets the conditions for true dialogue and interculturalism; it is also highly practical, as we were explaining earlier: quite apart from any other consideration, it is a fact that the modern rule of law requires an extremely heavy and costly infrastructure which few States can afford (officials, publication of gazettes, registers, surveys etc.). The State cannot therefore monopolize the running of the whole society – it is important to delegate some powers and find means of connecting "modern law" with "living laws" so that progress is made towards the ideal of making all the players in the social game more secure by ensuring that all play a real part.[20] And just as the State must accept its limitations if it is to be able to work in a manner that complements other social forces, so we must also rethink the concept of "development" and break its monopoly on all deliberation about how to guarantee everyone a life worthy of a human being.

To conclude, I consider the principal issue in non-Western situations to be the need to place participation at the centre of moves to treat poverty as a violation of human rights and thus include the intercultural dimension. If we take this requirement seriously then we begin to see approaches emerging that are not limited to modern, Western answers, but would take account of the experiences of humanity's other cultures in all their variety – and not merely in the abstract, but in a concrete way, in all the various arenas where legal policies are conceived and implemented. The anthropology of Law could prove an extremely useful resource in such a context.

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[20]    We may indeed wonder, on a more fundamental level, whether it is desirable that one authority alone (whether the modern State or some other construct) should have a monopoly of Law and so remove the accountability of other players in society. In my view the answer is definitely "No". On these questions see, for example, Huyghebaert & Martin 2002; ILSA 2003. This issue connects, of course, with all the more general contemporary worries over "technocracy" and the "democratic deficit" in our institutions.

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