

Prekarisierung und soziale Entkopplung –  
transdisziplinäre Studien

Mehmet Okyayuz · Junxiang Mao ·  
Letlhokwa George Mpedi ·  
Peter Herrmann *Editors*

# Human Rights in a Changing World

Reflections on Fundamental  
Challenges

 Springer VS

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# **Prekarisierung und soziale Entkopplung – transdisziplinäre Studien**

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Die Zunahme sozialer Unsicherheit und kultureller Verunsicherung in postfordistischen Gesellschaften erzeugt einen Status Quo, in dem Prozesse der Prekarisierung und der „sozialen Entkopplung“ (Robert Castel) verstärkt das Zentrum der Gesellschaft durchziehen. Der Verlust sozialer Garantien führt dabei zur Aushöhlung sozialstaatlicher Errungenschaften. Dadurch werden die Lebenskontexte und das Alltagsleben der Menschen stark verändert.

Das sozialwissenschaftliche Netzwerk S.U.P.I. beschäftigt sich auf europäischer Ebene seit Jahren mit den gegenwärtigen Formen von sozialer Unsicherheit, Prekarität und Ungleichheit. Die Reihe, herausgegeben von Mitgliedern des Netzwerks, präsentiert transdisziplinäre Forschungen zu den sozialen und kulturellen Transformationen in den sozialstaatlich geprägten Demokratien. Sie versteht sich als Forum für die Diskussion in nationalen, europäischen und auch globalen Kontexten. Ebenen einer kritischen Analyse aus multidisziplinären und feldorientierten Perspektiven werden dabei initiiert, aufgenommen und unterstützt. Überschreitung und Öffnung dienen programmatisch als Wegmarken für theoretisch-analytische Beiträge und empirisch-angewandte Forschung.

The increase of social insecurity in post-Fordist societies effect fundamental societal changes. As a consequence Precarity and Disaffiliation (Robert Castel) affecting increasingly the center of society. The loss of social guarantees leads to an erosion of the welfare state. As a result, living situations and everyday life are deeply changed.

The S.U.P.I.-Project (Social Uncertainty, Precarity, Inequality) is an European Research Group established by European and international scholars and experts. The network has been concerned with present forms of social insecurity, precariousness and inequality at European level for years. Edited by members of the network, the book series presents transdisciplinary research on aspects of social and cultural transformations in the democracies which are characterized by the welfare state. The book series opens a discursive space for discussions in national, European and global contexts. The contributions of the book series provide critical analyses from multidisciplinaryperspectives, theoretical-analytical reflections and empirical-applied research.

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## Editors' Introduction

Writing and editing a book on such a topic as Human Rights has at least two sides: on one hand, we are confronted with a huge number of publications—these may be official documents by the United Nations and/or national governments, these may be academic and political analyses, all trying to contribute to contemporary debates.

As academic working in the field, being aware of the importance of further development, one is tempted to contribute from the own specific background, thus contributing to even more documents, making it in many cases difficult to move from words to action. On the other hand, remaining silent seems not to be an option—although the human rights development is by and large progressing, there is an increasing number of instances that make us worrying about the future of Human Rights in the context of an unequal globalisation. The situation reminds a bit of Dickens' tale of two cities, the tale of the best and the worst of all times being present at the same time and in the same place.

The reason for the present edition is simple: Whereas many books can be found dealing with Human Rights today, we hope that we offer a publication that adds value:

It brings scholars together from various professional backgrounds, from different countries and regions and most importantly it tries to contribute to contemporary debates by taking a fundamental, theoretically guided approach; and vice versa, by looking at contemporary debates it tries to enhance the theoretical and analytical work.

As editors we are grateful to the publisher and the series editors, having agreed to the project and offering there valuable support. And we are grateful to the contributors—the patience with which they accepted the various delays had been necessary for us to work in too many cases against the odds.

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## **Focussing on the History and Ideology of Human Rights**



# Philosophical-Theoretical and Material Origins of Human Rights

Mehmet Okyayuz

## 1 Introduction: Historical and Theoretical Outline

### 1.1 The Main Strands of Human Rights Conceptualizations

Human rights and their conceptualization have always occupied an important place not only in political and social debates and arguments, but also in philosophical-theoretical and scientific discourse. And this has been happening in an explicitly systematic way since antiquity at the latest, also in the sense that this topic was no longer just one ‘among others’, but was itself the focus of consideration.<sup>1</sup> Four thematic (main) strands can be identified, on the basis of and along which their determination and localization patterns run, intensified by the corona pandemic that has caused new social contradictions and upheavals for two years

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<sup>1</sup>For example, in his work on the history of human rights, Andreas Haratsch locates a very early strand of ideas among the “Sophists, who taught as early as the fifth century BC. that natural law was superior to established law”. *Andreas Haratsch, 2010, Die Geschichte der Menschenrechte [The History of Human Rights], 11. Potsdam: Universitätsverlag Potsdam, 4th edition.*

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and the attempts to deal with it. For a constructive approach, it seems essential to consider all these strands in all their ambivalences shown below, in all their continuities but also discontinuities, on the basis of their connecting and not their conflicting nature:

- The first strand concerns current human rights issues and their possible implementation in socio-political life in the various countries, but also obstacles that stand in the way of this implementation. The focus here is on human rights as part of a just and egalitarian organization of human coexistence. This aspect is particularly aimed at goals such as democratization. In view of the broader human rights framework, the latter could be understood as the state-free sphere of societal freedom. In addition to the historical-political dimension, which manifests itself in social movements for a ‘better world’, but also in the classical liberal concept of *negative rights*, it is also assumed in this context that “that a desire for rights (and democracy) among individuals is a constant across time and space”.<sup>2</sup> It seems to be precisely this combination of structural and individual aspects that has developed its society-changing effect in the history of the development of human rights and the idea of human rights. In this way, the social-material *necessity* of egalitarian-social organization can be built on a *moral foundation*, which, however, is relieved of any form of abstractness in this combination. This means that morality should be understood here as the antithesis of moralization due to its social reference. A related approach, this time referring to the chronology, i.e. starting from the different phases of the development of human rights, but again from the perspective of specific rights, builds a bridge from civil and political rights, via economic and social rights to cultural rights. The constitution of South Africa is cited as an example of such a strand of development, in which ultimately everything flows together in an integrated manner. The central concept here is that of human dignity, again in structural and individual terms.<sup>3</sup>
- The second strand concerns human rights as part of a legal-political normative network system, which—embedded in institutional framework structures—requires transparency and accessibility for the public in order to then to be able to be instruments for those whose rights are severely endangered. Human

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<sup>2</sup>Michael Mousseau/Demet Yalçın Mousseau, 2008, *The Contracting Roots of Human Rights*. Journal of Peace Research, May 2008, Vol. 45, No. 3, p. 329.

<sup>3</sup>Richard Buchanan, 2001, *Human Dignity and Human Rights: Thoughts on the Principles of Human-Centered Design*. Design Issues, Summer 2001, Vol. 17, No. 3, p. 36.

rights in this sense include not only the exercise of participation rights, but also the possibility of realizing economic and social freedoms and rights. The content and constitution of the transparency and accessibility of the law listed above is determined by its relationship to society and politics, and this from two levels: Whether and to what extent does law control social and political dynamics and processes and to what extent does it adapt to them? If the first level is the attempt to regulate and shape society “from above”,<sup>4</sup> the latter is the attempt to take social demands into account.<sup>5</sup>

Within the framework of such an interlocking of law, society and politics, it may be possible to speak of the development of “legal morality”, which might in turn refer to the political and jurisprudential debate about the relationship between the state of law (Gesetzestaat) and the constitutional state (Rechtsstaat). In this context, as already explained above, the focus is on a holistic determination of human rights as an authority that positively intervenes in the living and working conditions of people, which in a definite way redefines and redetermines the relationship and the tension between individual freedom and social order. The technical-formal, normative legal system transforms itself into a kind of “moral universalism” that advances what has been achieved so far in human rights issues in a very concrete way with regard to the possibility of establishing global social justice.

In the social science debate, the unity of the social and political spheres is generally emphasized in the sense of complementing the political with the social. In the context of the human rights debate, in which legal provisions have always been important, the addition of the law to the social now plays a decisive role. This insight represents a qualitative new dimension in the holistic human rights debate. Preventing it can in turn be in the context of power relations, but it can also be the result of an “inadequate institutionalization”,<sup>6</sup> which means, among other things, a “crisis of institutions of solidarity”.<sup>7</sup>

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<sup>4</sup>**Klaus Lenk**, 1976, *Zur instrumentalen Funktion des Rechts bei gesellschaftlichen Veränderungen* [On the Instrumental Function of Law in Social Change]. Verfassung und Recht in Übersee, Vol. 9, p. 155.

<sup>5</sup>Ibid.

<sup>6</sup>**Amartya Sen**, 2004, *Elements of a Theory of Human Rights*. Philosophy & Public Affairs, Autumn 2004. Vol. 32, No. 4, p. 320.

<sup>7</sup>**Stefan Ludwig Hoffmann**, 2016, *Human Rights and History*. Past & Present, No. 232 (August 2016), p. 304.

- The third strand concerns human rights in the context of increasing globalization, with a tendency to exacerbate inequalities between different socio-economic formations, which may ultimately call into question some of the fundamental assumptions of the 1948 Universal Declaration of Human Rights. On the other hand, alongside these negative results, it should be noted that on the theoretical-legal level, international rights, or better: “the right of peoples, minorities and related communities, has resurfaced, constituting a new moment and challenge in the development of human rights in the contemporary world.”<sup>8</sup>

For the purposes of implementing this approach, the term *Humanitarian Intervention Practice* has been used since the early 1990s, which is often interpreted in legal literature as a more or less necessary addition to the charter. According to Christian Tomuschat, this term means “the military intervention of a state to secure the basic rights of a population group against their own government”.<sup>9</sup> Attempts are being made here to take into account the growing importance of human rights at international level with all the potential for conflict inherent in them. The “diffuse character” of such approaches naturally harbors—even more than “in the national space”—“the danger of political abuse”.<sup>10</sup> To state ambivalences of this kind is part of an objective approach to the theoretical and practical level of human rights. Only from such a point of view is it possible to reformulate and redefine human rights with all their distortions.

- Finally, the fourth and last strand concerns human rights definitions and conceptualizations as an attempt to understand human rights in their universal and inalienable nature. For Amartya Sen, this aspiration results in a “need for a theory”,<sup>11</sup> although it would probably be more nuanced to understand this as

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<sup>8</sup> Sumner P. Twiss, 2004, *History, Human Rights, and Globalization*. The Journal of Religious Ethics. Spring, 2004, Vol. 32, No. 1 (Spring, 2004), pp. 42–43.

<sup>9</sup> Christian Tomuschat, 2009, Humanitäre Intervention—ein trojanisches Pferd? [Humanitarian intervention—a Trojan horse?] In: Herfried Münkler/Karsten Malowitz, (eds.), Humanitäre Intervention. Ein Instrument außenpolitischer Konfliktbearbeitung. Grundlagen und Diskussion [Humanitarian Intervention. An Instrument of Foreign Policy Conflict Management. Basics and Discussion]. Wiesbaden: VS Verlag für Sozialwissenschaften, p. 66.

<sup>10</sup> Hermann-Josef Blanke, 1989, *Menschenrechte als völkerrechtliche Interventionstitel* [Human rights as a title of intervention under international law]. Archiv des Völkerrechts (September 1989), pp. 280–281.

<sup>11</sup> Sen, 2004, p. 315.

a restatement, definition and evaluation of existing human rights ideas since antiquity. One of the difficulties of this strand is that, for example, there is by no means a consensus as to what is to be understood by the concept of dignity, which is always associated with human rights.<sup>12</sup>

Can human dignity be seen as the foundation of human rights, or is it rather the case that the historical process of the human rights debate and the gradual implementation of human rights in their various aspects determine what human dignity is or should be? These two categorical aspects of the consideration of human dignity do not represent a contradiction to the fact that three periods or lines of the philosophical-theoretical human rights discussion can generally be stated:

The first line leads from antiquity to the seventeenth century, in which human dignity in concrete terms and human rights in general are understood as moral-philosophical principles. In this way, the original natural law has an oppositional character, which assumes the freedom and equality of all, but still remains in the individual-moral space and is not yet political because it lacks a social basis for implementation in socio-political existence.

From the middle of the nineteenth century, people's living and working conditions were included in the discussion about human rights and dignity. A concretization, i.e. also socialization of the human rights question takes place without negating the universal nature of the human rights question. The classically liberal division of rights into positive (participation) rights and negative (protective) rights that had dominated until then is now completed by the inclusion of social rights as a result of the emergence of the European bourgeois class societies that began their worldwide triumph after the French Revolution. Wage labor on the basis of production based on the division of labor, intensified as Taylorism in the course of the nineteenth century, forms the material basis of the above-mentioned socialization and concretization of the human rights question, without losing sight of previous debates about human rights in their inalienability and universality.

From the middle of the twentieth century, neo-colonialist resistance and the fight for social justice against new forms of institutional racism were included in the human rights debate,<sup>13</sup> also within the framework of a broad-based

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<sup>12</sup> **Gan Shaoping/Zhang Lin**, 2009, *Human Dignity as a Right*. Frontiers of Philosophy in China. Vol. 4, No. 3 (September, 2009), p. 372.

<sup>13</sup> **Samuel Moyn**, 2018, *Not Enough. Human Rights in an Unequal World*. Cambridge Massachusetts and London England: Harvard University Press, p. 98.



fascism research that was coming back onto the agenda.<sup>14</sup> The United Nations Charter of 1945,<sup>15</sup> the Universal Declaration of Human Rights of 1948,<sup>16</sup> and regional codes such as the European Convention on Human Rights<sup>17</sup> continue to represent attempts to make all of the different approaches and conceptualizations mentioned manifest themselves in a generally binding code.<sup>18</sup> Sen's focus on the need for the formation of a theory of human rights lies precisely in this apparent ambivalence of approaches and attempts to confront them. The aim is to create a far-reaching philosophical-theoretical framework on the basis of which human rights can be brought to the level of an indispensable dimension of human interaction on a global level.<sup>19</sup>

## 1.2 Ambivalence of Contemporary Developments

These four strands, which are inextricably intertwined, must be evaluated against the background of—on the one hand—historically contemporary developments and—on the other hand—a political-ideological level.

For example, the Universal Declaration of Human Rights of 1948 reassessed the principle of the nation state that emerged from the Peace of Westphalia

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<sup>14</sup> Ibid, p. 372.

<sup>15</sup> <https://www.un.org/en/about-us/un-charter/full-text> (Accessed July 25, 2022).

<sup>16</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed July 25, 2022).

<sup>17</sup> For the full text of this convention see also: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf). (Accessed July 25, 2022). For a more in-depth look at the topic see also: *Stephen Wheatley*, 2019, *The Idea of International Human Rights Law*, Oxford: Oxford University Press.

<sup>18</sup> *Gan Shaoping/Zhang Lin*, 2009, p. 372.

<sup>19</sup> Whether and in what way such a far-reaching theoretical-philosophical framework can be created has been a debate between representatives of the 'egalitarian' human rights tradition since the October Revolution at the latest. One of the most outstanding representatives of this tradition is Ernst Bloch, who in his work *Natural Law and Human Dignity* connects human rights in general and human dignity in specific, i.e. the connection of general principles and their concrete historical-social manifestation(s), as a prerequisite for promoting a just world. Such is then "human dignity ... [...] ... not possible without the case of human rights" or "with economic priority we find humanistic primacy". *Dennis J. Schmidt*, 1996, *Translator's Introduction: In the Spirit of Bloch*. In: Ernst Bloch, *Natural Law and Human Dignity*. Cambridge, Massachusetts/London, England: MIT Press (third printing), p. xi.

in 1648. Accordingly, the originally very broad conception of national sovereignty, which grants the states almost limitless legal scope for political action, is restricted.<sup>20</sup> In the further course, universal sets of rules are to be established, the aim of which is to create international standards for the living and working conditions of global humanity. With advancing globalization since the 1990s, however, this universal *right to justice* has become more and more obsolete and has been relativized in the factual validity of a large number of specific legal sub-regulations (such as the law on foreigners as an exceptional right that stands outside of liberal civil legal norms).

The steps towards the aforementioned universal regulations were decisively prepared by important developments. One is characterized by the strong push, particularly by the United States of America, to stabilize the hegemony of the capitalist world system as a result of the new world order after World War II. Related to this is the systemic conflict that began in the late 1940s and continued until the early 1990s between the socialist vision structured and thus also dominated by the Soviet Union and the concept of the “free world”, led by the USA. This bi-polar world order and its manifestation in the Cold War was challenged by large streams of refugees as a result of the Second World War: migration movements in which hundreds of thousands of people—including forced labourers employed in the fascist war economy and those liberated from the concentration camps—had to be resettled in new homes. From a human rights perspective, this was accompanied by practical political attempts to (re)structure the socio-political order in the late 1940s and early 1950s, which took place on the basis of political and legal regulations such as the Geneva Convention. This 1951 convention<sup>21</sup> marks an important point in the obligation of states to protect refugees from persecution. Along with this, the leeway for a purely national approach was restricted in favour of universal criteria. A development that began in the seventeenth century found its first major conclusion here. At present, precisely this tension between the competences of the nation states and their universal-global guidelines for action is one of the main areas of concern with human rights.

The migration movements listed above as a result of the Second World War are just one of the countless events that humanity was confronted with after 1945 in the form of violence and destruction in all areas of life on an unprecedented scale.

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<sup>20</sup> Twiss, 2004, p. 52.

<sup>21</sup> For the history, the content(s) and the modifications of this convention visit the website of the UNHCR: <https://www.unhcr.org/1951-refugee-convention.html> (Accessed July 25, 2022).

In the end, 70 million people died as victims of terror and war policies initiated by fascist Germany and its vassal states in Europe and the Far East. Against this background and even earlier against the background of the First World War, the founding of the League of Nations in 1919 and later the United Nations in October 1945 were the first institutional attempts to formulate formal legal mechanisms that were intended to ensure that something like this never happened again would; furthermore, attempts were made to firmly anchor the principle of national sovereignty. The aim of all these developments is the construction of binding domestic legal norms and regulations as well as their practical implementation, anchored in the framework of a general human rights discourse. The manifold ruptures and discontinuities, for example in the above-mentioned debate about human dignity and its different views, as well as the systemic conflicts after 1945, point to an ideological layer that is inherent in this discourse and makes it difficult to formulate and implement generally valid and accepted human rights norms. In a bi-polar world, it was associated with almost insurmountable obstacles to “maintain a real interest in the universality of human rights”.<sup>22</sup> For the current political and social debates on the relationship between social order and individual freedom and on that of authoritarian political structures and social participation, this could still manifest itself as a step backwards. Once again, it seems necessary to create a global consensus on the content and provisions of human rights and their legal norms.

With the acceleration and intensification of globalization processes, in close connection with the dissolution of the socialist bloc under the leadership of the Soviet Union and the parallel dissolution of a very specific political culture, a second, political-ideological, level of human rights discourses and practices can be stated. While on the one hand the thesis of the end of history (Fukujama) has been proclaimed since then, a general core of the debate on human rights remains, which emphasizes the search for a new world order. In the context of globalization we can increasingly observe (again) attempts to construct a “new” free world, in the sense of creating the notion of “freedom and democracy” through information production and dissemination, often with interventionist politics, complemented by the creation of a consensual public—a strategy very similar to that of Gramsci and his reference to the “two wars”. The initial situation can be seen in the fact that the principle of the nation state or nationality has experienced a tendency to decline over the past thirty years and the political

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<sup>22</sup> **Wolfgang Huber**, 1994, *Menschenwürde und Menschenrechte als Grundelemente einer zukünftigen internationalen Ordnung* [Human dignity and human rights as basic elements of a future international order]. Leviathan, March 1994, Vol. 22. No. 1, p. 49.

economy has also taken on new forms: on the one hand, global hegemony has allowed—and even demanded—unbridled capitalist activity,<sup>23</sup> while on the other hand creating the same globalization tendencies are the prerequisites which enabled the countries of the Global South to take a big step towards a reorganization of international relations. All of this has resulted in a fundamental shift in the global social structure, the most significant manifestation of which has been the emergence of information societies in which production, consumption, distribution and exchange have been redefined, redefined and revalued. In this “new” political-ideological framework of the globalized world, the current issue is to soften material injustice via a redefinition of rights, which—as already mentioned above—reconstitutes their social and political reference. Of course, economic aspects are part of society and politics, as these largely determine the extent of material inequality, which has worsened since the beginning of the corona pandemic. In this context, the current human rights debate is being restructured from two sides: one concerns the economy and, within this framework, the reinterpretation of use and exchange value, as well as the redefinition of the role and function of finance capital in the globalized world; of greater relevance in the current context is the determination of people as “human capital”, not least as a result of the changed role of the state: while its power is by no means dwindling, we find different mechanisms of privatization, in the sense that private operators take on formerly statutory tasks: for example, security services are increasingly taking on border control and looking after public spaces; education and training, but also legally regulated processes such as legislation are now increasingly (quasi) privatized. These globalization tendencies are closely intertwined with the human rights issue in theoretical and practical terms, as well as in its philosophical-theoretical, political-social, legal, economic and cultural dimensions.

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## 2 Origins of the Idea of Human Rights

### 2.1 The Determinants of Human Rights

Despite the above-mentioned ambivalences and distortions inherent in human rights thinking, the human rights narrative has always been largely presented as a consensual concept in terms of its value and content. Those who argue that

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<sup>23</sup> For a more in-depth look at the topic see also: *Thomas Pogge, 2002, World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms. Cambridge: Polity Press in association with Blackwell Publishers.*

human rights are universal and inalienable, and that every human being is born free and equal, do so on the assumption that a universally accepted “truth” is being expressed in this way. Insofar as this assumption deals with the question of the *nature* of human rights, such a consensus is of constructive significance to the extent that on this basis, especially after 1945, the necessity was seen and generally recognized to implement human rights as a structuring principle of coexistence. In other words, a “worldwide appeal to human rights”<sup>24</sup> has taken place, which at least enables further worldwide cooperation in this area, even if this “common in the dispute between world powers and ideologies”<sup>25</sup> is repeatedly called into question. However, there are differences with regard to the assessment of the significance of material, on the one hand, and philosophical-theoretical formation conditions, on the other hand, of the idea of human rights. These differences will be discussed further below. First of all, however, it seems necessary to draw a framework within which the—in the most general sense—*nature of human rights in the most general sense* is to be defined. In this context, the term *nature* should be understood to mean the definition of human rights, which also includes their location in various areas such as the legal system and international institutional networks. Ryffel (1984) speaks here about a “consistent idea”,<sup>26</sup> which manifests itself in four points.

The first point relates to human rights as a legal conglomerate belonging to the human species per se. Reference has already been made earlier, in connection with the concept of human dignity, but it is treated there in its ambivalence within the historical continuity/discontinuity. However, the consensual aspect should be emphasized here, which will then form one of the main foundations of the systematic philosophical-theoretical treatise on the idea of human rights since antiquity.

The second point relates to the integration of the idea of universality and inalienability as an ethical principle in positive law, also due to the need to adapt to social, political, economic and cultural changes since early Renaissance humanism. This adaptation also took place beforehand on the basis of Roman law, through a *politicization* of natural law and its incorporation into Roman constitutional law. The extent to which this *lucidification* of the human rights concept

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<sup>24</sup> **Hans Ryffel**, 1984, *Philosophische Wurzeln der Menschenrechte [Philosophical Roots of Human Rights]*. Archiv für Rechts- und Sozialphilosophie (ARSP), Vol. 70. No. 3, p. 400.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

present in natural law with its very early, albeit still moral, understanding of freedom, equality and fraternity modified its oppositional character into a status quo attitude will be dealt with later when referring to the interaction between theoretical conceptualization and material development.

The third point refers to the location and manifestation of human rights in national and international regulations. The main aspect here is the implementation of legal norms in people's living and working environments, which in the current world order is (still) the task of the nation states, despite the diversity of international institutional associations. Human rights are referred to as basic rights within the framework of national constitutions. The more far-reaching concept of human rights is thus reserved for a universal, in a certain respect also utopian-visionary view, as an idea of entire mankind. The philosophical-theoretical origin is also based on this universality. In a way, a certain kind of constructive productivity is immanent to this limitation, since in this way the motivating thrust of the utopian meaning of human rights is retained.

Closely related to the previous point is, fourth, the definition of human rights as civil rights, which are in fact reserved for citizens of a certain state. On the one hand, this limitation is understandable from a historical and social point of view, since the establishment of civic relationships is also the result of social struggles, which have been closely linked to the replacement of traditional relationships of belonging since the late Middle Ages and Renaissance humanism. In this way, civil rights certainly have a special status, also because these struggles are closely linked to the development of the principle that everyone is equal before the law. On the other hand, the universal principle that everyone has inalienable rights, regardless of their nationality and place of residence, is violated here. The debates on this point were and are a constant (controversial) point in the human rights discourse. As explained above, this debate is being conducted in particular within the framework of legislation on foreigners and within the framework of the question of the implementation of human rights.

Overall, there is a far-reaching consensus in the global institutional-legal debate on the human rights determinants outlined above. However, there is dissent above all in the theoretical debate between representatives of the various scientific disciplines, which points to different political and ideological localizations, to different regional traditional patterns, and then ultimately to different concepts of terminology. The history of human rights has always been defined by divergences of this kind; at least, however, there is currently an awareness of the need for global agreements, even if these threaten to break down from time to time, especially in times of crisis.

## 2.2 The Moral-Universal (Re)Conceptualization of the Image of Man

The image of man based on the appreciation of his mere existence as a sufficient reason to respect him was first systematically worked out as part of the theory of natural law in Greek and Roman antiquity. This “first epoch”<sup>27</sup> of human rights thinking was later developed further in this sense that “Graeco-Roman thinking and Christian elements meet and finally lead to a Stoic-Christian justification of natural law”.<sup>28</sup> In this way, a historically very early philosophical-ethical alternative to the existing structures of slave-owning societies is being drafted. Of course, such beginnings by no means appear on the stage of political thought as a tradition of thinking that overturns existing living and working conditions. These conceptualizations are not yet linked to social dynamics, i.e. the latter are not yet able to develop socio-political driving forces. The socialization of the idea of human rights is still rudimentary, and definitions remain tied to the philosophical-theoretical level. The moral sense for a better world, the most radical manifestation of which is the Sophists’ rejection of slavery,<sup>29</sup> is not yet capable of being transformative. However, later formulations, for example of the Enlightenment philosophy, that reason is the measure of all things, further still that all “epochs are to be brought before the judgment seat of reason”,<sup>30</sup> are already conceptually anticipated in Plato and Aristo. According to this, only laws that “can be proven to be the result of reason”<sup>31</sup> are binding. Cicero, who according to widespread opinion was the first to introduce the concept of *dignity* into the human rights debate,<sup>32</sup> defines it as the result of reason. The latter in turn forms the decisive difference between man and animal, between man and the beast.<sup>33</sup> When viewed

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<sup>27</sup> **Wilhelm Ernst, 1984**, *Ursprung und Entwicklung der Menschenrechte in Geschichte und Gegenwart [Origin and Development of Human Rights in the Past and Present]*. Gregorianum, Vol. 65, No 2/3, p. 232.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> <https://www.staatslexikon-online.de/Lexikon/Geschichte,Geschichtsphilosophie> (Accessed July 25, 2022).

<sup>31</sup> **Ernst, 1984**, p. 233.

<sup>32</sup> **David Luban, 2015**, Human Right Pragmatism and Human Dignity. In: **Rowan Craft/S. Matthew Liao/Massimo Renzo** (eds.), *Philosophical Foundations of Human Rights*. Oxford: Oxford University Press, p. 274.

<sup>33</sup> Ibid. And in particular footnote 28.

positively, these approaches—even if their conceptual interpretations harbour the danger of generality and abstractness—do not reveal the vision of a universal implementation and thus avoid a positivistic legal interpretation that is too restrictive of what constitutes our inalienable human existence.

In all of these early human rights conceptualizations, equality plays no part. Up until the sixteenth century, their thematization was largely reserved for the sphere of artistic production. Morus' *Utopia* and Campanella's *City of the Sun* deal with the question of equality within the framework of social and political ideas of (re)ordering. Philosophical-theoretical conceptualizations of the human being *as such*, which had previously dominated, are now prescribed in social reality, which represents a paradigmatic change in the history of the origins of the idea of human rights. This will be dealt with explicitly further below.

The path to this change is also reflected in concepts such as *universal individualism*, a kind of very early understanding of world citizenship. This idea, already formulated in antiquity, especially in the Graeco-Roman Stoa,<sup>34</sup> was developed further by Dante centuries later, in the time of Renaissance humanism which had prepared the actual Renaissance, in the form of his reflections on a world government. It may also be at this time that the idea of human rights also led to far-reaching material changes or, conversely, material changes began to integrate the idea of human rights into institutional systems.

### 2.3 Early Attempts at Locating the Idea of Human Rights in the Socio-Political and Legal Sphere

Without doubt, the (re)conceptualization of human rights thought discussed above had a formative character for the implementation of human rights in the differentiated sets of rules of early and contemporary modernity. The prehistory of these sets of rules can be found in the Roman state and legal constitution. Natural law in its oppositional nature, but nonetheless—as explained above—not yet going beyond ethical protest,<sup>35</sup> is incorporated into Roman constitutional law. In the sense that Cicero “makes natural law the criterion ... [... for the constitution

<sup>34</sup> **Hasso Hofmann, 2001, *Menschenrechte und Demokratie—oder: was man von Chrysipp lernen kann [Human Rights and Democracy—or: what you can learn from Chrysipp]*. JuristenZeitung, 5. Januar, 56. Jahrgang, Nr. 1, p. 2.**

<sup>35</sup> Concerning this aspect see **Ernst Bloch, 1996, Natural Law and Human Dignity**, and in particular Chapter 4: The First Opponents of Institutions, pp. 7–9.



...] [...] and [...] for right and law.<sup>36</sup> The humanitarian narrative of the utopia of a society of the free and equal in the early doctrine of natural law now becomes part of the political-ideological status quo and thus loses—on the one hand—its potential transformative explosive power, but on the other hand fixes the “comprehensive idea of humanity”<sup>37</sup> of the Stoa, which extends “the basic demands for justice and philanthropy ... [...] also to [...] slaves and barbarians”<sup>38</sup> in a set of rules and thus makes it somehow questionable. The material necessity for such an institutional localization of the idea of human rights is based on the fact that the Roman Empire contained many different groups of people on its soil who had to be held together by a common narrative of human dignity and legal equality. This functionalization of the idea of human rights points to a very early origin of modernity in the Roman Empire, without us being fully within it historically. The incorporation of the idea of human rights into the socio-political and legal sphere, as described above, is a paradigm shift in such a way that conditional theory and practice, idea and material necessity begin to interlock. Which ultimately plays an essential role for the important point of the implementation of human rights. This history of intertwining is nevertheless an appropriation of the idea of human rights (or at least an attempt at appropriation). This is also the case today, especially when particular interests call into question the universality of human rights, or when human rights are determined by regional or cultural particularities. This contradictory side of the human rights discourse—described above as ambivalence—is and remains one of the central points within the ongoing debate about human rights. If you look at it from the constructive side, you can see that the more clearly and pointedly these ambivalences are expressed or brought to light, the easier it is to develop strategies to counteract them. At this point, the author reserves the right to call this the *dialectics* of the idea of human rights.

Following the modification of the idea of human rights by Cicero and its functionalization within the Roman state apparatus, beginning in the third century, with the partial assimilation of the doctrine of natural law into the teaching of the apostles, the connection of the idea of humanity with Roman state and legal

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<sup>36</sup> **Jürgen Blänsdorf**, 1976, *Griechische und römische Elemente in Ciceros Rechtstheorie [Greek and Roman Elements in Cicero's Theory of Law]*. Würzburger Jahrbücher für die Altertumswissenschaft, Vol. 2, p. 143.

<sup>37</sup> **Haratsch**, 2010, p. 14; quoting **Hans Joachim Störig**, 2002, *Kleine Weltgeschichte der Philosophie*. p. 219, footnote 11, 3rd edition, Frankfurt/M.: Fischer Taschenbuchverlag.

<sup>38</sup> **Haratsch**, 2010, p. 14; referring to: **Hofmann**, 2001, p. 1.

practice came to their graduation.<sup>39</sup> At this point it should be kept in mind that the originally Greek and also later Hellenic-Roman natural law of the Stoics was built on a secular foundation. The cosmopolitan kingdom of natural law was on the one hand a philosophical-theoretical construct, a historical speculation so to speak, but on the other hand this kingdom was originally assigned to the material world, quite different from the later Christian modified natural law doctrine of Augustine, for example. For example, Roman law attempted to formulate criteria for establishing an orderly socio-political order with regard to rights and duties, for setting limits on the power of enforcement and, in general, for determining the relationship between the individual and It is in the nature of things that the impact(s) of these early conceptualizations on daily life has not yet come to fruition; the social practice of individuals remained largely unaffected by this idea.

The acceptance of human rights as a real social value and their transformation into a universal reference point for the socio-political order has only been achieved at the end of long-lasting social and political dynamics together with centuries of material changes as a result of painful efforts. However, it is possible to put this fight and the gains made after it into a conceptual framework, which is what we intend to do with this.

It was argued above that the Stoic secular natural law came to its end with and after the rise of Christianity. However, what was continued and had to be continued due to material changes was the still existing need to incorporate certain image determinations of man systematically determined by natural law into one's own thought systems. Thus the original natural law remained in the determination of what man is and is to have, what his position in the material (and as far as religious interpretations are concerned: spiritual) world is and is, reference, and that to this day.

Thus, in his dualistic doctrine of the *lex aeterna* (the eternal world of God) and the *lex naturalis* (the natural world), Augustine adopts concepts from the Stoics. But for him, the stoic (of course not yet to be read in the sense of monotheism; author's note) "divine world reason" is no longer the reason for all things, but God himself.<sup>40</sup> And he also conveys to people the image of man as a species. A universality limited to creation, which spiritualizes human nature, whereby the monopoly of definition of the divine ground is handed over to the church leaders. Such a human right continues in an even more explicit way the political-ideological character that has been immanent to natural law since it was located in the Roman state and legal system.

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<sup>39</sup> Hofmann, 2001, p. 2.

<sup>40</sup> Ernst, 1984, p. 236.

As a result of the social, political, economic, and cultural changes that occurred during the thirteenth century, Christian believers began to reinterpret natural law concepts of human rights. In this context, Aquinas reform efforts are focused on three important issues: human freedom and dignity (*homo est naturaliter liber et propter se ipsum existens*)<sup>41</sup> in their philosophical-theoretical dimension, freedom rights of property, the person and life, and the right of resistance. According to Ernst 1984, “the theologically based attempts at legitimation are ... [...] ... decisive for this entire period of Christianity. [...] But the thought of the equality of all people before God had hardly any influence on the real social conditions at this time.”<sup>42</sup> They are attempts to adapt to the changing material conditions in which, in the course of the rise of the early European bourgeoisie, property, for example, increasingly takes on a constitutive value in socio-political life.

In a certain way—in connection with the topic of secularism—Aquinas already made a necessary and well-developed mental separation of religion and state. In chronological terms, however, this development can be traced back to the Investiture Controversy (1057–1122). The all-encompassing proclaimed Christian unity of the universe in unity with the far-reaching dominance of religious traditions of thought was shaken during this period, later continuing in the anthropocentric thought systems of Renaissance philosophy and the incipient materialism of Enlightenment thinkers such as Thomas Hobbes. Structures are beginning to assert themselves in which the individual (the later citizen!) is granted the right to profess a religion or not. The principle of tolerance, freedom of conscience and freedom of religion is outlined here as civil rights introduced in later legal regulations. The Edict of Nantes of 1598 represents a very early attempt at this; in it the Huguenots were assured of these civil rights. Another very early set of rules that opens the door for certain population groups to participate in political decision-making processes and guarantees freedom rights, thus regulating class relations and placing them on a legal basis, is the English Magna Carta of 1215.<sup>43</sup>

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<sup>41</sup> Ibid, p. 237.

<sup>42</sup> Ibid.

<sup>43</sup> Later sets of rules are the English Bill of Rights of 1689 and the American Bill of Rights of Virginia of 1776, which served as models for the French Declaration of the Rights of Man and of the Citizen of 1789. But even with these, large groups of people, such as women or residents of European colonies, were excluded from the rights to freedom.

See also: *Corinne Wohlgensinger*, 2014, *Behinderung und Menschenrechte: Ein Verhältnis auf dem Prüfstand [Disability and Human Rights: A Relationship under Scrutiny]*. Leverkusen: Budrich UniPress, pp. 20–21.

These rights, which were determined in early sets of rules, are not yet described as “personal liberties” by Ernst, but as “corporate rights”, i.e. “concrete freedoms of individual strata and groups”.<sup>44</sup>

## 2.4 The Concept of Human Rights in Modern Times

The locations listed above represent balancing acts that seek to combine universal provisions of human rights and their implementation both in social life and in legal regulations. These localizations were neither significant in a practical sense, nor did they have a liberal and egalitarian character in society as a whole. With the development of modern humanism, this connection becomes more visible. It is possible to trace the origins of systematic modern human rights thinking as an expression of both the need for philosophical-theoretical conceptualization and the demand for social practice to universal Erasmusian humanism and the Spanish practical thinking of the sixteenth century Golden Age.<sup>45</sup> The ideas of the humanist thinker Erasmus enabled Spanish theorists to analyse and critically question the new conditions that arose with the discovery of the American continent from a human rights perspective. Erasmus’ influence goes to two important new elements in his thinking. One relates to the question of how a “Christian” should live “without becoming entangled in the meshes of excessive ritual worship”.<sup>46</sup> The second important element of Erasmus humanism is his concept of peace, “derived immediately from his espousal of religious tolerance and evangelical charity to be practiced towards all peoples”.<sup>47</sup> This is the beginning of a concept of human rights that seeks to combine descriptive and analytical definitions of the image of man with future projections for a free, egalitarian order. This now goes beyond the state and legal localization level and designs concrete models of

<sup>44</sup> For this topic see *Ernst*, 1984, and in particular Chapter 5: Korporative Rechte der alteuropäischen Gesellschaft als Vorläufer der Menschenrechte [Corporate Rights of the Old European Society as Precursors of Human Rights], pp. 237–238.

<sup>45</sup> “The Spanish Golden Age (*Siglo de Oro* in Spanish) was a period of high artistic activity and achievement that lasted from about 1580 to 1680. During this time period, El Greco and Velázquez painted their masterpieces, and Cervantes wrote his famous, satirical novel *Don Quixote*.”

Source: <https://www.nps.gov/cham/planyourvisit/spanish-golden-age.htm>

<sup>46</sup> *Rudolph Schevill*, 1939, *Erasmus and Spain*. *Hispanic Review*, Vol. 7, No. 2, p. 96.

<sup>47</sup> *Ibid.*

new forms of living and working together. Erasmus' approach to different political systems such as monarchy or the republic is the basis for such models. His political preference crystallizes on the basis of his *respublica* interpretation. His conception of the state, which was already subsumed under this term by Cicero in the Roman Republic, has the content that the state can be led by a prince, but ultimately belongs to the people, and that political leadership can only then become a true "public affairs"<sup>48</sup> in this way. The Dominican and Jesuit priests, influenced by these ideas, in the period of the Spanish conquest of Latin America in the sixteenth century, counted the members of indigenous peoples among the people.

The Spanish invasion marks the beginning of the massive destruction of civilizations, annihilation of indigenous peoples, exploitation of human labour and natural wealth of Latin America. On the other hand, certain clerics, particularly of the Jesuit and Dominican sects, have opposed this policy of the Spanish kingdom, trying to combine consistent theoretical efforts with practical considerations. According to Bartolomé de Las Casas, it is natural characteristics such as reason and sociality that distinguish man, who is a creation of God, from other beings. These intelligent and social creatures have been born free since the dawn of mankind. Freedom is the most basic human right, so the Spanish king must order the liberation of all enslaved indigenous peoples. This idea culminated in Las Casas' idea that "the harmonization of the recognition of the Indian religious freedom with the Jesuan commission for the mission [...] can only succeed through a peaceful proclamation of the Christian faith, namely "through the conviction of the understanding with reason, and by the gentle enticement and encouragement of the will."<sup>49</sup> Other missionaries acted directly, establishing settlements called Reduction or Mission where the locals could live in safety.<sup>50</sup> Some even took up arms to protect these settlements from the attacks of the Spanish conquerors, even at the risk of being excommunicated. It is precisely this tension between material conditions and the effort to overcome these conditions in order to integrate human rights ideas into social and political structures that is meant by social and political dynamics.

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<sup>48</sup> **Marcos Eduardo Melo dos Santos/Weber Suhett de Oliveira, 2019, *State, consensus and legitimacy in the Political Philosophy of Erasmus of Rotterdam*. Revista Portuguesa de Filosofia. T. 75, Fasc. 3, Teorias Políticas Medievais/Medieval Political Theories, p. 1913.**

<sup>49</sup> **Matthias Gillner, 1989, *Bartolomé de las Casas und die Menschenrechte [Bartolomé de las Casas and Human Rights]*. Jahrbuch für Christliche Sozialwissenschaften 39, p. 155.**

<sup>50</sup> Centuries later, then under completely different socio-political conditions, similar experiments of free and equal coexistence and work were put into practice by utopian socialists like Robert Owen.

Later efforts can be identified under the heading of legal and political equality, which came to the fore in early classical political liberalism. In John Locke's political philosophy, as a modified form of natural law, the individual is born free and equal; it is this individual who from now on is granted the right and competence to build up the state and to continuously develop it further—on the basis of reason and experience. Divine conceptions of the state are replaced by an understanding of the state as a functional unit. Here you can already see the quintessence of classical political liberalism, according to which the artificial, the created, is the natural. The idea of the working creative person, the *homo faber* of the pre-Renaissance and Renaissance culminates here in the concept of *homo economicus*. From now on, the work of art, the state and the world itself is the work of man, and with it his idea of himself as a rational being endowed with inalienable rights. At this point, however, it should be emphasized that John Locke deals with the freedom of the individual in particular in the context of property rights, which is not particularly surprising since the social carrier of modern secular-anthropocentric ideas since the early or pre-Renaissance has been the early European bourgeoisie whose rise was based on their property-based economic power. In this regard, Aquinas had already emphasized the importance of property as a constitutive element of the political order, as explained above. Even more than this tension between freedom and property, which is nowadays still making it difficult to create humane conditions, there is another tension that is worth mentioning in Locke's political philosophy, namely that between freedom and order. In contrast to the contemporary discourse on civil society as the sphere of a state-free society from which the democratic struggle against the authoritarian and monolithic state is to be waged, in Locke the state to be created via contract is the guarantor of civil liberties. According to Locke, the state-free sphere of society mentioned above does not exist. Locke's civil society is a *Bürgergesellschaft*<sup>51</sup> in which the state is a socially created appendage, but without whom 'nothing works'. One creates the state, but at the same time subordinates oneself to it to a maximum extent. In Thomas Hobbes's political philosophy, this ambivalent relationship is worked out even more clearly in favor of state power. Hobbes justifies this with the view, which seems paradoxical nowadays, that internal politics

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<sup>51</sup> The distinction between civil society and the citizens' society (*bürgerliche Gesellschaft*) is not reflected in English language, which might result in perception difficulties when it comes to translations. Translating Hegels' *Bürgerliche Gesellschaft* into civil society immediately brings into mind the contemporary use of the term civil society in Political Science. However, this is not what Hegel meant with *Bürgerliche Gesellschaft*.