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Rett R. Ludwikowski

## EDUCATION AND PROMOTION OF HUMAN RIGHTS FROM A EUROPEAN AND AMERICAN PERSPECTIVE

### Introduction

The relationship between education and implementation of programs for the protection of rights and freedoms has been substantiated by the numerous documents produced by international conferences on human rights, such as; the 1966 International Covenant on Economic, Social and Cultural Rights<sup>1</sup>, the 1978 UNESCO International Congress in Vienna on the Teaching of Human Rights<sup>2</sup>, the Congress in Seville in 1986 and in Malta in 1987<sup>3</sup>, the Seminar in Geneva in 1988 celebrating the 40<sup>th</sup> anniversary of the Universal Declaration of Human Rights,<sup>4</sup> the World Conference in Vienna on Human Rights in 1993<sup>5</sup>, the Montreal International Congress on Education for Human Rights and Democracy on 1993<sup>6</sup>, and many others.

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<sup>1</sup> *Manual on Human Rights Reporting*, Art. 1/3, United Nations, 1997, p. 141, see also commentary in: "Malta Recommendations on Human Rights Teaching. Information and Documentation" 1987, #1/3, [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/304-319.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/304-319.HTM).

<sup>2</sup> The final document adopted by the Congress can be found on the website, [http://portal.unesco.org/shs/en/ev.php-URL\\_ID=1686&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/shs/en/ev.php-URL_ID=1686&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>3</sup> See The International Congress on the Teaching of Human Rights, Seville, 16 May 1986, Guidelines prepared by the Congress can be found on the website: [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/293-303.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/293-303.HTM); see also, Malta Recommendations on Human Rights Teaching, Information and Documentation 1987, [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/304-319.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/304-319.HTM).

<sup>4</sup> *ABC, Teaching Human Rights*, available on the website [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/304-319.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/304-319.HTM).

<sup>5</sup> See the Vienna Declaration and Program of Action, <http://www2.ohchr.org/english/law/vienna.htm>.

<sup>6</sup> See World Plan of Action on Education for Human Rights and Democracy, Montreal, Canada, 1993, [http://www.unesco.org/webworld/peace\\_library/UNESCO/HRIGHTS/342-353.HTM](http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/342-353.HTM).



Implementation of these documents is provided for through various measures. The Executive Board of UNESCO has obligated the Director-General to co-operate with member states in the development of educational programs for the promotion of human rights.<sup>7</sup> The Congress in Malta recommended periodic reviews to examine the relevance of the teaching and promotion of human rights.<sup>8</sup> The U.N. declared 1995-2004 the decade of human rights education, in order to emphasize the significance of the relationship between education and the promotion of human rights.<sup>9</sup> The U.N. Plan of Action for 2005-2007 proposed “the creation of a U.N. inter-agency coordinating committee, composed of the Office of the U.N. High Commissioner for Human Rights (OHCHR), the U.N. Educational, Scientific and Cultural Organization (UNESCO), the U.N. Children’s Fund (UNICEF), the U.N. Development Programme (UNDP) and other relevant international agencies.”<sup>10</sup>

All these actions confirm that the contemporary human rights movement has produced expansive literature on an unquestionable conjunction between rights and education.<sup>11</sup>

Several questions still warrant serious discussion. What are the concrete goals of human rights education and what obstacles may restrain the development of successful educational projects? What do we actually teach and how advanced are our educational programs in general, and academic education in particular? Is there a concrete consensus on the interdependencies between different types of human rights, their hierarchy, and the standards of their protection? Is an optimistic attitude regarding the universalistic doctrine of human rights fully rooted in facts? How may we communicate to our students the concept of universally recognized, irremovable, and interdependent rights while acknowledging the many ethical, religious and cultural approaches to the recognition of these rights?

The main goal of this article is to identify these problems, and yet, as the scope does not allow for an exhaustive analysis, several related issues noted here require more detailed consideration.

It also has to be noted that, although the paper examines the relationship between rights and education in the era of globalization, it focuses on the American and European concepts of “universalism”.

<sup>7</sup> “Malta Recommendations on Human Rights Teaching. Information and Documentation” 1987, *ibidem*.

<sup>8</sup> *Ibidem*, #7.4 and # 8.2.

<sup>9</sup> See UNESCO’s overall responsibility within the Decade, at [http://portal.unesco.org/education/en/ev.php-URL\\_ID=2754&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=2754&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>10</sup> Plan of Action for 2005–2007 adopted by the United Nations General Assembly’s resolution 59/113B on 14 July 2005.

<sup>11</sup> The publications on the human rights education are abundant with meaningless statements such as: “Particularly teachers must be familiar with rights if they are to effectively help their students to respect these rights and to recognize any flagrant violations in the world.” S. M. Shaft er, *Human Rights Education in Schools*, [in:] *Human Rights and Education*, ed. N. B. Tarrow, Oxford 1987, at 191.

### The main goals of human rights education

The above-mentioned conferences, congresses and workshops have identified the most important goals of human rights education. Although the number of goals is extensive, they may be translated into several main objectives.<sup>12</sup>

First, human rights education should be based on the principles and values identified in the International Bill of Rights; the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the First Optional Protocol of 1966 on communications from victims of human rights violations and the Second Optional Protocol of 1989, on elimination of the death penalty.<sup>13</sup>

Second, human rights education should increase awareness of the political, social, economic, cultural, international and national, historical and contemporary dimensions of human rights, as well as their relationships to the other goals and principles of the United Nations, as provided by the U.N. Charter.<sup>14</sup>

Third, as recognized by numerous international documents reporting on the progress intended for the protection of human rights, human rights education should contribute to the growing confidence in the universality of human rights<sup>15</sup> and their indivisibility and interdependence.<sup>16</sup>

Fourth, with regard to the scope of educational efforts, human rights education should be taught at all levels of the educational system as independent courses<sup>17</sup>

<sup>12</sup> See The International Congress on the Teaching of Human Rights, Seville, 16 May 1986, *supra* note.

<sup>13</sup> The term International Bill of Rights was first officially applied to the above set of documents by the U.N. Commission of Human Rights in 1947. The initial compilation of fundamental rights was done, however, in 1942 by a group of jurists from several countries, sponsored by the American Law Institute. They prepared the Declaration of Essential Human Rights, which is often regarded as the first International Bill of Rights. See, Fact Sheet No. 2 (Rev. 1), *The International Bill of Human Rights*, prepared by the Office of the High Commissioner for Human Rights in June 1996, Geneva, Switzerland, p. 1–2, available at <http://www.unhcr.ch/html/menu6/2/fs2.htm>. For a bibliography on Universalism vs. Relativism in Human Rights, see Molly Ryan (Fall 1997), available at <http://globetrotter.berkeley.edu/humanrights/bibliographies/univbib.anthro.html>.

<sup>14</sup> *Ibidem*.

<sup>15</sup> The U.N. Plan Action for 2005–2007 states: “Human rights education can be defined as education, training and information aimed at building a universal culture of human rights”, *supra* note at 7.

<sup>16</sup> See the 1993 Vienna Declaration and Programme of Action. The Declaration confirmed that “The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels.” sec 33. Vienna Declaration can be found on the website [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

<sup>17</sup> For an example of a textbook for primary and secondary schools look at: B. A. Reardon, *Educating for Human Dignity. Learning About Rights and responsibilities*, Philadelphia 1995.

and the teaching of human rights should also be integrated into other areas of humane studies,<sup>18</sup> practical training and professional activities.<sup>19</sup> Without going into detail we may realize that this list presents the priorities of the so-called Western doctrine associated with a Eurocentric or American approach to human rights.

What do we really teach in the area of human rights? The Methodology Handbook of the Council of Europe identifies two main dimensions of human rights education: developing knowledge and skills. It states, “education in human rights is not a teaching subject. Rather, it is an understanding of matters and phenomena that surround us through learning about our own rights and recognizing the obligations that directly evolve from these rights.”<sup>20</sup> Teaching means “developing knowledge”, “creating a system of values” and yet teaching also “concentrates on skills such as personal skills (self understanding, self recognition) and social skills (interactive skills, skills in resolving conflicts and problems).”<sup>21</sup>

The first component of human rights education increases students’ knowledge about the various categories of human rights<sup>22</sup> and networks of organizations protecting human rights. In addition, this component helps students develop a comparative evaluation of the concept of fairness, and examine national approaches to human rights.<sup>23</sup> Problem-centered and action-oriented programs are intended to develop skills necessary to train professionals charged with protecting rights and freedoms through established international channels. Theoretical programs in human rights education instruct students on what they are fighting for, while the active learning programs help students develop the strategies and mechanisms for human rights protection.<sup>24</sup> Both programs help the participants develop values and reinforce attitudes and behaviors upholding human rights.<sup>25</sup>

<sup>18</sup> For the plan to integrate human rights education in the primary and secondary school systems, see Plan of Action for 2005–2007 supra note at 1.

<sup>19</sup> It means that “[t]he spread of human rights education across the globe can be analyzed from the perspectives of formal and non-formal education. The former is taken to mean education in the formal system of schools, colleges, universities and the equivalent, while the latter implies education ‘out of schools’, such as through non-formal courses given to specific groups beyond the school curriculum. V. Muntarbhorn, *Education for Human Rights*, [in:] *Human Rights: New Dimensions and Challenges*, ed. by J. Symonides, UNESCO 1998, p. 286.

<sup>20</sup> The Council of Europe, “Human Rights Album, Methodology Handbook, Information and Documentation Centre of the Council of Europe”, Bratislava 1996, p. 3; Handbook is available on the website [http://erc.hrea.org/Library/hralbum\\_eng.html](http://erc.hrea.org/Library/hralbum_eng.html).

<sup>21</sup> *Ibidem*, p. 4, see also The U.N. Plan of Action for 2005–2007 supra note at 1.

<sup>22</sup> See, as an example of the textbook, T. Landman, *Studying Human Rights*, Routledge 2006.

<sup>23</sup> As an example of these types of textbooks, see L. Gearon, *The Human Rights Handbook. A Global Perspective for Education*, Virginia 2003; see also *Understanding of Human Rights. Manual on Human Rights Education*, ed. W. Bendek, Vienna–Berlin–Antwerp 2006.

<sup>24</sup> Human Rights Education, The People’s Movement for Human Rights Education.

<sup>25</sup> The U.N. Plan of Action for 2005–2007, supra note at 12–13.

### **Developing knowledge: Obstacles affecting understanding of human rights**

The omnibus-like character of human rights teaching

Teaching substantive human rights courses, organizing workshops, internships, study abroad programs, lectures and offering "human rights minors" on interdisciplinary basis to all undergraduate students is an important component of general human rights education. This enables students to learn about the principles of human rights, and to familiarize themselves with historical efforts to protect human rights and the priorities of the human rights movements.<sup>26</sup>

Instructors teaching about human rights have to overcome several noticeable obstacles however. Besides the commonly known resource constraints and institutional inadequacies<sup>27</sup> there are problems, inherent in the omni-dimensional concept of human rights, that may impede the immediate realization of the above-mentioned objectives. Participants of theoretical courses on human rights quickly become aware that teaching about rights may mean talking about almost everything. If human rights are to be understood as a global value, their protection has multiple implications and dimensions: political, social, economic, cultural, psychological, religious, and environmental. The list of interrelated problems is long and may be expanded incessantly. Statements such as "sustainable development", "promotion of democracy through teaching about human rights", "fostering knowledge of and skills to use local, national, regional and international human rights instruments and mechanisms", "culture of human rights" and the numerous other U.N. initiatives, amount to mission-like statements or commonplaces that teachers of human rights should be better educated<sup>28</sup>, students should work harder, be more sensitive and aware of their rights, and governments should be more concerned about allocation of resources and implementation programs.<sup>29</sup>

Some of the problems related to the omni-directional character of human rights teaching can be resolved through the development of concrete and practice-oriented programs related to human rights protection. In addition, the introduction of substantive human rights courses into the curricula of the departments of social science, health, anthropology, psychology, and medical schools may also be use-

<sup>26</sup> See Human Rights Education and Research Network, <http://depts.washington.edu/hrights>. For the typical content of the human rights course compare generally, *Model Human Rights Curriculum for Commonwealth Law Schools*, Commonwealth Legal Education Association, London 1999.

<sup>27</sup> See the Vienna Declaration, The World Conference on Human Rights of 1993, *supra* note, sec. 33.

<sup>28</sup> Numerous statements in the books related to human rights education do not deliver any substantive messages. The readers learn nothing from observations such as: "Since the adoption of the UN Charter of Human Rights (1948), there has been no shortage of recommendations that teachers should be better prepared to develop human rights perspectives and skills among their students." K. Sebaly, *Education About Human Rights: Teacher Preparation*, [in:] *Human Rights and Education*, ed. N. Bernstein Tarrow, New York 1987, at 207.

<sup>29</sup> Compare, The U.N. Plan Action for 2005–2007 *supra* note at 11–15.

ful.<sup>30</sup> Broadening the scope of “those whom we educate” and simultaneously offering more focused or specialized models of education may help to better organize the content of human rights teaching according to the needs of students.<sup>31</sup> Continuous retraining of instructors, updating analyzed materials,<sup>32</sup> narrowing of the scope of all presentations on human rights and the organization of every single lecture or class assignment around clearly selected leitmotifs may help instructors counter the tendency to emphasize the ‘omnibus-like’ character of human rights. Handling some of the other problems might be significantly more difficult.

### Challenges to universal human rights

It is true that belief in human rights as a global value is quite universal. As Rob Young, British High Commissioner in the Human Rights Commission, stated: “Given the choice, people all over the world want them.”<sup>33</sup> The question remains: do people really want the same rights?<sup>34</sup>

The universalistic doctrine of human rights has an inclination to reformulate the problem. It focuses on the questions whether all people have rights and whether they deserve protection of the values they claim just because they are human beings. The answer is obvious and undeniably affirmative. The response to the question whether people desire the same rights is much less clear, and the vagueness related to this issue creates a definite “grey area” which works against effective human rights education. The thematic problems warrant more elaborate comments.

Regardless of the universalistic priorities of international human rights organizations, the concerns of cultural relativism have to be addressed and, moreover, the arguments of those who emphasize the differences within the areas or regions representing similar or comparable ethnic, religious and cultural traditions must be communicated to students of human rights. Only an exhaustive discussion of the most sensitive aspects of current debates on human rights protection can guarantee that teaching will not turn into indoctrination.

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<sup>30</sup> H. Gibbs, M. Seydegart, *Education on Human Rights and Democracy in Canada and the United States*; see background document of the UNESCO International Congress on Education for Human Rights and Democracy, Montreal, March 1993, p. 2 (quoted in J. Symonides, *Human Rights: New Dimensions and Challenges*, supra note at 287.

<sup>31</sup> J. Torney-Purta, *Human Rights and Education Viewed in a Comparative Framework: Synthesis and Conclusions*, [in:] *Human Rights and Education*, supra note at 226.

<sup>32</sup> For more comments, see V. Muntarbhorn, *Education for Human Rights* supra note at 290.

<sup>33</sup> Human Rights Teaching in Indian Universities, 24 January 2003, website, <http://www.hrhc.net/sah-rc/hrteaching.htm>.

<sup>34</sup> For more comments see V. Muntarbhorn, *Education for Human Rights*, [in:] *Human Rights: New Dimensions and Challenges*, ed. by J. Symonides, Aldershot 1998, at 283.



### Teaching about cultural relativism

It is unquestionable that since the emergence of cultural relativism in the 1990s, this trend has become a major obstacle to the development of a universalistic vision of human rights. In extreme, the claim of cultural diversities has led to conclusions that the catalog of human values has never been and will never become truly universal. More moderate human rights experts emphasized that “universality is not uniformity.”<sup>35</sup> As Vitit Muntarbhorn wrote: “There is also a trend among certain countries to advocate that universal standards are subject to cultural variations. At times, this kind of argument verges on ‘ethnocentrism’ which leads to the dilution of universal standards and undermines the spirit of human rights.”<sup>36</sup>

For the “universalistic” type of human rights education, cultural relativism has become a formidable challenge. On the one hand, it was clear that over-exposition of differences between East and West is counterproductive as far as dialog between these regions is concerned. On the other hand, the failure to recognize the differences, and simply claiming that the people of the world are “united in diversities”, waters down existing problems.

While the scope of this article does not allow for a detailed examination of the on-going debate between the relativists and the promoters of the universalistic approach, the unquestionable differences must be recognized. It should be acknowledged, for example, that Asian societies are less individualistic, more group oriented, and more focused on the rights of communities than Western Europeans.<sup>37</sup> Some regions of the world are not prepared to admit that the protection of democratic values is an over-reaching priority and some social groups do not agree that governments should sponsor education and enforce the duty to be instructed.<sup>38</sup>

There are many more examples, and they all confirm that human rights education should not simply deny the existence of cultural relativism. To some extent, this trend is a response to the overwhelming message of universalism;<sup>39</sup> mature human rights education requires an understanding that diversities may be an engine of progress, and differences exist not only between the West and the East but within the Asian, European, American and other ethnic, national and religious groups as well.

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<sup>35</sup> J. M. Woods, H. Lewis, *Human Rights and the Global Marketplace. Economic, Social, and Cultural Dimensions*, Ardsley NY 2005, at 143.

<sup>36</sup> V. Muntarbhorn, *Education for Human Rights*, supra note, p. 283–284.

<sup>37</sup> For more comments on “communitarian rights”, see *ibidem* at 284.

<sup>38</sup> J. M. Woods, H. Lewis, *Human Rights and Global Marketplace*, p. 121, 143–145.

<sup>39</sup> *Ibidem*, at 142.



### Multicultural content of human rights education

Some human rights experts suggest that a multicultural trend in education, advocating a productive dialog between promoters of ‘individual’ and group-oriented ‘collective’ approaches to human rights, is a possible solution for the clash between cultural relativism and universalism.<sup>40</sup> “A true multicultural curriculum integrates cultural content throughout subjects and grade levels, placing new content where it is pedagogically and contextually appropriate.”<sup>41</sup>

Multiculturalism is especially important for the Latin American and post-Socialist societies where it is viewed as a step toward involving indigenous groups and racial minorities in everyday politics. It is often claimed that protection of group interests is fundamentally important for the reconciliation of different cultural approaches to human rights. Several remedies, such as regionalization of ethnic groups, power sharing, proportional representation of minority interests, and affirmative actions, have traditionally been tested in many regions of the world. All these strategies should be discussed with students interested in the protection of the rights in ethnically and culturally diversified societies.

A well-balanced human rights education should confront students with arguments from those who believe that the improvement of human rights cannot be achieved without the protection of group rights and those who present an individualistic, liberal philosophy, arguing that cultural autonomy of minorities separates, rather than unites, people and that the equality of rights may simultaneously satisfy groups’ aspirations.

“A multicultural curriculum appropriately conceived and presented does not attempt to force any conclusions on students. However, educators and pupils must be prepared for possible shifts in outlook as each of them is exposed to a much broader range of information and perspectives.”<sup>42</sup> Multiculturalism may become an effective remedy for purely Anglocentric or, more generally speaking, Eurocentric curricula of human rights teaching<sup>43</sup>; on the other hand, the institutionalization of ethnic versions of multiculturalism by the American or European universities is often challenged by more conservative human rights experts who claim that the multicultural type of human education undermines the most important goals of the universalism.<sup>44</sup>

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<sup>40</sup> For more comments on ethnic multiculturalism, see generally, D. Lee Van Cott, *Latin America: Constitutional Reform and Ethnic Right*, “Parliamentary Affairs” 2000, No. 53; also R. R. Ludwikowski, *Constitutionalization of Human rights in Post-Soviet States and Latin America: A Comparative Analysis*, “Georgia Journal of International & Comparative Law” 2004, Vol. 33, No. 1, at 108–109.

<sup>41</sup> *The Next Millennium: A Multicultural Imperative for Education*, [in:] *Multicultural Education for the 21<sup>st</sup> Century*, ed. C. F. Diaz, Washington DC 1992, at 13.

<sup>42</sup> *Ibidem*, p. 194.

<sup>43</sup> J. A. Banks, *Multicultural Education: Nature, Challenges, and Opportunities*, *ibidem*, at 26–27.

<sup>44</sup> *Ibidem*, at 29. For more comments on the obstacles to multicultural education see, C. F. Diaz, *Resistance to Multicultural Education: Concerns and responses*, *ibidem*, p. 193–202.



### **“United in diversities”: Universalism from American and European Perspectives**

Historic differences between regions with significant connections and those with similar or comparable cultural, social and religious traditions are at the core of the discussion on the universality of human rights. These sensitive, and quite frequently belittled or omitted, problems became a major priority for human rights educators. Europe and America provide a powerful example of two regions connected by similar philosophical backgrounds and historically proven intellectual connections, which do not deny the existence of differences in hierarchization of rights and a significant variety of standards for their protection.<sup>45</sup> These diversities and differences may be counterproductive for the development of the universal system of human rights protection, and understanding this is an important goal for current educational programs related to human rights. Students of human rights, especially at the university level, have to understand that diversities do not rule out constructive dialogs.

#### **Historical differences between two regions: The concept of naturalism and positivism in human rights**

Historians studying the philosophical background of the first American and European systems for the protection of human rights have noted that, in spite of links and significant interflow of ideas, Americans and Europeans differed in approaches to human rights protection, and these differences could hamper the process of building a world-wide consensus with regard to human rights. Several arguments support this thesis.

If we study the early constitution-making developments in Europe and America, we observe that the European and American bills of rights of the eighteenth century, namely the French Declaration of the Rights of Man and Citizen, the American Declaration of Independence and the first ten American constitutional amendments, were comparable but did not duplicate each other. We can note, just to mention a few of the most striking differences, discrepancies in the approach to the protection of liberty. Americans were more inclined to emphasize liberty as a priority, while Europeans were traditionally more sensitive to social equality. The language of the American Bill of Rights emphasized individualism, while the European drafters of the first constitutions, namely, the 1793 French Constitution and the constitutions of the nineteenth century, relied more on Rousseau’s concept of “general will”, giving the constitutional acts in Europe a “collective flavor.”

The philosophical background of the first American and European constitutional documents was naturalistic, as they “recognized and protected” natural, ina-

<sup>45</sup> See generally, H. Hay, *Universal Human Rights and Cultural Diversity. A Review of Human Rights: New Perspective and New Realities* (2000), <http://www.du.edu/gsis/hrhw/volumes/2001/1-2/pollis-hey.pdf>.



lienable and sacred rights of man. In the nineteenth century, the Europeans, faster than the Americans, constitutionalized the positivistic doctrine of “granted” rather than “recognized” rights. While the positivism was not alien to the Americans, the longevity of the American federal constitution significantly fossilized naturalism, Jeffersonian language and to some extent substantive concepts of human rights.<sup>46</sup>

Time contributed to the polarization of these differences between regions. The Europeans began, more strongly than the Americans, to emphasize that the rights should be protected not only because they are sacred and inherent in human nature, but because law guarantees them. The main concern of European philosophy toward the end of the eighteenth and the nineteenth century was protection from the arbitrariness of governments. Although the liberal political philosophers, such as Jeremy Bentham or John Stuart Mill, realized that individual freedoms may be suppressed by any power, they agreed that parliamentary supremacy and the representative system of government would provide the best possible protection for individual rights. The concept of supremacy of the legislative power contributed to the idea that the rights should be protected not as abstract components of human nature but as values protected within the boundaries of the laws.<sup>47</sup>

### Indivisibility and hierarchization of rights

The European inclination to emphasize interdependence of political, social, and economic rights has never been matched by American attitudes, which adhere to the original American concept of the protection of negative rights rather than positive rights.<sup>48</sup> As Louis Henkin wrote:

Economic-social rights generally are not constitutionally protected [in the United States]. The United States has set an example of commitment and growth in civil and political rights, and has followed Europe in respect of economic-social rights; although President Franklin Roosevelt proclaimed that the commitment of the United States to ‘freedom from want’ would be equal with other freedoms, economic-social rights have not achieved constitutional status in the United States.<sup>49</sup>

<sup>46</sup> For more comments on constitutionalization of the positivistic philosophy of rights, see R. R. Ludwowski, *Limits of Universalism: Protection of Human Rights in Europe and America in Historical and Comparative perspective*, “Politeja” 2006, No. 2, at 19–23.

<sup>47</sup> See comments of R. Kirk, *Rights and Duties – Reflections on Our Conservative Constitution*, Dallas 1997, at p. 136.

<sup>48</sup> As V. Muntarhorn wrote: “However, one has noticed increasingly that some less than democratic countries favor fragmentation of human rights; they espouse economic, social, and cultural rights rather than civil and political rights. On the other hand, it must be noted that some developed countries tend to emphasize civil and political rights rather than economic, social and cultural rights, thus giving rise to a degree of ‘eurocentrism’ or ‘occidentalism’.” [in:] *Human Rights: New Dimensions and Challenges*, supra note, p. 284.

<sup>49</sup> Introduction to *Constitutionalism & Rights*, quoted in: L. Henkin, G. I. Newman, D. E. Prentlicher, D. W. Leebron, *Human Rights*, 1999, at p. 8–9.

Confronting the arguments of supporters and opponents of hierarchization of rights became a major challenge for human rights educators. Most of the European experts argued against the distinction between the rights of first and second rank, claiming that all rights are interdependent, indivisible,<sup>50</sup> and contain no qualitative difference among political, social, and economic benefits.<sup>51</sup> Experts also asserted that rights do not lose their human character because they are non-justiciable.<sup>52</sup> They claimed that three different approaches could be used to resolve the problem of justiciability of the second generation rights. Some of them suggested that fully justiciable social and economic rights should be clearly listed in constitutions;<sup>53</sup> others claimed that the scope of the judicial protection of these rights should be determined by legislatures; while others argued that governments, not judges, should pursue social and economic goals. These actions are more programmatic than normative in their character, which means that the voters rather than the courts evaluate them.<sup>54</sup>

Several additional arguments have been also produced to oppose the justiciability of second generation rights. First, it was argued that the so-called second generation rights are, by nature, collective rather than individual, and courts are not the right institutions to determine compensation for violations of these rights.<sup>55</sup> Second, these rights require positive intervention from the state rather than negative protection.<sup>56</sup> Third, the level of protection of these rights can be measured by

<sup>50</sup> See A. Eide, *Economic and Social Rights*, [in:] *Human Rights: Concept and Standards*, ed. J. Symonides, at 109. For more cautious evaluation of the European concept of invisibility of the rights, compare: J. Kenner, *Economic and Social Rights in the Eu Legal Order: the Mirage of indivisibility*, [in:] *Economic and Social rights under the EU Charter of Fundamental Rights. A Legal Perspective*, ed. T. Harvey and J. Kenner, Oxford–Portland–Oregon 2003, at 1–25.

<sup>51</sup> W. Sadurski, *Myślenie konstytucyjne: prawa drugiej kategorii* [Constitutional Thinking: The Second Rank Rights], “Kultura” [Culture] 1994, No. 3, at 230.

<sup>52</sup> A. Eide, *Economic and Social Rights*, supra note at 112.

<sup>53</sup> Several examples illustrate this doctrine. Some constitutional provisions are fully enforceable. Ukr. Const. art. 43 (“[T]he use of forced labor is prohibited.”); *ibidem*, art. 44 (“[T]hose who are employed have the right to strike.”); Russ. Const. art. 43, § 4 (“[C]omplete general secondary education is compulsory.”). Other statements describe only the goals of the states. Georg. Const. art. 30 (“[T]he State is obliged to promote the development of free enterprise and competition.”); Belr. Const. art. 21 (“[S]afeguarding the rights and liberties of the citizens... is the supreme goal of the State.”).

<sup>54</sup> The approaches of the second and third doctrines are reflected in several constitutional provisions. For example, the Ukrainian Constitution confirms that “everyone who is employed has the right to rest,” but specifies that maximum working hours and minimum vacation days will be determined by law. Ukr. Const. art. 45. Similarly, another article states, “[T]he prohibition of a strike is possible only on the basis of the law.” Ukr. Const. art. 44. See also Azer. Const. art. 36 (“[I]ndividual and collective labor disputes are settled according to legislation.”). In all these cases, the limits of enforcement of constitutionally guaranteed rights are determined by implementing laws and the justiciability of these rights are determined by the courts. Some statements identify the commitments of the government. Azer. Const. art. 41 (“The State, acting on the basis of various forms of property, implements necessary measures to support the developments of all aspects of health services...”); *ibidem*, art. 32 (“Marriage, the family, motherhood, fatherhood, and childhood are under the protection of the State”). Although the governments might be politically responsible for the fulfillment of the goals affirmed by the constitutions, the state’s obligations are legally unenforceable.

<sup>55</sup> See S. Zifszak, *Adjudicating Social Rights: Lessons from the Hungarian Constitutional Experience*, “East European Human Rights Review” 1998, Vol. 4, No. 51, p. 56–58.

<sup>56</sup> *Ibidem*.

results rather than conduct and political organs, rather than the court, conduct the evaluation of the results.<sup>57</sup> Fourth, judges are not trained to evaluate the content of these rights, as this task would impose an unbearable burden on them.<sup>58</sup> Fifth, the decisions on a violation of the second or third rank rights would involve the courts being in conflict with other powers that might impact the relationship between the judicial, legislative and executive branches of government.<sup>59</sup> These arguments, historically quite appealing to the Americans, should not be disregarded.

### Enforcement mechanisms

It is imperative for students of human rights to understand that, even with regard to fully justiciable rights, Americans and Europeans developed different models of human rights enforcement mechanisms. Following the Supreme Court's famous decision in *Marbury v. Madison*, Americans granted the right of judicial review of constitutionality of laws to all courts, while Europeans traditionally experimented with single, constitutionally established tribunals. In spite of the later developments of mixed models of constitutional review in Europe, the differences of concepts and protection of human rights did not vanish and are still, to some extent, typical of both regions.

These differences require a brief summery. The so-called American decentralized model was rooted in the concept of constitutional supremacy and the principle of *stare decisis*.<sup>60</sup> It vested regular courts with the power to nullify the law regarding disputes involving concrete parties. By binding the lower courts to the decisions of higher judicial institutions the system was to be protected against chaotic and diverse interpretations of law.

The classic European model, often called the Austrian model of judicial review, developed in the second decade of the twentieth century. The European model was not rooted in the concept of precedence; it vested the power of review in a supreme court or a special constitutional tribunal, which could check the constitutionality of abstract legislative acts submitted for review by the highest organs or officials of the state. The twentieth century European experiments with judicial review triggered the development of numerous mixed models; such as the French "preventive" model. The French model authorizes the *Conseil Constitutionnel* (Constitutional Council) to review laws submitted by the higher organs of the state after their adoption but before a formal promulgation.<sup>61</sup> In Germany, the "mixed appro-

<sup>57</sup> *Ibidem*, at 54–55.

<sup>58</sup> *Ibidem*, at 55.

<sup>59</sup> *Ibidem*, at 55–56.

<sup>60</sup> The comments have been taken almost *verbatim* from the author's article *Limits of Universalism*, *supra* note at 40–44.

<sup>61</sup> See Fr. Constitution (1958), Art. 61.

ach” allowed the Federal Constitutional Tribunal to review the constitutionality of abstract laws, constitutional problems submitted by the regular courts rising from concrete disputes, hear disputes over distribution of power between federal and state organs, disqualify unconstitutional political groupings and hear complaints from individuals for violations of their constitutional rights and freedoms.<sup>62</sup>

The jurisdiction of the European Court of Justice also blends the functions of an organ of constitutional review, which can hear challenges against abstract acts of the institutions of the Community,<sup>63</sup> with competences of a regular court deciding concrete disputes between the Community and its employees or non-contractual claims for compensation for damages.<sup>64</sup> Following German and Italian traditions,<sup>65</sup> the ECJ’s action may also be triggered by preliminary referrals from the national courts requesting the European Court to interpret the constitutional Treaties or rule on the validity or interpretation of acts of the Community institutions.<sup>66</sup>

To summarize, historically shaped similarities and differences between regions with significant cultural connections warrant more attention, and explanations of these contrasts should be a priority for human rights educators. If the dialog between Europe and America about models and standards of human rights protection is supposed to reconcile the traditional discrepancies, the position of both regions should be carefully analyzed by the participants of human rights educational programs.

### Problems with “active learning” programs

Training professionals by NGO’s, intergovernmental organizations, governmental enforcement centers, and grass-root organizations have become a fundamental concern for human rights educational programs. Many of these projects were associated with the training of human rights lawyers and human rights educators by legal experts. For this reason, the clinical legal programs at the schools of law warrant special attention.

Clinical legal education refers to programs that combine classroom teaching with practical components where students, supported by experienced attorneys and faculty members, represent clients in real cases without any fees charged for services.<sup>67</sup> The benefits of clinical legal programs are twofold. First, through drafting

<sup>62</sup> R. R. Ludwikowski, *Główne kierunki sądownictwa konstytucyjnego we współczesnym świecie. Studium porównawcze*, [Main Trends in the Constitutional review in the Contemporary World. Comparative Study], “Studia Prawno-Ekonomiczne” 1993, No. 48, p. 47–62. For a more extended analysis of the European constitutional review see generally, L. Garlicki, *Sądownictwo konstytucyjne w Europie Zachodniej* [Constitutional Review in Western Europe], Warszawa 1987; also A. M. Ludwikowska, *Sądownictwo konstytucyjne w Europie Środkowo-Wschodniej* [Constitutional Review in Eastern and Central Europe], Toruń 2002.

<sup>63</sup> EC Treaty Articles, p. 230–233.

<sup>64</sup> Art. 235–236 and 288/2, *ibidem*.

<sup>65</sup> See *Berrnan, Cases and Materials on European Law*, *supra* note 143, at 352.

<sup>66</sup> EC Treaty, Art. 234.

<sup>67</sup> “Every good clinical program should include both a casework component and a formal classroom

complaints, mock trials, trial presentations, cross-examining witnesses, direct contacts with clients, students are getting first-hand experience and are exposed, usually for the first time in their life, to litigation-related problems. Second, the clinics offer free of charge consultations and legal services to the people who cannot afford regular attorneys.

The development of clinical legal programs was stimulated by the growing popularity of a practice-oriented legal education, which was intended to supplement legal curricula focused on studying abstract legal doctrines.<sup>68</sup> In the United States, in the 1960s, the concepts of well-balanced theoretical and practical training of lawyers received strong incentives from charitable institutions. The initiatives of the Ford Foundation, which set aside at least twelve million dollars for development of legal clinics, warrants special notice.<sup>69</sup> Ford, with the support of other foundations, started promoting the idea that the clinics should become a part of the permanent curriculum of the American law schools.

As the next step, in the beginning of the nineteenth, the Ford Foundation started disbursing additional funds for the development of the clinical programs in new Central European democracies. The first clinics, which opened in Slovakia and Poland, spread the concept of “active learning” to the former satellite states of the Soviet Union and to the former Soviet republics.

The clinical programs were not always met with overwhelming enthusiasm. In civil law countries, practicing attorneys expressed their concerns that academic programs of “activist lawyering” not only compete with regular law firms, but services offered by the inexperienced students might be risky for clients. Some commentators claimed that an excessive politicization of clinical programs may jeopardize their commitment to equal justice, and the foundations lobbying for the recognition of the programs, as “a deductible charitable activity,” may affect the “public interest.” As Heather Mac Donald wrote:

No one can object to fighting discrimination and poverty. But the problem is that no one elected a Ford-funded “poverty lawyer” to create a new entitlement scheme. If that lawyer can find a judge who shares his passion for welfare, however, the two of them will put into law a significant new distribution of rights and resources that no voter or legislator ever approved.<sup>70</sup>

The critical comments translate into the point that, with time, the law schools’ attempts to “take social problems [...] and turn them into legal ones” might be questionable.<sup>71</sup>

The programs, which were supposed to fight racial discrimination and poverty, are now taking responsibility of the hands of the poor.

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component”, R. J. Wilson, *Clinical Legal Education for Human Rights Advocates*, [in:] *Human Rights Education for the Twenty-First Century*, ed. G. J. Andreopoulos and R. P. Claude, Philadelphia 1997, at 261.

<sup>68</sup> H. MacDonald, *This is the Legal Mainstream?*, “City Journal”, Winter 2006, available at [http://www.city-journal.org/html/16\\_1\\_law\\_schools.html](http://www.city-journal.org/html/16_1_law_schools.html), p. 3.

<sup>69</sup> *Ibidem*, p. 5.

<sup>70</sup> *Ibidem*, p. 2–3.

<sup>71</sup> *Ibidem*.

These critical comments, suggesting that lawyers pretend “they are chosen to save society,” provoke a variety of responses. Some commentators agree that there might be a difference between “a policy of human rights,” which sometimes means social engineering and manipulation of social values, and “a policy for human rights,” which means well-balanced projects promoting human rights.<sup>72</sup> Some argue that the schools, rather than sponsoring the homeless and poor people, should focus equally on legal support for small businesses<sup>73</sup> that would promote ideas of “an opportunity state” rather than “a welfare state”. Still others emphasize that, although the students of human rights should be confronted with complexities of all relevant endeavors to promote the rights and freedoms, they may also become confused by the charges of hidden political and social agendas, which sometimes come dangerously close to slogans about “conspiracy of feminists and gender activists”, “imperial globalization”, or “cultural imperialism”.<sup>74</sup>

### **Teaching methodology: The diversity of methods and new challenges for instructors**

It is widely confirmed that “[t]he most effective training method for human rights education is a participatory one.”<sup>75</sup> Participation at the very basic level starts with listening to the lecturers. At more advanced stages it is “the art to listen to the partner. To listen means much more than just to hear. Listening also incorporates the capacity to feel what our partner wants to communicate to us” according to the Council of Europe’s Methodology Handbook.<sup>76</sup>

As stated above, participatory education, at the university level, means simultaneously developing knowledge and skills. It is usually accomplished through the use of the Socratic method of teaching. Credited to Socrates, the method involves students participating in an ongoing dialog with the instructor, through the asking of questions and provoking the participants to check the correctness of their reactions and concerns.

The Socratic debate, enthusiastically used in the United States and increasingly popular in Europe, has opponents and critics who emphasize that the method, taken to extremes, may disappoint the students, contribute to numerous confusions and contradict the most fundamental goals of education. Without solid prepara-

<sup>72</sup> As Upendra Baxi concluded, State theories that fail to draw such distinctions remain unhelpful for human rights education, [in:] “Human Rights Learning. People’s Report” (Report of the People’s Movement for Human Rights Learning PDHRE, <http://www.pdhre.org/report/introduction.pdf>, p. 41.

<sup>73</sup> H. MacDonald, *This is the Legal Mainstream?*, supra note, p. 10.

<sup>74</sup> “Human Rights Learning. People’s Report”, supra note, p. 48.

<sup>75</sup> P. Spector, *Training of Trainers*, supra note at 179.

<sup>76</sup> The Council of Europe Human Rights Album. Methodology Handbook, 1996, [http://erc.hrea.org/Library/hralbum\\_eng.html](http://erc.hrea.org/Library/hralbum_eng.html); see also generally Human Rights Training. A Manual on Human Rights Training Methodology, 2000.



tion, involvement in the dialog, and the instructors' personal charisma, the endless questioning of the participants leaves problems unresolved and the students more frustrated than they were before the classes started.

The flexible approach of the instructors, fully aware that they always have to adjust their teaching methods to the needs and intellectual, professional and emotional preparation of the audience, may create a well-balance platform of communication with the students, effectively raise their human rights consciousness, and develop personal sensitivity to human rights related problems, and skills for defending rights. Most often it means a combination of traditional lecturing, case-studying, and Socratic questioning, but the real implementation of specific learning objectives is contingent on many factors such as availability of technology, teaching materials, financial resources,<sup>77</sup> support of governmental and non-governmental institutions, and many others factors. The "training of trainers" requires the consideration of all these interrelated issues.<sup>78</sup>

## Conclusions

Research confirms that the link between education and the promotion of human rights is undeniable. The question remains, however, what do we promote and how successful are our educational programs? The material analyzed in the article shows that one of the main challenges for educators is the need to explain how globalization affected the concept of rights.

First, we claim that human rights are a global value; on the other hand, the term "global values" is very broad, referring to nearly all values important to human beings. Globalization emphasizes the link between human rights and all other desirable commodities. This approach results in conveying to students commonplace statements, which give the impression that rather than focusing on the rights we are talking about the meaning of the word "human" itself. From an educational point of view this does not bring us any closer to valid conclusions.

Second, the tendency to discuss goals, rather than means of protection of human rights, is a chronic problem in many human rights educational programs. It is a byproduct of universalistic human rights movements. Building universal consensus, with regard to human rights, has become a motto of numerous international organizations headed by the United Nations and a primary goal identified in their guidelines for human rights education. Searching for shared features or attributes of human beings overshadows the discussion of the nuts and bolts of human rights education.

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<sup>77</sup> M. J. Seydegart and E. T. Jackson, *Fund-Raising for Human Rights Education, Human Rights Education for the Twenty-First Century*, supra note at 582–599.

<sup>78</sup> For more elaborate comments see generally, P. Spector, *Training of trainers*, supra note, at 181–193; for the methodology of the education of human rights instructors, compare also, teachers, *Human rights and Diversity: Educating Citizens in Multicultural Societies*, ed. by A. Osler, Trentham 2005.



The objective of this article is not to prove that universalistic concepts of human rights should be rejected or challenged. Rather that universalization of human rights is a process, not an accomplished fact. We should not confuse “internationalization” of the human rights movements with “universalization” of human values.<sup>79</sup>

Third, discussing with students the philosophical background of the universalistic approach to human rights, educators should emphasize the positions taken by cultural relativism or multiculturalism. It has to be noted that we still have a limited consensus on what we are struggling for, and the mere denial of this fact or covering it by the statement that the growing number of states recognizes the basic standards of human rights, does not serve the promotion of rights. Students should not confuse faith in a “universal respect for and observance of human rights and fundamental freedoms”<sup>80</sup> with universal implementation of the human rights programs.<sup>81</sup>

Fourth, building on several observations made above, differences in approaches to human rights do not exist only in culturally diverse regions. There are remarkable discrepancies between regions with significant cultural, ethical and religious links, such as Europe and America, regarding the scope of protection of rights of first, second and third generation, the recognition of their interdependencies and indivisibility, and the instruments of enforcement.

Fifth, programs of “active learning” can remedy an excessively theoretical approach to human rights, combined with a tendency to emphasize commonalities. These programs focus on developing skills, case-oriented classes, training legal experts, participation in human rights workshops, and mock trials. The tendency to discuss human rights exclusively as a part of all interrelated “human” problems may be counterbalanced by the introduction of human rights courses into the specialized programs of humane studies, such as sociology, philosophy, anthropology, economy, politics and many others.

<sup>79</sup> For more elaborate comments on this issue, see generally R. R. Ludwowski, *Limits of Universalism: Protection of Human Rights in Europe and America in Historical and Comparative Perspective*, “Politeja” 2006, No. 2, at 7–49.

<sup>80</sup> See Preambles of the Universal Declaration, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. See also *Universal Human Rights: Moral Order in a Divided World*, eds. D. A. Reidy and M. N. S. Sellers, Lanham 2005, at 1. Claming that rights have universal validity, Reidy and Sellers recognize themselves significant diversities in approach to the rights. They wrote: “While the vast majority of governments, collective peoples, and individual persons recognize and affirm more or less the same universal human rights, they frequently differ as to the nature, structure, justification, and origins of these rights. These disagreements often have important implications.” *Ibidem*, at 2.

<sup>81</sup> The noble goals of the universalistic doctrines cannot disregard that for example: “[t]he U.S. signed both Covenants but ratified only the ICCPR. The great number of the states signed the Covenants with reservations, understandings, and declarations, clearly indicating significant discrepancies in the interpretation of the basic provisions of the Covenants, such as, “the right to life”, “the imposition of capital punishment”, “cruel, inhuman or degrading treatment or punishment”, “the right to strike,” and “equal pay for equal work”. In fact, the trend toward internationalization of rights has never gone beyond a general and declaratory support for their commonality. The states reacted differently to the implementation of this idea and responded differently to the proposed catalogs of common values; in other words, the International Bill of Rights has never become truly universal.” R. R. Ludwowski, *Limits of Universalism*, supra note at 45–46.



Sixth, human rights educational programs can be greatly improved by the use of moderate Socratic methodologies, combining lecturing on selected issues and participatory activities stimulating students to resolve problems by asking questions and sharing their comments with the others. This approach may significantly increase the effectiveness of the programs promoting human rights. It creates a class environment allowing the teachers to discuss with the students even the most sensitive issues, a *conditio sine qua non* of mature education in human rights.

