

Unit E 13: Individual freedom, fundamental rights and entrepreneurial activity

1. Summary

Entrepreneurial activity is intimately linked to personal liberties. Therefore, any governmental attempt to monitor personal activities, to restrict personal freedoms, or to overly standardize or regulate economic activities is problematic. This does not mean, however, that state regulation should be rejected in every case - on the contrary, every regulatory activity is a question of a sense of proportion.

2. Individual Fundamental Rights and Entrepreneurial Activity

Article 17 of the Universal Declaration of Human Rights

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

The right to property - also in the form of private property - is guaranteed by human rights. At the same time, the right to work and thus to economic activity is also recognized:

Article 23 of the Universal Declaration of Human Rights

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Today, even in socialist or communist-ruled states - with the exception of North Korea - individual entrepreneurial activity is possible and desirable. However, the concrete conditions vary from country to country and from region to region.

This raises the question of the extent to which democracy is or is not a prerequisite for successful entrepreneurial activity and economic growth.

Like Amartya Sen, Swiss political scientist Hanspeter Kriesi (in *Neue Zürcher Zeitung*, Aug. 16, 2013) considers democracy to be a universal value. Democratic rights and democracy are of fundamental importance for political, economic and social participation, but also for any entrepreneurial activity. According to Kriesi (in *Neue Zürcher Zeitung*, 8/16/2013), economic development leads to a change in values, according to Ronald Inglehart and Christian Welzel, which leads to increased self-realization and, as a consequence, to an increased need of people for democracy. According to these ideas, modernization trends lead to a demand for democracy. It should be interesting to test this hypothesis using the example of China, but also the states of the Arab Spring.

Political scientist Kriesi (in *Neue Zürcher Zeitung*, 16.8.2013) speaks of a wave-like spread of democracy across the globe. In this context, the collapse of the great continental empires at the end of World War I led to a first wave of democratization, which was, however, interrupted by authoritarian - fascist and communist - regimes in the interwar period. After the Second World War and the democratization that followed the conclusion of peace in Western Europe and Japan was the expression of a second wave of democratization. After setbacks in the form of military dictatorships and authoritarian regimes, especially in Latin America, there was a third and largest wave of democratization in the context of decolonization: starting with the fall of southern European dictatorships in the mid-1970s in Portugal, Greece, and Spain, the wave of democratization - always according to Kriesi in *Neue Zürcher Zeitung*, Aug. 16, 2013 - swept Latin America and later East as well as South Asia (Philippines, Taiwan, South Korea, Thailand, and Indonesia). After the fall of the Soviet Union and the fall of communism in 1989, formally democratic but de facto authoritarian regimes emerged in many countries, for example in Russia, Belarus, as well as in the Central Asian region. According to Kriesi (in *Neue Zürcher Zeitung*, 16.8.2013): "The democracies of the third wave are generally still less liberal than the Western democracies, which definitely established themselves in the second wave. Moreover, important countries have not been covered by the third wave of democratization, first and foremost China. It is interesting to note, however, that although individual entrepreneurial freedoms have developed strongly

in China between the early 1990s and today, political democratization has not yet come about.

However, the guarantee of basic economic rights for entrepreneurs is only one side of the coin. It is equally important that the companies themselves also comply with human rights and ecological standards (see also ► Unit B 21: "Ecological management"). However, because this is by no means always the case, in April 2015 a broad coalition of 66 aid organizations, women's, human rights, and environmental organizations, as well as the trade union federation and the Ethos investor foundation, launched the so-called Corporate Responsibility Initiative in Switzerland, which aims to oblige Swiss companies or companies operating from Switzerland to comply with human rights and ecological standards in their foreign activities. Among other things, the initiative calls for private clarification and monitoring of compliance with human rights and environmental standards by companies abroad. In addition, a possibility for aggrieved parties to sue in Swiss courts should be created (cf. Scruzzi in *Neue Zürcher Zeitung*, 22.4.2015:11). The initiators justified their plan with the fact that Switzerland is among the ten countries with the most human rights violations by companies domiciled on its territory - i.e. corporations, holdings and SMEs. In doing so, the companies should not only observe the 1948 Declaration of Human Rights, but also the UN Covenants on Civil, Political, Economic, Social and Cultural Rights as well as the core concerns of the International Labor Organization ILO (cf. Scruzzi in *Neue Zürcher Zeitung*, 22.4.2015:11).

The fact that the topic of business and human rights is not just the concern of a few idealistic NGOs, but is of great importance, is proven by the fact that the UN Human Rights Council unanimously adopted Guiding Principles on Business and Human Rights back in 2011, which aim to hold both states and businesses accountable (cf. Calmy-Rey in *Neue Zürcher Zeitung*, 8.2.2017:9). According to former Swiss Federal Councillor Micheline Calmy-Rey, there are large gaps between actual risks and existing measures in many countries, including Switzerland. The central instrument of the UN Guiding Principles is human rights due diligence. According to Calmy-Rey (in *Neue Zürcher Zeitung*, 8.2.2017:9), the international trend is to make these mandatory by law. Companies are to be obliged to check which risks of human rights violations exist in their business activities. In Italy, legal clarifications are

underway for the introduction of such an obligation for companies, in Germany, the practice of companies is to be systematically reviewed, and in France, a law for a due diligence obligation is already about to be passed. That is why - in Calmy-Rey's opinion - Switzerland must also take action. The former federal councilor sees one possibility in the corporate responsibility initiative launched in 2015.

Critics object to the initiative, however, that instead of state monitoring, which can also involve a great deal of bureaucracy, aggrieved parties would be granted a right of action in Swiss courts to enforce their rights (cf. Scruzzi in *Neue Zürcher Zeitung*, April 22, 2015:11), which could lead to a flood of litigation. One can be curious about the discussion on this initiative!

2.1 The importance of privacy

Article 12 of the Universal Declaration of Human Rights

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

According to Article 12 of the Declaration of Human Rights, everyone is entitled to the protection of his or her privacy. This also applies - among other things - to his economic activities.

The affair of former NSA agent Edward Snowden has shown how frighteningly naive many U.S. citizens are about government and private data collection through individual surveillance. A survey by the Pew polling institute commissioned by the Washington Post found that in 2013 56% of respondents found the retention of private connection data by the NSA's Prism program "acceptable" and 45% even thought the government should be able to monitor all email traffic to prevent possible acts of terrorism (Price in *Le Monde Diplomatique*, August 2013:3). David Price (in *Le Monde Diplomatique*, August 2013:3) drew the following conclusion from this: "The fact that the U.S. now accepts and has apparently long since internalized such an extent of electronic spying marks a clear departure from the

long tradition of distrust of government surveillance." One could draw another conclusion from this: Western democracies - and above all the U.S. - are also much less democratic today than they were 50 years ago and violate individual fundamental rights in the most massive way - and to a degree known only from fascist or communist dictatorships. If the private sphere is violated on such a massive scale on the grounds of defense against terror, and if this is even approved of by a large part of the population, then the anti-liberal activities of the terrorists of the most diverse provenance have achieved their goal far more efficiently than the propaganda of our governments would have us believe. The erosion and abolition of important fundamental rights is already a fact today - only most of us have not yet noticed it.

In October 2013 it became known that the American National Security Agency NSA apparently systematically "harvests" address books and contact lists of people (Neue Zürcher Zeitung, 16.10.2013) who use email or chat services. For example, according to the Washington Post, on a single average day the NSA collected 445,000 address books from Yahoo, over 105,000 from Hotmail, a good 80,000 from Facebook, around 34,000 from Gmail and more than 22,000 others from other providers (Neue Zürcher Zeitung, 16.10.2013). Piquantly, this activity takes place abroad, via agreements with "friendly" companies and intelligence services. According to an alleged NSA PowerPoint presentation, the NSA has "direct" access to Google services as well as other U.S. Internet companies, such as Apple, Yahoo, Facebook, AOL, and Microsoft (Schiller in Le Monde Diplomatique, October 2013:9 as well as Arthur in The Guardian, June 20, 2013).

For these wiretapping activities and invasions of privacy in the process, the course was set in the U.S. clandestinely - and rubber-stamped by the courts: "If the courts had defined email as a kind of electric envelope in the early 1990s, the U.S. might be a different country today. Such an argumentative relationship between mail and telephone privacy had been established by Justice Brandeis in his dissenting vote in the Olmstead case. In 1928, he had justified his requirement that telephone conversations be protected from eavesdropping by arguing that there was essentially 'no difference between a sealed letter and a private telephone conversation.' In the post 9/11 world, however, there is little hope that our e-

mails will be protected in this way in the future" (Price in Le Monde Diplomatique, August 2013:4).

An interesting question is to what extent the erosion of privacy through the surveillance of all electronic traffic has an impact on the economic activity of companies. It seems obvious that inadmissible interference with and influence on companies cannot only be ruled out, but is the order of the day. As the saying goes: what is technically feasible will be done sooner or later. Therefore, managers and entrepreneurs would be well advised to fundamentally and systematically take action against surveillance by private companies and government agencies - if only in their own best interest. Who else can guarantee that economic innovations that run counter to existing military or political interests are not simply stifled, prevented by legal means or even prevented from emerging?

2.2 IT security in companies

In small and medium-sized enterprises (SMEs) in particular, IT often poses a considerable security risk. Especially when the money for a professional IT department is lacking. According to a study, 56% of the Chief Information Officers surveyed found that carelessness on the part of employees posed a significantly higher risk when dealing with data than malicious behavior (Neue Zürcher Zeitung, 17.10.2013). Not surprisingly, according to a study by Symantec in 2012, 50% of attacks on companies worldwide were directed at firms with fewer than 2500 employees (Neue Zürcher Zeitung, 17.10.2013).

Yet there are some simple rules that even small businesses can follow: For example, regularly adjusting the passwords on the servers, adequate monitoring of the IT infrastructure and sufficient funds for IT security. Ideally, 4 - 7% of IT costs should be used for IT security.

2.3 State regulations and personal freedom

Particularly for entrepreneurially active persons, the question arises again and again as to what extent government regulations restrict or even nullify corporate freedom. This is

particularly true in the environmental sector. According to Markus Hofmann (in Neue Zürcher Zeitung of 12.10.2013), "the guiding star of liberals is freedom". This includes freedom of expression, freedom of property, freedom to have children and freedom to lead the life one wants. In contrast - according to Hofmann (in Neue Zürcher Zeitung, Oct. 12, 2013) - Greens are conservative in principle: limiting resources, fighting climate change or destroying people's livelihoods are examples of this kind of conservatism. Precisely because liberals are skeptical of environmental regulations, an environmental policy geared to individual freedom would have to be built on five basic pillars: "On science, technological progress, the market economy, the precautionary principle and common sense" (Hofmann in Neue Zürcher Zeitung, 12.10.2013). Liberals should not - for example with regard to climate change - simply pick out those aspects of scientific studies that fit their worldview and ignore the rest. Rather, they should take a holistic and comprehensive view of research findings and implement them in politics. Technological progress could help to avert or reduce negative environmental impacts. Therefore, Hofmann (in Neue Zürcher Zeitung, 12.10.2013) demands targeted and comprehensive investments in Switzerland as a research location. However, environmental policy must be combined with market-based incentives and instruments, but not with subsidies. In addition, a "precautionary principle light" regulatory restrictions must be made, but without preventing economic and technical innovation. An overly conservative application of the precautionary principle would become a brake on progress. And finally, common sense is always called for, especially in the area of environmental and landscape protection. These five principles sound very good, but who can guarantee that they will not be subjected to a one-sided, profit-oriented and short-term way of thinking? Is it "common sense" to build more nuclear power plants after Chernobyl and Fukushima - for example, if the latest technology is used - or are the possible dangers and risks simply too unmanageable? Should oil be extracted on a large scale by means of "hydraulic fracking", even if entire landscapes are destroyed as in the USA? Should absolute freedom of mobility be sacrosanct, without ever limiting the number of private cars, for example, even if air pollution and climate change are inevitably progressing? As you can see, it is often a matter of concrete, tangible clashes of interests that cannot simply be resolved by a few so-called "reason criteria." Ultimately, one will hardly get around having a broad and comprehensive ethical discussion around these questions - if one does not want to wait too long and

promote the risk of an "eco-dictatorship" (Hofmann in Neue Zürcher Zeitung of 12.10.2013) precisely by leaving excessive personal freedoms untouched for too long.

At the same time, personal freedom seems to be increasingly taken for granted on the one hand and tends to be valued less and less on the other. For example, the John Stuart Mill Institute at the University of Heidelberg has been collecting a so-called freedom index since 2011 (cf. Ulrich Schmid in Neue Zürcher Zeitung, November 26, 2013). Representative surveys of the German population and quantitative media analyses revealed that the appreciation of freedom in Germany is declining slightly but steadily. In 2013, the survey concluded that Germans want more state regulation and prefer a "caring" and "looking after" state to a classically liberal state (Schmid in Neue Zürcher Zeitung, 26.11.2013). However, one should not make the - old liberal - mistake of confusing economic freedom with comprehensive freedom. Indeed, the results of these studies can also be read differently: As a rejection of an economic life that ice-coldly dominates all areas of human society, fights every thought of social solidarity and subordinates all areas of society solely to business criteria. Freedom is ultimately not possible without equality of opportunity, as the pioneer of liberal state theory, John Rawls, already knew: In his "Theory of Justice" (Rawls 1975), which he expanded in his later work of "Political Liberalism" (Rawls 1998), he laid down the principles that Johannes Frühbauer (2007:81) summarized as follows: "First, the principle of equal fundamental rights and freedoms; second, the principle to justify inequalities (difference principle); and third, the principle of fair equality of opportunity." The third principle means that violations of the first basic rule are acceptable only if they benefit the disadvantaged. Unfortunately, many of today's liberals have forgotten this.

2.4 Surveillance as a business model

Activist Jacob Appelbaum (see Trojanow in Neue Zürcher Zeitung, Aug. 2, 2013) believes that surveillance today is no longer illegal or semi-legal activity of intelligence agencies or other obscure government agencies, but a business model. According to the paper, 850,00 private sector employees in the U.S. today enjoy "top secret clearance," meaning they have access to highly classified information. One of them was Edward Snowden, who worked for Booz Allen Hamilton, a large company in the security industry (see Trojanow in Neue Zürcher

Zeitung, 2.8.2013). This firm - like many other intelligence and security firms founded by former agents of the CIA and NSA - is almost entirely dependent on government contracts. In 2013, for example, 70% of government intelligence spending went to private firms (see Trojanow in Neue Zürcher Zeitung, 2.8.2013). Many government agencies, but also private individuals, hold the resigned opinion - such as the German Minister of the Interior Hans-Peter Friedrich - that "what is technically possible ... is simply used..." (Trojanow in Neue Zürcher Zeitung, 2.8.2013). However, it is forgotten that total surveillance also harms the economy and private companies - one does not have to go back to the time of the Cold War behind the Iron Curtain for that. If one considers that all the Stasi files of the Gauck authorities - 111,200 shelf meters - would fit on a standard 2.8 terabyte hard disk, then it is hardly surprising that the Global Information Grid, the Pentagon's global information network, can store data volumes measured in yottabytes. In other words, 360 billion times as much data as all the Stasi files combined (see Trojanow in Neue Zürcher Zeitung, Aug. 2, 2013). That is more than 6.5 million times more data than the Stasi stored per GDR inhabitant!

In 2013, Germany, Switzerland, Austria and Liechtenstein deposited an initiative before the NO Human Rights Council to protect privacy in the age of the Internet. Although there is already an article in the International Covenant on Civil Rights prohibiting arbitrary or illegal violations of privacy (see Didier Burkhalter in Neue Luzerner Zeitung, Nov. 8, 2013), the latest technological developments and possibilities could not have been foreseen at the time of its creation. The new initiative is intended to respond more strongly to today's threats to privacy (Didier Burkhalter in Neue Luzerner Zeitung, 8.11.2013).

2.5 The problem of personal security, especially in fragile states

It stands to reason - and is a matter of course in Western states - that free economic activity and thus entrepreneurial activity are only possible if minimum security standards are guaranteed in the country concerned. If entrepreneurs have to fear being kidnapped for ransom at any time, as was the rule in South Africa after 2010 or in some Latin American countries, for example, then normal entrepreneurial activity is not possible. This is especially true for so-called "fragile states."

In recent years, the discussion about so-called fragile states with poorly developed state institutions has intensified. In particular, security is a key issue in "emerging states" with strongly developing economies. In Africa and Latin America, for example, there are zones even in the capitals where the state monopoly on the use of force, for example in the form of the police and judiciary, is completely absent. The Honduran city of San Pedro Sula, for example, is considered to have the highest murder rate in the world. Youth gangs such as the Mara Salvatrucha-with increasingly mafioso structures-control entire neighborhoods. Internal settlements, as well as the prevention of dropouts, often lead to murders. For example, according to churchman Monseñor Emiliani, who accompanies gang members willing to quit, 67 of about 200 young people willing to quit have been murdered in recent years (One World September 2013b:7). In 2004, there were 34 homicides per 100,000 inhabitants in Honduras; by 2012, there were 85.5 (One World September 2013b:9). According to statistics, 7172 people were killed in Honduras in 2012 alone (One World of September 2013b:9).

Especially in a number of countries in Africa and Central Asia, the security situation was and still is - partly until today - precarious (see Tschudy in Schweizerische Handelszeitung of 13.5.2015:39).

For this reason, every company should think carefully about whether it wants to take the risk of operating in such countries. It is not uncommon for employees of internationally active companies to be far too unaware of the dangers to which they may be exposed. Unfortunately, not all companies take their responsibility in this regard seriously enough. It is not enough to take out risk insurance for top executives - the traumatic experiences to which employees of foreign companies may be exposed are almost impossible to assess and, if the worst comes to the worst, to treat.

Companies operating abroad should regularly monitor the security situation and not be afraid to withdraw endangered employees if necessary.

Close supervision of all employees abroad, especially in emerging states, as well as appropriate coaching and integrated and ongoing training in intercultural competence and intercultural fields of work abroad are indispensable.

3. Control Questions

1. To what extent are the right to conduct a business and the right to economic property part of human rights?
2. Name the relevant articles of the Declaration of Human Rights.
3. In what way is privacy important and what threatens it?
4. What three principles did John Rawls formulate in his theory of justice?
5. What percentage of the IT budget should be allocated to IT security?
6. Explain to what extent personal surveillance has become a business model.
7. What do foreign companies and employees in emerging states have to pay particular attention to?

4. Links

Fragile States

<http://www.gsdrc.org/index.cfm?objectid=4D340CFC-14C2-620A-27176CB3C957CE79>

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