

Unit I 6: Human rights - universal or culture-specific?

1. Summary

A perennial issue in the intercultural discussion is the question of human rights: are they universally valid regardless of nationality or cultural affiliation, or are human rights merely a product of Western history and the Occident? This discussion is significant because very different - and in some cases opposing political and ideological groups - argue with human rights. Also historically, today's world situation is hardly conceivable without taking into account the decades-, even centuries-long human rights discussion.

2. Human rights

According to Klaus Günther (2011:52), human rights have a "self-referential structure." It follows that: "If they apply to all human beings, i.e. to every individual, then there cannot be one (or an exclusive group of) human beings who grant these rights to all others and decide on their content - such a procedure would contradict the meaning of human rights. Only people themselves can decide both on the validity and on the content and scope of their human rights. In the meaning of human rights, therefore, there is always also the self-empowerment of people for their self-determination" (Günther 2011:52).

In this context, human rights can be understood as "superpositive" - i.e., standing above established law -, as supranational, and as supra-legal. Human rights aim to be criteria for established law, to act as a guiding principle for politics, to reduce war and political violence, and to reduce the diversity of social legal systems to common standards.

The understanding of human rights is one of natural law: all people are entitled to the same (human) rights by virtue of their birth (thus nature can be traced back to "nasci", Latin for being born). Human dignity - a central postulate of human rights - and human rights cannot be taken away from any human being.

2.1 Origin and development of human rights

As early as the end of the Middle Ages and the dawn of modern times, decisive concepts emerged that became important for the later discussion of human rights. The Renaissance philosopher and humanist Pico della Mirandola, for example, formulated human dignity as a central element of the idea of human rights. And the Dominican friar Bartolomé de las Casas was the first to advocate the idea that not only the baptized but also the unbaptized were fundamentally entitled to the same personal rights as Christians (cf. Spénlé/Mugier 2011:51).

Thomas Hobbes (1588-1679) is considered one of the founders of the idea of human rights. He broke with medieval thinking by attributing the political order neither to God nor to a theologically conceived nature, but wanted to base it in the interests of individuals (cf. Celikates 2012:24). Unlike other contract theorists such as John Locke or Immanuel Kant, Hobbes linked his individual-centered rationale to the legitimation of an absolute sovereign. In contrast to the state of nature, where people had rights but no duties, after the establishment of an absolute sovereign, people were subject to duties without having rights. Accordingly, Hobbes takes an extremely ambivalent position in the history of human rights: On the one hand, he was a representative of radical normative individualism; on the other hand, he advocated unconditional submission to an absolute sovereign (cf. Celikates 2012:24). He justified this by arguing that the state of nature would lead to a war of all against all, which would lead to permanent insecurity and would be unbearable for people. However, he argued, the sovereign must include "amenities of life" in addition to securing peace, but not toward subjects, but toward God, toward himself, and toward his office (cf. Celikates 2012:25). However, according to Celikates 2012:25, it is debatable to what extent in Hobbes the power of the absolute sovereign is normatively or factually limited. Of the Hobbesian conception, "his contract-theoretic model of justification, but not the result of justification-the unrestricted Leviathan [i.e., the absolutist conception of the state advocated by Hobbes, note CJ]-has proven to be connectable" (Celikates 2012:25).

John Locke does not use the term human rights as a term, but his philosophy played a central role in the development and enforcement of human rights (Laukötter/Siep 2012:30). One of Locke's central concepts, "property" refers to a "core area of contemporary human rights: the right to life, liberty, bodily integrity, and to acquire property (life, liberty, integrity, possession)" (Laukötter/Siep 2012:30). Today, the task of the state - as holder of the monopoly on the use of force - is not only to secure peace, but also to guarantee human rights for its citizens. If the state violates this second task, then citizens have, in the last instance, a right to resist. For Locke, there are two sources of natural law and thus ultimately also of human rights: on the one hand, natural law corresponds to reason, on the other hand, it goes back to the will of God (cf. Laukötter/Siep 2012:31). According to (Laukötter/Siep 2012:31) this double grounding of human rights is not unproblematic, among other things because the grounding in the will of God is ultimately based on a proof of God or at least on the belief in God. Conversely, however, the grounding of human rights in God's will facilitates the inclusion of views of other religions, such as Islam.

Another important author in relation to the emergence of human rights is Jean-Jacques Rousseau (1712-1778). In his "Contrat social" there is admittedly no definition or derivation of a specific human right. "Nevertheless, Rousseau's notion of a pre-state fundamental right of man is an important station on the path of human rights, the 'droits de l'humanité' ..., to the present" (Brandt 2012:37). Rousseau argues that there can be no inequality between people when people invoke their inalienable right to liberty, because liberty of each individual conditions the equality of all (cf. Brandt 2012:37). Rousseau's argumentation is purely rational; he dispenses with theological arguments. Rousseau speaks of a "duty to preserve freedom" (Brandt 2012:39), which he bases on the nature of man and on the construction of domination. It is only through a social contract that man loses his natural freedom ("liberté naturelle") and thus the unlimited right ("droit illimité) to achieve anything he desires. Through the social contract, individual natural freedom becomes civil freedom (liberté civile), limited by the general will. According to Brandt (2012:40), this is one of the problems of modern human rights thought: on the one hand, the modern human right accrues to every individual by nature, but on the other hand, it has "no comprehensible force of obligation" (Brandt 2012:40), if not in a state or private contract. At the same time, according to Rousseau, the state of being an accomplished citizen is an expression of the

"general will," but without the citizen having the right to defend himself against misguided state power (cf. Brandt 2012:40). Following Rousseau's philosophy, two main strands of argumentation or evaluative tendencies of Rousseau's position emerged: "One focuses on the liberal elements of Rousseau's political philosophy, the other emphasizes the totalitarian opposite side" (Brandt 2012:41).

Also playing a central role in the path to human rights was the political writer Thomas Paine (1737 - 1809). Originally born in England, he moved to the United States in 1774, so he was committed to the abolition of slavery and the struggle for independence of the American colonies - here especially with the writing "Common Sense" (1776). When he returned to Europe in 1787, he committed himself theoretically and practically to the French Revolution, whose achievements he defended against conservative critics such as Edmund Burke in the writing "The Rights of Man" (1791/92) (cf. Pongrac/Roth 2012:42). Paine distinguishes between government and society in his writings. In this context, he understands society as a natural state of original freedom and equality of people given by the order of creation, while he sees in government only the "accidental guarantor of this state" (Pongrac/Roth 2012:42), whose task is to ensure freedom and security. In this context, according to Paine, it is a natural right of people to determine their own government - and not the prerogative of an aristocracy or a hereditary monarchy. The text "The Rights of Man" is probably Paine's most radical writing. Based on liberty and equality, Paine develops the "enlightened and divine principle of the equal rights of man" (quoted from Pongrac/Roth 2012:42). Here, people join together by contract to form a commonwealth in order to secure these rights. However, the individually exercisable rights of freedom of action, expression, and belief remain fully with the individual even in civil society. By social contract, jurisdiction and legislation are transferred to the central power of the government, which, however, is itself only a product of the preceding social contract. This also requires, among other things, a strict separation between church and state (cf. Pongrac/Roth 2012:43). Constitution-making is thereby understood as a collective act and as a right of the nation. The impact of Paine's writings was tremendous. Although today it is no longer possible to say whether Paine was involved in the drafting of the American Declaration of Independence of July 4, 1776, the ideas formulated therein are undoubtedly based on the considerations formulated in Common Sense (cf. Pongrac/Roth 2012:43).

According to Immanuel Kant, the "autonomy of the will" is "the supreme principle of morality" (Kant 1968a:440; cf. Klemme 2012:44) and "the ground of the dignity of human and every rational nature" (Kant 1968a:436; cf. Klemme 2012:44). According to Klemme (2012:44/45), Kant "refers to man's sensible nature also with the expression 'humanity' and asserts that the 'dignity of humanity' consists in me in the 'capacity' for general legislation to which I, as a sensible being, am 'at the same time subject myself' (Kant 1968a:440)" (Klemme 2012:44/45). In this context, law and ethics are mutually dependent for Kant: "I not only have the duty to act legally, I also have a virtue-ethical duty to act out of 'respect for law,' i.e., I should make 'the law of humanity, or also the law of human beings, my end (Kant 1968c:390)" (Klemme 2012:45). Accordingly, Kant (1968a:429) recommends, "Act in such a way that you use humanity, both in your person and in the person of everyone else, at all times simultaneously as an end, never merely as a means." In his doctrine of virtue, Kant speaks of the "dignity of humanity" (Kant 1968c:429), the "dignity of humanity in us" (Kant 1968c:436), of "inner freedom" and of the "innate dignity of man" (Kant 1968c:420), and of "human dignity" (Kant 1968c:429). In this context, he loses his dignity who allows his right to be "trampled on unpunished by others" (Kant 1968c:436). According to Klemme (2012:48), Kant sees a general will of the people, but not as participatory and direct democracy like Rousseau, but embodied by the will of the monarch. The latter has the duty to "bring the constitution and laws into line with the law of reason in the long term through reforms" (Klemme 2012:48), as a reform from above, so to speak (cf. Klemme 2012:48). Thereby, according to Kant, pure practical reason already demands "respect for the dignity of humanity in our person and the right of human beings..." (Kant 1968b:273). In this context, however, the "right of humanity" is not established by the "dignity of humanity" according to Kant, "but is the capacity of human beings, expressed in language and for the purposes of law, to determine their freedom by law" (Klemme 2012:49). Today, according to Klemme (2012:50), Kant's concept of human rights and human dignity is important "especially in the field of applied ethics (dignity of unborn life) of the discussions about the constitutional status of the concept of dignity ... and political philosophy" (Klemme 2012:50).

For a detailed discussion of Kant's ethics and Kant's categorical imperative, cf. ► Unit E 3: "Foundations of Ethics".

Definition and content of human rights

"Human rights are pre-state rights that belong to every human being as a person vis-à-vis organized collectives.

'Pre-state' means that human rights are not conferred by the state, but that, conversely, it should be a primary duty of every state to protect human rights. 'Every human being' is meant to make it clear that biological membership in the human species is the only criterion that must be met in order for someone to claim respect for her/his human rights. This claim is addressed to the 'organized collectives', first and foremost the state institutions, but also to the religious communities, family associations, business enterprises, civil war parties, etc. However, only the human rights claims against the state are explicitly covered at the legal level.

The term 'person' in the above definition does not imply a restriction of the scope of meaning of the expression 'every human being'. Rather, the term 'person' refers to those possibilities and/or necessities of being human that are emphasized as values in the internationally applicable human rights norms, namely:

- **Equality:** the egalitarian approach of human rights is expressed in the prohibition of discrimination: every person, regardless of gender and group affiliations, possesses an equal, inalienable human dignity, which is concretized in the same human rights.
- **Freedom:** Neither may the physical integrity of the person be violated, nor may the person's ability to express himself or herself and to realize his or her own life plans be restricted without compelling reason. The space of personal freedom is limited by the equal rights of other persons.
- **Conviviality:** The person envisaged by human rights is not a single, isolated individual, but a social, political and cultural being. From this derives the right for every person to form, together with other persons, communities such as families or associations such as clubs or parties, as well as to participate in shaping the cultural and political life of society.
- **Securing livelihood:** In the human rights perspective, the human being is not conceived as a disembodied idea, but as a living being with basic needs for food, shelter, health, education, work, social security, etc. This leads to the right of every human being to be a part of society. From this is derived the right of every human being to be able to secure his or her basic material needs in a system of social justice."

Source: Sutter 2004a:3-4.

Frederik von Harbou (2014:276) identifies four key human rights protections, namely

- "1) physical and mental integrity,
- 2) subsistence,
- 3) freedom, and
- 4) equality."

According to Sergio Dellavalle (2011:123/124), human rights move between two poles in the history of ideas: According to the first view, human rights were implemented "from above," so to speak (also called "descending" interpretation of human rights, cf. Dellavalle 2011:130), which is why - always according to this view - they do not depend on participatory procedures, but for that they run the risk of being left to third-party instances, such as courts. The second view sees human rights as a consequence and expression of social and political processes (also called "ascending" interpretation, cf. Dellavalle 2011:139), i.e. the democratic participation of people.

General Assembly Resolution 217 A (III) of December 10, 1948: Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and

freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

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.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(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.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with

others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(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.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Source: <https://www.institut-fuer-menschenrechte.de/menschenrechtsschutz/datenbanken/datenbank-fuer-menschenrechte-und-behinderung/detail/universal-declaration-of-human-rights-proclaimed-by-united-nations-general-assembly-on-10-december-1948-resolution-217-a>

Fundamentally, human rights are subject to two dangers: On the one hand, there is the threat of "an abstract and sometimes quasi-authoritarian definition of essential rights" (Dellavalle 2011:124), and on the other, a tendency toward particularism.

In Europe, the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR) represent, according to Backer 2011:187, "perhaps the greatest achievements of the Council of Europe" and are guarantors of the rule of law and human dignity in Europe.

However, there have also been weighty critics of classical conceptions of human rights over time. One of them was Hannah Arendt (1906-1975). Stefanie Rosenmüller (2012:79) writes about Hannah Arendt: "She was herself exposed to the experience of statelessness and flight in the 20th century as a Jew who emigrated first to France and later to the USA in 1933. In the context of her analyses of totalitarianism after the Second World War, she pointed out with provocative and bitterly ironic observations the ineffectiveness and the outdated bases of validity of human rights, which had been unable to counteract the massive experiences of injustice in the center of Europe... At the same time, Arendt coined the now famous concept of the 'right to rights', which is programmatic for the contemporary discussion of human rights. This 'single' human right, as Arendt puts it, consists in a fundamental, because constitutive for the possession of further rights, right to participate in a political community" (Rosenmüller 2012:79). In view of global migration (cf. in detail ► Unit I 30: "Migration"), which has led to more and more people living outside the scope of their political, and in some cases also economic and social rights, this fundamental right is of central importance. Using the example of refugees and stateless persons, Arendt showed that standard human rights always fail where people cannot invoke a positive, i.e. set, legal order. For example, stateless persons suffer from a "gradual loss of rights" (cf. Rosenmüller 2012:80), first in the form of loss of homeland - according to Arendt, a "loss of space and status" as well as a loss of a "place in the world." This is followed by the loss of legal protection by the state as a consequence of statelessness, and finally the situation of the stateless culminates in "absolute lawlessness," who are no longer even - like criminals, for example - addressees of the criminal code. Because totalitarianism has devastated and destroyed traditional traditions of thought, human rights - according to Arendt - can no longer be grounded in "innate natural rights" or in "reason."

Another weighty voice - the U.S. philosopher Richard Rorty (1931-2007) has explicitly opposed a universal grounding of human rights. He argued that it is outdated to attribute human rights to principles that transcend time and context; rather, "the spread of a democratic culture of human rights" should be promoted by "educating and cultivating a sense of sympathy" (Hoffmann 2012:83). For this, however, a state of material prosperity and security would have to be achieved worldwide. And one would have to add: a worldwide democratic constitutional state to which all people belong and are subject.

2.2 On the current human rights discourse

Gret Haller (2011:21-32) has listed the following controversies related to the human rights discussion, among others:

- 1) The "positivization" of human rights versus the application of human rights in concrete individual cases. Two questions arise: first, who determines what human rights entail, and second, who decides when and to what extent human rights have been violated (Haller 2011:21)? According to Haller (2011:22), the controversy arises "when the judge himself creates law." This is, according to Haller (2011:22), "largely the normal case" at the supranational level.
- 2) In the establishment of human rights, the question arises whether the establishment (the "positivization") consists in recognizing already existing rights through a common declaration, or whether the rights "are constituted only through the positivization" (Haller 2011:23). Particularly controversial in this regard is the relationship between human rights and popular sovereignty, especially in countries such as Switzerland where a direct voting democracy is cultivated. This raises the question of whether primacy lies with human rights - the more common position, according to Haller (2011:24) - or with democracy. A third, mediating position - for example Finland - sees neither a primacy of human rights nor of democracy (cf. Haller 2011:24).
- 3) This gives rise to the controversy over the institutional question. This involves the question "whether the affirmation of human rights should be carried out in the last instance by democratically elected bodies or by courts, whereby a distinction must be made between the national and supranational levels" (Haller 2011:25).

- 4) Further questions arise "when considering institutions at the national and international levels together" (Haller 2011:27). In particular, the lack of democratic institutions at the international level is perceived as a shortcoming - at least in the human rights field.
- 5) Finally, there is - according to Haller 2011:29/39 - the problem of the role and importance of the political public sphere at the national level. In this context, especially advocates of a democratic negotiation process see the need for a collective learning process. In addition, human rights activists see fundamental and human rights as a means to improve their individual situation. This gives rise to conflicts - for example, over issues of wealth distribution and property rights.

A special and also new human rights and international law problem is posed by the remote-controlled drone attacks by the U.S. that have been taking place against so-called terrorists for several years. For example, on January 29, 2009, at exactly 17:15, a Hellfire missile struck the guest courtyard of Fahim Quereshi's family home in North Waziristan/Pakistan, about a two-hour drive from the Afghan border (see Germund in Zentralschweiz am Sonntag, October 13, 2013). The missile, fired by a Predator drone, shredded seven people; only Fahim Quereshi survived. According to statistics of the Bureau of Investigative Journalism, between 2004 - when the drone attacks were first ordered by President George W. Bush - and October 2013, around 3,000 people died in drone attacks (see Germund in Zentralschweiz am Sonntag, 13.10.2013). Since Barack Obama came to power, there has been an average of one drone attack every four days, according to the same source. This practice is questionable in four respects: First, these attacks are probably a violation of Article 3 of the Universal Declaration of Human Rights (right to life, liberty and security of the person). Second, it would have to be clarified whether these attacks are legitimate according to international law criteria - which is doubtful. Third, they are carried out with the tacit approval of a regime (Pakistan) that can thus get rid of Islamist opposition members or terrorists without having to resort to constitutional means. And fourth, such attacks always kill many non-combatants, i.e. civilians and even children, which cannot be acceptable under any circumstances.

2.3 Are human rights universal or culture-specific?

"Already in the formative phase of the Universal Declaration of Human Rights (UDHR), the members of the relevant UN commissions were aware that there is a great tension between the universal claims of human rights and the pluralism of different cultures" (Lohmann 2012:210).

This tension is only partially addressed by the Regional Human Rights Declarations. These rather express the different history of human rights:

| Regional human rights regulations 1950 - 2014 | | |
|---|--|------|
| Abbreviation | Full title | Year |
| ECHR | European Convention on Human Rights (1) | 1950 |
| ACHR | American Convention on Human Rights and Protocol of San Salvador (2) | 1988 |
| | African Charter on Human and Peoples' Rights (3) | 1981 |
| | Arab Charter on Human Rights (4) | 2004 |
| | Asian Declaration of Human Rights (non-binding) (5) | 2012 |

(1) All of Europe, Turkey, Russia

(2) Virtually all of Latin America, excluding USA and Canada

(3) Virtually all of Africa + Madagascar, excluding Morocco and South Sudan.

(4) Syria, Iraq, Jordan, Saudi Arabia, Yemen, Algeria, Libya, excluding Oman

(5) Southeast Asia only, excluding China, Mongolia, India, Pakistan, Iran, Afghanistan, Bangladesh and Central Asia, both Koreas and Japan.

Source: Ionesco et al. 2017:124.

According to Lohmann 2012:211, there are essentially three positions on the universality and culture-relatedness of human rights in the human rights debate, if one leaves out the position that considers any claim to justification of human rights to be superfluous. A **first position** relies on **commonalities** that can be found in all cultures and justifies human rights on this **neutral basis**, so to speak (**substantialist position**). A **second position** starts from **different cultural points of view** and **tries to construct** human rights as something **common between cultures** through dialogue, comparison and mutual agreements. I call this position **dialogic-constructive position**. A **third position** leaves the **different, culture-specific justification** of human rights. We call this position "**culture-relative**" (Lohmann 2012:211) - some also speak somewhat misleadingly of "**cross-culture**" **approach** (cf. Lohmann 2012:211). However, according to Lohmann (2012:211), all three positions are based on John

Rawls' "overlapping consensus", which is used to justify the qualitative universalism of human rights. These three approaches are contrasted by a **fourth position**: Lohmann (2012:211) calls it **culturally relativistic** and **reductionist**: such understandings of human rights attempt to "restrict human rights in each case appropriately to what is (allegedly) culturally (and religiously) peculiar to a culture or religion in order to justify its own, culturally relativistic conception of human rights" (Lohmann 2012:211).

The first - substantialist - approach was advocated by Jeanne Hersch (1990), then head of the Philosophy Department at UNESCO, but also by Hans Küng (1990) in his Global Ethic project. The problem with this approach is that it is not clear whether a purely descriptive paraphrase of various culture-specific ethics is sufficient to establish a universalistic validity of human rights. Furthermore, there is the danger that this results in a (too) minimalist understanding of human rights.

In contrast, intercultural approaches - i.e. above all the dialogical-constructive position and the "cross-culture approach" - "try to preserve to a large extent the intrinsic value and the specificity of different cultures. They therefore seek, on the basis of different cultural premises in each case, an **overlapping consensus** between the cultures that can be understood **normatively**. To this end, they fight **against** Western, cultural imperialist appropriation and paternalism as well as for an equal dialogue between the different cultures... Only in an open conversation between the different (cultural or religious) convictions do the agreements with, but also deviations from, human rights ideas become clear and discussable" (Lohmann 2012:212).

From this perspective, a strictly functional understanding of human rights, as advocated by John Rawls (1999), is extremely problematic. According to Rawls, the function of human rights is "to restrict justifying reasons for war and its conduct" (Rawls 1999:79) and "[to] specify limits to a regime's internal autonomy" (Rawls 1999:79). Hahn (2012:64) concludes from this: for Rawls, human rights represent "conditions of access to the community of nations and as conditions of legitimacy of internal and external sovereignty." If this were true, then Rawls' position would be an instrumentalizing, appropriating, and thus ultimately imperialist view of human rights. Accordingly, John Tasioulas has called Rawls's view of

human rights a "coercive intervention account" ("Coercive Intervention Account"; Tasioulas 2009:940). However, it should be argued here that the context of Rawls's statement shows that he sees the human rights issue rather as an aid to reducing military intervention under international law. But the problem of instrumentalizing human rights remains.

It is obvious that ultimately only an attitude of permanent human rights dialogue can be sustainable - and also supported by all parties involved. However, this dialogue is also very laborious, marked by setbacks and - especially for Western thinking people - unpleasant, because they are also held up the mirror to their own history (colonialism, imperialism, etc.).

Even more self-reflexive and self-critical is the "cross-culture approach," as advocated by Abdullahi A. An-Na'im (1992, but also 2008 and 2011), for example, who, from a liberal position, critically questions not only his own Islamic conception of law but also Western legal culture (on the relationship between Islam and secularism or Muslims and the secular state.

Georg Lohmann (2012:214) is undoubtedly to be agreed with when he writes: "In the future ... two opposing efforts seem to arise from the tensions between human rights and the pluralism of cultures. On the one hand, powerful political parties seek to replace or at least limit the universalism of human rights with culture- and religion-specific regional human rights regimes. On the other hand, different intercultural approaches defend the universalism of human rights and try to root it in their own culture in a critical confrontation with the respective culture and via an inductive revision in this culture. Both endeavors stand in opposition to each other, which, however, would be meaningless if the claim of a complex justification of human rights universalism were abandoned in the improvements of human rights protection, which, after all, are at least rhetorically striven for by all states" (Lohmann 2012:214).

2.4 Religious Freedom as a Human Right

The catalog of human rights listed in the Universal Declaration of Human Rights (UDHR) can be divided into three groups in terms of content: Individual liberty rights (Articles 1-5, 12-14

and 16-19 UDHR), political (and legal) participation rights (juridical rights: Articles 6-11 and 29 and 30, and political participation rights: Articles 15, 18, 19, 20, 21 and 28 UDHR) and social participation rights (Articles 22-27 UDHR). However, some of the individual freedoms can also be assigned to one of the other two groups.

Article 18 of the UDHR on freedom of religion plays a special role:

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This means that both individual freedom of religion and belief (positive and negative, i.e. also in the form of withdrawal from a religious community), collective freedom of religion, and corporate freedom of religion are protected by human rights. Secondly, in the case of religious freedom, Article 20 (right to free association) and Article 19 (right to freedom of opinion and expression) also apply, as well as a number of other articles of the UDHR.

2.5 Ethical conclusions and perspectives for action

From an ethical point of view, the concept of human rights is subject to the following dilemma: If human rights are understood as the inalienable rights of every human being, regardless of cultural or national affiliation, religious conviction or ideology, then the question arises of how to deal with people who reject the universality of human rights out of cultural, religious or ideological conviction. Can, must, should or may human rights be enforced even if they are not shared by all people? If yes: Doesn't the human rights movement thereby violate its own principles, such as freedom of opinion and belief? If no, doesn't the idea of human rights then lose its very central concern, namely the guarantee and enforcement of fundamental rights for all people, regardless of their specificities?

It seems to me that from an ethical point of view there can be only one solution: The repeated attempt to bring the idea of human rights closer to all people through discourse,

i.e. through discussion and persuasion, but without violence. Ethical persuasion through discourse, patiently, persistently and without appropriation, but also without being discouraged by failure. Or as Jürgen Habermas (2001:180) once put it: If "human rights are accepted as a transcultural language" (Habermas 2001:180), they will break out of their one-sided domicile in the West and become the property of all cultures on this planet.

Problematically, many human rights are formulated only partially, not comprehensively or concretely enough. For example, Article 28 of the Declaration of Human Rights states, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." But what does that mean in concrete terms? Is this possible without a democratic world state, without a strong global executive and legislative power?

Article 5 of the Declaration of Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". But this article explicitly does not apply to the death penalty, which can arguably be considered the ultimate punishment.

And Article 13 of the Declaration of Human Rights states: "1. everyone has the right to move and reside freely within a State. 2. everyone has the right to leave any country, including his own, and to return to his country." But there is a lack of a general worldwide right to migrate and a right to choose freely where to live and settle in another country (for details cf. ► Unit V40: "Right to migrate and right to settle freely as human rights").

All this means that human rights, which are themselves partly the product of compromises, must be constantly reflected upon, expanded, and concretized. This requires institutionalized forms of human rights discourse that must go beyond regular conferences.

3. Control Questions

1. What does Klaus Günther mean by the "self-referential structure" of human rights?
2. Outline Thomas Hobbes' approach to human rights and the state.
3. How did the idea of human rights appear in John Locke?

4. How did Jean-Jacques Rousseau see the relationship between fundamental human rights and society?
5. Paraphrase Thomas Paine's contribution to human rights.
6. Outline the view of Immanuel Kant.
7. What central claim did Hannah Arendt bring to the human rights discussion?
8. What is meant by the statement that human rights are "pre-state rights"?
9. How many articles does the Universal Declaration of Human Rights contain?
10. List the freedoms formulated in each article of the Universal Declaration of Human Rights.
11. Outline the four main positions regarding the universality and culture specificity of human rights.
12. To what extent do human rights protect freedom of religion and belief?
13. What ethical dilemma is the commitment to human rights subject to?
14. what limits do you see to human rights, and in what direction would they need to be expanded or developed?

4. Links

Allgemeinen Erklärung der Menschenrechte von 1948

<http://www.un.org/depts/german/menschenrechte/aemr.pdf>

Menschrechtsportal

<http://www.humanrights.ch>

InterAction Council

<http://www.interactioncouncil.org>

UN Global Compact

<http://www.unglobalcompact.org>

Schweizer Sektion von Amnesty International

<http://www.amnesty.ch>

Menschenrechtsorganisation von und für Frauen

<https://www.frauenrechte.de/online/index.php> oder

<http://www.frauenrechte.de/online/index.php>

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