

Different Cultures and the Universality of Human Rights

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The Measurement of Rights

Structures, processes and semantic categories permeate the option of the “one” narrative of the occidental *nomos*. Without doubt, at first sight there seems to be a powerful discourse within the narratives of European language and legal culture that evokes “one” rationality and “one” repeatable understanding. However, there is also the anti-discourse, those constant and consistently emerging refusals within the narrative tradition of occidental thinking to blend into the homogeneity and isolation of a single rationality. The numerous narratives of such a refusal paint a far more complex, multi-layered and more intensive picture of those constitutive processes which generate human rights anew.¹ They abandon the narrative production of catchy archetypes that allow for simple identification. They

1 These process-like, discontinuous movements become descriptive in what Lyotard calls “patchworks”: “A (yet to be defined) group of heterogeneous spaces, a great *patchwork*, composed of nothing but minor singularities, becomes apparent: the mirror, in which they should realize their national entity, cracks. The decadence of such a staging, such a “spectacle” was named politics. Europe descended to define the elementary political groups; whilst the masters tried to unify top-down, the little people renewed character bottom-up.” Lyotard 1977, pp. 37–38 (my translation).

also try to complicate and deconstruct the knowing transmission of durable oppositional pairs such as “good” and “evil”, “pure” and “mixed” or “entity” and “multitude” against every hermeneutic economy.

The *aim* of paying attention to this varied and plural genesis of the occidental *nomos* and occidental rationality denoted a decisive revision and reorientation for thinking about and implementing human rights. A human rights instrument that is inspired by universal rationality and its practical consequences calls for a corresponding centered and vertically hierarchical law enforcement. By comparison, attention may be paid to a plural and decentralized genesis of rights which, in the view of migrants and the foreign, calls for evidence, an orientation towards processes of networking, the constitution of borders and the development of trans-judicial forms of moral obligation which firstly has to be prepared and analyzed. Accordingly, the traditional forms of human rights enforcement based on the UN or national institutions would be firmly challenged and become obsolete due to human rights ethics aiming at solidarity and justice.

The intensive correlation between human rights discourse and human rights practice would no longer need a normative justification. In fact, a description of their social genesis and constitutions as well as their emergence within the juridical and ethical context would suffice. With such a *phenomenology of human rights genesis* it could be demonstrated that human rights already commence in the relationship to the other and while encountering the latter. They already seem to be in force without even having been drafted as a legal institution and the word of the law. They rather constitute a pre-legal experience that becomes apparent in the relation of the own and the foreign, the self and the other. Human rights can only form and articulate themselves in the shape of requirements and pleas directed at some other in an unrecognized and unnameable way. The formation of human rights within a law of rationality that “categorically” commands the other asks, and for this reason prevents, its early abolition by homogeneous rationality:

In this respect, not only would a precise deconstruction of Kantian practical reason, but also the philosophy of human rights, be necessary in order

to establish illustrative insights in the “Islamic” discourse on human rights, but unfortunately it remains within the borders of a certain logocentrism.²

It is particularly because of this nature of the genesis of human rights that they cannot be set at rest and deprived of their annoying power. I *have to answer* the concrete and unique demand of the foreign and I cannot avoid or return it to my *responsibility*. In Bernhard Waldenfels’ words, this could be considered as an attempt to

[...] gain the commitment of the *nomos* from the core of a foreign request and not from the universal *nomos* that precedes this request and steals its uniqueness.³

The characteristic of human rights, as opposed to other rights, is that they precede and at the same time transcend them. Human rights as rights of the other turn into the constitutive condition of rights in general. Their measurement is not abstract rationality, but they themselves are “the measurement of rights”⁴, as Emmanuel Levinas says. This is precisely the reason why human rights constitute such a peculiar element that oscillates between law and ethics without enduringly fitting into one or the other. They qualify for an ethics of law which is orientated towards ethics when it wants to do justice to the other.

Human rights can always and everywhere serve as an ethics of national law for the sake of verifying and questioning justice and the legitimacy of national laws. However, we should also keep in mind that human rights certainly have to operate within law, namely national law with the separation of powers and democratic control typical for the liberal constitutional state, in order to unfold their justice. This leads to a paradoxical description of human rights as the element that simultaneously substantiates and questions national law, yet is also mandatory. In their responsibility towards the foreign, human rights precede law in general; they challenge it and fall into oblivion as soon as the first structures of solidarity and justice emerge. The true meaning of human rights lastly becomes apparent as that which *cannot yet* be named, in that it abstracts as a

2 Bielefeldt 1998, p. 56 (my translation).

3 Waldenfels 1995, p. 313 (my translation).

4 Levinas 1987, p. 176. Cf. also Delhom 2000, p. 311, on the problem of human rights in the aftermath of the “ethics of the other”.

“gift” beyond exchange and predictability.⁵ Yet, it is this very withdrawal and namelessness from which human rights constitutes a constant claim for an increase, for more justice for the other. Human rights undermine the uniqueness and freedom of the human being in their movement towards anonymity and symmetry of law and state. The specialization and diversity of the foreign also speaks to us in the form of human rights and calls for a peculiar universality that never ends and has to be named time and again, a “universality” which can only be gained via the “appeal”⁶ of the foreign and the other.

It is presumably agreed that human rights constitute an achievement of culture or, in the plural form, cultures. Law and rights emerge in the course of and in the making of a cultural process. They are certainly not the first and probably not the most important products of a culture. However, there is no doubt that rights, whether they are written down as positive law or internalized as unwritten natural justice, are a compelling part of an advanced cultural stage of development. The more profoundly culture and law are intertwined, the more decisive it is to differentiate them.

A culture comprises more than just rights that apply within in a culture; a right exceeds the role that the culture has envisaged. For instance, the word “legal culture” indicates that the law that is formally and contentwise practiced in the respective culture can be inscribed in the frame of a cultural characteristic. Since we talk about different “legal cultures”, it is clear that there is a variety of contents, understandings and practices of law. A “culture” becomes the specific content and form of expression of a right.

However, by talking about culture in a more comprehensive way, transcending the respective law, the specific facilitation conditions of law within a certain temporal, spatial and social context are addressed. There is – and this is indicated by the term “legal culture” – an entanglement between the specific content and forms of expression of a law, on the one hand, and the enabling conditions of the whole cultural reference point on the other. The uncovering

5 There is the “ethics of gift” for a “different” philosophy of human rights that is somehow based on Derrida. Cf. Derrida 1991; see also Wetzel and Rabaté 1993.

6 Compare the pre-judicial but nevertheless normative conception of the “appeal” (German: “Anspruch”) in the thinking of Bernhard Waldenfels: Waldenfels 1994, pp. 193ff.

and analysis of such an entanglement is not insignificant, and of more than the random interest that it *prima facie* seems to be. Where rights compete and where the origin of a legal conception is contested it shows that the question of the entanglement of a specific culture of a right – that is, a legal culture – and of the general cultural conditions of rights gives some indication of the future possibilities for development and connection.

The Cultural Origin of Human Rights: Universalism versus Relativism

The question of whether there is a culture-specific origin of human rights and therefore a specific legal culture is of fundamental meaning for the transcultural acceptance that is the precondition for the continued existence of human rights institutions in the global context.⁷ The debate on cultural relativism and universalism in human rights revolves around the fact that on the one hand, there are different legal cultures, but no general and universal law that is independent from a supporting culture; on the other, there is respect for the diversity of cultures, but common rationality is turned into a legal norm.

Moreover, there is a universalistic perspective within human rights theory which states that the historical development of rights has reached a universal level in the final stage of modernization. Whilst the cultural relativistic position stands for the non-transferability of legal norms and legal traditions, the universalistic positions assume that certain legal norms have always been on hand in all cultures, or necessarily emerge in the state of modernization that occurs after traditional societies finish their historical phase. The first insist on the irreconcilable difference of cultures; the latter question whether there is such a difference at all. Both perspectives seem to agree that the structural and relational conditions of the emergence and demise of cultures as well as of their specific areas are unknown and consciously neglected.

Assuming that both cultural relativism and universalism support, as their central task, human rights as formulated in the *Universal Declaration of Human Rights* in 1948, a few questions arise. In view of the known empirical differences and the current clash of

7 See also Hamm 2003, pp. 22ff.

cultures — and special reference should be made to the confrontation between the Judeo-Christian modernized West and the Islamic East — the question arises for both parties as to how to overcome this conflict of cultures. This conflict might be rather paradigmatic in light of the current global political situation, since there is a multitude of “cultural” differences many times greater than those of the Judeo-Christian and Islamic world.

How can cultural difference, which also comprises difference in legal cultures, be bypassed so that an expansive development of human rights institutions may follow? Subsequently, it has to be asked: to what extent might it be possible to derive human rights from different legal cultures? And this leads to the question of an actual policy of human rights that operates with corresponding strategies at international level and within the framework of the United Nations. Is it possible that such a human rights policy based on numerous national and non-government organizations can meet the cultural differences of states and nations? And what about the paradigm of the political as opposed to the paradigm of the culture?

The assumption here is that considerations of relativism and universalism should aim at a broad creation of respect for human rights. If such a pragmatic intention is put at the forefront of the cultural relevance of human rights, then one will be engaged with thinking about human right norms in cultures and political systems that have explicit reservations against “Western” human rights, rather than considering a new justification for human rights. Human rights are probably regarded in a rather skeptical way in those cultures, because they seem to be just another symbol of Western culture’s quest for hegemonic power. At the same time, this pragmatic orientation also has to consider the genesis of cultures and their differences as well as their relationship to each other.⁸ Without reflecting on and understanding cultural processes, the envisaged convergence and connections cannot be made. The question of historical-cultural origin is of high importance here.

Within the course of the Western debate on human rights there have been clearly more diverging opinions of the cultural genesis of human rights. Against the broad understanding that human rights have their origin in the French Revolution, Georg Jellinek ar-

8 See also Hamm and Nuscheler (1995, pp. 21f.) on the necessary and juridical cohesion of “equality” and “difference”.

gues at the end of the 19th century that the *Déclaration des Droits de l'Homme et des Citoyens* is based on the *Virginia Bill of Rights*. His aim was to liberate human rights from the mental-national surrounding of radical French Jacobinism and to offer it to German society and politics. By tracing back human rights to the *Virginia Bill of Rights* they are at the same time connected to the Protestant tradition.⁹ The assumption that the reformatory model of the free Christian should be regarded as some kind of “ancient human right” and that human rights therefore should be ascribed to their Protestant cultural line is of importance here. Jellinek emphatically connects human rights to religious evolution:

The idea to determine indefeasible, inherent, sanctified rights of the individual is not of political but of religious origin. What has been considered as an achievement of the Revolution truly dates back to the Reformation and its battles.¹⁰

The conflicts during the Reformation were certainly much more than just religious debates, since they were accompanied, if not carried, by a social and political movement and its objectives. In this vein, Wolfgang Fikentscher develops the thesis that human rights have their origin in the campaigns of the Dutch Protestants against the Catholic Spanish. The secular origin of human rights would not carry very far and would nowadays actually lead to a “Christian mission”¹¹ in the “Third World” without one realizing it.

However, arguing that human rights are derived from a certain cultural and religious background points to the high relevance of the evolutionary thesis. The oppositional thesis follows quickly and the Protestant cultural derivation of human rights was rejected during the first half of the 20th century. The development of human rights norms from a scholastic naturalistic tradition ties to the thinking of Thomas Aquinas and was concerned with the consequent embedding within a Catholic line of reflection.¹² The Catholic interpretation of human rights that puts special emphasis on the continuity of the central content of their tradition with human rights norms presents in some ways a reversal of secularized or

9 Cf. Jellinek 1974, pp. 5ff.

10 Ibid., pp. 53f. (my translation).

11 Fikentscher 1987, p. 64.

12 Cf. Merks 1981, pp. 161ff.

Protestant moral demands. However, there is a heretical moment within the religious traditions at the end of the 19th and beginning of the 20th century, since the two Christian churches acknowledged human rights only in the 20th century, during the 1960s. This striking reluctance to embrace human rights goes back to the aspect of human rights that is not specifically directed towards Christianity. During the 70s the pontifical nuncio still complained about the *Declaration of Human Rights* and the subsequent Covenants:

Yes indeed, it is not an easy task to acknowledge that the name of God is not stated in this document.¹³

Paulus Lenz-Medoc rejects this request, but only to indicate that referring to God within the *Declaration of Human Rights* would be tantamount to blasphemy, since one would force non-believers and heathens to call upon a God they do not know or who could even be overturned. He indeed rejects the explicit naming of God in human rights documents of the United Nations; however, he still wants to derive human rights from their Christian tradition and disagrees with the efforts to find their origin within Greek philosophy, which made a distinction between the “free” and the “unfree”:

Here, Christianity breaks in and offers a different idea of man: we are all children of God, everybody is assigned to live according to their appointment to become God’s own likeness. For this reason, a term of human beings, a term of persons has entered our history that has not been preceded or followed by anything like it.¹⁴

A true universalistic approach to human rights has only become possible, according to Lenz-Medoc, in the aftermath of Christian belief and thinking. As emancipated as this argumentation seemed to be in Christian-Catholic discourse, it equally disrupts the debate between Christianity and Islam. The latter apparently feels vindicated in the assumption that the origin of human rights from a Christian tradition makes obsolete a sustainable debate on the entitlement of human rights, as they are also written down in the Covenants of 1966.

13 According to Lenz-Medoc 1981, p. 214 (my translation).

14 Ibid., p. 205 (my translation).

Yet Islamic access to human rights and their development is anything but homogenous or coherent; their proponents and opponents of human rights also fight and they again can be divided into a multitude of subgroups, of which more later.

Opening up human rights to the traditions of non-Christian cultures can only be achieved by tracing back human rights to a secular philosophical tradition; this applies at least when the tradition is clearly assigned to a closed and coherent cultural area. In this vein, Georg Picht indicates that, since he believes that human rights are deduced from stoical philosophy, the

[...] utopia of a global human rights system can only be considered as an empty delusion.¹⁵

Metaphysical requirements for the understanding of human rights are missing which would decrease the chance of global respect for human rights. Picht proves himself to be a cultural relativistic critic of human rights implementation without abjuring the project of human rights as such. It is nevertheless astonishing that a careful author such as Picht does not address cultural genesis as such and assumes the homogeneity of cultural traditions. Newer debates on the cultural problem of human rights implicitly seem to follow this cultural-theoretical paradigm, but they are concerned with avoiding the problems incurred when deriving human rights from a Western cultural tradition.

Modernization and Culture

According to Dieter Senghaas there is a need to unhinge human rights from their specific culture and to ascribe them to the result of disputes that have led to a “civilization against somebody’s will” in order to justify transcultural norms, norms that human rights should be. In other words, the relation of human rights to a culture is levelled by the fact that rights possess something contingent and deeply modernistic; they are too new to belong to a cultural tradition. According to Senghaas it should be considered that

European values, insofar as they are directed to all human beings and as such *directed towards a mass foundation*, have only recently been accepted in

15 Picht 1980, p. 127 (my translation).

the Western world; that in this respect the thinking and feeling in Europe is different to its long "prehistory," that especially the practical translation of those values into institutional provisions as they underlie the democratic and constitutional state are rather new; that "European values" are due to a modern and highly particular constellation.¹⁶

The thesis based on these considerations rejects the factor of "culture" and regards modernization as a radical break with conventions. Individual protective rights, as initially eked out with *Magna Charta* and later on with the *habeas corpus*, leading to constitutional structures with enforceable civil rights in the following centuries, constitute such a push in modernization which cannot be explained by preceding traditions, as Senghaas explains. The same is true for the separation of church and state, which could hardly be deduced from the recommendation that

The emperor should be given the things that belong to him; God should be given the things that belong to him.

The secular state as well as universal suffrage and the emancipation of women are a "late product" of modernity.¹⁷ They cannot be explained with the help of structures or the content of the preceding specific cultural history, but rather by referring to a radical break with the latter. Here, the assumption that a civilizing modernization leads to an abolition of culture or the establishment of a "non-culture" becomes apparent. The purpose behind this argumentation might ennoble this reasoning, but it does not cover it from a structural-logical perspective. The antagonistic powers that oppose certain components of a certain culture and in extreme cases even neglect them are still strongly characterized by this culture. Even emancipations and fractures with cultural traditions do not just fall into one's lap, but have arisen as antagonistic and diverging powers within a certain cultural system. The other, diverging from a culture, which only appears at the inner and outer margins of the culture, can only emerge here because its contours and its content are formed by these margins and their relation to the things lying beyond the margin.

16 Senghaas 1998, p. 19 (my translation).

17 Cf. *Ibid.*, pp. 200–201 (my translation).

Knowing about the possibility of those dialectical objections, Heiner Bielefeldt tries to mitigate the thesis of radical break with cultural tradition, without abandoning its essential argumentative consequences. This becomes clear when he writes:

Other than in earlier times the modern human being cannot refer back to the more or less unquestioned validity of authoritative traditions, but rather has to struggle for normative orientation, as an individual person as well as within the community [...]. In opposition to traditional ideas of a given normativity, human rights can be understood as elements of a “post-traditional” normative thinking in which norms can and should be subject to critical reflection and communication.¹⁸

“To struggle for normative orientation” does not mean to jump from scratch to the “post” of a certain cultural situation. Likewise, “critical reflection” and “communication” of norms cannot completely abandon the symbols and interpretation patterns that are culturally and traditionally predefined. They need themselves within their critical alienation. They are ultimately reserved for skilful play and intelligent strategies of a post-critical thinking that settles down in the differential intervals and on the margins of the differential order to figure out to what extent it can remove itself from its own structural and semantic conditions.

Bielefeldt anticipates the consequences stemming from cultural-philosophical thinking about identity and only holds against them with reassurance and partial revision:

An abstract dichotomization of tradition and modernity would cause problems for the universality of human rights, since respect for human rights would be conceptually limited to a circle of human beings that have liberated themselves from their religious, ideological and cultural tradition (whether allegedly or actually). Such an approach may consequently lead to the loss of human rights universality within the modernistic ideology of process, which may have imperialistic effects such as the equation of universal human rights with a particular canon of occidental values.¹⁹

However, it is disputable that the thesis of modernization *qua* requirement for a universal realization of human rights entitlements can be independently thought of, detached from the “idea of pro-

18 Bielefeldt 1998, p. 125 (my translation).

19 Ibid. (my translation).

gress" for which the Western process of modernization serves as role model. How can we think independently about such a historical development of concrete changes in Western culture and the cultures they came into contact with in this specific and irreversible way? There might be salient and radical differences between "pre-modern" and "modern" systems, but it remains a difference that relates two phases of a certain cultural tradition and intertwines them. On that note, the modernization of an Arab culture unfolds in a way related to this difference, as does a pre-modern Asian or the Native American culture. The insistent rejection of an entanglement of modernity and cultural tradition nourishes the suspicion that something is supposed to be decoupled in a theoretical way, which has proved to be a conflicting network of different cultures. It is not sufficient to counter the suspicion of a "cultural essentialism" by claiming human rights to be independent of a culture in principle and by making them the final product of a break with culture and tradition that takes place in stages. Even though human rights seem to be freed of the suspicion of being ethnocentric, this is replaced by the pattern of a development and break with development that should be carried out in different cultures along the lines of the Western model.

The underlying logic here avoids the pitfalls of the universalization of one's own Western, European culture and its rationality at the cost of universalization of the "break with culture" that takes place within modernity. This is also suggested by Senhaas: This development process contains, in some parts of Europe earlier than in other parts, a historically unprecedented rebuilding of politics, society, economy and culture. Traditional societies became modern ones; societies of illiterates as well as of human beings living in poor conditions turned into societies with competent, confident human beings living in urban areas of high population density and who were sensible of their new interests and identities and who politicized and organized themselves.²⁰ Occidental rationality no longer serves as the parameter of a universal rationality, but rather the development process of the occidental societies is universalized and becomes the paradigm for an exemplary "past" and "first" for all other cultures. Suggesting this superiority of occidental devel-

20 Senhaas 1998.

opment silently implies that other cultures, ethnicities and societies are delayed in their development and are affected by social, political and economic backwardness. Assuming the necessity of a chronological passage of certain civilizing phases also implies being convinced of a coherent development of humankind that excludes aspects of non-contemporary and alternative ways of development. The foreign culture is reduced in its eigenvalue or is completely abolished.²¹

The “acting,” “confident” and “autonomous” human being enjoys an outstanding role that makes him or her the only type of a future humanity worth copying. Supposing that this type of human being is the exemplary endpoint of the development of humankind also means declaring Western individualism and subject-centrism to be the *telos* of a historical universal development process. Both the exemplariness of the process of modernization as well as the paradigmatic genesis of an autonomous and subject-centered humanity imputes that history unfolds as a story of improvement. Such thinking about history quickly reveals as a specific occidental endowment of historical processes with meaning, and also as disavowing those belligerent social, political, and ethnic catastrophes that have been and still are an integral part of modernity itself. Becoming deaf and blind to the developments and achievements of other cultures is closely connected to the arrogant assumption that the occidental progress story unfolds *qua* modernization. Its “development graph” carries no weight for occidental civilization and cannot be captured by our symbolic systems and categories of meaning, and thus escapes the perception and understanding of occidental theorists on modernization.

Cultural Hegemony and Allergy

The insight into the constitutive differences and relations that support the civilized order and the allegedly weak or non-civilized systems and their history is out of tune at the same time. One should ask about the role that the “non- or prehistoric” peoples of the former colonies play in the modernization process in Europe. It is well-known that the exploitation of the colonies led to a — carefully

21 Cf. Waldenfels 1997, p. 35.

speaking – change in development and repression in the colonized countries, whilst a development stimulus took place in the colonizing countries. The slave trade and the deployment of slaves in the American economy can hardly be separated from the associated achievements in industrialization and economic prosperity. The import and transfer of goods and products from the colonies as well as the adoption of production engineering and mass production of raw materials have led to an accelerated modernization of the economy and the civilization of the West. The contributions of foreign cultures to the Western process of modernization can hardly be enumerated or captured in any real degree.

To measure these immense achievements, one only has to bring to mind America's contribution to the civilization of the Old World. There firstly are potatoes, rubber, tobacco and Coka (the basis for modern anesthesia), which, although in very different ways, comprise the four pillars of Western culture; then there is maize and the peanut, which should have revolutionized the African economy, perhaps even before they distributed the nourishment around in Europe; then cocoa, vanilla, tomatoes, the pineapple, pimento, several kinds of beans, cotton and pumpkin.²²

However, throughout the whole of occidental history, scientific knowledge of maths, geography, physics, philosophy and botany were imported from India, Arabia and China and other advanced civilizations, without which the civilizing development of the occidental culture would not have been possible. Cultural and civilizing processes of different cultures that have been in touch in a more or less intensive way never proceed in parallel, but rather interleave, dynamize or inhibit each other, interfere with each other and lead to pointed defense reactions that only occur in certain forms of encounters of cultures.

A colonization, for example, that perceives itself as the legitimate dominance of a culturally deficient country and nation by a culturally superior society, provokes counter-reactions and defensive attitudes that are able to redirect history and the civilizing development of this country and this nation. The "barbarian" or the "savage" does by no means always reject the assigned position and role. Often the opposite case comes to pass. The "barbarian" and

22 Lévi-Strauss 1996, p. 189 (my translation).

the “savage” adopt the role they usurp by force.²³ The discrepancy that defines them promotes allergies and reactions that they develop against the hegemonic culture of allegedly civilized and culturally superior peoples.

On the contrary, numerous and complex correlations and repulsions lead to the development of differences between the interacting cultures that gain a size and complexity which is hardly manageable, especially at the level of the social and political. The long-lasting relations and differences between the Christian European and Islamic worlds constitute an especially haunting example. Warlike confrontation during the post-Roman era gave way to a time of long and peaceful co-existence between Islam and Christianity in Europe.

The reciprocal, though asymmetrical, relation between Islamic and Christian culture during the turn of the century in Spain was especially remarkable. The Islamic culture that was of high standing and widely respected in Christian Europe was looking for an active reception of and debate with occidental culture. The best known example is the reception of Aristotle by the Islamic cleric and scholar Averoes. This heyday of reciprocal respect that has left its marks in literature, architecture, arts and jurisprudence made way for enduring supremacy and the colonization of the Arabic-Islamic region through Europe and America after the hegemonic claim of the Turks during the 16th century and the occupation of Vienna.

The changing relations and differences between the Islamic and the Judeo-Christian world are particularly remarkable. Rather than attempting to indicate their scope and content, one may refer to the estimation of the Islamic-Arab culture as “backward” and “primitive” that is common in Western Europe. According to our own phylogenetic fantasies of process, the Christian West considers the Islamic-Arab world to be trapped in the “gloomy Middle Ages”. An awareness of superiority to Islamic culture is especially distinct in Europe and America and therefore constitutes the prerequisite for Western/Christian ambitions to civilize, something we are witnessing at the moment.²⁴

23 Cf. Schneider 1997, pp. 93ff.

24 The historically changeable interlacing and confrontation of the Judeo-Christian and Islamic-Arab culture has only exemplary char-

The standards that are brought to the Islamic-Arab cultural world by the West are mostly provided with the title of human rights and laid out as the primary cultural condition for recognition. Given the insistence of the Western civilizing request, the Islamic world alternates between adopting the role of a “medieval”, retarding, violent culture and asserting a normative initiative of human rights within the context of Islamic sources. Mostly, however, human rights requirements are met with skepticism. According to Udo Steinbach this is due to the fact that the West constantly impinges on its “upheld principles” and also considers

[...] the realization of Western interests and dealing with human rights [...] in one and the same context.²⁵

Additionally, international institutions, which are widely created by the West, do not possess corresponding levels of trust as found in Europe. Quite the contrary: human rights are identified with the hegemonic claim of the Christian-Western world and are therefore seldom considered very seriously. Conversely, human rights proponents of the Western hemisphere do not show any willingness to enter into an open and intercultural dialog that addresses human rights norms which are believed to be universal.

Western reservations center on the absent separation of religion and state. Secularism and the creation of a secular community is considered an important aspect for the unfolding of human rights standards. For many Islamic states this means that religious orders and norms, as they are grounded in Shari’ah, are simultaneously the legal basis of the state. This leads to the fact that Islamic law provides bodily punishments that may also include amputation. Moreover, there is no religious freedom within the Islamic legal systems and no true sexual equality. Saudi Arabia opposed article 18 of the *Declaration of Human Rights*, which provided for religious freedom and the free change of religions at an already very early stage. In some traditional Islamic codes of law the death penalty follows apostasy.²⁶ The death penalty against such persons was

acter in this context, since there is a multitude of different, possibly more terse contingencies of traditional cultural worlds.

25 Steinbach 2002, p. 111.

26 See also Aldeeb Abu-Salieh 1994.

imposed and implemented a few times in Iran and Sudan during the past decades.²⁷

Discrimination against women within Islam is expressed, for example, in the fact that a woman is disadvantaged with regard to divorce and inheritance law. From the perspective of certain Islamic circles this is not considered an obstacle to respecting human rights. They rather tend to claim human rights norms and their development for Islamic culture. The most influential attempt of this kind was the Cairo Declaration in 1990 which contained an explanation of human rights in Islam. The declaration was adopted and issued by the foreign ministers of the member states of the organization of The Islamic Conference. In many respects the declaration seems to resemble the *UN Declaration of Human Rights* but article 24 clearly reveals the main issue:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Furthermore, article 25 states:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

Without doubt, based on the *Declaration of Human Rights* from 1948 and the two Covenants from 1966, these are clearly provisional clauses, which restrict the right to live and bodily integrity in article 2 or, for example, freedom of speech in article 22 of the UN Human Rights Charter.

Furthermore, from a Western perspective, unacceptable restrictions of human rights as important as the right of "personal status" (religious restrictions on marriage – which applies to Israel as well) could be named. Western proponents of the UN Covenants are certain:

The Cairo Declaration proves to be a political document, which knowingly exposes the continuity of the United Nations' universal human right standards. At the same moment the declaration sets an example for the tendency of a one-sided Islamic occupation of the perception of human rights in the ongoing Islamic human rights debate comparable with the Western

27 Cf. Amnesty International 1997.

perception of human rights as “occidental values,” leaving no room for inter-cultural discourse.²⁸

One could object that current Islamic culture does not open up itself to the extensively universal human rights norm influenced by the West. However, if you consider that secularity is based on the political commonwealth of the Western world and that it is a requirement and validation of a trans-religious right, the extent of cultural differences between the Islamic and the Christian world become evident at this point. For a Muslim it is simply not understandable that a human by himself, as an abstract universal assumption, independent of his society’s influential culture and his religion, is led to have rights in the first place. Against this backdrop it should become apparent that the importance – for the European-influenced perception of human rights – of the independence and individuality of a human being cannot be shared by Islam.

In an Islamic dimension [...] the human being acts and is responsible to God’s light of revealed words. As a “representative” he remains subordinate to him. Human individuality does not lead to an absolutization of the individual and one’s ego. The autonomous human being, as developed in Europe’s modern era, who acts according to an inner moral law, is hardly understandable for a religious Muslim.²⁹

From a perspective influenced by occidental culture, one might complain about this and wish to change it. Nevertheless, the opposition of the Islamic world culturally and philosophically shows that a human being does not delineate its character in an abstract humankind, but takes shape in concrete cultural, temporal and spatial conditions as well as in symbolic structures and semantics.

Not until the difference of this diversity of human genesis is recognized and taken seriously throughout different cultures might an endless normative process of acquisition of qualities or knowledge, as a dialog between cultures, create universality. This would *laterally* grow and change into a concrete encounter of foreign, but politically and socially reliant cultures.

28 Bielefeldt 1998, p. 137 (my translation).

29 Steinbach 2002, pp. 109–110 (own translation).

The generation of human rights between cultures should be thought of as a greater and endless language which steadily emerges in an ongoing translation process of many different languages, in which meaningful words and minor allusions nestle together, not excluding each other as a result of their diverging backgrounds.

