

Stronger judges, real rights

by Chibli Mallat

In his masterful history of the twentieth century, aptly entitled the *Age of Extremes*, Eric Hobsbawm surveys the ruthlessness and violence which our century has wreaked upon the world. In the book, the famed British historian underlines the brutal and systematic character of state-organised violence.

The year 1996 has unfortunately not been an exception to the characteristics of a ruthless age, from the operation 'Grapes of Wrath' to the tragedy still unfolding in Algeria and in the Great Lakes of central Africa.

There is no dearth of texts to condemn massive violence, whether it is organised by the state domestically or internationally. From the United Nations Universal Declaration of Human Rights, the 48th anniversary of which we celebrate today, to various bills embodying basic rights of the citizens and the groups, such as the African or Islamic Charters, to the UN covenants of the 1960s, the common denominator is now well anchored in the psyche of people: so-called first generation rights include the right to free expression, the right to equal treatment of the law, the right to participate openly in one country's political process, the right to be protected against torture and unusual and cruel punishment, the right to be considered innocent until proven guilty.

The second generation rights, which the Universal Declaration also mentions, include the right to make a decent living, to proper education and to health.

The economic crisis which started in the fourth quarter of the twentieth century has paved the way for a Thatcherite philosophy sacrificing second-generation rights on the altar of free markets. Our declining century has gradually undermined second generation rights. The only universal common denominator for the protection of rights has shrunk to the basic rights which are originally found in the constitution and bill of rights of Britain, the USA and France.

One can only hope that a new philosophy emerges in western countries which will reinvigorate social and economic rights in a more subtle and inventive form. To some extent, this emphasis is taking shape in the powerful

calls for gender equality and the protection of minorities, but the language of egalitarianism remains uncertain, because the role of the state has not been adequately redefined.

Should the welfare state be jettisoned as a monstrous and inefficient distortion, and as a threat to individual creativity? Or should it be thought anew with elements of economic efficiency which can reconcile it with private enterprise?

There is a vast agenda here, which some thinkers like the French sociologist and banker Robert Fossaert have tried to articulate, but this search seems to be only at the beginning.

Even when it comes to first generation rights, alas, the picture is far from being universally reassuring. In the first place, the planet is sharply divided. The Universal Declaration of Human Rights – which Lebanon is proud to have helped draft under the UN ambassadorship of the late Charles Malek – has come to countries like the USA and France as an unnecessary text. Basic rights had long been enshrined in their constitutions.

For many countries of the Third World, constitutions have been passed which were inspired by the Declaration, and some have made explicit reference to it. But the problem is implementation, and the sore test remains, for those basic rights which no one contests seriously, how much, if at all, they exist beyond the letter of the Basic Law.

One is well aware of the problem in Lebanon and in the Middle East. Executive power is naturally prone to excesses. Granted that parliaments are there to frame laws in a way which should not oppress the citizen, only one power can stand to the executive in the field of implementation: the courts. Only the judge has the means to punish executive excesses.

But judges do not come in the abstract. Apart from being human like the rest of us – a characteristic which may be as much a blessing as it may be a curse – judges function as an arm of the state.

Should the state refuse to implement the judge's order, there is little that the judge can do. To that extent, judges wield the most remarkable moral power in society, which is

to uphold the law against the excesses of a country's own government.

Which brings us back to the Universal Declaration. Without courts to implement the rights enshrined in the Declaration or in its constitutional cousins, lofty texts remain dead letters. Hence there are two requirements for taking these rights off the book and into life: judges who are strong, independent, and respected, and judges who can look into the constitution and defend it against executive encroachments, especially when they touch upon the basic rights of the citizen.

Maybe a register of courts, with some newly devised indices, could be started by the United Nations on the anniversary of the Human Rights Declaration. We already have the accumulated reports of Amnesty International and other human rights organisations, which have changed the face of the world by examining the details of human rights violations in every single jurisdiction, including most recently the nascent Palestinian Authority. Other organisations concentrate on women's rights and on the freedom of expression, and have drawn up useful comparative tables. There is even a very good annual register for 'civil society' in the Arab world, which the Egyptian Ibn Khaldun Centre started a few years ago.

But we still do not have a proper court register for human rights. Rather than useful but bland 'negative' reports on human rights violations, a new UN secretary-general could give some thought to the creation of a UN court register. This register would operate 'positively', by identifying, in each country, the efficiency and strength of courts in their most basic role: that of upholding the basic rights of the citizen under a universally defined common denominator which has been on the books for half a century.

By doing so, the world might be slowly leaving the age of extremes for what next century's Eric Hobsbawm might summarise as the universal advent of tolerance.

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