

Walter Schweidler (ed.)

Human Rights and Natural Law

An Intercultural Philosophical Perspective



Academia

Walter Schweidler (ed.)

Human Rights and Natural Law

West-östliche Denkwege

Herausgegeben von Walter Schweidler
Band 21

Wissenschaftlicher Beirat

Kogaku Arifuku (Kyoto) · Gerhold K. Becker (Hongkong)
Rolf Elberfeld (Wuppertal) · Jens Heise (Berlin)
Heiner Roetz (Bochum) · Annette Wilke (Münster)

Walter Schweidler (ed.)

Human Rights and Natural Law

An Intercultural Philosophical Perspective

Academia Verlag  Sankt Augustin



Gedruckt mit Unterstützung der Hermann und Marianne Straniak-Stiftung

Bild auf dem Umschlag: Ausschnitt aus
„Allegorien der Gerechtigkeit und des Friedens“ von Johann Michael Franz.
Deckengemälde des Spiegelsaals der Fürstbischöflichen Residenz Eichstätt.
Foto: Pia Bayer

Bibliografische Information der Deutschen Nationalbibliothek
Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der
Deutschen Nationalbibliografie; detaillierte bibliografische Daten
sind im Internet über <http://dnb.ddb.de> abrufbar.

ISBN 978-3-89665-567-7

1. Auflage 2012

© Academia Verlag
Bahnstraße 7, D-53757 Sankt Augustin
Internet: www.academia-verlag.de
E-Mail: info@academia-verlag.de

Printed in Germany

Ohne schriftliche Genehmigung des Verlages ist es nicht gestattet, das Werk unter Verwendung mechanischer, elektronischer und anderer Systeme in irgendeiner Weise zu verarbeiten und zu verbreiten. Insbesondere vorbehalten sind die Rechte der Vervielfältigung – auch von Teilen des Werkes – auf fotomechanischem oder ähnlichem Wege, der tontechnischen Wiedergabe, des Vortrags, der Funk- und Fernsehsendung, der Speicherung in Datenverarbeitungsanlagen, der Übersetzung und der literarischen und anderweitigen Bearbeitung.

Contents

Contents	5
Preface	7
Introduction	8

I. Philosophical Foundations

Robert Spaemann

Human Dignity and Human Nature	15
--------------------------------------	----

Holger Zaborowski

Nature—Reason—Freedom. Thinking about Natural Law in Modern Philosophy	20
---	----

Nathan Philips

'Renewal is the Universal Call': Trials of Reason in Edmund Husserl	36
---	----

Florian Bruckmann

Interpretation of the pre-ethical difference. On the problem of nature and violence in (the work of) Jacques Derrida	52
---	----

II. Juridical Principles

Christian Hillgruber

Constitution and Natural Law	67
------------------------------------	----

Marta Cartabia

Europe and Rights: Taking Dialogue Seriously	76
--	----

Christian Erk

What makes a Right a Human Right? The Philosophy of Human Rights	101
--	-----

Marko Trajkovic

Law in the World of Values	132
----------------------------------	-----

Philip J. Harold

Economics, Politics, and Natural Law	147
--	-----

III. Human Dignity

Lorenza Violini and Maria Maddalena Giungi

Human Dignity: An undefined area? In search of the concept's many facets through the path of history and philosophy	159
--	-----

Harald Seubert

The Universality of Human Dignity: Possibilities, Limits and Aporias of Justification	195
---	-----

Dietmar von der Pfordten

The rise of human dignity	217
---------------------------------	-----

Pedro Pallares Yabur

Practical Reason, Ius, and objectivity on Human Rights	230
--	-----

IV. Intercultural Perception**Remi Brague**

On Natural Law in Islam	251
-------------------------------	-----

Rocio Daga Portillo

The Question of Shari'a and Human Rights	266
--	-----

Bardhyl Çipi

Relationship of Bioethics in Albania and Traditional Islamic Teaching	287
---	-----

Heiner Roetz

Human Rights in China: An Alien Element in a Non-Western Culture?	296
---	-----

Raji C. Steineck

Looking for sources of human rights in Japanese traditions	314
--	-----

Preface

Walter Schweidler

This volume contains the proceedings of the International Summer Academy “Human Rights and Natural Law: An Intercultural Philosophical Perspective” at the Catholic University Eichstaett-Ingolstadt in July/August 2011 and articles of various colleagues who were so kind as to collaborate in the discussion that followed. The intercultural approach to the questions about the ethical, political and juridical foundations of human rights and human dignity is still dependent on the analysis of its presuppositions in the different cultures and civilizations on earth. The general idea of the International Academy was to explicate the classical European idea of natural law as one element among these cultural horizons and to relate it to the traditions of non-European cultures. We hope to have made a contribution to some of the fundamental questions of historic continuity and discontinuity and the intercultural validity of the philosophical substance of human rights. The editor is very grateful to all the contributors to this volume, to the institutions that made the International Academy possible—among them the DAAD, Renovabis, the Hertie Foundation and the Hanns Seidel Foundation—and of course to the University itself and especially its International Office. The publication of this volume was made possible by the Hermann and Marianne Straniak-Stiftung, which has, under the direction of its late president Dr. Herwig Liebscher, been of the highest importance for the initiation and development of intercultural philosophical research, especially in the German-speaking world. The editor also thanks heartily Tobias Holischka and Neil O’Donnell for the immense work they dedicated to this book. He is very glad to continue with this volume the long and valuable cooperation with the publisher.

Introduction

Walter Schweidler

In 1918 Oswald Spengler attacked the eurocentrism of our traditional scheme of “world history”: “Thanks to the subdivision of history into ‘Ancient’, ‘Medieval’ and ‘Modern’ – an incredibly jejune and *meaningless* scheme, which has, however, entirely dominated our historical thinking – we have failed to perceive the true position in the general history of higher mankind, of the little part-world which has developed on West-European soil [...] It is not only that the scheme circumscribes the area of history. What is worse, it rigs the stage. The ground of West Europe is treated as a steady pole, a unique patch chosen on the surface of the sphere for no better reason, it seems, than because we live on it – and great histories of millennial duration and mighty far-away Cultures are made to evolve around this pole in all modesty. It is a quaintly conceived system of sun and planets! We select a single bit of ground as the natural center of the historical system, and make it the central sun. From it all the events of history receive their light, from it their importance is judged in *perspective*. But it is in our own West-European conceit alone that this phantom ‘world-history’, which a breath of scepticism would dissipate, is acted out.”¹ Nowadays, such critical self-distance from eurocentrism has become a common attitude. But the model of history, which Spengler in these words characterized as a core of eurocentrism, seems to be as powerful as it was a 100 years ago. Do we not assume that there is one modernity for mankind, that there is a global hunger for “modernization”, an almost God-given tendency towards social progress sweeping from the developed to the less developed parts of the world? And if this is so, then the idea of Human Rights seems to be right in the center of that movement. There are quarrels about its “Western” origin, about its political instrumentalization for establishing and deepening the European-American hegemony on the world stage, about the inconsistency between the values underlying that idea and the political reality in the countries which propagate it; but there is no alternative model which could in any way give us orientation about the historical development in which we stand. There is the reference to, e.g., “Asian values”, to different ways of development, to the plurality of cultural heritage in the world; but the framework for all that seems to be still the presupposition of a measure of critique which in the end is based on the claim of freedom and equality for all peoples and so for all human beings in the world – and this means, it is based on the same principles as the idea of human rights.

However, there is at least one conceptual development which contains a very important change. The content of that development is also already contained in the passage quoted from Spengler’s “Decline of the West”. It is the development of our concept of “culture”. We find that change already in the terms which we have used to

¹ The Decline of the West, vol. 1, New York 1944, 17

design what is discussed in the contributions to this volume: interculturality, multiculturalism, cultural identity, cultural values, and so on. In this conceptual context, we have really overcome eurocentrism. In order to make this clearer, we must remember that our present and widely accepted concept of culture as a historically and ethnically constituted social entity connecting its members by descent, language and legal and social institutions is indeed far from being a “traditional” one, rather, it is relatively new. It has had at least two predecessors of substantial importance. In antiquity and in the Middle Ages the concept of culture was characterized by what we can classify as an accidental-pluralist meaning, i.e. “culture” was seen as a kind of treatment necessarily related to *something* that was treated: the origin of its meaning was “agriculture”, it was the land that had been there and had to be “cultivated”. Then the concept became more metaphoric, Cicero spoke of philosophy as the *cultura animi*, there was a *cultura dolorum* etc. Culture meant in its essence *care*, and always *care of something*.² Then, in the mainstream of modernity, a significantly different concept of culture was developed; it can be classified as a substantially-universal one. There was no “culture of...”, but simply “culture”, i.e. the final state of humanity which defined the logic of history and which was represented more or less by the European civilization. We are all civilized, said Kant, but we are still far from culture;³ nevertheless, culture is the aim and meaning of the existence of mankind.

Between all this and our present thinking about culture there was a significant break. We must keep in mind that our present, that one which I would call the “political”, concept of culture, was created not before the 19th century and that had a definitely polemic impetus directed against the modern idea of a universal culture. Thinkers like Herder, Nietzsche and Spengler established, as I would classify it, a substantially-pluralistic concept of culture according to which “cultures” are entities of equal quality and equal dignity, and there is no universal culture in the singular that would define the goal or measure for all the others.

What can we learn from that development? There is one thing I want to direct our attention to: in its ancient meaning the term *cultura* characterized essential elements of human forms of life that were thought to belong to every human society and to every human existence, but that were also seen to be dependent on something that lies in our hands. We have to cultivate what in the end shows why we were right and why we were fundamentally obliged to cultivate it. And in the modern meaning *culture* was connected to a way on which mankind was assumed to step forward to its general destination. So, both concepts contained a relation between the meaning of what they called “culture” and what makes us human beings. That was exactly the relation between what then was called “culture” to what was called and what we still have to understand as *our human nature*. And my thesis is that our present concept of culture, as justified as it may be as a result of our overcoming of eurocentrism and mental colonialism, lacks

² Cf. Spengler und der moderne Begriff der Kultur, in: A. Gethmann-Siefferth /E. Weisser-Lohmann, Hg., Kultur-Kunst-Öffentlichkeit. Philosophische Perspektiven auf praktische Probleme, 2001, 95-113.

³ Immanuel Kant, Idea for a Universal History from a Cosmopolitan Point of View, seventh thesis.

one decisive relation, namely exactly the relation to an idea of human nature. And, as I think, this is the result of the most important reason that has led us into the crisis in which we now must consider different “cultures” with respect to the convictions of their members concerning the meaning and essence of what is a real “human life”. Our awareness of what is “human nature” has been lost to an important degree. Therefore, the horizon in which we may find the only way to overcome that dangerous cultural split seems to me to be the reconsideration of what human nature is.

When we connect these two aspects which, as I tried to point out in these very general remarks, are in theoretical and practical tension -- that is, the hardly having become relativized power of the idea of human rights and the radically changed meaning of the concept of culture -- we are led *nolens volens* to the concept of the *lex naturalis*, to “natural law”. It may not demarcate the solution, but it clearly opens our eyes to the problem we are dealing with when we search for the reconciliation of political universalism and the request for cultural autonomy.

“Natural law” is a concept whose origin lies in times long ago. Is it indeed applicable to the discussion in our time? Basically, the contributions to this volume are based on the hypothesis that it is. We will therefore critically discuss the thesis that the natural law remains in the centre of the legitimation and justification of state power in the whole modernity; that it is still the basis for our legislation and for the culture of norms in the heart of our social and international order. It is correct that the original concept of “natural law”, as it was developed in the Aristotelian ethics, was bound to an idea of *eudaimonia* that is no longer valid within the theoretical model of the modern state as it has been fundamentally shaped by the political theory of Thomas Hobbes. But Hobbes himself transformed the idea of natural law in a way that until today connects the modern state with the classical idea of the ethical justification of the civil law.⁴ Hobbes developed a theory of precontractual conditions of the social contract – conditions like the Golden Rule, equality, gratitude, peacefulness and justice – that he summarized as the impact of what “the ancient” had called the *virtues*! Hobbes emphasized strongly that it is not primarily the quality of life or its improvement that citizens expect to be guaranteed by the state but first of all and above all the guarantee of life itself, the protection of the life of everyone who is born as a member of society. The protection of the life of every citizen is, according to Hobbes, the absolute condition of legitimacy of the state! So, it must be rigorously emphasized that the obligation to any citizen’s right to live is a principle of legitimacy of the modern much more than of any ancient state that may have been grounded on metaphysical or religious claims! That is the reason why *terrorism* is a phenomenon that is genuinely related to our modern state. Terrorists claim to show that the state is not able to protect its citizens and *therefore* has no legitimacy.

⁴ Cf. Walter Schweidler: *Der gute Staat. Politische Ethik von Platon bis zur Gegenwart*, Stuttgart: Reclam 2004. And cf. Walter Schweidler: *Über Menschenwürde: Der Ursprung der Person und die Kultur des Lebens*. Reihe *Das Bild vom Menschen und die Ordnung der Gesellschaft*, VS Verlag 2012.

Thus, we will discuss the hypothesis that the deepest connection between the foundations of the modern state and the cultural forms of our lives is constituted not by a philosophical principle that could be expressed in canonical formulations, but by the reality of the rule of law in our states and societies. It is this constitutional and legal reality in that we find the determination that is constituted by our human nature. “Human dignity” as the core concept of the constitution of the modern state is, correctly understood, the indirect reference to the absolute conviction that there is such a human nature. And it is of crucial importance for the understanding of the ontological and also metaphysical background of the modern view of humanity, that by the principle of “human dignity” we have put an intrinsically *legal* concept on the top of the pyramid of the legitimation and justification of our political order. A legal principle in its essence does not have to create justice but to prevent injustice. The consequence is that in the view of the modern constitutional state the legitimacy of government institutions cannot be finally established through a positive answer to the question of what is human nature. The notion of “human dignity” contains at its core nothing but the *prohibition* of the answering of this question⁵. Nobody has the right to decide whether another human being is worthy of dignity. But at least in this indirect sense, we will have to discuss the thesis that the reference to our common human nature is inherent in the principles of political life and order in culturally pluralistic world.

⁵ This kind of prohibition is altogether characteristic for legal terminology, in which it is not said that the notion of dignity has not been defined positively and distinctly laid out. What is implied is that its definition and interpretation always refers to concrete cases of conflict, whose resolution is achieved through law and order. The legitimacy of legislation and administration of justice is opened/disclosed through concrete cases of decision, from the danger and the disruption of which law and order protects society. Insofar as this, legal notions carry constitutionally the character of a negation of negation, when they build on the basis of the idea of human rights. Cf. Walter Schweidler: *Geistesmacht und Menschenrecht. Der Universalitätsanspruch der Menschenrechte und das Problem der Ersten Philosophie*, Freiburg i.Br. 1994, §§ 36 f., see especially pp. 445; also Walter Schweidler: *Menschenrechte und kulturelle Identität*, in Walter Schweidler: *Das Unantastbare. Beiträge zur Philosophie der Menschenrechte*, Münster 2001, pp. 163-188, see especially p. 167.

