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# Die Freiheit der Menschenrechte

Festschrift für Heiner Bielefeldt  
zum 65. Geburtstag



**WOCHEN  
SCHAU  
WISSENSCHAFT**

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Herausgegeben von Michael Krennerich,  
Michaela Lissowsky und Marco Schendel



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Prof. Dr. Dr. h.c. Heiner Bielefeldt



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## Vorbemerkung

Eines ist gewiss: Hätten wir vorher Heiner Bielefeldt gesagt, dass wir eine Festschrift zu seinem 65. Geburtstag planen, hätte er uns das Vorhaben umgehend ausgedrückt. So blieb uns nichts anderes übrig, als das Buch ohne sein Wissen zu erstellen. Er wird es uns verzeihen. Den Herausgeber\*innen und den Autor\*innen war es schlicht ein Bedürfnis, Heiner Bielefeldt mit einer Festschrift zu würdigen und zugleich den menschenrechtlichen Diskurs mit ihm zu führen. Viele wollten dabei sein, doch nicht allen war es möglich, in der Kürze der Zeit einen Beitrag beizusteuern. Umso mehr sei allen Mitwirkenden an dem vorliegenden Band für die erfreuliche Zusammenarbeit herzlich gedankt. Besonderer Dank gilt Jana Rothe für die gewissenhafte Redaktionsarbeit sowie Dr. Tessa Debus und Dr. Birgit Wolter vom Wochenschau Verlag für die gelungene Kooperation.

Die Festschrift versammelt 20 wissenschaftliche Beiträge, die zum fortlaufenden Nachdenken über Menschenrechte anregen. In dem ersten, eher philosophischen Teil werden, in Auseinandersetzung mit kritischen Stimmen, sowohl Fragen der Begründung und Plausibilisierung universeller Menschenrechte behandelt als auch die Subjekte der Menschenrechte genauer in den Blick genommen. Der zweite Teil geht aus rechts- und politikwissenschaftlicher Sicht auf Institutionen und Politik der Menschenrechte ein. Hinzu kommen eine Würdigung des Wirkens von Heiner Bielefeldt als UN-Sonderberichterstatter zu Religions- und Weltanschauungsfreiheit sowie eine Würdigung seiner Person und seines Schaffens aus persönlicher Perspektive von sieben (weiteren) Wegbegleiter\*innen.

Wir wünschen Heiner Bielefeldt und den weiteren Leser\*innen eine anregende Lektüre.

Erlangen, Januar 2023

Michael Krennerich, Michaela Lissowsky und Marco Schendel

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Heiner Bielefeldt wurde 1958 in der Nähe von Aachen geboren. Er studierte Philosophie, Theologie und Geschichte in Bonn und Tübingen. 1989 promovierte er an der Universität Tübingen im Fach Philosophie mit einer Arbeit zu den Gesellschaftsvertragstheorien. 2000 folgte die Habilitation an der Universität Bremen mit einer Arbeit zur Philosophie der Menschenrechte. Bielefeldt unterrichtete an verschiedenen Universitäten: in Mannheim, Heidelberg, Toronto, Bielefeld, Bremen, Oslo und Erlangen-Nürnberg.

Seit Anfang der 1980er Jahre engagiert sich Heiner Bielefeldt sowohl akademisch als auch in zivilgesellschaftlichen Organisationen für das Thema Menschenrechte. Zwischen 2003 und 2009 fungierte er als Direktor des auf Beschluss des Deutschen Bundestags eingerichteten Deutschen Instituts für Menschenrechte. Seit dem Wintersemester 2009/10 hat er den Lehrstuhl für Menschenrechte und Menschenrechtspolitik an der Friedrich-Alexander-Universität Erlangen-Nürnberg inne. Zwischen 2016 und 2019 war er außerdem „Professor 2“ am Norwegian Centre for Human Rights in Oslo. Heiner Bielefeldts Forschungsinteressen sind breit angelegt und schließen interdisziplinäre Fragen der Menschenrechtstheorie und -praxis genauso ein wie die politische Ideengeschichte und normative Grenzfragen zwischen Menschenrechten und Medizinethik.

Von 2010 bis 2016 hatte Heiner Bielefeldt das Amt des UN-Sonderberichterstatters für Religions- und Weltanschauungsfreiheit inne. In der Wahrnehmung dieser Aufgabe führte Heiner Bielefeldt Fact-Finding-Missionen in zahlreichen Ländern durch und verfasste thematische Berichte für den UN-Menschenrechtsrat bzw. die UN-Generalversammlung.

Seit 2007 hat Bielefeldt zusätzlich eine Honorarprofessur an der rechtswissenschaftlichen Fakultät der Universität Bielefeld inne. Im Jahre 2014 erhielt er ein Ehrendoktorat der katholisch-theologischen Fakultät der Universität Luzern. Die Brigham Young University in Provo/USA zeichnete ihn mit dem 2016 Religious Freedom Service Award aus. Im Jahre 2017 erhielt er den Alfons-Auer-Ethik-Preis der katholisch-theologischen Fakultät der Universität Tübingen. Sein bei Oxford University Press veröffentlichter und zusammen mit Nazila Ghanea und Michael Wiener verfasster Kommentar zur Religions- und Weltanschauungsfreiheit („Freedom of Religion or Belief. An International Commentary“) erhielt den Guiseppe Alberigo Award (Kategorie A) der European Academy of Religion in Bologna. Im Oktober 2017 erhielt Heiner Bielefeldt von Bundespräsident Frank-Walter Steinmeier das Bundesverdienstkreuz Erster Klasse. Seit 2020 ist er Mitglied der Bayerischen Akademie der Wissenschaften.

# Begründung und Subjekte der Menschenrechte



LINDA HOGAN

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## Justifying Human Rights: Plural Foundations, Embedded Universalism

Have we entered “The Endtimes of Human Rights”, as Stephen Hopgood (2013) contends? Is anthropologist Mark Goodale correct when he describes this as an age *after* international law, when “the optimism about the transformative potential of the international legal order has buckled under the weight of both existing and new geopolitical and political economic pressures” (Goodale 2021, 289)? There is no doubt that human rights are under threat from multiple quarters. The collapse of the post-war liberal consensus on international co-operation, the rise of nationalistic populism, the disregard of international obligations towards refugees, asylum-seekers and migrants, each of these demonstrates the challenging global context in which human rights politics and law operate today. In addition, the failure of states to address the violent heteronomies of racism, sexism and colonialism over successive generations has embedded inequity to such an extent that global inequality is accelerating and new challenges to human rights are emerging, linked to lack of access to education, gender inequality, the digital divide and climate change (UNDP 2019).

Disenchantment and climate anxiety abound because of “the snare in which humanity is caught” (Robinson 2020, 43). Yet alongside this disenchantment, the politics of resistance and social change continues, much of it pursued through the idiom and principles of human rights. This essay arises from the conviction that, notwithstanding its limitations, human rights politics is an essential resource to safeguard human dignity and must be defended. As such it seeks to honour the magisterial contribution of Heiner Bielefeldt to the advancement of human rights world-wide, which he has accomplished both through his vision for human rights and through his practice, particularly as UN Special Rapporteur for Freedom of Religion and Belief. This essay shares with Bielefeldt an understanding of human rights as a living tradition, an evolving discourse that articulates the essential dignity and equality of persons. Moreover, with Bielefeldt it regards the fluency with which human rights engages a plurality of philosophical, religious and cultural world-views to be essential to its success.

This essay is concerned with the justification of human rights. In the first section I discuss this contested issue of justifying rights, sketching my approach

to their justification in terms of plural foundations and embedded universalism.<sup>1</sup> I argue that human rights discourse draws much of its strength and global resonance from its capacity to incorporate and appropriate a variety of philosophical and religious metaphors, beliefs and moral languages in support of its non-negotiable principles of human dignity and equality. To illustrate this, in the second section I discuss the re-orientation of human rights that is currently underway and analyze how human rights have incorporated insights and ideas from distinct philosophical and religious traditions in order to address some of its acknowledged limitations. The limitations in question are its excessive individualism and its failure to adequately address global inequality. I highlight how feminist, decolonial and postcolonial insights, as well as ideas from the Catholic social ethical tradition of the common good provide crucial resources in this process of re-imagining of human rights. This discussion is but an example of the distinct contributions that diverse moral traditions make to the advancement of human rights. Other religious and moral traditions contribute different nuances and refinements as human rights evolve and as we broaden and deepen our understanding of how human dignity can best be secured and protected in the contemporary context.

## 1. Human Rights: Plural Foundations, Embedded Universalism

The idea of universal human rights, and its antecedent natural rights, has long had its sceptics. In the eighteenth century Edmund Burke criticized the abstract and absolute rights-claims asserted in “French Declaration of the Rights of Man and the Citizen” (1789) arguing that since they admit of no compromise, they lead to the dissolution of society and to the triumph of tyranny (Burke 1989, 109). For the philosopher Jeremy Bentham rights were “simple nonsense; [and] natural and imprescriptible rights, rhetorical nonsense – nonsense upon stilts” (Bentham 1987, 53). Influential critics in the twentieth and twenty-first centuries include philosophers as diverse as Alasdair MacIntyre (1996), Chantal Mouffe (2014), Admantia Pollis (1979), and Samuel Moyn (2010) each of whom has led the charge against the concept of human rights on the basis that it is incoherent or inadequate or both. Philosophical critiques of human rights reflect the disintegration of the enlightenment project, with its essentialist view

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1 This section summarises and builds upon the central argument in my book “Keeping Faith with Human Rights” (Hogan 2015).

of human nature, its confidence in abstract reasoning and its grand narrative of human progress. Critics argue that the concept of human rights depends on a philosophy that is not only bankrupt (Langlois 2001, 80), but orientalist and ethnocentric (Said 1993, 58), and which has as its core objective “the displacement of local, customary or traditional moralities and all forms of transcendental faiths [...] by a critical or rational morality which was projected as the basis of a universal civilisation [...] and binding on all human beings” (Gray 1995, 123). Among theologians there is also a tradition of skepticism, with Nigel Biggar, John Milbank, Stanley Hauerwas and Joan Lockwood O’Donovan being the most prominent. While their respective criticisms also reject the universalizing claims of enlightenment rationalism, their varying theological commitments under-write their diverse objections to the concept of human rights.

Notwithstanding this tradition of skepticism, the mid-twentieth century onwards saw a flowering of the ethics and politics of human rights. It was propelled by the post-war political settlement, reinforced with the promulgation of the 1948 UN Declaration of Human Rights and amplified by the decolonization movements in Africa and Asia in the 1950s and 60s. These political developments were accompanied by the elaboration of international human rights law, international, regional and national human rights legal instruments, as well as by the growth of human rights-based NGOs (secular and religious). In this period, religious traditions also began to engage more determinedly with the politics of human rights, including traditions previously skeptical of the language of rights, such as Roman Catholicism and Islam, and rediscovered resources within their respective traditions from which to justify and support the politics of human rights.

In this context the philosophical question of the justification of human rights has long been contentious. The UN Declaration itself is silent on the justification of human rights, thus creating space for diverse ways of accounting for the intrinsic authority of human rights and the assertion that “all human beings are born free and equal in dignity and rights.” Some argue that the idea of human rights must be premised on a particular metaphysical claim, or justified on the basis of a concept that all human beings can reasonably be said to share, for example human dignity. In this vein Johannes Morsink insists that the idea of human rights can *only* be grounded on the twin pillars of metaphysical and epistemic universality (Morsink 2009, 38), while Jeremy Waldron speaks about the concept of human dignity as an anchor for human rights (Waldron 2017). Other theorists argue that human rights require a religious justification in order that their normative claims can be justified. For example, Christian theologians

Nicholas Wolterstorff (2008, 325-341) and Michael Perry (1998, 18-26) each argue that inherent human rights require a theistic justification, while Jewish philosopher David Novak takes a comparable approach from the perspective of Judaism (Novak 1996). Others, including Ronald Dworkin and Richard Rorty have taken a constructivist or pragmatic approach to the issue of justification. Dworkin proposes a modest constructivist approach to human rights that locates the reason for positing the existence of human rights in “our habits of thought and political convictions,” habits that are cemented “at a level so deep that we cannot coherently deny that supposition” (Dworkin 1977, 290), while Rorty sees human rights as the product of a gradual extension of both security and sympathy, evident in the West since the Enlightenment (and indeed propelled by western values) (Rorty 1993). Michael Ignatieff (2001, 54) and Jack Donnelly (1989, 23-27) eschew discussions about justification altogether, insisting that this cul-de-sac should be jettisoned altogether in favour of an exclusive focus on politics.

Notwithstanding the insights of these propositions, the search for a single justification of human rights is misguided. Rather, as I have argued elsewhere a pluralist approach to the justification of human rights is historically accurate and philosophically warranted (Hogan 2015, 119). Historically, human rights language emerged from the intellectual heritage of Christendom and its aftermath. However, since the late nineteenth century a plurality of different philosophical, political, cultural and religious perspectives has re-shaped both the substantive meaning of human rights and how they are grounded. In terms of their substantive meaning, human rights evolved from a language focused primarily, one might even say exclusively, on individual liberties (specifically articulated in terms of civil and political rights) to one that incorporates social, economic and cultural rights precisely because of the impact of Latin American, Cuban, Russian and Chinese voices (especially in the debates during the third session of the Human Rights Commission) who insisted that the UN Declaration of Human Rights must include the rights to food, shelter, healthcare, social security and education, rather than being focused exclusively on the civil and political rights originating from western enlightenment philosophy.<sup>2</sup> In recent decades third generation solidarity rights, including the rights of people to self-determination, to development, peace and a sustainable environment have elaborated and ex-

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2 It should be noted however that echoes of the concern with economic and social goods (and which included the language of rights and duties) are also found in the early medieval tradition of natural subjective rights.

tended the understanding of human rights. This pluralism has also reshaped the conceptual grounding of human rights. Thus, in the decades since the promulgation of the UN Declaration the language of inherent human dignity has been mediated and adapted in and through a myriad of different worldviews and traditions. Moreover, it has endured and been renewed precisely because it has been receptive to many different justifications and rendered intelligible in the diverse moral languages that express the attachments and capabilities which shape the individual and her sense of flourishing. Indeed, over the decades human rights discourse has begotten neither an ontological nor an epistemic convergence. It has, nonetheless, become a language around which the world's manifold worldviews with their plural foundations cohere. Its strength as a moral framework derives from its capacity to embrace a diversity of comprehensive doctrines in support of the requirements of human flourishing, articulated in terms of basic needs, core freedoms and essential relationships (Hollenbach 2019, 88).

The universalism of human rights is therefore neither abstract, ahistorical nor context-free. Neither does it depend on a "view from above" that stands apart from the particularities of human life. Rather human rights claims are properly anchored in an epistemological framework which acknowledges that all our knowledge of the world is situated, that the universalist convictions we articulate are inevitably embedded in the cultural values through which they are expressed and that the justifications we marshal are contingent on the frameworks through which they are intelligible (Hogan 2015, 102). Human rights are more appropriately conceptualised in terms of an embedded universalism, or what Bielefeldt characterises as "a universalism from within" (Bielefeldt 2022, 75). Understood in this way, universal human rights "unfold their critical transformative approach within the particularistic contingencies of human life" (Ebd., 75). Driven by the conviction that each person has a right to dignity and respect, human rights therefore become the vehicle through which inherited and systemic privilege is challenged and previously silenced voices are amplified.

Inevitably the particularistic narratives through which human rights evolved are flawed and continue to have their blind-spots. In particular contexts human rights language was deployed to give moral respectability to western imperialist practices and in many countries it has been implicated in the dehumanizing violence of colonialism and racism. However, it has also been claimed by populations around the world to become a catalyst for the self-determination of nations and for the empowerment of marginalized individuals and groups. It has been developed, sometimes radically, by different communities worldwide, both in place of and alongside their indigenous moral languages. Moreover, it has been

re-framed and renewed by feminist, decolonial and subaltern voices who have worked to divest it of its moral myopia (O'Neill 2021b, 11) of racism, ethnocentrism and sexism. It is thus being re-imagined as a globally resonant ethic of equal dignity through multiple genealogical, multi-religious, intercultural global conversations about what we owe each other (Hogan 2015, 206). Mark Goodale's recent "Reinventing Human Rights" reflects a similar conclusion and advocates "translocality" as a way of grounding human rights. Translocality invites people to form alliances beyond established boundaries of community, nation, race, or religious identity, thereby reinventing human rights as a cross-cultural foundation for both empowerment and social action (Goodale 2022, quoting the publisher recommendation). Thus today, in the words of Bill O'Neill, the language of human rights is neither a *gran recit* (a Kantian metanarrative) nor a *petit recit* – the particular narrative of the postmodern western bourgeoisie (O'Neill 2021a, 11). Rather, it is a dynamic moral language that continues to evolve through inclusive, tradition-thick, cross-cultural, multi-religious conversations, through which we gain a greater understanding of what we owe each other.

## 2. Renewing Human Rights

The renewal of human rights as a globally resonant ethic of equal dignity draws on multiple genealogical critiques and diverse moral languages in order to develop a greater understanding of how human dignity can be safeguarded today. In recent decades the scale of the climate crisis, the brutalities of globalization and the persistent legacies of colonialism have led some critics to argue that human rights categories no longer have the capacity to support a politics of human flourishing. In particular critics argue that human rights politics is excessively individualistic and in addition, that it has failed to form a protective barrier against the growing economic inequality within and between states and to prevent the shocking immiseration experienced by millions of people worldwide. There is undoubtedly a measure of truth in each criticism. Moreover, because emphases vary in the different cultures within which human rights claims are advanced, these criticisms are more relevant in certain contexts than others. In what follows, I discuss the re-orientation of human rights that is already underway, and which seeks to address these limitations. My concern here is two-fold. First, I aim to highlight how feminist, decolonial and postcolonial insights, as well as ideas from the Catholic social ethical tradition of the common good can assist

in the current re-imagining of human rights discourse.<sup>3</sup> In addition, I hope to illustrate, through these examples, how different moral languages add nuances and refinements that are essential for the evolution and thus for the flourishing of human rights.

## 2.1 Re-orienting the Individualism

The claim that human rights language is fatally or excessively individualistic is well-rehearsed. In Asian values debate of the 1990s a sharp distinction was drawn between the putative western, liberal individualistic conceptualization of political life and the Asian one in which “the natural pattern is nation before community and society before self.”<sup>4</sup> According to Malaysia’s Prime Minister Mahathir Mohamad, the immorality of the west is the direct result of the West’s misinterpretation of human rights in which individual interests and rights are promoted over those of the community and the nation<sup>5</sup> (Langlois 2001, 15). However this has not been a debate simply between East and West. Rather, western communitarian philosophers and theologians too are highly critical of what they regard as liberalism’s misconceived anthropology and particularly its conceptualization of the person as “unencumbered” (Sandel 1984). Michael Walzer, for example, argues that the structure of human life is communitarian, not individualistic (Walzer 2004, 30). Thus, whereas communitarianism orients us to the common good, liberalism, it is argued, mistakenly structures human life around sovereign selves, unencumbered by relationships and free from the conventions of community. As noted by O’Neill, for Locke “the existence of individual rights precedes that of the community, which previously had been considered the concrete source of right” (Dupré 2004, 160; quoted in O’Neill 2021b, 10). Indeed Hobbes, Locke, Kant, despite their differences from one another, are variously implicated in this error in which rights are conceived “as formal properties (powers) of sovereign, autonomous selves abstracted from the

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3 In common with many religious and philosophical traditions, Catholicism has a complex history when it comes to the concept of human rights. It is a history that includes skepticism, ambivalence, reluctant affirmation and wholehearted embrace. See Hollenbach 1979, Clark 2014 for discussions of the modern period; and Tierney 1997 for a detailed discussion of the medieval period.

4 Hurrell 1999, 295: discussing a 1991 Singaporean Delegation White Paper in preparation for the Vienna Conference. There are also similar discussions from a Cuban perspective. See for example Schwab 1998, 57.

5 which includes the disregard of marriage, cohabitation, children begotten without fathers, etc.

ensemble of natural social relations” (O’Neill 2021b, 11). Misconceived in this manner, it is argued, the unencumbered self is the philosophical basis on which self-interested, egoistic politics of rights turns, in sharp contrast to a politics of the common good.

However, this characterization presents a false dichotomy because it ignores how human rights philosophy has been transformed by feminist, decolonial and post-colonial scholars, as well as by scholars of race, and as a result it mischaracterizes much of the politics of human rights around the world. Additionally, it fails to take account of the impact of theological traditions that advance human rights-based politics in tandem with an ethic of the common good. In the first place, feminist, decolonial and post-colonial scholars (including theologians), as well as scholars of race, have demonstrated that regnant philosophical and theological accounts of the subject (including the subject of human rights) are inscribed with patriarchal, racial, colonial and western-centric tropes. Their work problematizes the sovereign, abstract self of liberalism, by revealing how relationality, embodiment, interdependence and vulnerability are as characteristic of the human, as are autonomy and sovereignty. However, their critiques also problematize idealized and essentialized accounts of community. Philosophers such as Judith Butler, and theologians like Catherine Keller, Pui Lan Kwok and Agnes Brazal demonstrate how each of these categories are formed and reformed through discursive processes of power and privilege. Their re-conceptualizations of the subject and of community render the classic liberal-communitarian dichotomy redundant and undermine moral frameworks that are premised on an essential conflict between the rights of individuals on the one hand, and the common good on the other.

This re-orientation of the philosophy of human rights is echoed in the politics, a point that is made by Bill O’Neill in his “Reimagining Human Rights: Religion and the Common Good”. O’Neill argues that the choice between a thin politics of rights and a thick politics of the common good is an illusory one, and that this “antinomy of rights and the common good is belied by both theory and practice” (O’Neill 2021a, 1). O’Neill draws on the use of rights-language by victims and their advocates, including at South Africa’s Truth and Reconciliation Commission, in the International Criminal Tribunal for Rwanda (in Arusha) or in the Kakuma refugee camp in northwestern Kenya (where 600,000 refugees and asylum seekers live today) to demonstrate that rights are not merely properties of sovereign selves, but rather, in testimony, rights become a grammar of dissent, and they “comprise a set of complex, interrelated claims configuring practical discourse” (Ebd., 11) through which the common good is realized.

Moreover, in countless contexts all around the world, these inter-related claims incorporate claims to the basic goods required for security, subsistence, liberty and participation, and thus articulate the “moral minima of respect presumed in any reasonable conception of flourishing” (O’Neill 2021b, 37). In this way, as O’Neill reminds us, the moral language of human rights is what Henry Shue calls “the morality of the depths” (Shue 1980, 18).

Catholic social ethics has an important role to play in this re-orientation of contemporary human rights since, in this tradition the languages of rights (human rights) and of the common good are in many respects symbiotic and mutually reinforcing. Within Catholic social ethics the tradition of human rights developed within a theological world-view in which human beings are social creatures in a divinely providential universe, oriented to the common good, and where duties express the correlative obligations associated with rights. “*Rerum Novarum* (On the Condition of Labour)” (1891, No. 5) was the first papal encyclical to use the language of rights. “[F]or, every man has by nature the right to possess property as his own” writes Leo XIII. More importantly, however, in “*Rerum Novarum*” each assertion of a right – to property, to marriage, etc., is accompanied by an account of the associated duties, and more particularly the moral language of rights is contextualised within a common good framework. Issued on the 70<sup>th</sup> anniversary of “*Rerum Novarum*”, “*Mater et Magistra*” developed the church’s thinking on social and economic rights, and here also did so within a common good context. It stated, “the sum total of these conditions of social living, whereby [we] are enabled to achieve [our] own integral perfection” (John XXIII “*Mater et Magistra*” 1961, No. 65). Moreover, especially in “*Pacem in Terris*”, described by David Hollenbach as the Catholic Charter of human rights, (playing a role in the church analogous to that of the UN Declaration in the global political community), the enumeration of human rights, (civil and political, economic, social and cultural) is framed within the context of the common good. “It is generally accepted today that the common good is best safeguarded when personal rights and duties are guaranteed”, Pope John XXIII declared (“*Pacem in Terris*”, No. 60). Thus, the common good cannot be realized through the subordination of the human rights of individuals. Rather it is something in which we each share as individuals. In the Catholic tradition the language of rights does not supplant, crowd out or render superfluous the language of common good (or indeed the language of virtue or duty). Rather there is an essential and symbiotic relationship between human rights and the common good.

Within the Catholic tradition there are disputes about the genealogy of rights and about whether traces of the indigenous Christian theological lan-

guage of natural subjective rights (of the medieval canonists) persisted in the liberal tradition of human rights. There are disagreements as to whether this modern rapprochement between the language of human rights and the common good amounts to an inappropriate or illegitimate effort to graft an what some regard as alien language (that is of rights) onto the Aristotelian-Thomistic tradition. There are also disputes about whether what has been characterised as a deontological philosophy of rights can be meaningful within the teleological and theological framework of the good. However, important as these discussions may be, nonetheless they miss an essential point that, like all moral languages, the language of human rights is evolving, that the revival and renewal of the language of rights in Catholic social ethics develops this living tradition. Moreover, this distinctively theological tradition has much to contribute to contemporary philosophy and politics of human rights, in particular in the way it highlights the symbiotic relationship between human rights and the common good, and thereby provides the platform for the elaboration of human rights rooted in the flourishing of persons-in-community, and oriented to the common good.

## **2.2 Challenging the Inequality**

This focus on the flourishing of persons-in-community brings us face to face with another of the criticism of human rights – namely its failure to address the issue of social and economic justice and to curb the excesses of a market fundamentalism that has left the world more unequal than ever before. Samuel Moyn's stark conclusion is that the age of human rights (which he dates post 1970) has, in fact, been kindest to the rich! In his book "Not Enough Human Rights in an Unequal World", Moyn notes that even while the normative commitments to equal dignity and rights were being formally adopted by governments across the world, the economic policies that would support the realization of social and economic rights were being discarded and over-ridden. Instead of the global justice that was initially bound up with the post-war ideal of human rights, market fundamentalism triumphed, and, he argues, human rights were cut off from the dream of globally fair distribution. The problem has not just been one of unrealized promises, but rather of the abandonment of a fundamental dimension of the human rights agenda, namely the complementary commitment to distributive justice. Moyn argues "as twin visions of minimum provision, neither basic needs nor human rights thematized national inequality on the brink of its explosion as a wrong apart from poverty, or international inequality as an evil that states might reasonably combat" (Moyn 2018, 138). In effect inequality was sublated to basic subsistence rights and to the eradication of extreme poverty.

Conor Gearty also argues that the role of human rights “in the neo-liberal shift has been disturbing” (Gearty 2014, 27) noting that the rights that have advanced over the decades since 1989 have tended to be the rights most amenable to the neo-liberal point of view, i.e. the rights that do not involve interferences with individual property rights or large amounts of public expenditure (on education, healthcare etc.) (ibid., 27). Saskia Sassen’s “Expulsions: Brutality and Complexity in the Global Economy” lays bare the systemic and interconnected nature of the brutalities of globalization and delineates how the developments in trade, technology and international politics that ought to have broadened and strengthened the well-being of society “instead too often [has] served to dismember the social through extreme inequality, to destroy much of middle-class life promised by liberal democracy, [and] to expel the vulnerable and poor from land, jobs and homes” (Sassen 2014, 5). The fundamental failing of the post-war human-rights-oriented order, it is argued, is that while it may have left the globe more humane, in terms of a formal commitment to equality of dignity and respect it has also left it enduringly unequal.

There is no doubt that both Moyn and Gearty highlight a serious failing in the politics of human rights as it has evolved in recent decades. However, there is also another story of human rights in this period, and it is a story of at least partial success. In particular, the international coalition of human rights activist and advocates (which includes states and international organizations as well as NGOs and faith communities) have made significant strides in eradicating extreme poverty, and thereby vindicating the basic human rights to food, water, shelter, basic healthcare for tens of millions of people worldwide. Thus, while extreme inequality is undoubtedly a serious problem, the provision of basic subsistence rights is an essential (although not sufficient) step on the way to addressing extreme inequality. This period has also seen significant progress in addressing some of the systemic violations of human dignity, for example related to gender and women’s rights. Nonetheless, it is true that human rights values have been eroded and denuded market fundamentalism and if human rights is to retain its potency as a moral language then this current failure must be addressed.

However, rather than rendering human rights language redundant, neo-liberal economic globalization reinforces its importance. Moreover, it particularly reinforces the importance of the comprehensive vision of human rights that asserts their indivisibility and interdependence – that is the recognition civil, political, economic, social and cultural rights are inherently complementary and equal in importance, and that the violation of one damages the achievement of the others (Minkler/Sweeney 2011). Here again Catholic social ethics articulates

a crucial counter-weight to neo-liberal interpretations of rights, particularly in the way it anchors the inalienability of human rights in the dignity of the person – a dignity-in-solidarity, oriented to the common good. The virtue of justice, as “nothing else than the virtue of charity applied to any form of organized social existence” (Chiavacci 2007, 240) is fundamental to the common good, and its role is to establish standards for the distribution of goods. Moreover, the requirements of justice are established through the principles of solidarity, participation, equity and subsidiarity, which substantiate the meaning of the common good in each particular context. These principles must be instantiated in each of the domains of social, cultural, political and economic life. Thus, the common good can neither be conceptualized in narrow ethnocentric, nationalistic or sectarian terms, (but rather in the context of what “*Gaudium et Spes*” calls “the birth of a new humanism” (“*Gaudium et Spes*” No. 37, 55; quoted in Chiavacci 2007, 241) nor can it be realized through economic models that ignore distributive justice and amplify inequality.

The Roman Catholic tradition’s understanding of the economic requirements of justice and the common good continue to evolve, but it has tended to steer a mid-course between the universal destination of goods and the good/right to private property. Thus, while “*Rerum Novarum*” supported worker’s rights, a living wage, and protections against inhumane conditions of the industrialized, capitalist economies it was nonetheless vehement in its denunciation of the evils of socialism. Yet, as noted by Thomas Masarro SJ the trajectory of the subsequent century has been that of a “gradual softening of this aversion to addressing massive inequalities and exclusions from economic opportunities” (Massaro 2019, 868). Moreover with Pope Francis this trajectory is accelerated, particularly with “*Evangelii Gaudium*” (2013) and “*Laudato Si*” (2015). In “*Evangelii Gaudium*” Pope Francis addresses this issue that Moyn and Gearty have highlighted with his statement that “inequality is the root of social ills” (“*Evangelii Gaudium*”, No. 201, 202) and he goes on to note that as destructive as raw poverty is, the phenomenon of vast inequality compounds the damage, creates social divisions, closes off opportunities for social mobility, and marginalizes those who lack access. “Such an economy kills”, says Pope Francis, as he rejects trickle-down economics, and denounces “the new idolatry of money” and “a financial system which rules rather than serves” (Massaro 2019, 881; quoting “*Evangelii Gaudium*” No. 53, 54, 55-58). Pope Francis’ is unambiguous in his indictment of the inequalities embedded in and amplified by neoliberal economics. Moreover, his approach develops and re-affirms the insights of Catholic social ethicists and faith-based human rights activists and NGOs who draw attention to the intersecting brutalities of

neo-liberal economics, who are highly critical of libertarian accounts of human rights, and who insist that commitment to human dignity-in-solidarity requires attention to the multiple ways in which economics re-inscribes exclusion and inequality. The language of human rights cannot be the hand-maid of neo-liberal economics, and if it has been hijacked then it must not be abandoned, but reclaimed so that it retain its character as a language premised on the equal dignity of human beings and that advances human flourishing.

### 3. Conclusion

To conclude, throughout this essay I have suggested that, notwithstanding its limitations, human rights language is a vital resource through which the requirements of human flourishing, social justice and ecological sustainability are vindicated. In common with all moral languages however, it is flawed and in need of constant development. Indeed, Jennifer Herdt's words are an important reminder of the frailty of such human endeavors. She writes remember that "Christians built an array of institutions to care for the poor and the sick, transforming the face of the ancient world. They also went on Crusades and burned witches. This side of the *eschaton*, the work is never done. [...] [All we can do is]: attend to our common vulnerabilities, engage the transformative power of disruptive empathy, build the best institutions we can, and keep watch for their failures and exclusions to emerge into view" (Herdt 2020).

This essay highlights the nature of human rights as a living tradition, a tradition that articulates the essential dignity and equality of persons and, through its engagement with diverse philosophical, religious and cultural worldviews, acquires new resources that drive its renewal. As we look to the future one has confidence that human rights discourse can indeed become an ever more globally resonant ethic of equal dignity, a language that propels us to "recover and sharpen a sense of justice, based on a reverent appreciation of humankind" (Robinson 2020, 46) and a commitment to planetary well-being.

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# Menschenrechte ohne Widerstandsrecht? Zur Aktualität Kants für den heutigen Menschenrechtsdiskurs

## 1. Einleitung

Für viele TeilnehmerInnen der philosophischen Debatte um das richtige Verständnis von Menschenrechten stellt Immanuel Kants Moral- und Rechtsphilosophie einen wichtigen Bezugspunkt dar. Das ist in vielen Hinsichten wenig überraschend: Kants Betonung vernunftbegründeter natürlicher Rechte und seine Konzeption des Staatszwecks über den Schutz individueller Freiheitsrechte machen ihn nicht nur zu einem der großen Denker des liberalen Rechtsstaates, sondern bieten auch zahlreiche Anknüpfungspunkte für eine mögliche Begründung von Menschenrechten, die über einen engen kulturellen Kontext hinaus Anschlussfähigkeit erwarten kann.<sup>1</sup> Besondere Aufmerksamkeit hat dabei in jüngerer Zeit Kants Würdebegriff gefunden, der wiederholt sowohl zur Begründung des Unverfügbarkeitsanspruchs der Menschenrechte als auch zur Auslegung spezifischer Menschenrechtsansprüche herangezogen worden ist. Stellvertretend für verschiedene Rückgriffe auf den Würdebegriff soll hier nur folgendes Zitat von Heiner Bielefeldt stehen: „It is only with regard to the ‚unalienable‘ dignity of every human being that human rights, too, can be considered to constitute an ‚unalienable‘ normative demand in which the meaning of a truly humane existence is at stake“ (Bielefeldt 1997, 353).<sup>2</sup>

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- 1 Verbindungen in der Sache finden sich dabei auch bei vielen PhilosophInnen, die ihre eigenen Positionen explizit als nicht-kantianisch charakterisieren würden. So trägt z.B. Griffins Theorie der Menschenrechte, die den Begriff der „normative agency“ in den Mittelpunkt stellt (Griffin 2008, 33), insoweit klar kantische Züge, auch wenn sich Griffin explizit von Kant abgrenzt. (Interessanterweise interpretiert Caranti diese explizite Abgrenzung trotz der Nähe zu Kant in der Sache so, dass Kants Theorie als interkulturell *zu wenig* anschlussfähig angesehen würde (2017, 18).)
  - 2 Für einen neueren Versuch der Ausarbeitung einer „kantischen“ Theorie der Menschenrechte siehe Caranti (2017).

Aber diesem weit verbreiteten und enthusiastischen Rückgriff auf Kant in der philosophischen Debatte um Menschenrechte stehen auch dezidiert skeptische Stimmen gegenüber. Eine wichtige Variante dieses Skeptizismus findet sich bei Andrea Sangiovanni, der den Versuch einer „kantischen“ Menschenrechtstheorie sogar zu „one of the great misappropriations in the history of political thought“ erklärt (Sangiovanni 2015, 689). Grund für die u.a. von Sangiovanni geäußerte Skepsis ist nicht die Tatsache, dass Kant explizit kaum von „Menschenrechten“ spricht (und es auch dann, wenn er davon spricht, keineswegs immer klar ist, dass er von individuellen Rechten sprechen möchte).<sup>3</sup> Vielmehr scheinen Eigenschaften von Menschenrechten, die im zeitgenössischen Diskurs als wesentliche, wenn nicht sogar definatorische Merkmale solcher Rechte angesehen werden, mit zentralen Elementen von Kants Rechtsphilosophie unvereinbar zu sein. Das sind diejenigen Eigenschaften, die damit zusammenhängen, dass Menschenrechte den Anspruch auf staatliche Autorität – nach innen – und auf Souveränität – nach außen – „trumpfen“. Menschenrechte sind von hinreichend großer Bedeutung, dass ihre (jedenfalls gravierende und systematische) Verletzung durch einen Staat – im Gegensatz zur Verletzung anderer Rechte – „nach innen“ den Anspruch dieses Staates auf Gehorsam seiner Bürger untergräbt und zugleich „nach außen“ den Anspruch gegenüber anderen Staaten auf Nichteinmischung ausschaltet. Auch wenn sich andere Staaten normalerweise aus den „inneren Angelegenheiten“ eines Staates heraushalten müssen, gehen systematische Menschenrechtsverletzungen auch sie etwas an und bilden die Grundlage für internationale Maßnahmen und – im Extremfall – für (humanitäre) militärische Interventionen. Die letztere Funktion sah bekanntlich John Rawls als das kennzeichnende Merkmal von Menschenrechten an (Rawls 1999, 79f), und andere VertreterInnen einer sog. politischen Konzeption von Menschenrechten sind ihm darin gefolgt, die Souveränitätsbeschränkung als wesentliches Merkmal solcher Rechte anzusehen.<sup>4</sup> Aber auch über VertreterInnen einer politischen Konzeption hinaus besteht ein überwiegender Konsens, dass Menschenrechten – jedenfalls so, wie sich der Menschenrechtsdiskurs seit 1945 entwickelt hat – diese souveränitätsbeschränkende Funktion zugeschrieben wird (ob diese Funktion nun schon zum Begriff der „Menschenrechte“ gehört oder nicht). Eine Theorie der Menschenrechte, die diesem Diskurs und der daran gekoppelten Praxis gerecht werden will, muss daher eine solche Funktion zumindest zulassen.

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<sup>3</sup> Zu letzterem Punkt s.a. Caranti (2012, 35).

<sup>4</sup> z.B. Joseph Raz, der betont: „setting limits to sovereignty [...] is the predominant mark of human rights in human rights practice“ (Raz 2010, 334).