

**Thomas Schirrmacher**

**Human Rights**



# **The WEA Global Issues Series**

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*Dr. Geoff Tunncliffe, Secretary General, World Evangelical Alliance*

**Thomas Schirrmacher**

# **Human Rights**

## **Promise and Reality**

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The WEA Global Issues Series

Volume 15

Verlag für Kultur und Wissenschaft

Culture and Science Publ.

Bonn 2014

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2nd edition 2015  
© Copyright 2014 by  
Verlag für Kultur und Wissenschaft  
(Culture and Science Publ.)  
Prof. Dr. Thomas Schirmacher  
Friedrichstraße 38, 53111 Bonn, Germany  
Fax +49 / 228 / 9650389  
[www.vkwonline.de](http://www.vkwonline.de) / [info@vkwonline.de](mailto:info@vkwonline.de)  
ISBN 978-3-86269-047-3 / ISSN 1867-7320

Cover: [http://commons.wikimedia.org/wiki/File:  
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Eleanor Roosevelt, former first lady of the USA, chaired the UN committee creating the  
Universal Declaration of Human Rights. Here she holds one of the first prints in 1949.

Printed in Germany  
Cover design and production:  
BoD Verlagsservice Beese, Friedensallee 44, 22765 Hamburg, Germany  
[www.rvbeese.de](http://www.rvbeese.de) / [info@rvbeese.de](mailto:info@rvbeese.de)  
Publisher's Distribution:  
Hänssler Verlag / IC-Medienhaus  
71087 Holzgerlingen, Germany, Tel. +49 / 7031/7414-177 Fax -119  
[www.haenssler.de](http://www.haenssler.de) / [www.icmedienhaus.de](http://www.icmedienhaus.de)

Individual sales: [www.vkwonline.com](http://www.vkwonline.com)

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Gebende Hände gGmbH / Giving Hands International  
Adenauerallee 11 • 53111 Bonn, Germany • [www.giving-hands.de](http://www.giving-hands.de)  
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## Foreword: The Holocaust and German Thought on Human Rights

A visit to the Nazi concentration camp at Dachau in August 1972 started my lifetime interaction with German intellectual and political life.<sup>1</sup> After being shocked by the pictures of total brutality, I began to realize there are two sides to what I saw preserved at Dachau. On the one hand, I saw evil at such a level that words fail us: Industrial efficiency employed by a totalitarian government in the grip of an evil ideology filled in with personal viciousness led by a dictator with demonic control. Apocalyptic images of tribulation seemed more appropriate than words. On the other hand, I saw a civilized democracy repenting from everything represented by the Nazis, seeking a truly humane alternative. This national repentance was the background for the preservation of concentration camps, for establishing museums, for the rigorous historical studies about totalitarianism and the Holocaust, and for the many moving novels reporting the internal stories of people both ordinary and extraordinary. Millions of people were saying together, “Never again!”

One has to understand the German Fundamental Law, adopted in 1949, against this background.<sup>2</sup> Here one reads,

Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

All persons shall be equal before the law. Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for

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<sup>1</sup> [Http://www.kz-gedenkstaette-dachau.de/index-e.html](http://www.kz-gedenkstaette-dachau.de/index-e.html). 17 October 2014.

<sup>2</sup> I am translating the German term *Grundgesetz* as Fundamental Law rather than as Constitution or Basic Law, because I think this English term better conveys both the meaning of the German word *Grund* and also fits the content of the German text. The post-Nazi time moved humanely minded people to think about what was truly fundamental for life together in society.

women and men and take steps to eliminate disadvantages that now exist. No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. The undisturbed practice of religion shall be guaranteed. No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.

Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship. These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour. Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.<sup>3</sup>

One has to notice the allusions to the Universal Declaration of Human Rights published by the United Nations the previous year, 1948. Both texts were responses to the atrocities committed during World War II. But there are also distinct references in the German Foundational Law to matters that lie hard on the conscience of Germans, especially the way military service and disabilities are described. The Nazi past was repudiated as the foundation for a different future. Freedom of religion and conscience is prominent, representing the document's strong religious overtones that echo the Judeo-Christian traditions in dialogue with much of western cultural history. Indeed, such freedoms may be one of the outstanding contributions of Judaism and Christianity to our political culture.

This is the context within which one should read Thomas Schirrmacher's numerous studies on human rights and freedom of religion, including this book. He grew up in Germany during the time when repudiating the Nazi past was part of the agenda of the entirety of German society, in school, church, state, and family. Schirrmacher even wrote a massive doctoral dissertation about Hitler's "War Religion," with excruciating quotations from primary sources, making painfully explicit what he was rejecting with all his heart, soul, mind, and strength.<sup>4</sup> And with Schirrmacher, the Judeo-

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<sup>3</sup> Articles 1 through 5, German Foundational Law, formatting reduced. [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0015](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0015). 17 October 2014.

<sup>4</sup> Hitlers Kriegsreligion: Die Verankerung der Weltanschauung Hitlers in seiner religiösen Begrifflichkeit und seinem Gottesbild. Bonn: VKW, 2007.



Christian overtones of the German Foundational Law are explicit with his open, personal embrace of the Christian faith. His whole intellectual effort bears the marks of the German response to the Holocaust, National Socialism, and anti-Semitism.

This little book should be received as a distinctly German contribution to the global effort to address our entire human past that bears so many resemblances, unfortunately, to what our German neighbors experienced during the epochal tragedies of the twentieth century. It would not be a mistake to see responding to the atrocities coming from human hands as a description of humanity at its worst and at its best.

Thomas K. Johnson, Ph.D.



## Author's Preface

The Global Issues Series is not turning its attention to the topic of human rights for the first time. Indeed, we opened the series with Thomas K. Johnson's *Human Rights: A Christian Primer* (2008), which focused on the philosophical foundations of human rights, and we have returned to this set of themes repeatedly. In *Human Trafficking* and *The Persecution of Christians Concerns Us All* we addressed two of the worst violations of human rights, while the theme of religious persecution was also addressed in our book on *The Bad Uraah Statement*. In *Racism* the matter at hand was equality and the equal dignity of all people, while the Islamic understanding of human rights was engaged repeatedly in *The Sharia: Law and Order in Islam* and in *Islam and Society*. Some related issues of the relation of religions to violence and humane values were taken up in our volume *Fundamentalism: When Religion becomes Dangerous*. This shows that many of the global concerns we Christians have can be discussed in the language of human rights.

I might have taken on something in this book which is almost impossible. I want to define what human rights are and state which human rights there are. Additionally, this book has to include their history and a discussion of their justification. There are many comprehensive studies regarding these points. At the same time, I want to juxtapose the principles of these rights with the present world reality. This reality is discovered in a number of comprehensive reports which appear around the world on an annual basis, not to mention annual reports on individual human rights, such as freedom of the press and women's rights, as well as innumerable daily communiqués.

To contrast the ideal and the real, too seldom presented together, is our task; and this task is seldom addressed even in more comprehensive books. That is in itself a challenge. To attempt all of that in such a compact manner might appear to be foolhardy. However, the concept of human rights is much too valuable and important for it not to be explainable in a couple hours.

The shorter the better! So whoever wants to become acquainted with one of the most important signs of progress in modernity in an initial sweeping blow has come to the correct address. Whoever is looking for a detailed discussion, or is on the trail of individual human rights, or who wants to know something in detail about every country will find the necessary literature and web links in Part 3.



# **1 The ideal and the real surrounding human rights**

## **1.1 human rights – basic rights – the democratic constitutional state**

65 years of basic rights in Germany

Apart from the basic rights of the so-called Paulskirche Constitution of 1848 and known as the “Imperial Law regarding the Basic Rights of the German People” (also called the “Frankfurt Constitution”), only formally valid until 1851, basic rights for Germans were guaranteed for the first time in the Weimar Constitution of 1919. However, they were set aside again in 1933 by Hitler through the Reichstag Fire Decree. It takes the backdrop of these 14 years to properly perceive the miracle that the German Constitution has now already guaranteed basic rights for 65 years since 1949, and (apart from exceptions, imperfections, and the continuous development of the human rights system) has indeed been successful. Somewhat similar is the case in Austria. The Swiss have enjoyed basic rights for an even longer period of time!

The concept of human rights is quite a peculiar thing. While on the one hand no one can agree on a common justification, and every detailed question is the object of vehement international disputes, on the other hand they are almost the only thing which holds the free world together. Beyond that, they unite humanity even if it is only by lip service. Except for Saudi Arabia, Myanmar, Fiji, Tonga, Brunei, and the Vatican State, all other countries of the world label themselves as democracies with human rights standards. And, of course, the Vatican has become one of the true champions of human rights.

It used to be a matter of course that conquering armies plundered, raped women, and drove people from their homes. Nowadays human rights organizations painstakingly keep count when this happens, and the acts can be denounced globally or even brought before an international court.<sup>5</sup> While it used to be a matter of course that children were seriously beaten and forced to work, today they have individual rights, and the well-being

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<sup>5</sup> Some real improvements are possible. For example, up to 1900, there were approximately 100-150 people lynched in the USA every year, about one-half ‘black’ and one-half ‘white.’ Up to 1920, the number dropped to about 25 per year and gradually beyond that until lynching completely stopped around 1960.

of children means that degrading child rearing practices and children's exploitation are prohibited, even though the problem has not been eradicated.

People have always victimized, tormented, discriminated, enslaved, raped, and killed other people. The oppression of religious freedom and freedom of opinion, and the use of torture in war and in legal proceedings, and the oppression of women, were entirely normal for thousands of years.

Such types of human rights infringements reach from Hitler's, Stalin's, and Mao's millions of victims all the way to abusing one's own children in the private sphere, from genocide all the way to racist discrimination against occupants in rental properties, from starving millions all the way to showing favoritism to sons when it comes to education in large parts of the underdeveloped world and beyond. The mere mention of human rights shows that people are broadly aware of a standard by which such actions can be evaluated, and "human rights" discussions are a way, albeit imperfect, by which this evaluation is happening today.

## "Human Rights"

The human rights label is ingenious, and one can derive the most important characteristics of human rights from it.

Human rights are *universal*. They simply apply to "people."

Human rights are *individual* since people exist only as individual persons.

They are, however, also *social*, since there is never only one person. Rather, there are always people in society, and rights apply to everyone at the same time.

They are *egalitarian* because they are derived from what it is that makes being human the same and not from what differentiates people or is conferred upon them.

Human rights exist *prior to the state* because being human precedes everything else.

Human rights are *enforceable*, i.e., they are not only observations, appeals, or demands; rather, they are rights that can be enforced in a court of law.

They are *indivisible* because people are themselves indivisible and people stand in the center; no political system or ideology is in the center.

They are *inalienable* (meaning they cannot be taken away from a person) since an individual, even in the worst situation or as a criminal, remains a human being.

Not all rights are human rights, and not every sensible demand for oneself, for others, or for the community is automatically a human right. Rob-

ert Alexy names five criteria for differentiating between human rights and other reasonable claims: 1. their universality, 2. their moral validity, 3. their fundamental nature, 4. their priority, and 5. their abstractness<sup>6</sup>

Two subdivisions of human rights are of significance. The first one divides human rights according to status, the other according to three generations of rights.

### The status doctrine regarding human rights

The status doctrine regarding basic and human rights is traceable back to Georg Jellinek's 1892 book entitled the *System of Subjective Public Rights*.<sup>7</sup>

#### **Three relationships individuals have to the state with respect to human rights**

***Status negativus***: Rights of defense against the state (protection against premature incarceration, protection against torture, protection against unfair treatment on account of religion or worldview)

***Status positivus***: Rights which obligate the state to concrete action in service to citizens, enabling participation in the life of the state or offering a measure of protection (e.g., legal protection via laws and a functioning court system, a claim on maintaining the educational system)

***Status activus***: The right to participation in the state and society and co-determination of the establishment of the state (e.g., the right to vote, rights for individuals with handicaps, the right to education)

The Limburg Principles, which were worked out in 1986 by a group of human rights activists within the sphere of the UN, formulate a similar three-way split using other terms which have likewise been carried through:

#### **The state and its three duties**

***Duty to respect***: The state is obligated to respect people and to refrain from the infringement of rights.

***Duty to protect***: The state has to protect human rights from infringement by others.

<sup>6</sup> Robert Alexy in Gosepath, Lohmann. Philosophie, 246-254.

<sup>7</sup> Georg Jellinek. System der subjektiven öffentlichen Rechte (Mohr, 1892).

***Duty to guarantee:*** The state has to ensure the comprehensive attainment of human rights, i.e., that a society is created in which this occurs as well as one in which offenders are punished.

(Of late, the following is also often included: the *duty to pursue legal action.*)

## The three generations of human rights

For a long time scholars have differentiated among three generations of human rights. Historically, they have moved into the center one after the other.

The first generation, often called civil human rights, as they are above all found in the UN's International Covenant on Civil and Political Rights, comprise the liberal rights of defense (e.g., freedom of the press, religious freedom) over against the state and democratic co-determination rights (e.g., the general right to vote). They are purely individualistically formulated. They derive from the Enlightenment, and for a long time they counted as the only human rights and were also the only human rights which were at all legally implementable.

### **First generation human rights**

- Human dignity (as a starting point)
- The right to life, freedom, and security of the individual
- Prohibition against slavery and, more specifically, servitude
- Prohibition against torture and cruel, inhumane treatment
- The right to recognition as a person before the law
- Equality before the law
- The right to legal protection
- Prohibition against arbitrary arrest or deportation
- The right to a public trial before an independent tribunal
- Presumption of innocence before the court
- No conviction without an adopted law prior to the act
- Protection of the private sphere of the individual
- The right to freedom of movement (within the country and the right to leave a country)
- The right to asylum
- The right to citizenship



- The right to marriage and protection of the family
- The right to own property
- The freedom of conscience
- The freedom of religion and freedom of belief
- The right to freedom of opinion and freedom of expression
- The freedom of association and assembly

The second generation of rights comprises commercial, social, and cultural service rights as rights to claims and participatory rights. At this point it is no longer the individual who is protected from the state. Rather, the state is obligated to provide concrete, positive services which often apply to groups or communities or which can only be realized in community, such as education, labor, or maternity protection.

#### **Second generation human rights in the UN's 1966 International Covenant on Economic, Social and Cultural Rights<sup>8</sup>**

- The equality between men and women – *Article 3*
- The right to work – 6.1
- The right to freedom of choice of profession – 6.2
- The right to vocational guidance – 6.3
- The right to just and favorable working conditions – 7
- The right to an adequate wage – 7 a) i)
- The right to equal pay for equal work – 7 a) i)
- The right to a reasonable means of subsistence (through work) – 7 a) ii)
- The right to safe and healthy working conditions – 7 b)
- The right to a limitation on working hours, periodic paid vacation, and remuneration for public holidays – 7 d)
- The right to form trade unions – 8.1
- The right to form trade union associations – 8.2
- The right to strike – 8.4
- The right to social security and social insurance – 9
- The right to the widest possible protection and assistance to the family – 10.1
- The prohibition against forced marriage – 10.1

<sup>8</sup> [Http://www.ohchr.org/en/professionalinterest/pages/cescr.aspx](http://www.ohchr.org/en/professionalinterest/pages/cescr.aspx). 31 October 2014.

- The right to maternity protection – 10.2
- The right to paid maternity leave – 10.2
- The right to equal treatment and freedom from discrimination (in particular due to ancestry) with special measures for the protection and assistance of all children and youth – 10.3
- The right to protection against the economic and social exploitation of children and youth – 10.3
- The right to a minimum working age for children – 10.3
- The right to an adequate standard of living, including the right to housing – 11.1
- The right to protection from hunger and, together with 11.1 sentence 1, the right to adequate nourishment – 11.2
- The right to the highest attainable standard of physical and mental health – 12.1
- The right of every individual to medical services – 12.2 d)
- The right to education – 13.1
- General compulsory primary education and the right to free primary school education – 13.2 a)
- The right of general access to secondary education – 13.2 b)
- The right of general equal access to higher education for everyone – 13.2 c)
- The right to free education, in particular a prohibition on the introduction of tuition fees – 13.2 c)
- General compulsory school attendance and the right to free education – 14
- The right to participate in cultural life – 15.1
- The right to participate in scientific advancement and its application – 15.2
- Copyright law – 15.3
- The freedom to conduct research – 15.4

It used to be that first and second generation human rights were often strictly distinguished from each other. Nowadays one would probably not – as in 1966 – formulate the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights separately. If written today they would probably be combined. The common distinction is no longer as convincing as it once was. The first

generation does not only serve to defend against the state (religious freedom presupposes more than that the state only undertakes nothing against religion). Rather, the character of the second generation, that the state undertakes something positive, is something which also turns up in the first generation (e.g., maintaining jurisdiction in order to prevent unjustified incarceration or torture). And the second generation also often contains an element of resistance (e.g., contains the protection of one's mother tongue and protection against an overpowering state language).

Third generation human rights are rather new and presently still disputed. They encompass no individual rights but rather collective rights of the people and are above all a claim made by countries of the global South. Here above all one finds that rich countries should guarantee poor countries that they will protect the environment and guarantee peace, a just sharing of nature and culture, and the enablement of development. This right to develop is the most important but also the most disputed third generation right. As early as 1981, the Banjul Charter, the human rights charter of the African Union, placed human rights on an equal footing next to the rights of people groups.

The Africa representative for the German Federal Government and former representative on human rights Günther Nooke wrote the following: "Since the Vienna Human Rights Conference in 1993, however, the indivisibility of and equality between all human rights, including collective rights, has been alleged by the UN in a quasi-official manner. What was politically negotiated against the convictions of Europeans and North Americans has, in the meantime, become political correctness among us. According to rational thought, it quickly becomes clear that there are differences among the 30 articles of The Universal Declaration of Human Rights and other rights. One cannot truly speak about the equality of the right to life, the absolute prohibitions against torture and slavery and freedom of expression and religion, on the one hand, and the right to periodic paid vacation, on the other hand. Also for that reason, the catalog of what we label human rights and what should apply to every individual person everywhere in the world should not be continually expanded. What is important is the global implementation of a minimum standard regarding elementary human rights . . . not everything which is well-intentioned or which can be seen as a sensible political goal should be labeled a human right. Human rights are neither state goals nor do they replace concrete political concepts on battling poverty." "I am decidedly not of the completely politically correct opinion: Aside from civil liberties and political rights to co-determination as first generation and social, economic, and cultural rights as second generation rights, so-called third generation human rights are ruled out as genuine human rights. Unfortunately, the

grounds for a decision in the United Nations has been another, and that only makes the entire question more complicated. Whoever allows a collective to be the repository of human rights creates a completely different class of rights for which the central notion of universality becomes meaningless.” “As I have experienced the debates about collective rights over the past two years, this development has been accomplished as a conscious political counter-project to the Western understanding of universally valid human rights.”<sup>9</sup> Above all, this naturally applies if countries such as Iran or North Korea invoke such arguments.<sup>10</sup>

In contrast with Nooke, in his 1995 address before the UN, Pope John Paul II called the rights of nations “human rights fostered on the specific level of community life”<sup>11</sup> He mentioned for instance the right to one’s own language and culture. A question arises, however: Does that only apply to the majority or does it also not first of all apply to the individual and also to the minority? And is it not the individual who decides which tradition he wants to belong to and which language he wants to speak? And who is the legal entity when it comes to third generation rights? Who represents the people? Their rulers, which means, perhaps those who often trample upon first and second generation human rights? Do different states have obligations to assist each other? As a moral claim, indeed, third generation rights make a degree of sense, but can they be construed as legal and enforceable rights? And who would monitor this on a permanent basis? The UN?

Europe (and more specifically the Council of Europe) enacted a European Charter for Regional or Minority Languages in 1992 and in 1994 a Framework Convention for the Protection of National Minorities. That is all right and fitting, but can the maintenance of a language actually be re-fashioned into an enforceable human right, like first and second generation rights?

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<sup>9</sup> Nooke. *Gelten Menschenrechte*, 35.

<sup>10</sup> Nooke has also wisely commented, “Hold fast to the idea of universally valid, inherent human rights and the search for opportunities and justification, and do not disturb more than necessary the development of independent cultural spheres or arrogantly ride roughshod over developed traditions. In the process, it is always to be kept in mind how important community is and in particular how important the family is when it comes to also stabilizing societies (states) through ‘unwritten law’ and not solely to not trust the indispensable legal order as the sole form of order.” *Gelten Menschenrechte*, 37.

<sup>11</sup> Address of His Holiness John Paul II at the Fiftieth General Assembly of the United Nation, October 5, 1995, paragraph 8. [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1995/october/documents/hf\\_jp-ii\\_spe\\_05101995\\_address-to-uno\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno_en.html)

One-half of the 6,000 – 8,000 languages presently existing worldwide are spoken by fewer than 10,000 people. Linguists estimate that every two weeks one of these languages dies out. That is a loss for humanity, and it is correct to undertake efforts to prevent this as much as possible. On the other hand, this development will not just be stopped by any particular measure. This is due to the fact that there are also people involved who often decide to no longer use their mother language or move to areas where no one speaks it. If this happens voluntarily, there is nothing that can be done to counter it and no abuse of human rights has occurred. Something can and may be undertaken against it only if it is a matter of coercion or when overly extreme and changing social factors exercise excessive pressure.

## 1.2 The state and human rights

### Antecedent to the state

Who would want the German Parliament to reconsider every year which rights we citizens receive for the year and which not? Behind the obvious answer lies a basic understanding that human rights only function when they precede the state, when they are present prior to the advent of the state. The state protects them, but the state does not create them. It has to formulate them within its legal system, flesh them out, and make them enforceable, and assert and preserve them with its monopoly on the use of force. However, the state cannot create or discover human rights. The state has to establish a balance between human rights when they collide, and it has to set down the concrete details. But for all that, the dignity of the individual is inviolable, i.e., it exists long before the state enters the picture. That is different from the communist understanding, as for example, the communist understanding was applied in the German Democratic Republic (the former East Germany). People's rights there were specifically conferred upon the citizens by the state, and the purported collective had priority over the individual.

The former Czech President Vaclav Havel wrote the following: “. . . the glory of the nation-state as a climax of the history of every national community and the highest earthly value-in fact the only one in whose name it is permissible to kill or which is worth dying for-is already past its culminating point. . . . generations of democrats [and] the horrible experience of two World Wars . . . are gradually bringing the human race to the realization that a human being is more important than a state. . . . I am not fighting here against the institution of the state as such. . . . I am talking about something else. I am talking about the fact that there is a value which

ranks higher than the state. This value is humanity. The state, as is well known, is here to serve the people, not the other way around. If a person serves his or her state such service should go only as far as is necessary for the state to do a good service to all its citizens. Human rights rank above the rights of states. Human liberties constitute a higher value than state sovereignty. In terms of international law, the provisions that protect the unique human being should take precedence over the provisions that protect the state.”<sup>12</sup>

## Basic rights

The state is indeed bound to human rights which precede it, but at the same time human rights are reliant on the constitutional state. It is only through the state that – expressing it in legal terms – human rights become concrete *basic rights*, meaning rights that are foundational for a legal and political system.

Article 1 of the German Basic Law (constitution) clearly illustrates the transition from human dignity via human rights to state guaranteed basic rights: “(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.”

Basic rights are those human rights which are anchored in the constitution or legislation and are enforceable. They apply only to those people embraced by the law. Thus German citizens have human rights which can be claimed on the basis of the first articles of the German Basic Law but are likewise found in the European Convention on Human Rights. Many of the basic rights in Basic Law, however, also expressly apply to all people residing in Germany or even all people. Thus, the freedom of assembly applies first of all to German citizens, and the prohibition against torture applies to every individual, for instance to those the German armed forces are confronted with due to overseas assignments.

It might well be that for reasons of international law a country has to guarantee human rights which it does not guarantee as basic rights, for instance when it is a matter of individuals who are not citizens (refugees, individuals seeking asylum, citizens of other countries). Alternatively, it

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<sup>12</sup> Vaclav Havel. “Mensch, Staat und Gott,” *Die Welt* dated March 7, 2000, p. 8. English: [http://www.vaclavhavel.cz/showtrans.php?cat=projevy&val=105\\_aj\\_projevy.html&typ=HTML](http://www.vaclavhavel.cz/showtrans.php?cat=projevy&val=105_aj_projevy.html&typ=HTML)

might be that that state's basic rights are too limiting or even omit certain of them which, hopefully, a high court is prepared to declare.

### The constitutional state

“The protection of human rights is linked to the existence of the monopoly on the use of force controlled by a constitutional state.”<sup>13</sup>

Indeed, the following must be said loud and clear: fighting crime is human rights protection, and *the police and the judicial system are a constitutional state's largest human rights protection organizations!* Human rights are thus clearly dependent upon a functioning, autonomous, and just judicial system. Certainly there is not only the necessity for a just system of ordinary courts which a state can in turn guarantee. Rather, the most important axioms of law for the state are human rights themselves.

#### **Important judicial human rights connected with old axioms of law**

- Effective judicial legal protection in the case of an infringement of rights
- The right to a fair trial before an independent court with judges bound to adhere to the law
- The right to be heard before a court (audi alteram partem or audiatur et altera pars)
- No penalty without the existence of a prior act of law (nulla poena sine lege)
- Presumption of innocence until proven otherwise (in dubio pro reo)

### Democracy and human rights

On the one hand, the concept of human rights, alongside its foundational concept of freedom, presses itself upon free democratic constitutional states as an ideal. Democracies around the world appear to be best able to protect human rights, even if this is not automatic. “Just how closely basic rights and democracy are interrelated is shown by a countercheck: As far as is observable, there is no other political system that not only theoretically guarantees basic rights but rather achieves them in individual cases. There are also basic rights catalogs in non-democratic countries. However,

<sup>13</sup> Aus Gottes Frieden leben für gerechten Frieden sorgen: Eine Denkschrift des Rates der Evangelischen Kirche in Deutschland. Gütersloh: Gütersloher Verlagshaus, 2007<sup>2</sup>, 60 (Nr. 89), [www.ekd.de/download/ekd\\_friedensdenkschrift.pdf](http://www.ekd.de/download/ekd_friedensdenkschrift.pdf).

only in democratic systems are there independent courts and effective protection of basic rights.”<sup>14</sup>

This is also the case historically. “It is not by chance that the first basic rights catalogs appear in the first democratic constitutions in modernity. Both – basic rights and democracy – developed as a demarcation from forms of governments which did not guarantee these elements. In part, as far as the history of the development of ideas is concerned, there was no differentiation made at all between individual legal content and political say by the people.”<sup>15</sup>

In short: in the final event, human rights require a democracy in order for them to be cast into concrete basic rights and a functioning constitutional state. However, they stand above democracy and need no democratic legitimization for their justification. They do, however, need a democracy for their implementation.

On the other hand, that means that the concept of human rights also limits democracy. Indeed, modern democracies derive their legitimacy from protecting human rights and for this reason lose their legitimacy if they trample upon human rights.<sup>16</sup> And a government that claims to be a democracy but does not protect basic human rights, including freedom of religion and freedom of speech/press, is not a proper democracy.

Conversely, human rights clearly place democracy in shackles! Or positively formulated: A democratic constitution defends material values, not only a form of electing the government. Basic rights are, for example, the unalterable core of the German Basic Law, while the concrete form of government is changeable. Thus, the office of the Federal President could theoretically be abolished, or – and this is long since no longer only theoretical – the Federal President could be directly elected by the people, instead of being elected by the German Federal Convention. The Bundestag (the German federal parliament) could be elected every two years (instead of the current practice of elections every four years), and the Bundesrat (the German Federal Council) could receive entirely other rights – always providing that there are corresponding majorities. But torture, on the other hand, cannot be reintroduced even if all members of the Bundestag together with the Bundesrat and a referendum each resulted in a 100% vote in favor of it.

"Basic rights and democracy do not comprise a contradiction for our present day understanding of democracy. On the contrary: It is precisely

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<sup>14</sup> Grundrechte. Bundeszentrale für politische Bildung, 13.

<sup>15</sup> Grundrechte. Bundeszentrale für politische Bildung, 13.

<sup>16</sup> See in particular Frank I. Michelman in: Brunkhorst: *Recht auf Menschenrechte*, 52-65.



basic rights which ensure democracy. On the one hand, this is because according to our understanding, together with state principles such as the rule of law and the separation of powers, the prevention of an unlimited dictatorship of the majority serves to legitimate a form of the state in the first place. On the other hand, however, it is because democracy without basic rights would hardly function. Democracy is not a result but rather a process. Continual discussion is a part of democratic societies, and it is ensured through rights such as the freedom of opinion, the freedom of the press, and the freedom of assembly. Besides, majorities always have to be re-determined.”<sup>17</sup>

### Limitations on human rights?

Can human rights be limited? “There are a number of particularly important human rights, such as the prohibition against torture or against slavery, which apply absolutely and can under no circumstances be limited. Other human rights, on the contrary, allow for limitations under certain objectively qualified and legitimate reasons. In a democratic society, the allowed aims of intrusion can be the maintenance of national security or public order, the prevention of punishable actions as well as the protection of health, or of the rights and freedoms of others. This intrusion may not be arbitrary, however. Rather, it has to occur upon a statutory basis, be well founded, and respect the principle of commensurability. Thus, for example, the right to assemble can be limited if there are concrete indications that those assembled will commit acts of violence. There is also the basic possibility of limiting certain political activities of foreigners . . .”<sup>18</sup>

Article 19, Paragraphs 1-2 of the German Basic Law read as follows: “Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case. In addition, the law must specify the basic right affected and the Article in which it appears. (2) In no case may the essence of a basic right be affected.”

Do human rights also apply in emergencies and in times of crisis? What again applies here is that there are rights which can never be limited, for instance the prohibition against torture or slavery. These are what are labeled “inalienable” rights, in contrast with “alienable” rights that may be limited or even lost (alienated) under certain circumstances. In declared emergencies, of which war is the most significant, but also in the case of

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<sup>17</sup> Grundrechte. Bundeszentrale für politische Bildung, 13.

<sup>18</sup> Menschenrechte: Politik und Unterricht, Heft 2/2005; **Fehler! Hyperlink-Referenz ungültig.**, 7-8.

natural catastrophes or unrest, the state may not only limit human rights but rather carry out “deviations.” The UN International Covenant on Civil and Political Rights likewise contains an emergency clause in Article 4.2, as does the European Convention on Human Rights in Article 15. For times of war, humanitarian international law was also established. It protects the civilian population and also, for example, regulates dealing with captured combatants.

### The significance of non-governmental participants!

If one emphasizes the significance of the state, in particular of the constitutional state, and if thereunder the important role of the associations of states, such as the UN and the Council of Europe is depicted, it is at the same time important to speak to the important role of civil society and of non-governmental organizations (NGOs) of all types, without which many a state and even the UN would not have become active.

The anti-slavery movement was the first large-scale movement in which the civilian population set something in motion and finally implemented what rulers in politics, commerce, and the church did not previously have on the agenda. Beginning with Evangelicals in England who were initially lacking in influence, but then spreading to many others in Great Britain and the USA, attention was drawn to the issue by collecting lists of signatures, songs (“Amazing Grace”), books (*Uncle Tom’s Cabin*), rank and file committees, buttons, sugar-free days, and much more. “Ultimately, every effort for human rights in the modern world has its origin in the campaigns for the abolition of the slave trade and slavery.”<sup>19</sup>

Up to the present day, globally successful campaigns for human rights proceed similarly and have been able to repeatedly register significant successes. Thus, global protest and worldwide-networked NGOs against landmines, along with their umbrella organization International Campaign to Ban Landmines (ICBL), managed to get the UN to adopt a ban on anti-personnel landmines under international law in Ottawa in 1997.<sup>20</sup> Over 150 countries have acceded to the landmine ban convention, but unfortunately there are a number of countries, such as the USA and China, which have not yet done so. The German armed forces destroyed their anti-personnel

<sup>19</sup> Michael Ignatieff, *Die Politik der Menschenrechte* (Hamburg: Europäische Verlagsanstalt, 2002), p. 37.

<sup>20</sup> The use of landmines makes it almost impossible for an army trying to follow traditional just war ethics to implement the moral principle of proper discrimination (between combatants and non-combatants) *in bello*.

mine inventory prior to Germany signing the agreement. The ICBL received the Nobel Peace Prize for its efforts.

Similar thanks are due to NGOs for the convention for handicapped people (see Section 2.7) which the UN issued in 2006.

Additionally, classical human rights organizations, which above all are active in the area of first generation human rights, such as Amnesty International, Human Rights Watch, the International Society for Human Rights (started in Germany), and the Society for Threatened Peoples, are based upon individual casework.

*See part 3 on this topic; for follow-up: tips for the individual*

### 1.3 The global situation

Seven global reports as examples

According to the *Freedom in the World 2009* report, in 1978 there were 47 free, 56 partly free, and 55 not free countries. In 2008 there were 89 free, 62 partly free, and 22 not free countries. However, the development has stopped in recent years. The 46% of free nations also account for 46% of the world population. Unfortunately, the 22% of not free nations account for 34% of the global population.<sup>21</sup>

In the *2004 Amnesty International Annual Report*, much was collated which otherwise is reported in a scattered manner, on individual countries. In 47 countries there are arbitrary executions (e.g., Liberia, Rwanda, The Philippines, Cambodia, Brazil, Guatemala, not counting countries with the death penalty!). In 28 countries people simply disappeared (Burundi, Nepal, Pakistan, Columbia, Algeria, and Iraq). In 132 states there is state conducted torture and abuse (e.g., in Cameroon, Saudi Arabia, China, North Korea, Belarus, Haiti); in 44 nations there are non-violent, political detainees in prisons (Burundi, Cuba, Peru, Turkey, Syria, Indonesia, Egypt), and in 58 countries people are held under custody without charges having been filed or court proceedings having been conducted (Nigeria, Zimbabwe, Brunei, Vietnam, Jamaica, Egypt). These are, of course, only the documented cases. The actual numbers were and are higher.

The 2011 annual report does not show all these numbers so clearly. However, it does document the following numbers for 2010: Unjust court proceedings were documented in 54 countries in which 2/3 of the human population is found, and in 89 countries freedoms of opinion and of the

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<sup>21</sup> [Http://www.freedomhouse.org/report/countries-crossroads-2011/essays#.U9C95PmSxFY](http://www.freedomhouse.org/report/countries-crossroads-2011/essays#.U9C95PmSxFY).

press were limited. In 48 countries there were non-violent political prisoners, and in 98 there was state conducted torture and abuse.<sup>22</sup>

According to the *2002 World Health Organization report on violence and health*, on which researchers from around the globe worked for years, there are on average 1.6 million people who die annually as a result of direct violence, 520,000 of whom die of murder at the hands of others, with the rest dying in war and civil war. If one were to take 15-44 year olds – thus largely disregarding age related, natural deaths – 14% of all deaths of men and 7% of all deaths of women are traceable back to direct violence. More recent investigations confirm the magnitude of these numbers. (Of course, that does not exclude the fact that a great number of additional cases of death are traceable back to human rights infringements, for instance in the case of refugees, or due to the unavailability of medical care.)<sup>23</sup>

Wars, civil wars, and violent conflicts are above all the case in: Iraq, Israel, Columbia, (Democratic Republic of) Congo, Russia (Chechnya/North Caucasus), Somalia, Sri Lanka, Sudan, Chad, and the Democratic Republic of Congo, where many civilians everywhere fall between the fronts, as victims, as protective shields, or are plundered, or are objects of revenge. In West Sudan, for example, rebels killed 200,000 people and displaced 2.5 million people between 2003 and 2006.

For decades, Amnesty International has kept a global register of all cases where the death penalty has been administered. The proportion of death penalties in countries in which an orderly legal process takes place and there is the chance to file appeals is, on the whole, very small. Actually, it is only the USA which plays a role. For two years now, Amnesty International has no longer provided a number for China. This is due to the fact that everything is secret there and the estimated number of unknown cases seems to be much higher than the estimated 5,000 executions. Countries with the highest number of executions in 2010 after China are Iran with 252, then North Korea with 60, and finally Yemen with 53. The USA follows with 46 executions.

Over 20,000 people die daily because they have too little to eat, though some think the number is far higher. Over 1 billion people have to drink dirty water. Over 2 million people die of the consequences – either from drinking or from horribly unhygienic conditions.

It is estimated that over the past 30 years, approximately 1 million people died from land mines, of which 80% were civilians and 25% children. The annual number of fatal victims probably lies between 10,000 and

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<sup>22</sup> [Http://www.amnesty.org/](http://www.amnesty.org/)

<sup>23</sup> [Http://www.who.int/en/](http://www.who.int/en/).

20,000. At the same time, there are the innumerable victims of mutilation or dismemberment, above all to the legs and feet but including damage to hearing to those up to a distance of five meters from the explosion. These have not been counted. The international anti-personnel Mine Ban Treaty, or the 1997 Ottawa Convention, has shown little impact but has, however, seen the number of newly laid mines begin to drop.

**Many countries have terrible landmine problems. Selected examples:<sup>24</sup>**

- Somalia: 1 million
- Mozambique: 3 million
- Bosnia and Herzegovina: 3 million
- Kuwait: 5 million
- Cambodia: 8-10 million
- Iraq: 10 million
- Afghanistan: 10 million
- Angola: 10-20 million
- Iran: 16 million
- Egypt: 23 million

### Five different examples

In addition to these global examples, let us take five completely different country-related examples.

In May 2008 a cyclone devastated Myanmar (earlier known as Burma). 84,500 people died, and 54,000 people were reported missing. And yet for three weeks the government refused all international offers of assistance and left the 2.4 million victims of the natural catastrophe to themselves.

In the USA, people who seek asylum are initially automatically incarcerated. The conditions in the prisons are almost always catastrophic. It is not only that the prisons are overcrowded and one is unable to move. Medical care is also lacking, and the constitutional right to legal assistance is not made possible.

“After the unrest in the aftermath of the Iranian presidential elections in 2009, 5,000 members of the opposition of one kind or another, among them students, journalists, and lawyers, were imprisoned. Kangaroo courts, which have little in common with an independent legal process, begin in August. The defendants are first isolated from the outside world and have

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<sup>24</sup> [Http://listverse.com/2008/08/11/10-countries-with-the-most-landmines/](http://listverse.com/2008/08/11/10-countries-with-the-most-landmines/).

no defense lawyer. Mistreatment and forced confessions are the rule.” (Süddeutsche Zeitung).

According to the Afghan Independent Human Rights Commission (AIHRC), in 2008 60%-80% of all marriages in Afghanistan were marriages in which women were forced to marry. Frequently, the women were minors. A woman who wants to flee can be mistreated by her family, and if she actually flees, the state arrests her and brings her back.<sup>25</sup>

The Süddeutsche Zeitung (a German newspaper) writes regarding Libya: “The human rights organization Amnesty International is denouncing possible war crimes in Libya. Not only the henchmen of the deposed despot Muammar al-Gaddafi, but also rebels themselves have committed human rights violations. Prior members of Gaddafi’s security forces, supposed allies, captured soldiers, as well as foreigners considered to be mercenaries, were abducted, arbitrarily imprisoned, tortured, and killed, according to a more than 100 page report on the situation in Libya.”<sup>26</sup>

## 1.4 On the history of human rights

### Converging streams of history

For a long time, a line linking civil rights and liberties in earlier centuries and modern human rights was frowned upon. The current history of human rights was seen to begin with the French Revolution at the end of the 18<sup>th</sup> century, often leaving out the simultaneous independence of the United States of America. At the least, the centuries-long pre-history of human rights was left out.

Strictly speaking, the most famous historical human rights declarations were not comprehensive. It was not until after a long process that the declaration in France applied to Protestants, and it did not include women at all – a corresponding and very good declaration of women’s rights was rejected by the revolutionaries, and its author was executed in 1793. Women’s voting rights were first introduced in France in 1944! The United States Bill of Rights (1791) also overlooked women. In particular, however, it overlooked Indians and slaves.

Whoever is looking within history for a fully developed concept of human rights and its legal practice, one which actually applied invariably to every individual, will not strike upon anything prior to World War II. And even human rights which are taken for granted today only developed over

<sup>25</sup> [Http://www.refworld.org/publisher,AIHRC,ANNUALREPORT,,4a03f4f32,0.html](http://www.refworld.org/publisher,AIHRC,ANNUALREPORT,,4a03f4f32,0.html).

<sup>26</sup> *Süddeutsche Zeitung* dated September 13, 2011.

the course of the decades thereafter, such as children's rights, rights for persons with disabilities, or the right to drinkable water.

Historically, however, the concept of human rights fed on several large streams. They brought together the ideas without which this notion would not have originated nor would it have been able to have such a massive effect.

In this respect, the discussion of the history of human rights can be accused of being too often centered on the terms used, on individual topics, or even on substantive historical events and texts, but not, however, keeping an eye on the entire picture. The German Federal Agency for Civic Education has described this situation well:

“When it comes to the theoretical understanding of basic rights to which all people are entitled, there are at least basic approaches which are found among the Greek and Roman philosophers of antiquity, for instance among the adherents of the Stoics and Sophists. However, Plato (427 – 347 B.C.), Aristotle (384 – 322 B. C.), and Cicero (106 – 43 B. C.) also dealt with this issue.

When it comes to statutory foundational rights, this history can be traced back at least to the Middle Ages. The best known example is the English Magna Carta, which dates from 1215. This ‘great charter of liberties’ made feudal law against royal despotism statutorily valid, and it bound encroachments upon the life and property of free men – of that part of the population which was able to assert itself against the king – with a statutory basis.

However, what we understand to be basic rights or statutory rights for every individual or every citizen, thus a combination of both developments, is much younger. The development goes hand in hand with the development of civil constitutional states found in modernity.”<sup>27</sup>

Ironically, the abolishment of torture began with the Inquisition, which attempted to limit torture and to impose the rule of law. It began in a concrete manner in 1754 with Friedrich the Great who abolished it in the army and in the judiciary system. It flows via the UN's 1984 Convention Against Torture into its modern expression. The development sequentially intersected with other general and special developments having to do with human rights. However, it nonetheless retains its independent course, which was not inextricably linked with human rights as such until after World War II.

<b>Component examples of the concept of human rights and particular human rights which have their own history</b>
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<sup>27</sup> Grundrechte. Bundeszentrale für politische Bildung, 4.

- Human dignity, the dignity of women, anti-racism
- The rule of law, the right to due process, the opportunity to seek remedies via international courts
- Democracy, the right to vote, universal suffrage, women's suffrage
- The constitutional state, human rights catalogs, constitutional jurisdiction
- Human rights for blacks, Jews, Indians, and natives
- Constitutions, the binding of rulers to law and order
- The right to resist, the monarchomachs, social contracts
- Natural law, universal ethics, Kantian ethics
- The separation of church and state, religious freedom
- Women's rights, rights of the disabled, children's rights
- Prohibition against torture, prohibition against medical experiments
- Limitations on martial law, protection of the civilian population, the Red Cross

This diverse historical background for human rights protections is also seen in current political parties and theories. Classical liberalism, with its strong emphasis on individual liberties and the right to be different, belongs to the history of human rights, as does socialism with its strong emphasis on collective responsibility and social and economic participation rights. Conservative traces are found in the rights surrounding marriage. But traces of progressivism are found in the punishment of rape within marriage, which ultimately protects the same values.

If we choose the parties represented in the German Bundestag, or better yet the political currents which they represent, then we have to notice the following: At some point in history each one has participated in oppression, but each one has also contributed a vital element in the development of thinking with respect to human rights up to the present.

### The Middle Ages

Many place the beginning of the history of human rights in the year 1215 with the English Magna Carta. For starters, one has here a situation where subjects – even if it is only a small portion of them – establish an agreement with the government for concrete liberties which are legally binding.

A short time later, in a mixture of Greek philosophy and Christian theology, the most significant medieval theologian, Thomas Aquinas (1225-1274), unmistakably justified human dignity through the endowment of



reason and the freedom of the individual. Some find roots of human rights theory in his theology of law.

In 1552, the Dominican Monk Bartholomew de Las Casas spoke of the “principles of the rights of people” when he denounced the oppression of Peruvian natives through slavery and exploitation. The pope himself said he was correct as far as the contents of his arguments were concerned, even though the Catholic colonial powers still asserted themselves. Here, for the first time, the dignity and rights attached to being a person appear to stand above all state forms.

### The “stepchildren” of the Reformation – Christianity and the Enlightenment

It was in the middle of the 17<sup>th</sup> century that for the first time demands for religious freedom, freedom of conscience, freedom of the press, and general voting rights for men were heard from the radical Protestant wing in England. Michael Farris has advanced a comprehensive examination of the early sources of religious freedom in the USA, among them countless sermons and tracts.<sup>28</sup> After Sebastian Castellio, a former student of Calvin, argued the case against John Calvin for a rather rudimentary form of religious freedom, one finds the first known tract calling for complete religious freedom by the English Baptist Thomas Helwys<sup>29</sup> (1550-1616) in 1611. After that, in 1614, one finds a second tract by the Baptist Leonard Busher.<sup>30</sup> The thought then spread among Baptists and other dissenters in England, the Netherlands, and then North America. It was the Baptist and spiritualist Roger Williams (1604-1685), who co-founded the first American Baptist congregation with a congregational structure (in which all members enjoy equal rights and elect the leadership and the pastor) in 1639, who also called for complete religious freedom in 1644.<sup>31</sup> In 1647 the Rhode Island constitution was established as the first with complete separation of church and state along with religious freedom – even for Jews and atheists – although Williams was a friend of Christian missions. Slavery was already abolished in 1652 in Rhode Island. In 1663, the mini-

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<sup>28</sup> Michael Farris. *From Tyndale to Madison*. Nashville (TN, USA): B & H, 2007.

<sup>29</sup> Thomas Helwys. *A Short Declaration of the Mystery of Iniquity*. London: on vellum, 1611, reprint: London: Kingsgate Press, 1935.

<sup>30</sup> Leonard Busher. *Religious Peace*. Amsterdam: on vellum o. V., 1614, London: Sweeting, 1644.

<sup>31</sup> Roger Williams. *The bloody tenent, for cause of conscience*. London: n.p., 1644, by the same author. *The bloody tenent yet more bloody*. London: n.p., 1652; by the same author. *Christenings make not Christians*. London: n.p., 1645.

state of Rhode Island became independent of Great Britain and with that became the first state on earth with a democratic constitution. Even though there was no universal suffrage, most men were able to vote. (It was not until 1842 – which was still very early – that universal suffrage was offered, even for African-American men, and in 1917 women’s suffrage followed.) Rainer Prätorius describes it aptly: “It is not despite the fact but because of the fact that he was deeply religious that Roger Williams called for a separation of politics and religion.”<sup>32</sup>

The Protestant theologian and philosopher of religion Ernst Troeltsch<sup>33</sup> has defended the idea that human rights are owed not to the Protestantism of established churches but rather to free churches in the new world, sects, and spiritualists – from the Puritans to the Quakers. “What we have here are the stepchildren of the Reformation having their hour in world history after all.”<sup>34</sup> This discussion, which arose with the reception of Max Weber’s thought, has been completely revived in very recent times. Nowadays we would certainly add more clearly that other religious minorities also played important roles. For instance, one only has to think of the central role of Jewish philosophers.

In any case, what one saw in the states that became the USA was religious freedom and freedom of conscience, along with separation of church and state. These advances had been won by men of deep religious belief, such as the spearheads Williams and Penn. The hard won liberties, religious freedom, freedom of conscience, and separation of church and state, were united with the expanded drafts of constitutional states (initially without religious freedom) of the Puritans and other Reformers. These liberties were also united with the democracy of Enlightenment and deist politicians who took pious guidelines and translated the ideas into secular law for application in geographically expansive countries.

Alexis de Tocqueville (1805-1859), in his famous work *Democracy in America*, defended the idea that deeply religious, mostly Reformed movements had entered into an inseparable symbiosis with Enlightenment points

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<sup>32</sup> Rainer Prätorius. In *God We Trust: Religion und Politik in den USA*. München: Beck, 2003, 35.

<sup>33</sup> Comp. Friedrich Wilhelm Graf. “Puritanische Sektenfreiheit versus lutherische Volkskirche: Zum Einfluss Georg Jellineks auf religionsdiagnostische Deutungsmuster Max Webers und Ernst Troeltschs,” *Zeitschrift für Neuere Theologiegeschichte* 9 (2002): 42–69.

<sup>34</sup> Ernst Troeltsch. *Die Bedeutung des Protestantismus für die Entstehung der modernen Welt*. München/Berlin: Oldenbourg, 1911, 62.

of view.<sup>35</sup> For instance - to mention only one example – there is John Locke (1632–1704), an Enlightenment philosopher coming from Puritanism.<sup>36</sup> As far as the emergence of democracy is concerned, the interplay of Christianity and Enlightenment functioned with significantly less friction in America, while in Europe it was left standing only after numerous and often even violent and bloody conflicts. This continues to have its aftereffects and explains up to the present day, at least in part, the lack of understanding between the United States and Europe.

Either way, every mono-causal explanation is out of the question. The Enlightenment would have not have been able to lead to democracy if it had not been able to revert to certain Christian concepts in Western culture, nor would Christianity have changed its political ethics without the Enlightenment nor given up its comfortable position of an alliance between the throne and the pulpit.

## The Enlightenment

A development towards human rights finds a concrete framework in chartered rights. Catalogs of civil liberties are first found in the Middle Ages, and the first systematizations of natural rights and human rights are found from the onset of the 16<sup>th</sup> century onwards. Their integration into constitutions occurred in a number of American states: in 1647 (Rhode Island) and 1776 (Virginia), followed by integration in 1789 for the entire USA and since 1789 in France.

In 1679, the Habeas Corpus Act in England guaranteed protection against arbitrary incarceration by ruling powers for the first time and thereby started a long list of human rights as protected rights in the eyes of the state.

More important still are catalogs of rights. In 1689 a Bill of Rights was adopted for the first time in England, i.e., a list of specific rights was produced. The 1776 Virginia Declaration of Rights is significant because for the first time it determined that these rights could not be suspended. These catalogs also have such significance because people repeatedly went to court over these rights and thereby often wrote legal history. In the United States, in the state of Massachusetts, a slave demanded his basic rights on the basis of the catalog of rights in effect there. That led to the abolition of

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<sup>35</sup> 1835 and 1840, two volumes, Alexis de Tocqueville. *De la Démocratie en Amérique*. 2 Vols. Paris: Gosselin, 1835, 1840, in addition Manfred G. Schmidt, *Demokratiethorien*. Wiesbaden: Verlag für Sozialwiss., 2008<sup>4</sup>, 113-131.

<sup>36</sup> Thus *ibid.*, p. 63, taken as a whole, 57-65.

slavery in Massachusetts in 1783, which did not occur on a federal level until 1865.

Many additional Enlightenment philosophers played a large role in the developing idea of human rights and their inclusion into the legal structure and the idea of the state, such as, for example, the Germans Samuel Pufendorf and Immanuel Kant, the Englishmen Thomas Hobbes and John Locke, and the Frenchman Jean-Jacques Rousseau.

Samuel Pufendorf (1632-1694) is the first among the Enlightenment thinkers who counted human dignity (Latin: *dignatio*) as part of the natural state of humankind, whereby all people are free and equal. He stated: “The individual has the highest level of dignity because he has a soul marked by the light of reason, through the ability to judge things and to freely decide, and his being versed in many arts.”

“Towards the end of the 17<sup>th</sup> century, John Locke formulated his classical liberal theory of the state which was marked by Christian as well as Enlightenment and natural rights motives. His theory made the legitimacy of state rule dependent upon the observance of inalienable rights – life, liberty, and property. In the case of massive infringement of these foundational rights, Locke held violent resistance under certain circumstances to be legitimate. Scarcely one hundred years later, American settlers reverted to Locke’s theory of the state. In the battle against state tutelage by the London Houses of Parliament, efforts were above all directed against unduly claimed sovereignty on the part of the royal executive.”<sup>37</sup>

In particular, I would like to mention the German Immanuel Kant (1724–1804) and his justification of the state under the rule of law. The sole human right from which all others are derived is freedom. It does not emerge from the nature of humankind or from a natural law. Rather, it is a law of reason independent of all historical, cultural, social, and religious conditions. The state is legitimated through its assurance of civil rights and liberties and finds its central task therein. The state is not in a position to question human rights without questioning itself. The sole inconsistency thereto is that Kant rejected the right to resist states which massively infringe upon civil rights and liberties.

What was above all decisive during the Enlightenment was that the difference between people –for instance between the aristocracy and farmers – was no longer seen as inherent and immutable but rather as man-made. For that reason, there was no allowance for inferences to be made regarding supposedly different levels of dignity.

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<sup>37</sup> Bielefeldt. “Menschenrecht – Universell . . .,” 19.

## The consequences of World War II

When it comes to details, every human right is hotly debated. The number of human rights about which we are reminded is growing, and others in turn hold this to be wrong and dangerous. In the UN, there are fervent political power games raging in which regimes violating human rights often account for the majority. The justification of human rights beyond all worldviews is something which is disputed today more than ever. A solution or a common basis is a long way off. Indeed, what applies is actually the following: “As a result of the global increase in the importance of human rights, there appears to be a new obscurity accompanying the discussion.”<sup>38</sup>

How could the idea of human rights make history and make our world take a turn for the better? This is asked because the number and types of human rights infringements are legion: Without the global enforcement of human rights on national, regional, and global levels everything would surely look much, much worse.

It was the horrors of World War II, Hitler’s gruesomeness, and the brutality of the Japanese, but also that of Mussolini, Stalin, and others, which advanced the topic of human rights into the center of world interest. That is the only explanation for the UN’s using the topic as its legitimization and for Germany’s Basic Law’s codifying such fundamental law in a manner such that even a 100% majority in the Bundestag would not be allowed to abolish it.

World War II and the regimes participating, those of Hitler, Stalin, and others, drove gruesomeness and human rights violations to sad, historical extremes: Among the 60 million fatal victims, there were 6 million Jews who were exterminated in a virtually industrial manner. This has been burned into the world’s conscience, whereby the killing of Roma and Sinti, homosexuals, priests, and nuns has only recently been more broadly recognized. In addition to that, there are millions of dispossessed people during and after the war and innumerable victims of rape and other forms of humiliation. The atom bomb dropped on Hiroshima opened the world’s eyes to the possibility that things could get even worse. And the world did not find tranquility after 1945. Millions were dislodged as a consequence of war. In India, hundreds of thousands of Muslims and Hindus died through the partitioning of India and Pakistan, and the Cold War brought about large numbers in the political prisoner category. Colonies sank into wars of liberation and civil wars.

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<sup>38</sup> Koenig. Menschenrechte, 8.

It was in the middle of World War II that a global discussion on human rights began on a large scale, and the number of publications increased. From 1939 to 1950, the British writer H. G. Wells published important books and collections of texts including a “World Declaration of the Rights of Man.” In the face of Hitler’s Germany, US President Franklin Roosevelt emphasized that freedom has four footings: the freedom of speech and expression, the freedom of belief, the freedom from fear, and the freedom from want. He initiated the founding of the United Nations in the hope that a repeat of such a catastrophe could be prevented. It was President Roosevelt’s wife, Eleanor Roosevelt, who, after President Roosevelt’s death, essentially exercised the determining influence on the development of The Universal Declaration of Human Rights.

The Nuremberg Trials against Nazi leaders and generals and the corresponding Tokyo War Crimes Trials against the Japanese government and army leadership did the rest. This was the first time that rulers were not condemned on the basis of the law of their own country. Rather, they were jointly condemned by judges from a number of countries on account of crimes against humanity. They were thus condemned on the basis of a morally accepted international law that was not in existence in written form.

Mary Ann Glendon meticulously researched the history of the emergence of the Universal Declaration of Human Rights and the role played by Eleanor Roosevelt (1884-1962) as the chairperson of the Human Rights Commission (1946-1951) which developed it. During the period of her husband’s administration, Roosevelt was an active journalist and women’s rights activist. President Harry Truman delegated the widow of his predecessor to the UN’s General Assembly from 1945-1953, where she unexpectedly ascended and in the end left an invaluable legacy for the world.

Alongside this, Charles Malik (1906-1987), who was born Greek Orthodox and was a Lebanese diplomat, was named deputy for the other members of the Human Rights Commission. As a matter of fact, he was an existentialist philosopher who had also been educated in Germany and the USA.

## The United Nations

### *The Universal Declaration of Human Rights*

The General Assembly of the United Nations adopted The Universal Declaration of Human Rights on December 10, 1948. Initially, indeed, it did not have any sort of binding character for anyone, but it has long since become the moral point of reference for global human rights activism. It is

stated herein that all people possess the same dignity (Article 1) and that every form of discrimination on the basis of race, skin color, gender, language, religion, and political conviction is prohibited (Article 2). Every individual has the right to life and liberty (Article 3), for which reason slavery and human trafficking (Article 4) as well as torture (Article 5) are forbidden. Every individual has the human right to be treated equally before the law and the judge in a court of law, and may only be condemned by a court only on the basis of a previously issued law after a legal hearing (Articles 7-11). Every individual has the right to emigrate and to freely choose his place of residence (Article 13) or to seek asylum in another country (Article 14). Every individual has the right to freely choose a marital partner, and the family is to be protected by the state and society as the “natural and fundamental group unit of society” (Articles 16 and 26). What follows is the right to property (Article 17), the right to freedom of thought, conscience, and religion, for which reason the individual may also change his or her religion (Article 18), the right to the freedom of opinion and expression, and to the free flow of information (Article 19), the rights to assembly and association (Article 20), and the right to enjoy universal voting rights (Article 21). Every individual has a right to social security (Articles 22, 25, 28), work with fair pay (Article 23), and education (Article 26).

In its early days, when the UN placed human rights in the center by placing them in its charter and in the Universal Declaration of Human Rights, this only worked by leaving things at the level of declarations which were not legally binding. Who would have thought at that time that the toothless tiger of the Universal Declaration of Human Rights would become the moral standard of the world?

Thus, the Universal Declaration of Human Rights formulated a complete form of equality between man and woman, even though this had not yet been applied in the legislation of any member nation in 1948.

“The Universal Declaration of Human Rights is a success story. The core of the notion of human rights is the question of universality. Whoever relativizes the universal application goes against the idea of human rights. Human rights apply universally, or they do not exist at all. Human rights exist prior to the state. They are moral, inalienable rights, which each individual person possesses, independent of his background, his physical and mental faculties, and the circumstances under which that individual lives. In the Universal Declaration of Human Rights one reads the following in Article 1: ‘All human beings are born free and equal in dignity and rights.’

Everyone is entitled to human rights, if only because that individual is a person.”<sup>39</sup>

### *UN human rights pacts*

According to Article 1 of the United Nations Charter, the UN has the goal of encouraging “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (similar to Article 55c). Although at that time there was still no concrete notion of the concept of human rights, human rights are repeatedly mentioned in the United Nations Charter (e.g., Articles 13, 55, 56, 62). Since, from the viewpoint at that time, it was only a matter of statements of intent, the consensus was easy to produce. It was precisely the USA which wanted to avoid legal regulations.

The UN, given all its shortcomings, has remained true to this topic and above all through its human rights pacts – international treaties which all countries on earth are able to legally become party to (and should) – has advanced the safeguarding and development of the concept of human rights.

### **Supra-regional human rights pacts**

#### **UN or international**

- International Covenant on Economic, Social and Cultural Rights (1966/1976)
- International Covenant on Civil and Political Rights (1966/1976)
- International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- United Nations Convention against Torture (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- United Nations Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

#### **Continental or Regional**

- European Convention on Human Rights (1950)

<sup>39</sup> Nooke. “Wie wir die Menschenrechte ...“



- European Social Charter (1961), Protocol amending the European Social Charter (1991)
- Charter of Fundamental Rights of the European Union (2000)
- Framework Convention for the Protection of National Minorities (1995)
- American Convention on Human Rights (1969)
- African Charter on Human and People's Rights (1986)
- Arab Charter on Human Rights (2008)

### *The UN Human Rights Council*

For a long time the UN Human Rights Commission was responsible for human rights. To be sure, it was equipped with the moral authority of history and had developed the 1948 Declaration, but it was actually toothless, with no real opportunity to take drastic measures. “The General Assembly of the United Nations decided in March 2006 to replace the Human Rights Commission with the Human Rights Council, which met for the first time in June 2006. The Human Rights Council is a subsidiary organ of the General Assembly. It consists of 47 member states which are elected by the General Assembly with an absolute majority (96 votes) for periods of three years: 13 seats for the African states, 13 for the Asian, 6 for Eastern European, 8 for Latin American and Caribbean, and 7 for the Western European and other states. . . . In addition to its regular meetings, the Human Rights Council holds special sessions on topics and situations in countries and for this purpose names special rapporteurs. In a general periodic examination procedure, the human rights situation is appraised in all 192 member states of the United Nations. Furthermore, there is a confidential investigative procedure for cases of systematic human rights violations.”<sup>40</sup>

However, what sounds so good legally and morally and can be a blessing for humanity is in reality often a sad chapter of self-imposed deadlocks. “Almost all countries on earth have a seat and a vote in the UN, also those which tread human rights under foot, take away the dignity of its citizens, and torment and even kill them. The offenders often attempt to exercise influence in the General Assembly as to how the society of nations reacts to its injustices.”<sup>41</sup>

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<sup>40</sup> [Http://www.institut-fuer-menschenrechte.de/menschenrechtsinstrumente/vereinbarungen/menschenrechtsrat.html](http://www.institut-fuer-menschenrechte.de/menschenrechtsinstrumente/vereinbarungen/menschenrechtsrat.html). Confirmed 28 July, 2014.

<sup>41</sup> Schulz-Reiss, Nachgefragt, 58.

**Shadow report:** In the system of human rights protection, there are governments which give regular reports to the UN or to other international or regional associations, but also often to their own parliaments (scheduled hearings) about the human rights situation in their own country or about certain subject areas such as women's rights, children's rights, or the prohibition against torture. In non-democratic countries it is more frequently a matter of propaganda, but according to the state of the democratic situation and the inclusion or exclusion of non-partisan institutions, democratic countries can also touch up their reports or give them a one-sided orientation. For this reason, non-governmental organizations (NGOs) are often called upon to submit so-called "shadow reports" (in an official sense mostly as a parallel report or an alternative report). NGOs often publish such shadow reports without being requested to do so. These reports are among the most important pieces of documentation to be found in the area of human rights.

### *The office of the High Commissioner for Human Rights*

The situation is better for the holder of the office of UN High Commissioner for Human Rights (OHCHR) in Geneva, which was created in 1997. The office holder investigates human rights violations and can issue appeals in a somewhat more independent manner and has greater prospects when making submissions.

In addition to that, there is a list of independent special rapporteurs. Admittedly, they are chosen by the countries but are in most cases completely independent after they are elected. For that reason, they often raise their voices very clearly. They can also raise their voices against those countries which have elected them. There are special rapporteurs for freedom of the press and freedom of religion as well as for topics relating to torture and children's rights.

### *The UN Security Council*

Solely the UN Security Council is in the position of being able to impose sanctions against states on account of human rights violations and even decide for humanitarian intervention, send UN peacekeeping forces, or empower other states to intervene militarily.

### *The International Criminal Court*

"The community of states was well aware of the need for international criminal jurisdiction from the end of the Second World War onwards. The international military tribunals instituted at Nuremberg and Tokyo marked

the beginning of the criminal prosecution of atrocities for which individuals could be held accountable. Next in line were the *ad hoc* tribunals instituted in 1993 to deal with the crimes committed in ex-Yugoslavia, and in 1994 to adjudicate the genocide in Rwanda. However, the punishment meted out by these tribunals was selective, and many of the persons responsible were never brought to book, which encouraged fresh crimes. Endeavors to establish a universal and permanent criminal court finally came to fruition at the end of the 20th century. In 1998, agreement was reached on the so-called Rome Statute which provided for the creation of an international criminal court. In 2002, the statute came into force, having been ratified by 60 countries. All member states of the European Union are to be found among the states parties, which numbered 100 as early as 2005. Then again, a number of important states, including the USA, Japan, Russia, China, and India, have not acceded to the statute to this day. Ceremonially opened in March 2003, the International Criminal Court employs 18 judges, one of them German. According to Article 5, the crimes that fall within the jurisdiction of the court include genocide, crimes against humanity, war crimes, and the crime of aggression. All except the last are defined in detail in the following articles of the statute where a number of punishable offences are enumerated. The International Criminal Court may step in only if a crime has not been prosecuted on the national plane (see Art. 17 of the statute).<sup>42</sup>

This also means that a universal ethic stands above all nations, above all constitutions, and it can even condemn a ruler who has not violated a law of his own country!

Genocide is the gravest offense within the framework of the United Nations and in international law. In contrast to a war of aggression, genocide is clearly defined, has been employed in international criminal tribunals, and can be pursued by countries other than the countries involved. Since the occurrence of genocide in Yugoslavia and Rwanda, for which international criminal tribunals have been employed, and since the establishment of the International Criminal Court in The Hague in 2003, the condemnation of genocide has increasingly taken on practical importance.

### *The Council of Europe*

The Council of Europe, founded in 1949 and headquartered in Strasbourg, has 47 member states and comprises almost all of Europe. Its main goal is to ensure human rights and democracy all over Europe. Among the foundational conventions adopted by the Council of Europe as binding interna-

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<sup>42</sup> Konrad-Adenauer-Stiftung. Menschenrechtessichern, 13.

tional law are above all the following: the Convention for the Protection of Human Rights and Fundamental Freedoms (CPR) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as the European Social Charter.

Above all, the corresponding European Court of Human Rights in Strasbourg has played and plays a central role for the enforcement of human rights in Europe. It guarantees that in questions of human rights in Europe one can even take legal action against one's own state and its highest courts, which is a unique situation globally.

The Strasbourg tribunal has significantly co-determined the development of law in Europe and has ensured that in no other region of the world things are seen as intensely through the spectacles of human rights.

On the whole, human rights protection is nowhere more effective than in Europe, not because Europeans are more noble people, but because supra-national institutions have jurisdiction and do not only symbolically advocate human rights. Thus, for instance, the Strasbourg tribunal condemned Greece and had it take religious affiliation out of its passports since it was the basis for severe discrimination. Greece complied.

Furthermore, it is to Europe's advantage that it has a number of overlapping human rights monitoring systems. In addition to the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) is to be mentioned first of all before the EU for its significance with respect to European human rights monitoring. It followed the final acts of the Conference on Security and Co-operation in Europe as negotiated with the former member states of the Communist Bloc and by which European and a number of other nations mutually monitor questions relating to free elections, human rights, etc. Within the OSCE, the Office for Democratic Institutions and Human Rights (ODIHR) is to be mentioned.

It is especially worth highlighting that both of the aforementioned exercise their role in light of circumstances where a large number of the members of the Council of Europe and the OSCE have indeed signed all the pertinent human rights declarations and mention them in their constitutions, etc., but in reality they only partly or scarcely hold to them (e.g., Azerbaijan). The OSCE was created for this very reason. It not only had relevance for the time of the collapse of the Soviet Empire but also retains relevance in a completely changed - but not always automatically better - world after the Soviet collapse.

### *European Union (EU)*

“At the level of the European Union, on the other hand, the protection of human rights evolved much later and in a comparatively limited scope. The

dimension of human rights moved into focus only as the reach of the Union expanded. In 2000, after the preliminary spade-work had been done by the Convent on Fundamental Rights, a charter of fundamental rights was finally proclaimed by the European Council meeting at Nice which, however, has not yet come into legal force. Having been incorporated in the constitutional treaty, it will now become legally binding at long last, provided the treaty is ratified by the EU member states. However, these fundamental rights are binding only at the community-law level.”<sup>43</sup>

The Fundamental Rights Agency, or FRA, founded in 2007, is headquartered in Vienna. It advises sovereign states and authorities, commissions studies and advisory opinions, invites non-governmental organizations to cooperate, and has the mandate to guarantee to collect, analyze, and disseminate objective, reliable, and comparable data on the human rights situation in the member states of the EU. With that said, the society-wide discussion on human rights and its foundations goes far beyond legal application as a topic in Europe.

## 1.5 On justification

The justification deficit regarding human rights

People say, “Human rights are eternal, unchangeable, and apply universally.”<sup>44</sup> One wants to say ‘Amen’ since it almost sounds like a prayer. The same author writes, “Human rights stand as natural law above the state.”<sup>45</sup> This is also religious language, or at least metaphysical, and it is astounding in light of the way that natural law is deemed everywhere to be outdated. Nevertheless, whoever rejects such language overlooks the fact that the existence of norms which are supranational and compulsory for all people seems to require an ultimate explanation. In reality, this need for justification is either simply dispensed with, made in a manner which leaves things standing on shaky footing, or is seen to apply only for certain religions or world views. The justification of human rights is an important point of interaction among religions and worldviews.

Such being the case, there is a very significant “justification deficit” with respect to human rights, at least since the time of the UN human rights declaration.<sup>46</sup> Nowhere can a derivation or a justification of human rights be found which is universally accepted or even accepted by half the

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<sup>43</sup> Konrad-Adenauer-Stiftung. Menschenrechte sichern, 16.

<sup>44</sup> Schulz-Reiss. Nachgefragt, 15.

<sup>45</sup> Schulz-Reiss. Nachgefragt, 21.

<sup>46</sup> Punt. *Idee*, 222, comp. 222-226.

world's population. "A universally accepted theory of human rights cannot be given. This is generally seen and able to be experienced.<sup>47</sup>" And this lack has negative consequences. When human rights catalogues have no retrospective dependence on any higher authority, then human rights are only the result of a vote and are valid only as long as they are agreed to. Josef Punt emphasizes this point: "Without this retrospective dependence, humanity is only a postulate, without which human rights lose their inalienability . . . for without this retrospective dependence, they can be withdrawn at any time by a new agreement."<sup>48</sup>

The derivation of the existence of human rights is as much a matter of dispute as are the questions of which individual human rights there are, how they relate to each other, and in conflict situations, which ones have the priority. "As a general assessment, it can be concluded as follows: There is no agreed upon canon of essential and inalienable human rights nor of elementary and fundamental human rights. It seems as if everyone knows about the problem and about the problem of determining a canon, and everyone knows the danger of retreating from what has already been achieved. Nevertheless, I often sense unease in the debate because an all too broad catalog endangers *Western* fundamental ideas of universal validity."<sup>49</sup>

The idea behind the human rights notion of human dignity is remarkably vague and without universally accepted justification. At the same time, we must emphasize, it is one of the most effective concepts in world history. While in Anglo-Saxon philosophy and discussion, for example, legally protected human rights have been viewed with great self-evidence as moral rights, the German discussion almost unanimously rejects this. For instance, Jürgen Habermas rejects the claim of unambiguous moral validity for rights and does the same as it relates to legally protected rights.

On the one hand, human rights naturally have to be prior not only to all states but also prior to all religions and worldviews. Otherwise they do not work. Even Christian churches cannot co-opt human rights for their own. After all, human rights have not only been protected in cooperation with churches, as in the United States of America, but rather have also been protected successfully against churches, as in France.

The matter is more complicated still when one considers that there are people who take advantage of their own alleged rights in order to do damage to others. Which rights of people are truly inviolable in any and in all situations, and which may be restricted in order to protect other people?

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<sup>47</sup> Volker Gerhardt in: Brunkhorst et al., *Recht auf Menschenrechte*, 43.

<sup>48</sup> Punt. *Idee*, 225.

<sup>49</sup> Nooke. *Gelten Menschenrechte*, 33.

Fundamental rights can also be restricted according to the German Basic Law (constitution) in order to protect the public good, for instance when a criminal is sent to jail. According to Article 18 of German Basic Law, one can even partially forfeit his or her basic rights.

For the question of justification, the following are to be individually substantiated: 1. To whom do human rights apply; in particular, how is it that they apply to everyone? 2. As regards content, which human rights are there, and why are there these human rights and not others? 3. Is there a human rights ranking which is decisive in the case of a rights collision or conflicting obligations, and if so, why is it this ranking and not another? 4. How should human rights be enforced, i.e., why should human rights be enforced by the highest possible level of the state monopoly and by the international community of states?

The conflict of obligations between different rights begins at the highest level. Thus, freedom and justice cannot both be extended arbitrarily. In the UN's 1966/1976 International Covenant on Civil and Political Rights, for example, the rights conflict between freedom of opinion (Article 19) and the prohibition against national, racist, or religious hatred (Article 21) is as clear as, for instance, the conflict between the equality between man and woman (Article 3) and the right to religious freedom (Article 18).

As much as I have repeatedly set forth a Christian justification for human rights as a Christian theologian and sociologist of religion, and as much as I am convinced that historically seen there are central elements of the notion of human rights which stem from the Judeo-Christian tradition, even if in a secularized form, and indeed, as much as I repeatedly issue reminders of the justification deficit of the notion of human rights, the following still applies: 1. No one should be interested in seeing another person reject the notion of human rights because that other individual rejects the former's religion or worldview. 2. Pragmatism, in the sense of calling upon human rights from a general human feeling and from an increasingly strong positive experience with the practice of human rights, is not the worst thing if it enables a life compatible with human dignity. 3. And finally, I would prefer that someone welcomes the notion of human rights, indeed observes them, and does not know exactly why, rather than have his rejection of a certain justification of human rights bring him to believe he is entitled to commit human rights violations.

Significant human rights philosophers hold human rights to be "self-evident"<sup>50</sup> – as was done as early as in the Declaration of Independence of 1776. Thus, they are seen as apparent, as a matter of course, and as self-explanatory. Their enforcement does not have philosophical or religious

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<sup>50</sup> E.g., Hunt. Inventing.

deliberations to thank, but rather compassion and terror in the face of horrible experiences of injustice which all people are in the position to consider. Rational discourse helps in designing protections, but the motivation for rights protections is pre-rational. When faced with concentration camps and famines, almost every individual reacts in a similar manner. The anti-slavery movement originated with strongly religious people, but it was able to achieve emotional shock value on the part of many without awakening any regard for their worldview. The man on the street experienced the situation vicariously and prevailed against the state and the world of commerce.

Since the experience of injustice is universal, the desire for human rights is the best idea on the market to prevent such injustice. For that reason, one must rest “upon a largely practical . . . consensus.”<sup>51</sup> Philosopher Charles Taylor believes that the notion of human rights was able to spread so globally precisely because so many people dispensed with a true justification. There is surely something true about this, but there is also the danger that without a clear conceptual foundation the notion of human rights could be lost.

### Are human rights bound to culture?

It has to be observed that a vast range of cultural and religious traditions were involved in defining and defending human rights by the United Nations. “When the Universal Declaration of Human Rights was composed, it was not only Western but rather also many other traditions – the Chinese, the Near Eastern Christian, the Marxist, the Hindu, the Latin American, and the Islamic – which were all represented. Furthermore, the members of the commission, who formulated the Declaration, did not understand their mandate to be a mere confirmation of Western convictions. Rather, they saw the work as an attempt to work out a limited spectrum of universal moral values drawing upon a wide variety of religious, political, ethnic, and philosophical sources.”<sup>52</sup>

There were 48 countries which agreed to the 1948 Universal Declaration of Human Rights; 34 countries had a Christian majority, 10 a Muslim majority, and 4 a Buddhist or Confucian majority. 48 countries voted in favor of it, while 8 abstained. No country voted against it. The sole Islamic state abstaining was Saudi Arabia, and the sole Western African country abstaining was South Africa (on account of apartheid), while the remaining states abstaining were states under the influence of the Soviet Union –

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<sup>51</sup> Volker Gerhardt in: Brunkhorst et al., *Recht auf Menschenrechte*, 43.

<sup>52</sup> Ignatieff. *Menschenrechte*, 84.



these six abstentions were above all due to Article 13, the right to leave a country.

There were 18 men and women from Egypt, Australia, Belgium, Chile, China, France, Great Britain, India, Iran, Yugoslavia, Lebanon, Panama, the Philippines, the Soviet Union, the Ukraine, Belarus, Uruguay, and the USA who collaborated on the declaration. UNESCO had previously received opinions by 70 leading thinkers, among them Mahatma Gandhi from India, the Muslim writer from India, Hamayun Kabir, the Chinese philosophy professor, Chung-Shu Lo, the English author, Aldous Huxley, the Russian law professor, Boris A. Tchechko, and the Indian social reformer, S. V. Puntambekar, to name just a few. Michael Ignatieff rightly states: “The international human rights revolution was not set into motion by states which already were practicing what they declared.”<sup>53</sup> “They also knew that the declaration did not announce the superiority of European civilization. Rather, it represented the attempt to save the remains of the Enlightenment from the barbarianism of a recently ended world war.”<sup>54</sup>

The former Commissioner for Human Rights Policy for the German government, Günter Nooke, wrote the following in an opinion piece entitled “How We Water Down Human Rights:” “The notion of human rights emerged in North America and in the history of Enlightenment Europe. The experiences of injustice through war, the Holocaust, and Stalinism all contributed to the formulation and adoption of the Universal Declaration of Human Rights on December 10, 1948. The genesis of human rights in the context of ‘Western’ culture and politics in no way excludes its universal application. It also does not help to deny this fact in the hope that other regions of the world will more willingly follow us. Instead, a too timid defense of universal claims has opened a back door for a reinterpretation on the basis of other cultural or religious experiences.”<sup>55</sup> “The idea of human rights does not demand a uniform culture: However, it allows for diversity only on the basis of a minimal, but universally accepted understanding of the rights of every individual person. It is precisely the opponents of the notion of human rights who over the past few years have increasingly positioned the concept of ‘cultural diversity’ as a counter-concept to the idea of universally applicable human rights. Internationally, in the meantime, more is spoken about the alleged defamation of Islam or of religion in general than about the elementary human right of freedom of belief.”<sup>56</sup>

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<sup>53</sup> Ignatieff. *Menschenrechte*, 30.

<sup>54</sup> Ignatieff. *Menschenrechte*, 85.

<sup>55</sup> Nooke. “Wie wir die Menschenrechte . . .“

<sup>56</sup> Nooke. *Gelten Menschenrechte*, 35.

The governments of China and Malaysia, but also of Singapore and Taiwan (to name four representatives of the signatories of the 1993 Bangkok Declaration) readily invoke the priority of social and cultural basic rights as they relate to their violations of basic rights to justice. The only question is, who is it who actually says what is typically Chinese, the government or the dissident? And how do we know that 1.3 billion Chinese want faster sentencing without legal proceedings? And why are these rights only invoked when it is a matter of state action against individuals? Why does one not argue on the basis of social basic rights against the massive impoverishment of the rural Chinese population? And why is the individual not allowed to invoke his cultural tradition against the state but rather only the state against the individual?

However, the danger of watering down conceptions of human rights by pointing to supposedly different cultural circumstances (is there a culture in which people want to be tortured?) should not be overlooked as well as the fact that the concrete implementation of human rights always occurs within the framework of a state which always has an underlying culture and history. This even applies within the ethics of a tradition, for instance that of the Judeo-Christian tradition. From the Bible, one can for instance derive the right to orderly court proceedings with clearly predefined laws, the questioning of witnesses, incorruptible judges, and the right to the opportunity to defend oneself. And if so, then with which legal system is it to be equated? With the German, the English, the French, or the legal system of the United States? Does not everyone know how strongly these differ from each other? There should be provision provided for each people group on earth to have the right to orderly court proceedings, which surely is part of human rights, and this should occur in a sphere that is organized according to their own cultural and historical traditions.

Are there truths which bind democracies?

The Catholic theologian William J. Hoye has rightly pointed out that democracies ultimately rely upon certain inviolable truth claims for rational discourse among all the participants, regardless of whether these truth claims can be justified either religiously or philosophically.<sup>57</sup> For example, the German constitution is simply and totally committed to human rights without any further foundations or justification. And the preamble of the 1948 Universal Declaration of Human Rights talks about “recognition” and even about “faith” when it states: “Whereas recognition of the inherent

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<sup>57</sup> William J. Hoye. *Demokratie und Christentum: Die christliche Verantwortung für demokratische Prinzipien*. Aschendorff: Münster, 1999, 29-33, 47-49, and often.

dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and mentions “faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” Hove notes that similar formulations, which presuppose the acknowledgement of a predefined, apparently unalterable truth, are found in many human rights documents and constitutional texts. There is a kind of faith or recognition of a higher truth that in some sense comes before such proclamations of human rights. As another example Hove mentions German state constitutions which speak about “respect for the truth” and basic convictions related to human rights, and even of education towards “respect for the dignity of every person” (Constitution of Bremen, Article 26).

The thought that all people have dignity and therefore should share their perception of truth in a democracy is inherent in a democracy.<sup>58</sup> In an important sense, “like no other political system, democracy is reliant upon philosophical thought.”<sup>59</sup> Even if only a small number of democratic systems want to force their structure upon other countries, democracy is nevertheless a strongly missionary state model which by no means relies upon randomly successful balloting. Rather, it is reliant upon final truths about human dignity which should be pragmatically practiced even if the religious or metaphysical explanations are lacking, and which make a person seem undemocratic if they question them.

Does not the erection of international courts with jurisdiction for genocide, before which state rulers have to answer, assume an overarching ethic over all states and all positive law?<sup>60</sup> Is there not too little discussion at this point? From the secular side, is there not as much a presupposed ethos with universal reach as there is on the religious side, such as that which Christianity takes from Judaism and the Torah or the once prevailing notion of natural law? And how does this concept – in a much more concrete version and completely different meaning – relate to what Islam has with the Sharia? And should such a world ethos not likewise be subjected to an intensive discussion for its final justification, as Christian ethics has always been throughout its history? Do not a lot of people hide their lack of final justification behind the pretense that they are the only ones who do not want to argue religiously or recognize they might have something in common with the religious fundamentalist?

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<sup>58</sup> Ibid., 39.

<sup>59</sup> Ibid., 53.

<sup>60</sup> “Positive law” (from Latin, *positio*) is the technical term for publicly written and currently applicable law. It stands in contrast with informal cultural norms or an unwritten natural law.

Let us take the example of the permissibility of pregnancy termination. On both sides the argument is made by reference to a supranational law – as a start we will skip the broad spectrum in between which seeks a compromise. The teaching authority of the Catholic Church and the greater part of the Evangelical movement view unborn individuals as people with complete human dignity and do not grant any state the prerogative to allow this human life to be terminated.<sup>61</sup> The state is measured against a truth that is higher than the state, which on the one hand is a religious truth, but which, according to the understanding of its proponents, is also visible to every rational person without regard to religion.

However, the opponents of the right to life also do not simply point to positive law resting upon majority decisions in parliaments in favor of the approval of abortion. If so, then they would have to accept that likewise in Ireland, Poland, and many non-Western nations abortion is not allowable owing to laws mandated by parliamentary action or by referendums. However, they argue here for rights for all people extending beyond the state, such as that of women's right to self-determination, or directly for a human right to abortion. Both sides measure the state in a seemingly religious manner by referencing eternal values and truths which bind democracy together. Furthermore, they assume that the other side, on a foundation of base motives spiting all reasonableness, does not want to understand these values.

### My recommendation

My proposal is that we talk about human beings having a direct awareness of the dignity of other people that comes before any historical religion or philosophy. This sets our awareness of human dignity into a status so that this knowledge allows us to evaluate political systems, philosophies, and religions. Within Evangelical theology we are beginning to talk about such an awareness of human dignity as part of God's general revelation, given to all of humanity to make civilization possible, in contrast with God's special revelation in Christ, which is given to believers for the purpose of salvation by faith.<sup>62</sup> In this way we can explain why people have a God-

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<sup>61</sup> Classically on this is the presentation of a leading Evangelical who converted to the Catholic faith, Francis J. Beckwith, *Defending Life. A moral and legal case against abortion choice*, Cambridge 2007, also comp. Martin Rhonheimer, *Abtreibung und Lebensschutz*, Paderborn 2004.

<sup>62</sup> See Thomas K. Johnson, *The First Step in Missions Training: How our Neighbors are Wrestling with God's General Revelation*, World of Theology series vol. 1 (WEA Theological Commission, 2014), 21. Online: <http://www.bucer.org/resources/category/buecher.html>.

given pre-theoretical awareness of human dignity that is not entirely dependent on their religion but is compatible with faith within the Judeo-Christian tradition. And as Evangelicals we invite our neighbors to make similar developments within their theories of ethics.

### The ideologization of human rights

The term “human rights” is often hastily utilized as if it is clear to everyone what is actually at issue. After all, one can surely agree with Ulrich Dehn when he writes: “Few political, legal, and anthropological terms are so broad and vague and lure users into ideological misuse than those relating to human rights.”<sup>63</sup>

At the UN, invoking human rights plays an enormous role in every type of political lobbying, whether good or bad. Most frequently, human rights are addressed by those who most often infringe upon them. They also call most frequently for completely new human rights. Thus, it is often difficult to recognize in political poker who truly wants something for other people and liberty *for all*, and who is only conducting morally glossed-over political patronage or wanting to conceal their own problems.

In the global discussion about so-called third generation human rights, which are the human rights of complete peoples and groups and which will be addressed later, there is no rapprochement in the direction of accord. Instead, there are whole blocks of states competing against each other.

The question regarding Israel and the Palestinians, which persistently occupies the UN, is also less addressed because the human rights situation of the Palestinians is so near and dear to the most vocal countries. Otherwise, a number of the states would do something concretely for the Palestinians in their country and as the centerpiece of Middle Eastern foreign policy.

The protection of human rights in the case of military intervention is in the meantime the most popular justification – for good or for ill.<sup>64</sup>

One has to soberly see that apart from a few violators of human rights, 1. nowadays almost every government and everyone in power attempts to envelop everything in the coat of human rights, and 2. attempts are made to confer more weight upon almost every public demand by making a connection to human rights.

Is there a human right to smoke, to travel, to love, to err, to take drugs, to have a television or an automobile? All of that and much more has al-

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<sup>63</sup> Ulrich Dehn. “Religionen und Menschenrechte,” *Materialdienst der Evangelischen Zentralstelle für Weltanschauungsfragen* 60 (1997) 2: 33-41, here 33.

<sup>64</sup> For more background see Grube, *Menschenrechte als Ideologie*.

ready been postulated. Self-defense is permissible, often unavoidable, but is there truly a human right to self-defense? Are there important questions here, needing to be clarified but super-elevated by the human rights question and thus in part irresolvable?

All the same, let us take a disputed example from within the UN at the moment. Is there a right to abortion, as is increasingly frequently championed? To dignify the plight of women who actually do not want to become pregnant is one thing. However, it is difficult to understand that a human right to an abortion is proclaimed for the mother while not at least mentioning the unborn and also failing to see a collision between highly valued legally protected rights.

This should not, however, mean that in principle no human rights could be added. The rights of individuals with handicaps, special children's rights, or the right to drinking water (how else can one be a human without water to drink?) are all rather recent developments and nevertheless undisputed.

## Human duties

Buddhist and Christian authors in particular have repeatedly pointed out that the current notion of human rights is negatively oriented. Thus, to state it negatively, human rights have to do with what may not be done with me or what the state may not neglect to do. As legitimate as this is, observing human rights on a broad scale can only be successful if people are oriented towards each other in love.

Under the honorary chairmanship of former German Chancellor Helmut Schmidt, the InterAction Council, an association of many former state leaders from around the world based in Tokyo, presented a Universal Declaration of Human Responsibilities to the UN in 1997. Helmut Schmidt proposed that in the German translation the word for "duty" be used, but the German word for responsibility would have been a more plausible translation. Without placing human rights in question, the Declaration seeks to complement the one-sided emphasis on rights since "the exclusive insistence on rights can result in conflict, division, and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos," and since "all people, to the best of their knowledge and ability, have a responsibility to foster a better social order, both at home and globally, a goal which cannot be achieved by laws, prescriptions, and conventions alone, whereas human aspirations for progress and improvement can only

be realized by agreed values and standards applying to all people and institutions at all times.”<sup>65</sup>

The foundation is found in Article 1: “Every person, regardless of gender, ethnic origin, social status, political opinion, language, age, nationality, or religion, has a responsibility to treat all people in a humane way.” It is not surprising that Article 4 quotes the Golden Rule that goes back to Jesus but also to various philosophers in the form of a German saying, which translated into English states: “What you do not wish done to yourself, do not do to others.”

Borrowings from the structure of the second part of the Ten Commandments are also recognizable in the Declaration: “In all its cultural and religious varieties, marriage requires love, loyalty and forgiveness and should aim at guaranteeing security and mutual support.”<sup>66</sup>

The German Federal Agency for Civic Education has offered an excellent statement on this theme: “According to our legal understanding, there are also duties which invariably belong to rights. Human rights also have such a reciprocal relationship. Admittedly, it is principally individuals who possess human rights and the states which have the duties. Basic direct international duties on the parts of individuals derive from the prohibition against participation in the most severe international crimes (genocide, war crimes, crimes against humanity, crimes arising from wars of aggression). Apart from that, international laws, because they are principally states’ rights, have hardly any duties of the individual when contrasted with national law. That does not mean, however, that the individuals are released from their responsibilities towards the community. ‘Everyone has duties to the community in which alone the free and full development of his personality is possible.’ (Universal Declaration of Human Rights, Article 29, Paragraph 1) An inherent duty relating to human rights for the individual consists in paying attention to the human dignity and human rights of other individuals and not taking advantage of one’s own rights at the expense of the rights of another. Respect for human rights begins in day to day life. Education, morality, and national law contain corresponding rules for co-existence.”<sup>67</sup>

The question “Are human rights claims bound to the fulfillment of duties?” is answered as follows: “As important as the connection between rights and duties is, it cannot be concluded therefrom that claims to human rights should be legally bound to the fulfillment of certain social duties by

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<sup>65</sup> [Http://www.peace.ca/univdeclarticle.htm](http://www.peace.ca/univdeclarticle.htm). Viewed July 28, 2014.

<sup>66</sup> [Http://globlethic.org/Center/unesco.htm](http://globlethic.org/Center/unesco.htm). Viewed July 28, 2014.

<sup>67</sup> Menschenrechte. Politik und Unterricht, 7.

the individual. Whoever generally places human rights under the proviso of social fulfillment of duties softens human rights protection.”<sup>68</sup>

## Buddhism

Let us take Buddhism as an example. I am limiting myself to how the encyclopedia *Ethik der Weltreligionen (Ethics of World Religions)* represents the assessment of Buddhism’s relationship to human rights.<sup>69</sup> One reads there that the discussion about human rights in Buddhism “kicked off relatively late” and that Buddhism has always found human rights to be a Western notion. In particular, this applies since in classical Buddhist texts there are no texts in which one could identify a starting point. “The concept of dharma in the sense of a cosmic moral order regulating human behavior” also makes it difficult. What is meant by this is that each individual has his or her prior life to thank for the situation being experienced now. According to the encyclopedia, there have been attempts, specifically since 1988, to formulate thoughts about human rights given Buddhism’s central summons to compassion. Thus, the efforts attempt to couple “the principle of compassion with the Bodhisattva concept,” i.e., “the idea of a spiritually advanced being deferring one’s own well-being for the benefit of another.” From a Western point of view, that has the peculiar overtone that human rights and the rights of animals and plants are addressed jointly since this compassion applies to the entire created order. With this approach, one does not truly find a special position for humankind within the rest of the created order.

There is, however, no question that among the classic world religions, Buddhism comes closest to the content-based support for human rights after today’s Christianity (and smaller, newer religions like Bahai), and Buddhist thinkers are increasingly reconciling themselves with the notion of human rights. Nevertheless, Buddhism provides only a narrow basis, for instance, to call upon Buddhist politicians and high officials in Sri Lanka, who are prepared to use violence, to refrain from violence and political pressure against adherents of other religions.

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<sup>68</sup> Menschenrechte: Politik und Unterricht, Heft 2/2005; **Fehler! Hyperlink-Referenz ungültig.** P. 7. Viewed July 29, 2014.

<sup>69</sup> Klöcker, Tworuschka. *Ethik*, pp. 24-26. For more details see the same metaphor in Carmen Meinert, Hans-Bernd Zöllner (eds.). *Buddhist approaches to human rights: Dissonances and resonances*. Bielefeld: Transcript, 2010.



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## Islam – the Sharia<sup>70</sup>

The majority of all religions and worldviews are increasingly following suit in thinking about human rights. This also applies for such branches of the great religions which have done little up to this point. Thus, as far as this question is concerned, the world of Orthodox Christianity is often closer to Islam than it is to the other large Christian denominations. However, in the meantime the notion of human rights has after all been principally welcomed, if still with theological reservations, by the Russian Orthodox and Greek Orthodox Churches.

Islam is the sole religion in which large sections find it hard when it comes to human rights, or better said, with human rights for *everyone* (extending, for instance, to women and non-believers) and when it comes to certain aspects of human rights (religious conversion away from Islam, for instance, as well as freedom of the press for religious topics). Indeed, there have been Islamic democracies in completely free countries, such as Mali, and indeed there are significant intellectual pioneers with respect to human rights in Islam, such as Abdullah Saeed, but the majority of people and states remain unaffected by these developments.

The Islamic Cairo Declaration of Human Rights, which is advocated by 57 states within the Organization of the Islamic Conference, justifies human rights from the Sharia,<sup>71</sup> which is Islamic law, but it also limits human rights to those allowed by the Sharia. With practically every reference to human rights, the Declaration mentions a limitation that these rights only apply as long as the Sharia does not decree otherwise. It is to be added that this is an arbitrary approach since the Sharia is not a prescribed law book but rather a collection of almost 1500 years of legal history with regional differences. In the end, the Sharia is that which Islamic scholars stipulate in fatwas.

Thus, in Article 12 one reads: “Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his

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<sup>70</sup> For more on this topic see Christine Schirmacher, *The Sharia – Law and Order in Islam*, The WEA Global Issues Series, Vol. 10, Culture and Science Publishing: Bonn, 2013, 74 pp. Online: <http://www.bucer.org/resources/details/the-sharia-law-and-order-in-islam.html>.

<sup>71</sup> See Schirmacher, *Sharia and further literature* by Christine Schirmacher in the bibliography.

protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.”<sup>72</sup>

Article 16 reads as follows: “Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom . . .” That is normal sounding as regards freedom of speech and freedom of the press and related principles of intellectual property. In the next phrase, however, one reads that this applies “provided that such production is not contrary to the principles of Shari'ah.”

Included in the freedom addressed here is specifically the right to contradict religious norms. Christians have always utilized the right to mutual criticism, and then – even if the criticism has not always been pleasant – they welcome a society in which one is allowed to freely speak for or against the Christian faith.

In Article 10 one finds the following: “Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.” In a declaration of human rights, it is expressly stated that it is forbidden to use pressure to bring about the conversion of an individual from Islam to another religion or to atheism. Nothing is there as regards the opposite. To exert pressure on an individual or to exploit his poverty or lack of knowledge in order to convert an individual to Islam appears to be allowed.

What is missing in Article 5 as it relates to the freedom to marry is religion. This is no wonder. After all, a Muslim woman is not allowed to marry a non-Muslim man. In Article 6a one finds: “Woman is equal to man in human dignity and has rights to enjoy as well as duties to perform . . .” Woman is equivalent to man as it relates to dignity but not as it relates to rights!

Article 22 a to c reads as follows: “(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah. (b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah. (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.”

Certainly one has to soberly observe that the Organization of the Islamic Conference and Islamic states willingly make wholehearted declarations to the outside which do not apply internally. No country has yet adapted its

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<sup>72</sup> [Http://www.fmreview.org/en/FMRpdfs/Human-Rights/cairo.pdf](http://www.fmreview.org/en/FMRpdfs/Human-Rights/cairo.pdf).

legislation to the Cairo Declaration. The claim that punishments in the Sharia have to apply always and everywhere (what place does this have in a human rights declaration?) has nowhere exacerbated the penal code; where, for example, drastic corporal punishment has not been present in the penal code, Sharia punishments have fortunately not been introduced to make punishments more drastic.

And yet, it is not always Islam which is guilty of the poor human rights record of many Islamic states. The *Süddeutsche Zeitung* tellingly describes the situation: “In issues relating to human rights, things are miserable when it comes to the Islamic world. Most states sponsor torture: Whether it is Egypt, Syria, Iran, Pakistan, or Uzbekistan, human dignity is trampled underfoot. It does not look better with respect to other basic rights. The legal systems of most Islamic states emerged while borrowing from the French, British, or German models, and on paper they might look exemplary. In practice they have shown themselves to be deficient. Reasons for this are judges who subject themselves to the wishes of the regime, corrupt police structures, and all-powerful intelligence agencies. This has little to do with Islam as a religion and more to do with the balance of power which has developed. The majority of Arab states are led by kings, emirs, dictators, or autocrats who rule for life. Other Islamic states as well are not role models. There also, apart from Turkey and individual South East Asian countries, the elections are more acclamations than a reflection of fair competition to choose the best government. It is a fact that Islam as such, and above all the cultural environment it has developed since the seventh century, have together brought synchronization problems with them when it comes to convergence with a Western legal understanding. And the same goes for human rights themselves. The debates regarding the position of women and the dispute regarding the lawfulness of the brutal corporal punishments set down in the Sharia have gone in circles for centuries. Conservative Muslims emphasize the irrevocable domination of divine law over all humanly devised legal systems: The Sharia invokes parts of the Koran as it has been declared by God and the directions of the Prophet Mohammed. In addition thereto, there are collections of legal interpretations by Islamic legal experts and theologians which have accumulated over the centuries.”<sup>73</sup>

*For more detail see the Global Issues volume entitled **The Sharia: Law and Order in Islam.***

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<sup>73</sup> Tomas Avenarius, “Die Scharia und die Menschenrechte,” *Die Süddeutsche Zeitung*, December 8, 2008, <http://www.sueddeutsche.de/politik/menschenrechtserklaerung-die-scharia-und-die-menschenrechte-1.365417>.

## The Creator desires human rights

It would help the Islamic world if it would give less attention to the secular character of human rights, which it finds threatening, and would more heavily emphasize the authorization Judaism and Christianity give to human rights as coming from the Creator. The Islamic world would be better served by seeing how human rights are anchored in the nature people have as beings created by God. Why should a Muslim not be able to agree to the following three quotations?

In the American Declaration of Independence, dating from 1776, one reads the following: “We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . .”

In the Bill of Rights for the State of Virginia, dating from 1776, one finds the following in Articles 1 and 16: “That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity.” “That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity toward each other.” (At this point one would naturally have to replace “Christian” with “Muslim” or “God-fearing” if it were to apply to Muslims.)

In the discussion about Germany’s basic law in the Parliamentary Council, a Christian representative said: “There are rights prior to and above the state which arise out of nature, out of the nature of humanity, and out of the various human communities which the state must respect. All authorities of the state find their limits at the point of these natural rights willed by God for the individual, families, communities, homelands, and professional associations.”<sup>74</sup>

Or let us think of the many authors who defend the idea that human rights presuppose faith. One does not have to follow them in order to be in

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<sup>74</sup> Dr. Seebohm in the second meeting of the Parliamentary Council on September 8, 1948, quoted in Eckart Busch, “Das Menschenbild in der Verfassung der Bundesrepublik Deutschland,” 4-27 in: Evangelisches Kirchenamt für die Bundeswehr (ed.). *Von der Würde des Menschen. Beiträge aus der Militärseelsorge* 36 (Mai 1986). Evangelisches Kirchenamt für die Bundeswehr: Bonn, 1981, 8.

favor of human rights, but for billions of religious people this is the simplest way to human rights. Let us again choose three quotations:

“The liberal (civil rights and liberties and rights of equality) basic rights, in particular the classical civil rights and liberties, were viewed as inherent, natural, eternal, divine, prior to the state, and binding for the drafters of constitutions. For that reason they were thought to be absolutely unalterable, indissoluble, inalienable, unable to lapse, and inviolable rights. That there are such unwritten basic human rights which can be stifled by the state but which can be neither created nor abolished by the state ‘is something which is not to be demonstrated or refuted but rather only believed or disavowed’ . . .”<sup>75</sup>

The German legal theorist Christian Starck writes: “The guarantee of human dignity assumes that the individual is more than he knows himself to be. It cannot be fully grasped by means of rational science. It is metaphysically open.”<sup>76</sup> “Discussions up to this point have shown that in terms of law, the modern state lives on the basis of presuppositions which the state itself cannot guarantee.”<sup>77</sup>

The Swiss legal expert Peter Saladin has rightly pointed out, “Science ends at this point, and faith begins. Every attempt to justify human rights has to necessarily rest upon a confession of faith.”<sup>78</sup>

For many religious people, and they account for the large majority of the world’s population, it is difficult to understand how people reject global ethics in the sense of a created order as intolerant but are still able to make human rights the sole individual moral standard.

## Christian roots?

That human rights as protected rights have Christian roots has repeatedly been advocated.<sup>79</sup> As Wolfgang Fikentscher sees it, “there can be no doubt

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<sup>75</sup> (Wolfgang Hug). *Die Menschenrechte*. Informationen zur politischen Bildung 129. Bonn: Bundeszentrale für politische Bildung, 1978-2, 8. (Block omitted).

<sup>76</sup> From the Greek ‘meta’ = over, beyond and after ‘physis’ = nature, i.e., supernatural, standing above nature.

<sup>77</sup> Christian Starck. “Menschenwürde als Verfassungsgarantie im modernen Staat,” *Juristenzeitung* 36 (1981) 14 (July 17): 457-464, here 463.

<sup>78</sup> Peter Saladin. *Grundrecht im Wandel*. Verlag Staempfli & Cie: Bern, 1970, 432.

<sup>79</sup> Montgomery. *Human Rights*; numerous essays in Ernst-Wolfgang Böckenförde, Robert Spaemann. *Menschenrechte und Menschenwürde*. Stuttgart: Klett-Cotta, 1987.

that human rights as we understand them today have a Christian origin, notwithstanding their politically frail and tragic early forms.”<sup>80</sup>

In his groundbreaking investigations on the pre-history to the Declaration of Human and Civic Rights<sup>81</sup> of 1789, Georg Jellinek defended the position that modern human rights developed from the constitutions of early states in the United States shaped by Christianity in general and Calvinism in particular. Furthermore, he defended the stance that all human rights developed from the right to religious freedom and freedom of conscience that was gradually initiated through the Reformation. The discussion surrounding this thesis is ongoing up to this day, whereby there are definite advocates as well as opponents of this point of view.

Arthur F. Holmes wrote regarding human rights: “Correctly understood, it is, however, a concept the cause of which is through and through theistic and Christian.”<sup>82</sup> Even Karl Marx supported this notion:<sup>83</sup> “Human rights as the mere protection of human ego is something Marx sees as a product of Christianity and therefore rejects along with Christianity.”<sup>84</sup>

This is not to say that Christianity has throughout history more strongly respected human rights and implemented them or that there is a straight line from Jesus to human rights. Christian Starck, however, has correctly written in the *Juristenzeitung* (a specialist journal for legal theorists): “Failures of the Christian church against human rights . . . do not refute the origin of human dignity as coming from Christianity.”<sup>85</sup>

It is also the case that Christianity – with some exception for the large orthodox churches – has its easiest time with human rights having a character resting above religions and secular notions. As far as Klaus Tanner is concerned, the notion of human rights is simply “the decisive intersection

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<sup>80</sup> Wolfgang Fikentscher in *ibid.*, p. 58. For more on this see Pavel Hošek, “The Christian Claim for Universal Human Rights in Relation to Natural Law: Two Perspectives,” *International Journal for Religious Freedom* 5:2, 2012, 147-160.

<sup>81</sup> Georg Jellinek. *Die Erklärung der Menschen- und Bürgerrechte: Ein Beitrag zur modernen Verfassungsgeschichte*. Duncker & Humblot: Leipzig, 1895<sup>1</sup>, 1904<sup>2</sup>, 1919<sup>3</sup>, *ibid.*: München, 1927<sup>4</sup>, the most easily accessible is in Georg Jellinek. “Die Erklärung der Menschen- und Bürgerrechte,” 1-77 in: Roman Schnur (ed.). *Zur Geschichte der Erklärung der Menschenrechte. Wege der Forschung II*. Wissenschaftliche Buchgesellschaft: Darmstadt, 1964.

<sup>82</sup> Arthur F. Holmes. *Wege zum ethischen Urteil: Grundlagen und Modelle*. TVG. R. Brockhaus: Wuppertal, 1987, 83.

<sup>83</sup> E.g., Marx Engels Werke, *Bd. 1*, 362ff.

<sup>84</sup> Christian Starck. “Menschenwürde als Verfassungsgarantie im modernen Staat,” *Juristenzeitung* 36 (1981) 14 (July 17): 457-464, here 461 with source citations.

<sup>85</sup> *Ibid.*, 460 (with additional literature).

between efforts within the church and outside the church for designing a human ethos as a foundation for political activity.”<sup>86</sup>

### The major churches

Most major churches did not champion human rights until after the experiences of the Third Reich, i.e., the time when human rights first became the starting point for political thought. According to Josef Punt, churches shifted to the ideas behind human rights because they did not represent a prescription for a new atheistic vision of society –with practically its own religion – but rather became “simply the final court of appeal in order to ensure and protect individualized designs against an overpowering state.”<sup>87</sup> Up to that time, the notion of human rights had been so closely identified with the Enlightenment and its struggle against the church that the church preferred to stay with its own description of human dignity.

As far as it relates to the Catholic Church, this view seems to apply. Emanating from the human rights ideas in England and America, human rights were acknowledged much sooner in Protestantism since along with their Christian justification they became the new foundation for the state in the USA. At that time such ideas had not yet taken hold in the Catholic Church.

One can agree with Punt that Christian teaching in the Middle Ages was only unaware of universal human rights due to a situation where instead of human rights a universal sense of justice was taught. This universal sense of justice stood above the state and set a direction for all of public life.<sup>88</sup> The state and the Church were subject to God and universal justice and were measured against these. It was not until Nicolo Machiavelli (1469-1527) that the sovereign state unfastened itself from its attachment to divine law or to natural law<sup>89</sup> and declared that the state itself was the supreme lawgiver and the supreme power and did not have to orient itself towards anyone.

Gerhard Ritter views it similarly. He summarizes as follows: “Christian natural law doctrine of medieval Scholasticism primarily had its historical significance in establishing moral standards and the idea of an eternal order

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<sup>86</sup> Klaus Tanner. *Der lange Schatten des Naturrechts*. Stuttgart: Kohlhammer, 1993, 35.

<sup>87</sup> Punt. *Idee*, 176.

<sup>88</sup> Punt. *Idee*, 33-36.

<sup>89</sup> Punt. *Idee*, 70.

of justice above the state – a concept of justice and peace which all earthly rulers had to serve.”<sup>90</sup>

### Once Again: Christianity and the Enlightenment

There is life in the old dog yet, as the saying goes. Natural law, which had long been buried in Christian theology and frowned upon in philosophy since the time of Immanuel Kant, is experiencing a cheerful comeback in human rights discussions. It does not matter that the large majority continues to maintain the idea that natural law is obsolete or that a small but growing minority wants to officially have natural law resurrected in a modern form. The fact appears to me to be that the thought of human rights without the Christian-Enlightenment pre-history of natural law - as a universal law standing above all other law and prescribed by God or by the essence of nature itself, by which, ultimately everything is measured (“being responsible before God and mankind”) - would never have been born.

In any case, human rights are first of all a product of European intellectual and religious history with the corresponding offshoot of European immigrants in America. A good example of how Christian and secular aspects intermingle for the benefit of human rights is Martin Luther King, Jr. It is known to only a few in Europe that King was not only a pastor and theologian but also held a doctorate in sociology.

Other worldviews trailed with their own justifications for human rights, but much later and not nearly in any manner that saw it permeate into the majority of adherents of these worldviews.

The existence of human rights is thus principally a Christian concept which is rooted in the towering dignity of each individual person as an image of the Creator. Admittedly, what applies in the case of democracy is that the modern human rights perspective has come about via a secularization of Christian and even particular Calvinistic notions. That is to say, the understanding of human rights has become a commingling of Calvinism and the Enlightenment.

Incidentally, the Enlightenment of the eighteenth century indeed saw a direct and undisputable improvement on the human rights front, for instance in the abolition of torture or witch trials. However, there were at the same time also many human rights violations trailing in the wake, in par-

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<sup>90</sup> Gerhard Ritter. “Ursprung und Wesen der Menschenrechte“ (1958), 202-237 in: Roman Schnur (ed.). *Zur Geschichte der Erklärung der Menschenrechte. Wege der Forschung* 11. Wissenschaftliche Buchgesellschaft: Darmstadt, 1964, 205; also comp. Eberhard Schockenhoff. *Naturrecht und Menschenwürde: Universale Ethik in einer geschichtlichen Welt*. Matthias Grünewald: Mainz, 1996.



ticular due to arbitrary measures taken in the age of revolution, due to the existence of Enlightenment absolutism, and through the massive increase in power and influence on the part of the state.

Otfried Höffer views human rights as the result of a combination of Judeo-Christian and Greco-Roman notions, mediated by Enlightenment considerations.<sup>91</sup> Certainly there is also a problem here nowadays, as for instance one constitutional commentator observed: “In any case, a uniform justification of basic rights is not possible from the viewpoint of intellectual history since there are ‘ostensibly irreconcilable, contrasting elements’ . . . .”<sup>92</sup>

I would like to venture the thesis that convinced atheists, practical atheists, nominal Christians, and secularized Christians in our country - and that encompasses the broad general public in our country – live with human rights as a fruit of Christianity, the Enlightenment, and Western culture because they fare very well with them and otherwise simply do not think about where human rights come from. This is not to say that committed Christians automatically think more about this.

### A Christian justification

For most Christians nowadays, human rights are a strung together chain of natural certainties, even if this would perhaps have been different 300 years ago. The Christian foundation of human rights is in the first instance the following: People, indeed all people and not only Christians, are God’s creations and images of God and for that reason possess an incredible dignity which precedes all other things. This dignity is not dependent upon how the individual person stands in relation to God, whether or not the individual is a Christian. The South African Archbishop Desmond Tutu has written: “This is the foundation of the egalitarian concept in the Bible: everything belongs to God. And all people are equal before him. That is an intoxicating assertion. No political ideology could be more radical.”<sup>93</sup>

What is at the basis of the notion of human rights is that all people have the same rights to be treated as people irrespective of their differences in race, religion, gender, politics, or social/economic status. So where is hu-

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<sup>91</sup> Otfried Höffer. “Christliche Sozialethik im Horizont der Ethik der Gegenwart,” From *Politik und Zeitgeschichte* (Supplement to *Das Parlament*) Nr. 20/91 dated May 10, 1991, 36-44, here 36-41.

<sup>92</sup> Hermann von Mangoldt, Friedrich Klein. *Das Bonner Grundgesetz*. op. cit., 57 (Block omitted).

<sup>93</sup> Desmond D. Tutu. “Religiöse Menschenrechte in der Bibel,” *Gewissen und Freiheit* 23 (1996) Nr. 46/47: 36-42, here 41.

manity's equality predicated, if not in God's having created everyone? For that reason, every Christian justification of human rights begins with the creation narrative in the first two chapters of the Bible in which the following is stated: "Then God said, 'Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.' So God created mankind in his own image, in the image of God he created them; male and female he created them." (Genesis 1:26-27)

Christians thereupon derive from the Bible the idea that God does not show partiality. Indeed, that applies in the church, but it applies above all to the state and that which is under its jurisdiction: Judges must independently and incorruptibly scrutinize what is the case, not show partiality, and not judge on the basis of the accused's religion. A murder is not made less atrocious if a Christian commits it. The Old Testament teaches that the judge should neither favor a wealthy individual nor should the judge favor a poor individual just because he is poor. Justice is to be dispensed without any partiality.

Added to this is the fact that in Judaism and Christianity, throughout the entire Old and New Testaments, the entire perspective with regard to the earthly world is a perspective comprised of legal structures. (Muslims can track with this, while Hindus and Buddhist do so to a much lesser degree.) The state is a constitutional state, and the political order is a legal order. What liberal Protestantism at one time derided or criticized because it desired a form of Christianity free from all laws, has long since become the structure of our everyday life: Collective life is held together by laws and statutes. Every power which is installed somewhere is derived from law. And this was already the case in Israel when other cultures hardly knew of such a thing.

Emerging from this is the fact that everyone, and that meant above all the king in the Old Testament, was subject to law, so that today the state itself is subject to law. It is not so striking for us when we read that the prophet Nathan confronted David on behalf of justice. This occurred after David had had an officer liquidated in a subtle and pseudo-legal manner so that he could have the officer's wife. But in much of our history the supreme ruler was not subject to law. For example, Kaiser Wilhelm II wrote in the Golden Book of Nuremberg: "I am the law." His father Kaiser Wilhelm I claimed, when it came to the matter of a constitution: "I won't let a piece of paper come between God and me."

The notion of a federal constitution, including the concept of the rule of law, is actually borrowed from the Old Testament notion of *Torah* and has increasingly been secularized since the seventeenth century in legal and

state language (“federal republic,” “confederation,” “federal constitutional court”). In the first instance, the thought is absurd that the highest authority of a country is only a piece of paper. You can put anything on paper. Paper cannot defend itself. Only out of the Judeo-Christian tradition can one understand that this piece of paper stands for a law to which every individual is subject and is that which holds the society together. It is not actually the king, nor the emperor, nor the pope, who is the highest authority, but rather the written statutory law. The authority for power is anchored in supreme law.

According to the Biblical-Christian understanding, the state itself is subject to law. From a Christian point of view, Romans 13 has to do with human rights because the state derives its legitimacy through ensuring justice and combating injustice. For this reason Christians are obligated to let themselves be ruled by non-Christian governmental authorities. The state about which Paul is speaking in Romans 13 is indeed that of the Roman emperor. For starters, Paul primarily sees the rule of law in the Roman Empire, which he himself used diligently. In terms of worldly justice, Christians are subject to the state. Paul even bluntly described the non-Christian state as “God’s servants” when they punish a Christian who does wrong. (Romans 13:1-7) That Christians have often handled this completely differently in the course of history does not change anything about the fact a Christian does not have to bend his faith out of shape if he now lives in a secular constitutional state.

What naturally derives from that is an automatic separation of church and state. When Jesus said, “Give to Caesar what is Caesar's” - he also knew that the Roman emperor was not a Christian – “and to God what is God's” (Matthew 22:21), he automatically conveys the loyalty Jews had to the state to loyalty to a non-Jewish state. The separation of church and state presupposes a religion which desires this. The German-speaking countries can be happy that the majority religion advocates this separation and does not combat it.

There are critics who maintain that human rights philosophy has the status of a state religion or a civil religion around the world and especially in Germany. This is actually nothing other than a secular variation of its Christian roots. Haimo Schulz Meinen writes for instance:

“In connection with Durkheim’s theses, it [is] possible to evaluate the notions of human rights as intellectual advancement of the Christian cultural tradition.”<sup>94</sup>

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<sup>94</sup> Haimo Schulz Meinen. *Die Staatsreligion: Menschenrechte kontra Naturschutz*. Marburg: Diagonal-Verlag, 2000, p. 168; a good compilation is found in Bielefeldt. *Auslaufmodell*.

## Bielefeldt: religions

The UN's Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, writes on the idea of human rights which he derives secularly from the circumstances that the ability to take on responsibility accompanies being human: "Confessing the dignity of humankind is not an exclusively Judeo-Christian or Western insight. Rather, it has points of reference in various religions and cultures, for instance in the Confucian human ideal (ren), in the Buddhist appreciation of the possible self-transcendence of humanity, or in the Koranic distinction humankind has as God's vice-regent (khalifa) on earth. . . . By all means, basic approaches for providing a spiritual home for human rights exist in various religions and cultures. For this reason, we do not stand before the alternatives of either sacrificing the diversity of religions and cultures or the inverse of giving up universalistic human rights for the sake of cultural pluralism."<sup>95</sup>

He continues: "In opposition to premature harmonization, it is important to note that the connection of human dignity and politico-legal recognition of identical civil liberties and participation rights presents a uniquely modern achievement which in the West as well as in non-Western religions and cultures cannot become effective if not attended by preparedness for criticism, self-criticism, and reform. Only with this is it possible to make the human entitlement to human rights – concentrated in the commitment to the inviolable dignity of every human being – fruitful and to simultaneously introduce religious faith as a motive for engagement in the human rights issue. This is an opportunity to freely (re)develop the potential to find the meaning of religious and cultural traditions for the modern world. Incidentally, emphasizing the modern nature of human rights does not mean propagating a civilizing mission of ideological progress at the cost of religion tradition and cultural diversity."<sup>96</sup>

On the other hand, one has to soberly see: If a religion or a worldview does not offer its own clear way of justifying human rights for everyone, or perhaps summarily takes on a justification for universal human rights from another religion – even if in principle that justification might stand in contradiction with the religion adopting the justification used by another religion-- human rights implementation will at least lose momentum if not be difficult on a political as well as a personal level in states and cultures significantly conditioned by such religions or worldviews.

As long as the Catholic Church, for example, saw human rights as a mere product of the anticlerical Enlightenment, it was able to be in agree-

<sup>95</sup> See Bielefeldt. *Auslaufmodell*.

<sup>96</sup> Bielefeldt. "Menschenrechte: Universell . . .," 22-23.

ment with its introduction here and there if it experienced advantages from it. However, it always saw a conflict between belief and human rights. In Russia, the chances for human rights actually first arose when the Russian Orthodox Church made them their own issue. In contrast, the large Protestant churches in the USA (and increasingly beyond that) viewed human rights as the epitome of their Christian ethics. Moreover, human rights were a central component at the founding of the World Council of Churches in 1948 in Amsterdam – for Evangelicals, who largely were outside of this council, this applied in any case. It is no surprise that it long appeared as if the Protestant countries had been predestined for democracy.

After the 1892 papal encyclical letter *Rerum Novarum*, a process began with respect to human rights. The Second Vatican Council of 1965, with its declaration on human dignity entitled *Dignitatis Humanae* and the simultaneous encyclical by the pope entitled *Pacem in Terris*, human rights were reconciled with the faith of the Catholic Church. Human rights thus moved more into the center of the papal agenda, with the result that practically all Catholic countries followed in the matter of democracy and human rights. Nowadays a Catholic Christian does not see a conflict between human rights and his Christian faith. A Catholic Christian hardly comprehends the issue in the question of whether, in cases of doubt, the basic rights in the constitution or Christian ethics are given priority. Something corresponding to the provisos relating to the Sharia as is known in conservative Islam, insofar as human rights and the constitution are concerned, appears to Catholics to have originated in the distant past.



## **2 Selected human rights – the ideal and the real**

Let us turn from human rights in general to particular human rights. It would be impossible to address all of them. Therefore, I have chosen seven representative human rights.

### **2.1 The prohibition against torture**

Article 5 of the Universal Declaration of Human Rights reads as follows: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Torture is the targeted use of psychological or physical harm. Torture occurs: 1. out of the desire to torment, humiliate or demonstrate power, or 2. in order to break the resistance of a victim, or 3. in order to force him to do something he would otherwise not do (provide a signature, for example), or 4. to receive information, receive a confession, to have a statement made, or to achieve the betrayal of others, whereby the four types can overlap.

The United Nations Convention against Torture (Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment) dating from 1984/1987 outlaws every act by which a carrier of state force “inflicts, has inflicted, or tolerates intentional bodily or mental pain being inflicted upon an individual in order to, for example, extort a statement, in order to intimidate, or to punish.” This convention was ratified by practically all countries on earth. A special rapporteur for the UN on torture monitors the global situation. The Council of Europe’s European Committee for the Prevention of Torture (CPT), located in Strasbourg, monitors the situation in Europe. Owing to Article 3 of the European Convention on Human Rights, every EU citizen can bring actions against the use of torture before the European Court of Human Rights. In Germany torture is a criminal offense according to § 357 of the Penal Code, and the German Basic Law states the following in Article 104: “Persons in custody may not be subjected to mental or physical mistreatment.”

“Torture means exploiting the vulnerability of a person to break her or his will in order to obtain information, to humiliate or to systematically intimidate her or him or others. In international human rights treaties, such as the 1984 United Nations Convention against Torture, inhuman or degrading treatment or punishment, it is absolutely prohibited without exception. In order to prevent torture and mistreatment, states have far-reaching obligations arising from human rights: They have to clarify and punish

alleged cases of torture and mistreatment. Evidence arising out of torture may not be utilized in court proceedings. States have to incorporate the prohibition against torture as an elementary component in the training of police, the military, and prison personnel and align official instructions and practices so that torture and mistreatment are prevented. By regularly and independently monitoring places of risk, such as detention facilities, psychiatric clinics, and police stations, situations that involve the risk of torture shall be detected early and redressed as far as possible. The prohibition against torture also comprises prohibition against deporting people into states in which torture and mistreatment are threatened. It is thus of great significance for refugee protection.” (German Institute for Human Rights)

I am citing the prohibition against torture as an example of an absolute human right; in any case it is understood as such – with the exception of certain circles in the USA. Namely, the absolute right cannot be limited to certain groups of perpetrators, and it applies precisely with respect to prisoners and criminals. It does not only apply to citizens but rather to everyone. It does not have to be weighed against other human rights, and it is not only a goal to be pursued. Rather, it is able to be implemented everywhere immediately, for no significant investment costs are needed.

Now we turn to reality. Amnesty International reports on torture with respect to 133 countries around the world. The prohibition against torture is truly absolute in only in a few countries, such as Germany. In particular, within the framework of the war against terror going on since 2001, there are, however, Western countries which have again used torture. They have practically always used torture outside of the bounds of the legal system. Furthermore, they have mostly not done this in their own country but rather in countries which handle the issue more loosely. The USA, France, and Italy are unfortunate examples, whereby in all three countries there are often racist motives which play into the situation. President Obama did not fundamentally end the practice of his three predecessors, and the Military Commissions Act, passed by the US Senate in 2006, which expressly allows “unlawful enemy combatants” to be exposed to “enhanced interrogation techniques,” is still in force.

## **2.2 Freedom of thought and freedom of conscience**

The freedom of conscience is the right for an individual to have his own thoughts and to be allowed to follow one’s own convictions when speaking and taking action. The freedom of conscience protects the generation and maintaining of one’s conscience and the orientation of behavior on the basis of conscience. Through conscience, the inner autonomy and the inner



identity of personality are recognized. For this reason, it is a constitutive component of human dignity.

Freedom of conscience is “the right guaranteed by the state to the individual which leaves the individual free from external coercion (coercion of conscience) to call upon the conscience in order to decide to take action or to refrain from action. Freedom of conscience is legally subsumed with religious freedom and freedom of belief as a basic right.” (Article 4, Federal Law for the Federal Republic of Germany, freedom of faith and conscience)<sup>97</sup>

The opposite to the freedom of conscience is *the persecution of different-minded people*. Generally, where this occurs there are numerous other human rights which are infringed upon at the same time, for instance the freedom of speech, the freedom of the press, religious freedom, and the right to free assembly. Likewise, the basic social rights of different-minded people are also often deliberately limited.

Article 1 of the Universal Declaration of Human Rights reads as follows: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Thoughts are free! Just try once not to think! “Reason and conscience” help us to decide on a moral basis and to take action. Indeed, they are what make people into people. In my opinion, the formulation shows the Christian-Enlightenment roots of human rights very nicely. This is due to the fact that the conscience is a central expression in the New Testament which ran into a Greco-Roman philosophical tradition which developed into the nineteenth century. As such, reason in the Bible as well as in the thinking of the Enlightenment is the sister of conscience and a central element of the image of God and of what it means to be human; it is the central tool of individuality and responsibility (e.g., Romans 12:2). Paul closely ties conscience and liberty (I Corinthians 10:29: “For why should my freedom be judged by another's conscience?”). Immanuel Kant, the most famous representative of Enlightenment ethics, would not have felt differently.

In terms of freedom of conscience, one should differentiate – just as in the case of religious freedom - between the *forum internum*, that is, the inner events, and the *forum externum*, that is, the words and actions that emerge with reference to the *forum internum*.

The **forum internum** is resistant to intrusion because it comprises the core of our human dignity. For this reason, brainwashing and thought influence through undesired hypnosis, the application of drugs, and similar intervention are prohibited.

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<sup>97</sup> [Http://www.bpb.de/wissen/DA3QZ7,0,0,Gewissensfreiheit.html](http://www.bpb.de/wissen/DA3QZ7,0,0,Gewissensfreiheit.html) 2 November 2011.

With the **forum externum**, an individual calls upon the conscience and declares why he has to say or do this or that or, conversely, cannot say or do this or that. This side of the freedom of conscience is naturally hedged by other human rights. Thus, I cannot call upon my conscience when I would like to kill a “dangerous” person. The freedom of conscience plays a particular role in an everyday legal context where, for example, employees refuse to conduct certain activities, i.e., animal experiments, abortion, the production of weapons, or participate in military attacks.

In addition, the right to conscientious objection is a classical case of freedom of conscience.<sup>98</sup> With this right, a state may only intervene according to law in order to examine whether it is truly a case of a question of conscience.

## 2.3 Religious freedom and the separation of church and state

The human rights to the freedom of conscience and religious freedom play a central role in the history of human rights. But nowadays there is often too little importance attached to this circumstance. “The first individual freedom in modern constitutional history is religious freedom.”<sup>99</sup>

That every individual may have his own religion or worldview, may choose it or change it, and indeed may do so publicly and not covertly, without this either being prescribed by the state or forced upon the individual by other social forces, is included among the central preconditions of what it means to be free.

It is thereby clear that the translation of the German words *Religionsfreiheit* and *Glaubensfreiheit* is the English expression “freedom of religion and belief.” Furthermore, “belief” means worldviews in general including non-religious convictions, which the German word *Glauben* does not so clearly express. When I render the full concept “freedom of religion or belief” with “freedom of religion” in English or *Religionsfreiheit* in German, what is meant is not always only the freedom of religious people. Rather, it also means the freedom of people who hold other worldview systems, the freedom of people who are atheists, and the freedom of non-religious people as well. In a famous ruling by the European Court of Hu-

<sup>98</sup> This is usually practiced by religious groups who believe that any participation in the military is sinful; democracies that have a military draft have generally allowed members of such pacifist religions some option other than serving in the military and have called it “conscientious objection.”

<sup>99</sup> Paul Kirchhof. *Der Staat--eine Erneuerungsaufgabe*. Freiburg im Breisgau: Herder, 2005<sup>2</sup>, 39.

man Rights (ECHR) dated May 25, 1993, one reads: “The freedom of thought, conscience and religion is one of the foundations of a democratic society” and indeed for religious individuals as well as for “atheists, agnostics, and sceptics.”

In addition to that, Brian J. Grim and Roger Finke have demonstrated statistically in an investigation appearing in 2010 that religious freedom contributes to peace within a society as well as to its democratization. They doubt the justification of arguments by states which try to justify limitations on religious minorities or protecting majority religions by saying that is the only way to maintain social peace. They actually came to precisely the opposite result. And when states marginalize these minorities, they actually kill the comparatively high centuries-long contribution made by religious minorities to commerce, culture, and knowledge.<sup>100</sup>

### Excursus: a Christian justification of religious freedom

The freedom of religion applies to all people, not only to Christians. That is not just political allowance on the part of Christians. Rather, it arises out of the Christian faith itself. For God has created *all* people as his image bearers, not only *Christians*. God desires, as the Old Testament repeatedly says, to be loved from the *heart* and not through coercion. According to this, the innermost orientation of the conscience and of people’s hearts may not and cannot be imposed. And what Jesus forbade his disciples, namely that fire fall from heaven upon those who rejected his message, is forbidden for Christians for all time as a matter of principle.

Whoever looks at which tasks the New Testament assigns to the state sees that the spread or promotion of a certain religion is not included among them. What is included is peace and justice for *all*. In issues of worldly justice, Christians are subject to the state. Indeed, Paul is able to literally describe the non-Christian state as “God’s servant” if it punishes Christians who do wrong. (Romans 13:1-7)

Christians thus claim for themselves no greater right to religious freedom than for others. Christians also want to “live at peace with everyone” (Romans 12:18), not only with people like them.

## 2.4 Freedom of the press

Freedom of the press denotes the right to free operation of the forms of media and the uncensored publication of information and opinions. Media means the classic forms, such as newspapers, books, radio, and television

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<sup>100</sup> Brian J. Grim and Roger Finke, *The Price of Freedom Denied*. New York, 2011.

as well as newer online media or social networks on the internet. Freedom of the press should ensure the free shaping of opinion. German Basic Law combines freedom of the press with freedom of opinion, broadcasting freedom for radio and television, and freedom of information in Article 5. The Federal Constitution of the Swiss Federation uses a more modern formulation and speaks of freedom of the media.

There are two indexes on freedom of the press for all countries on earth, one by Reporters Without Borders and one by Freedom House, which also produces a Freedom and Democracy Index. What is shown here is that the majority of the world's population has to go without free access to the media, and more than one-half of all countries strongly limit freedom of the press.

Germany finds itself in the seventeenth position out of 178 countries, and in front of it are only other European countries with the exception of New Zealand and Japan. With 6 other countries, Switzerland shares the number 1 position, followed directly by Austria at the seventh position, both practically without any limitation on freedom of the press. Those bringing up the rear with practically no freedom of the press are the usual suspects: Rwanda, Yemen, China, Sudan, Syria, Burma, Iran, Turkmenistan, North Korea, and Eritrea.

The world market leader as far as restrictions on freedom of the press and freedom of information are concerned is China. "In a report, Reporters Without Borders criticizes the massive internet blocks and the selective information on offer via the internet in China. In particular, this affects information offered by the companies Yahoo, Microsoft, Ebay, and Google. For commercial reasons, the management of these companies has adapted themselves to government censure, but people such as Hu Jia, who campaign for freedom of information in their own country, are also affected."<sup>101</sup>

In 2006, Reporters Without Borders (French: Reporters sans frontières), an international organization founded in 1985, reported that 85 journalists and 32 media assistants were killed in the line of duty, and 36 journalists and more than 24 assistants were killed in Iraq. For 2011, up to and including the month of October, 55 journalists and 3 assistants were killed, 164 (+9) incarcerated, and 123 online dissidents were arrested.

Freedom of the press and freedom of opinion are also indispensable for other human rights, such as freedom of religion or truth, as tacit preconditions. Nevertheless, for their part, the media conversely has the natural obligation to work for and not against human rights. Thus freedom of the press can come into conflict with other human rights which the state must

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<sup>101</sup> [Http://de.wikipedia.org/wiki/Reporter\\_ohne\\_Grenzen#China](http://de.wikipedia.org/wiki/Reporter_ohne_Grenzen#China).

protect, and this is why, for example, Islamist sermons calling for violence must not be tolerated as a legitimate use of freedom of the press.

Therefore, an exaggerated political correctness on the side of the media can endanger the real freedom of the press. The media gladly plays down the role they play in instigating or appeasing prejudices, racism, or religious tensions, ignoring the way in which extreme opinions can hardly be reported without consequences for society. Even in reputable newspapers – thanks to the increasingly fast way that news shoots through the system – the number of well researched and documented reports which support the opinion-forming activity on the side of the reader has decreased, and the number of derisive or otherwise emotional reports about events and individuals has increased. With respect to movements on the margins of society, one has long since become accustomed to learning a whole host of deriding details or negative headlines, but nothing about that for which they stand – no matter how wayward it might be.

To be noted carefully: Such outlying extreme opinions are not combated effectively with censure but rather with a more diverse media landscape in which everyone has the opportunity to present his own view of things in order to not only have to read and hear what others say *about* him.

## 2.5 Women's rights

In the following we will turn to the human rights of particularly vulnerable groups, such as women, children, refugees/asylum seekers, and people with handicaps.

As mentioned above, Marie-Olympe de Gouges was executed in 1793 by French revolutionaries on account of her Declaration of the Rights of Women. While the 1948 Universal Declaration of Human Rights was clear enough, in 1953 the UN adopted a convention regarding the political rights of women. Owing to a lack of legal obligations and enforcement mechanisms on an international level, things yet again became silent with respect to the question of women's rights. Eventually there were great strides of progress made in Western states beginning in the 1960s, though it was not until 1979 that the UN affirmed the Convention on the Elimination of All Forms of Discrimination against Women and created a set of tools for its implementation. Finally, the UN World Conference on Human Rights in Vienna declared for the first time in 1993 that violence against women is a human rights violation. Besides that, it was finally settled what is today self-evident for human rights activists: "The human rights of women and

girls are an inalienable, integral, and indivisible part of universal human rights.”<sup>102</sup>

“During the last decades, the reinforcement of women's human rights essentially led towards an expanded understanding of human rights in general. Women's rights are based on the principles of universality and indivisibility of all human rights. The 1979 Convention on the Elimination of Discrimination against Women (CEDAW) shows that not only on the state level, but in all social spheres, far-reaching measures are required for the elimination of discrimination against women and for guaranteeing women's full and equal enjoyment of political, civil, economic, social and cultural rights. Also included is the recognition of violence against women as a human rights violation.” (German Institute for Human Rights)

**Women's Suffrage:** Between 1914 and 1939 women received the right to vote in 28 countries and thus approximately doubled the number of states with women's suffrage. Since 1718, women's rights had been temporarily introduced in many states or at least applied to the same classes as for men or applied, as in Sweden or in Great Britain, only to unmarried women, or as in Canada, only to widows. Australia was the first country to have universal voting rights for women, and Finland, in 1906, was the first European country to extend universal suffrage to women.<sup>103</sup> Today this even applies in most Islamic countries, provided there are general elections taking place. And even Saudi Arabia – as one of the last countries on earth – has announced women's suffrage for 2015, even if it is only initially for local elections.

While in Germany there are fierce battles regarding a quota of women in supervisory boards of large corporate groups, and where a woman holds the position of Chancellor and counts as one of the most powerful women in the world, in Afghanistan old tribal laws apply in which the wife is property of the husband, is forced to marry at an early age, does not participate in societal life, and is frequently confronted with violence. As much as these women are made second class citizens by the Sharia, there would still be real progress if the Sharia were honestly applied.

In most underdeveloped countries, women and children have to bear the brunt of manual labor, such as carrying water. On average, they work much more than men, namely 60-90 hours per week, but they earn nothing or significantly less. When it comes to hygiene, medical care, food, and

<sup>102</sup> [Http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx](http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx) 29. October 2014.

<sup>103</sup> A good table can be found at [http://de.wikipedia.org/wiki/Zeittafel\\_Frauenwahlrecht](http://de.wikipedia.org/wiki/Zeittafel_Frauenwahlrecht).

much more, they are at the back of the line. Many millions of women are not allowed to go to the doctor with their child, not allowed to learn to read and write, or to have contact with other people without the permission of their husband or whoever is viewed as their male guardian. In the Indian state of Gujarat, with its 60 million inhabitants, this applies to one-half of all women, as has been extensively investigated.<sup>104</sup>

In underdeveloped countries women also seldom have the opportunity to sue for their rights before a court. In many Islamic countries, the word of a woman, if it is allowed at all, counts one-half as much as that of a man.

On the basis of 65 countries for which official numbers are available, the United Nations calculates that there are 250,000 rapes of women by men every year. The number is naturally very unreliable due to the wavering definitions and the high estimated number of unrecorded cases. In any case it forms a lower limit. Just how difficult it is to enforce women's rights is shown by the fact that Sweden, one of the countries with the greatest degree of equality between men and women, with 46 cases per year for every 100,000 inhabitants, has one of the highest rates of rape in the world, more than four times that of Germany. South Africa lies at the top of the list. Whether there are actually 500,000 rapes per year, as a number of organizations maintain, cannot be said without available studies and useable criminal statistics. However, 67,000 rapes of children were documented for the year 2000. And the probability that a girl in South Africa will be raped is higher than the probability that she will learn to read and write. At the same time, the number of rapes is growing from year to year.

In times of war and civil war, the number of rapes goes up immensely – even when UN troops are stationed in these areas. Rape is often used as a weapon of war. In the Congo, many die in civil war as victims of rape. And almost no one attends to the remaining 200,000 victims of rape.

Terre des Femmes writes: “According to current indications from Unicef, there are more than 150 million girls and women alive who have experienced genital mutilation. Every year there are about three million new victims of this practice: That means 8,000 per day! There is also a risk that girls will be secretly exposed to this practice here at home in Germany or therefore taken to a foreign country.”

At this point, one would actually have to go into honor killings, the high maternal mortality rate in many countries, sex tourism, violent pornography, and human trafficking, all of which involve women with greater than average frequency.

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<sup>104</sup> For documentation on this theme see Thomas and Christine Schirmacher, *Unterdrückte Frauen-Gewalt-Armut-Ausbeutung*. SCM Hänssler, 2013.

*For more detail see the volume in the Global Issues series entitled **Human Trafficking** (available online at <http://www.bucer.org/resources/details/human-trafficking.html>).*

### **Varieties of Violence against Women as mentioned in the UN's Women Convention**

- Physical and sexual domestic violence within the family, which includes the sexual abuse of women and rape within marriage
- Violence in connection with the dowry at marriage
- Genital mutilation
- Sexual or other types of exploitation of women (rape, sexual abuse, sexual harassment in the workplace, in schools, etc.)
- Trafficking in women
- Forced Prostitution
- State or state-tolerated physical or sexual violence (in state facilities and elsewhere, for example in prisons)

## **2.6 Children's rights**

“The UN Convention on the Rights of the Child (1989) formulates human rights from a children's perspective. It is their special situation in life and partly their special vulnerability that requires a concretization of human rights for children, such as the right to life, freedom of opinion, freedom of religion, education, and health care. The best interest of the child is the central issue and requires priority consideration. According to the UN Convention, all young persons under the age of 18, which includes juveniles, are defined as children.” (German Institute for Human Rights)

All states with the exception of the USA and Somalia have acceded to the Convention on the Rights of the Child, more than is the case with all other UN conventions. In 2002, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict came into effect.

### **UNESCO has accessibly reduced the Convention on the Rights of the Child down to ten children's rights:**

- the right to equality and protection against discrimination, independent of religion, ancestry, and gender;



- the right to a name and to a nationality;
- the right to health;
- the right to education and training;
- the right to leisure, play, and recreation;
- the right to inform oneself, express oneself, and to assemble;
- the right to a private sphere and a violence-free upbringing in the sense of equality and peace;
- the right to immediate aid in times of catastrophe and emergency and the right to protection from cruelty, neglect, exploitation, and persecution;
- the right to a family, parental care, and a safe home;
- the right to care in the case of a disability.<sup>105</sup>

And again, one can see the reality of the situation by pointing to a few examples. Approximately 425 million children worldwide do not have enough to eat. As a result, 18,000 children die every day.

According to the International Labor Organization, an agency of the UN, there are 215 million children involved in child labor, whereby 115 million do so under degrading or dangerous conditions. In the process, there are 1.2 million children displaced outside of their home locations within the scope of human trafficking.

According to expert estimates, there are 8.4 million child slaves, of whom 5.7 million work, 1.8 million are caught up in prostitution and pornography, 0.6 million are in criminal gangs, 0.3 million are child soldiers, and a total of 1.2 million who are kidnapped worldwide.

*For more details see **Human Trafficking** also in the *Global Issues series*.*

And finally there is a concrete country case study. “In the overfilled prisons of Burundi, degrading conditions prevail: The hygienic conditions are likewise catastrophic as is the medical care. The provision of sufficient food is also not guaranteed. To make matters worse, in 2008 there were also children in most police detention facilities, although this actually violates the regulations regarding arrest and incarceration. For the most part, children and adolescents have shared overfilled cells with adults. The danger of sexual and physical abuse is great. Nothing was provided in the way of medical care and to fulfil educational needs. Many juvenile detainees had been imprisoned without court proceedings, and according to one in-

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<sup>105</sup> According to <http://de.wikipedia.org/wiki/Kinderrechtskonvention> 2 November 2011.

ternational organization, in 2008 80% of them were waiting for their trial.” (*Süddeutsche Zeitung* regarding the Amnesty International Annual Report.)

## 2.7 The rights of people with disabilities

In the German Social Security Code (Book IX, § 2, Paragraph 1), a handicap is defined as follows: “Persons are handicapped if their physical function, mental ability, or mental health deviates from the condition which is typical for their age for a period which will last longer than 6 months and, if as a result, their participation in social life is impaired.”

“Only during the last decades has the social exclusion of persons with disabilities been recognized as a human rights issue. The 2006 Convention on the Rights of Persons with Disabilities formulates rights of persons with disabilities in different areas of life, including education, the labor market, politics, culture, marriage and family, health system and other social fields, in which persons with disabilities claim participation on the basis of non-discrimination. In combination with disability, non-discrimination means above all accessibility. Reaching the goal of an ‘inclusive society’ without barriers for persons with disabilities requires great political efforts and concrete implementation mechanisms, also in Germany.” (German Institute for Human Rights)

In Germany, the 2002 German Equal Opportunities for Persons with Disabilities Act forms the basis for the rights of the disabled. Above all, it contains a prohibition against discrimination by public authorities (§ 7) and the following four goals, which are to be achieved by “agreements on objectives” between associations of handicapped persons and corporations, etc.: 1. Creation of a barrier-free environment in the construction and transportation sectors (§ 8), 2. The right to the use of sign language and communication aids adapted to the needs of the handicapped (§ 9), 3. Notices and forms adapted to the need of the disabled (§ 10), and 4. Barrier-free information technology (§ 11).

The goal of all of this is inclusion, i.e., that as far as is possible the lives of people with handicaps will not take place in a segregated manner, for instance that students with handicaps will not just not go to normal schools when they need permanent care but otherwise naturally belong. By the way, the choice of words is deliberate here. People have disabilities but are not the disabled, and this is why the laws even speak in terms of “people with disabilities.”

**In Germany there are the following groups<sup>106</sup>**

- 6.7 million people with severe handicaps
- 355,000 blind and visually impaired people
- 2 million hearing aid users
- 600,000 deaf people
- 536,000 mentally and psychologically handicapped people
- 525,000 people with consequences of craniocerebral injuries
- 1.5 million wheelchair users
- 1.38 million people who experience other restricted mobility
- 55,000 dialysis patients
- 650,000 people with MS
- 120,000 people with Parkinson's
- 350,000 new cancer patients annually
- 200,000 stroke patients annually
- 1 million people with senile dementia

When speaking of ableism, discrimination against people with disabilities, there are differentiations to be made among direct and active rejection, discrimination, and marginalization. Indeed, there is an increasingly frequent use of force by other people against people with disabilities and, also social circumstances whereby people with disabilities experience shipwreck in an environment shaped for healthy people. This means that provisions are not made for them. Examples are found in the surrounding world (e.g., stairs, curbs, narrow doorways), in traffic, in local and long-distance public transport, in libraries and places of business, but also, for example, when computers and the internet cannot be used in a barrier-free manner. Also included are developments which not only have to do with people with disabilities, but also the persistent and erotic physical norms found in the media. In between lie mostly unintentional interaction with people who have disabilities, for instance in the form of pitying looks, ill-considered comments, or a craving for the sensational as the Guinness Book of Records exhibits it.

Ableism is also documented in the high readiness to abort unborn children even if there is just a suspicion or probability that a disability could be present. “The social pressure that exists in the expectation placed on a

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<sup>106</sup> Excerpt from <http://www.ead.de/arbeitskreise/perspektivforum-behinderung/perspektivforum-behinderung.html>. 2 November 2011.

pregnant woman to terminate a pregnancy if (e.g., in the context of an examination of amniotic fluid or an ultrasound examination) it is determined that the child which they expect will be disabled is felt by many to be a form of ableism. A court in France derived an obligation to terminate pregnancy from a 'right to non-existence' of people with future severe disabilities: A case was ruled in favor of a severely disabled individual after he brought action against his parents. The suit called for damages because the parents had not had him aborted."<sup>107</sup> While practically everyone rejects a type of euthanasia after birth, 75% of Germans see euthanasia prior to birth per se as positive or neutral.<sup>108</sup>

Unfortunately, the UN Convention on the Rights of Persons with Disabilities, which was adopted in 2006, hardly plays a role in many countries around the world. The first global report on disabilities, which was released by the World Health Organization (WHO) in June 2011,<sup>109</sup> gives some startling news. One billion people are disabled, and 110-190 million are severely disabled. In aging societies, the number of affected people is increasing. Disabilities occur above average among women, older men, and the poor.

In many Western countries there are significant accumulated needs, especially in both of the areas where discrimination has the greatest consequences, schools (education) and the workplace. There are still laws which isolate people with disabilities in different schools and an absence of provisions that would require voting boxes to be reached barrier-free. However, at least the problem is being tackled, and there are already numerous laws and administrative provisions and anti-discrimination laws. In the Global South, discrimination often begins early on at home and really sets in on the streets. It is often the case that children with disabilities are not sent to school in the first place, leaving people with disabilities doomed to beg instead of work.

The rights of the disabled, above all calling for inclusion, are good examples of human rights that, for example, are not called for in an absolute manner and are not directly implemented universally. Indeed, there are also absolute rights, for example things which one may not do to anyone, including people with disabilities, and there are realms in which equality can be sued for in court. Also included, however, are other areas in which only objectives are possible. These are realms where only the employment of enormous amounts of money would make things possible. The money has to first be available, and then decisions have to be made in the democratic process. In the end, the internal attitude of people can only be influenced to a limited extent.

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<sup>107</sup> [Http://de.wikipedia.org/wiki/Behindertenfeindlichkeit](http://de.wikipedia.org/wiki/Behindertenfeindlichkeit). 2 November 2011.

<sup>108</sup> According to [http://www.zeit.de/2002/41/Zeugung\\_auf\\_Probe](http://www.zeit.de/2002/41/Zeugung_auf_Probe). 2 November 2011.

<sup>109</sup> [Http://www.who.int/disabilities/world\\_report/2011/en/](http://www.who.int/disabilities/world_report/2011/en/).

## **3 For follow-up: tips for the individual**

### **3.1 How can I become involved?**

The field of work revolving around human rights is truly vast. For that reason, here are various pieces of advice for beginners who want to make a difference. For human rights work, the following applies: Together we are strong. The more individuals do, the greater the overall effect. And that does not just apply to one particular right for which an individual is engaged.

Differentiate between possibilities offered to you by your career or employment position and those you can privately pursue.

#### **1. Professional involvement:**

1.1 First consider which legal obligations are associated with your professional sphere, your occupation, your company, church community, etc. and whether they are being complied with. Become a sort of human rights representative or human rights advocate in your own environment (e.g., you can inform yourself, and if you find that the legal provisions and the UN conventions with respect to people with disabilities do not play a role, then you can try to change this).

1.2 Consider which human rights you, your profession, occupation, your company, etc. come into contact with (e.g., children's work in the Global South for companies in the apparel industry; medicine which is too expensive for the poor in the healthcare industry).

1.3 Think about the countries with which special contacts exist. Think also about those countries where things said in professional circles by citizens of your nation carry particular weight.

1.4 Find out who is active in this area and which possibilities exist for officially becoming active firsthand as an individual or via an employer or an association (e.g., joining anti-sex tourism activities in the travel industry).

1.5 Consider which human rights organizations can profit from your specific knowledge (e.g., graphic designers in advertising who can develop free, snappy campaigns, doctors and craftsmen who might sacrifice their vacation in order to offer assistance; finance specialists who might work in management boards).

## 2. Personally:

2.1 Browse in publications or in the internet and decide on an area from the broad spectrum of human rights (e.g., combating the use of landmines, or providing assistance to prisoners).

2.2 Inform yourself as to which organizations there are. Have information sent to you from 2 – 3 of them. Choose one of them to support concretely and to become an effort you would like to participate in.

2.3 Inform yourself regarding collaboration opportunities and choose one of them which is near and dear to you and where you can imagine remaining excited about it for years to come (e.g., providing assistance to prisoners by writing letters; working in task forces or on a management board; developing a Facebook network).

2.4 Everyone can find something to do! Every human rights organization is thankful for each individual who gives a hand and for those who give time and money for what appear to be unimportant things.

2.5 In order to set a possible additional focus, consider which countries you know particularly well (e.g., have traveled to or would like to travel to) or countries which interest you. Do you perhaps have particular language knowledge to contribute?

## 3.2 Reports – Literature – Websites

### Regular general reports

Amnesty International. Amnesty International Report 2011: Zur weltweiten Lage der Menschenrechte. Frankfurt am Main: S. Fischer, 2011 (annually). The English version is found on numerous individual pages spread throughout <http://www.amnesty.org>.

Human Rights Watch. World Report 2011. New York: Human Rights Watch, 2011, as a pdf: <http://www.hrw.org/world-report-2011> (annually); not in German, current German reports are found at <http://www.hrw.org/de>.

Auswärtiges Amt (German Federal Foreign Office). 9. Bericht der Bundesregierung über ihre Menschenrechtspolitik in den auswärtigen Beziehungen und in anderen Politikbereichen. Berlin: Auswärtiges Amt, 2011 (approximately every two years); [http://www.auswaertiges-amt.de/DE/Aussenpolitik/Menschenrechte/9.MR.Bericht\\_node.html](http://www.auswaertiges-amt.de/DE/Aussenpolitik/Menschenrechte/9.MR.Bericht_node.html).

Arch Puddington. Freedom in the World 2009: The Annual Survey of Political Rights & Civil Liberties. Lanham (ML): Rowman & Littlefield, 2009; New York: Freedom House, 2009 (approximately every two years), in excerpts: <http://www.freedomhouse.org/template.cfm?page=445>; also all countries individually at <http://www.unhcr.org/refworld/publisher/FREEHOU.html>.

In addition, for only the annual index, see [http://en.wikipedia.org/wiki/Freedom\\_House](http://en.wikipedia.org/wiki/Freedom_House).

## Annual reports on selected human rights

Disabilities: [http://www.who.int/disabilities/world\\_report/2011/en/](http://www.who.int/disabilities/world_report/2011/en/) (World Health Organization World Report on Disability).

Torture: <http://www.omct.org/> (Steadfast in Protest, Annual Report 2011).

Torture: [www.atlas-of-torture.org](http://www.atlas-of-torture.org).

Women's Rights: Sechster Bericht der Bundesrepublik Deutschland zum Übereinkommen der Vereinten Nationen zur Beseitigung jeder Form von Diskriminierung der Frau (CEDAW), 2007 (approximately every four years), [www.broken-rainbow.de/material/CEDAW\\_Bericht\\_Deutschland.pdf](http://www.broken-rainbow.de/material/CEDAW_Bericht_Deutschland.pdf).

Violence, Murder, War: World Report on Violence and Health. Geneva: World Health Organization, 2002; [www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](http://www.who.int/violence_injury_prevention/violence/world_report/en/) (approximately every 10 years).

Freedom of the Press: Press Freedom Index 2010, <http://www.reporter-ohne-grenzen.de/ranglisten/die-neue-rangliste-2010.html> (annually).

Freedom of the Press: Freedom of the Press 2011 (biannually), **Fehler! Hyperlink-Referenz ungültig.**

Religious Freedom: Pew Forum. "Global Restrictions on Religion 2009." <http://pewforum.org/docs/?DocID=491>; pdf: <http://pewforum.org/uploadedFiles/Topics/Issues/Government/restrictions-fullreport.pdf>

Pew Forum. „Rising Restrictions on Religion 2011“. [http://pewforum.org/Government/Rising-Restrictions-on-Religion\(2\).aspx](http://pewforum.org/Government/Rising-Restrictions-on-Religion(2).aspx); pdf: <http://pewforum.org/uploadedFiles/Topics/Issues/Government/RisingRestrictions-web.pdf>.

Moises Naim. Das Schwarzbuch des globalisierten Verbrechens: Drogen, Waffen, Menschenhandel, Geldwäsche, Markenpiraterie. Munich: Piper, 2005.

## Human rights organizations with a continuous flow of German and English reporting

<http://www.amnesty.org/> (Amnesty International).

[www.igfm.de](http://www.igfm.de) (Internationale Gesellschaft für Menschenrechte/International Society for Human Rights).

[www.gfbv.de](http://www.gfbv.de) (Gesellschaft für bedrohte Völker/Society for threatened Peoples).

[www.hrw.org](http://www.hrw.org) (Human Rights Watch)

[www.ohchr.org/EN/](http://www.ohchr.org/EN/) (UN High Commissioner for Human Rights).

## Journals

*Menschenrechte* (IGFM – Internationale Gesellschaft für Menschenrechte / International Society for Human Rights).

*amnesty journal* (Amnesty International).

Jahrbuch Menschenrechte.

## Texts

K. Peter Fritzsche. **Menschenrechte**. UTB. Schöningh: Paderborn, 2004.

Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany). Bonn: Bundeszentrale für politische Bildung, 2011, official text on the web: [www.gesetze-im-internet.de/gg/](http://www.gesetze-im-internet.de/gg/).

*Menschenrechte: Dokumente und Deklarationen*. Publication Series 397. Bonn: Bundeszentrale für politische Bildung (The Federal Agency for Civic Education of Germany), 2004-4, pdf at [www.bpb.de/files/67JIPU.pdf](http://www.bpb.de/files/67JIPU.pdf).

Völkerrechtliche Verträge. München: dtv, 2010<sup>12</sup>.

## History & complete overviews

[http://en.wikipedia.org/wiki/Human\\_rights](http://en.wikipedia.org/wiki/Human_rights).

Elke Luise Barnstedt. "Was sind Menschenrechte." Materialdienst: *Zeitschrift für Religions- und Weltanschauungsfragen* 72 (2009): 83-95.

Andrew Clapham. *Human Rights: A Very Short Introduction*. Oxford: OUP, 2007.

Bardo Fassbender. *Menschenrechteerklärung: The Universal Declaration of Human Rights Allgemeine Erklärungen der Menschenrechte*. München: Sellier, 2009.

K. Peter Fritzsche. *Menschenrechte*. UTB. Schöningh: Paderborn, 2004.

Mary Ann Glendon. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2002.

Lynn Hunt. *Inventing Human Rights: A History*. New York: W. W. Norton, 2007.

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Micheline R. Ishay. *The History of Human Rights*. Berkeley (CA): Univ. of California Press, 2008-4.

Matthias König. *Menschenrechte*. Campus: Frankfurt, 2005.

*Menschenrechte. Informationen zur politischen Bildung* 297. Bonn: Bundeszentrale für politische Bildung (The Federal Agency for Civic Education of Germany), 2007; pdf: <http://www.bpb.de/publikationen/2BW1XX,0,Menschenrechte.html>.

*Menschenrechte. Politik und Unterricht*, Heft 2/2005; pdf: **Fehler! Hyperlink-Referenz ungültig.**

Konrad-Adenauer-Stiftung. *Menschenrechte sichern*. Sankt Augustin: KAS, 2008; pdf: [www.kas.de/wf/doc/kas\\_9801-544-1-30.pdf?070214171101](http://www.kas.de/wf/doc/kas_9801-544-1-30.pdf?070214171101).

Walter Odersky (ed.). *Die Menschenrechte. Herkunft – Geltung – Gefährdung*. Düsseldorf: Patmos, 1994.

Gerhard Oestreich. *Die Idee der Menschenrechte*. Berlin: Colloquium, 1963<sup>5</sup>.

Josef Punt. *Die Idee der Menschenrechte: Ihre geschichtliche Entwicklung und ihre Rezeption durch die moderne katholische Sozialverkündigung*. Paderborn: Schöningh, 1987.

Christine Schulz-Reiss. *Nachgefragt: Menschenrechte und Demokratie*. Bindlach: Loewe, 2008.



## Basic discussion including philosophy

[www.institut-fuer-menschenrechte.de](http://www.institut-fuer-menschenrechte.de) (Deutsches Institut für Menschenrechte Bundesregierung/German Institute for Human Rights).

[www.forum-menschenrechte.de](http://www.forum-menschenrechte.de).

<http://www2.ohchr.org/english/bodies/hrcouncil/> (UN Human Rights Council).

*Jahrbuch Menschenrechte 2011*. Frankfurt: Suhrkamp, 2010 (annually).

Abdullahi Ahmed An-Na'im. *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Philadelphia (PH): University of Pennsylvania Press, 1992.

Heiner Bielefeldt. *Auslaufmodell Menschenwürde?: Warum Sie in Frage steht und warum wir sie verteidigen müssen*. Freiburg: Herder, 2011.

Heiner Bielefeldt. "Menschenrechte: Universell gültig oder kulturell bedingt?" p. 1323 in: Daniel Bogner, Stefan Herbst (eds.). *Man hört nichts mehr von Unrecht in deinem Land: zur Menschenrechtsarbeit der katholischen Kirche*. Publication Series Gerechtigkeit und Frieden 100. Deutsche Kommission Justitia et Pax: Bonn, 2004, pdf: [www.justitia-et-pax.de/Bielefeldt.pdf](http://www.justitia-et-pax.de/Bielefeldt.pdf).

Heiner Bielefeldt. *Menschenwürde*. Berlin: Dt. Institut für Menschenrechte, 2008; pdf [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/studie\\_menschenwuerde\\_2008.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_menschenwuerde_2008.pdf).

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## Biography

Prof. Dr. theol. Dr. phil. Thomas Schirmmacher, PhD, DD, (born 1960) is Ambassador for Human Rights of the World Evangelical Alliance, speaking for 600 million Christians, chair of its Theological Commission, and director of its International Institute for Religious Freedom (Bonn, Cape Town, Colombo). He is also president of the International Council of the International Society for Human Rights with chapters in 55 countries on all continents.

Schirmmacher is visiting professor of the sociology of religion at the State University of the West in Timisoara (Romania) and Distinguished Professor of Global Ethics and International Development at William Carey University in Shillong (Meghalaya, India). He is president of 'Martin Bucer European Theological Seminary and Research Institutes' with small campuses in Bonn, Berlin, Zurich, Linz, Innsbruck, Prague, Istanbul, and Sao Paulo, where he teaches ethics and comparative religions.

He studied theology from 1978 to 1982 at STH Basel (Switzerland) and since 1983 Cultural Anthropology and Comparative Religions at Bonn State University. He earned a Drs. theol. in Missiology and Ecumenics at Theological University (Kampen/Netherlands) in 1984, and a Dr. theol. in Missiology and Ecumenics at Johannes Calvin Foundation (Kampen/Netherlands) in 1985, a Ph.D. in Cultural Anthropology at Pacific Western University in Los Angeles (CA) in 1989, a Th.D. in Ethics at Whitefield Theological Seminary in Lakeland (FL) in 1996, and a Dr. phil. in Comparative Religions / Sociology of Religion at State University of Bonn in 2007. In 1997 he received an honorary doctorate (D.D.) from Cranmer Theological House, in 2006 one from Acts University in Bangalore.

Schirmmacher regularly testifies in the German parliament and other parliaments in Europe, in the EU parliament in Brussels, the OSCE in Vienna and the UN Human Rights Council in Geneva.

His newest books are on corruption (2014), human rights (2012), human trafficking (2011), fundamentalism (2010), racism (2009), and in German only: persecution of Christians in Iraq (2009), HIV/AIDS as Christian challenge (2008), internet pornography (2008), and Hitler's religion of war (2007). His 92 books were published in 17 languages.

He is listed in Marquis' Who's Who in the World, Dictionary of International Biography, International Who is Who of Professionals, 2000 Outstanding Intellectuals of the 21st Century, Kürschners Gelehrten-Kalender and other biographical year-books.