

The controversial universality of individual human rights

Friedrich Wilhelm Graf¹

(University of Munich)

ABSTRACT

The controversial universality of individual human rights

Human rights is currently a very relevant but also very controversial issue in international politics in the aftermath of some of the events that occurred during the twentieth century. In this article, the author puts the present issues in perspective by initiating the discussion with a look at aspects of the historical development of the concept of human rights. He then moves on to take a closer look at how the concept of human rights feature and function in the Christian religion and follows that up with an overview of how human rights are perceived and are operative in the religion of Islam. The article concludes with a focus on inter-cultural discourse.

1 ASPECTS OF THE HISTORICAL DEVELOPMENT

In 1948, in response to the crimes committed by national-socialist Germany and the devastating consequences of the Second World War, the United Nations set itself the goal of safeguarding world peace and promoting “universal respect for and observance of human rights and fundamental freedoms of all without distinction of any kind, such as race, colour, sex, language or religion”. In the preambles to the UN charter, the member states of the United Nations declared “their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. On 1 December 1948, the United Nations passed the ‘Universal Declaration of Human Rights’. What had hitherto been recognised in only a few Western democracies was here declared the normative basis of international law: the absolute dignity of every human being and their elementary human rights. With two international treaties, the ‘International Covenant on Civil and Political Rights’ and the ‘International Covenant on Economic, Social and Cultural Rights’, the United Nations tried in 1966 to strengthen the protection of human rights under international law. These treaties were reinforced by regional human rights declarations,

1 Visiting fellow, Department of Systematic Theology, University of Pretoria.

including, in particular, the 'European Convention on Human Rights' set up by the Council of Europe in 1950. This convention allows citizens of the signatory states to institute proceedings against a possible infringement of basic rights at the European Court of Human Rights. These steps constituted an essential break with a handed-down principle of international law: traditionally, the way in which a sovereign nation state dealt with its citizens had been regarded an 'internal affair'. Now, however, European citizens could also institute legal proceedings against their nation state for violating basic rights at a European court with legal authority over and above that of the individual member states. Possible violations of human rights were for the European states which had signed the 'European Convention on Human Rights' no longer an 'internal affair' of the individual state.

The United Nations still lacks a comparable legal institution which could provide the citizens of UN member states with the unconditional protection of human rights. Up to the present day, the question of whether other governments or foreign organisations and citizens are permitted to interfere in the domestic affairs of another country, for the sake of human rights, remains an unresolved conflict in the United Nations. A current example of this problem is the diverse disputes of Western states with the People's Republic of China and other repressive or dictatorial regimes which continually violate the human rights of their citizens, especially those of political opponents and religious dissidents. Representatives of these states defend the traditional independence of the politically sovereign state and see foreign interventions regarding the question of human rights only as an aggressive violation of their sovereign rights. In the interests of basic human rights, their critics, however, consider such interference in the domestic affairs of foreign countries to be morally imperative as well as permissible under international law. For this reason, they expect the United Nations to offer far greater support than they have in the past to international organisations, such as Amnesty International, which publicise the infringement of human rights in numerous countries throughout the world and seek to support those who suffer from political or religious persecution or other forms of degradation.

Immediately after the Second World War, with the atrocities of the National-Socialist dictatorship still fresh in their minds, it was relatively easy for the member states of the United Nations to come

to an agreement on a catalogue of general human rights. Yet, in the situation of permanent tension during the 'Cold War', it soon became apparent how profoundly western ideas on human dignity, rights and freedom differ from the concepts of human rights in states shaped by communism. In the tradition of the European-American Enlightenment and political liberalism, the Western democracies understood human rights first and foremost as natural rights of the individual which serve to safeguard a person's unconditional dignity and to protect their sphere of freedom vis-à-vis the intrusion on one's privacy by external bodies. Shaped by an emphatic understanding of the intrinsic value of every human being, that is to say, their inner and inalienable freedom, the Western theory of human rights saw in the right of religious freedom or freedom of conscience and worship the kernel of an ensemble of subjective rights which protected the individual sphere of freedom from interventions by the state. Fundamental to the theories on human rights shaped by communist states, by contrast, was a picture of human freedom which primarily portrayed an individual's rights of partnership vis-à-vis state and society and one's resultant duties in the community. Here it was not the individual but the social community that was deemed the vehicle of human rights, and these in turn were not viewed as safeguarding the sphere of freedom *against* the state, but as the freedom, itself, to participate in the realisation of the common good of all. In its debates on human rights, the UN has never succeeded in finding a workable settlement between these divergent and, essentially, mutually excluding concepts.

The international discussion on human rights became even more complicated after the collapse of the colonial system when a number of Third World states which had gained independence demanded the recovery of their political sovereignty and economic as well as cultural autonomy as 'human rights'. As in Marxist theories on human rights, the emphasis shifted from the individual to such supra-individual subjects as 'the people', 'the nation' or 'the community' which were regarded as the true foundations of elementary human rights. In the 'African Charter on Human and Peoples' Rights', the so-called 'Banjul Charter' of 1981, for instance, such terms as 'equality', 'existence', 'the free disposal of natural resources', 'developmental aid' and 'peace' were employed to denote the 'rights of peoples' which found the duties of an individual with regard to their respective people. Unlike classical

Western theories, here the concept of human rights does not serve to protect the freedom of the individual over against political bodies or the state, but rather to legitimise the extensive demands of the political organism on its members. In a different way, this also applies to the various concepts of 'Islamic human rights' that have been put forward since the late 1960's. In the Islamic discussions, intellectuals have also attempted to develop an independent understanding of human rights on the basis of their own religious tradition, i.e. the Holy Scriptures of Islam, over against the individualism of the West, and concretise human rights primarily in the terms of communal ties, that is to say, as 'social duties'. And, finally, similar argumentative patterns also shape the discussions on human rights in the People's Republic of China, where the tradition of an authoritarian state Confucianism, in which the law is never understood as a means to protect the individual but as an instrument serving the welfare of the people as well as the rule of the authorities, exerts a formative influence on the discursive climate and has led to a rejection of the idea of an individual's intrinsic, natural or inborn rights. Even a great many intellectuals belonging to the Chinese opposition living in exile, according to recent research, condemn the individualism of 'western' human rights as socially detrimental. In accord with the structures of authoritarian state Confucianism, they subordinate the rights of the individual to the common weal of the people that is to be defined and carried through by a strong government.

The parents of the UN charter had spoken explicitly of 'universal' human rights, by which they meant (and still mean): every human being, without reserve, possesses human rights. These rights hold in all places and at all times because every human being is of absolute worth. Over and against this unconditional intrinsic value of every individual human being, all other qualities such as gender, race, religion and worldviews become irrelevant elements in the way we interpret ourselves. To be sure, these elements provide for profound differences between human beings; yet in no way do they relativise or render variable each individual's participation in the 'intrinsic value' of humankind. This dignity is unconditionally absolute and applies to everyone, regardless of cultural or biological determinants such as religion, ethnicity, sex and health. It is founded, as Immanuel Kant formulated it with unrivalled exactitude, on an 'end in itself' which must never be exploited as a means to an end.

Thus, human dignity is another term for the fundamental freedom of human beings as rational beings, capable of leading their lives according to self-defined principles.

According to the charter set forth by the United Nations, human rights are defined as 'universal'. However, no single person or group possesses a generally accepted foundation for universal human rights. The theoreticians of the European and American Enlightenment, as well as the jurists of the nineteenth and twentieth centuries, all took for granted that their understanding of the dignity and rights of man was absolutely rational, that is, generally valid and readily comprehensible for every reasonable person. Already in the late eighteenth century, theorists of political conservatism tried to prove that the 'Reason' propagated by these exponents of the Enlightenment rested on 'non-rational' premises and that what they supposed to be universal was in fact particular, i.e. merely an expression of the urge for freedom of the new bourgeoisie. Representatives of the early labour movement linked the fight for the political participation and rights of the 'Fourth Estate' to the demands for 'social rights of man', with the intention of extending the protective rights of the middle classes. Marxist theoreticians declared the classical-liberal concentration on the freedom of the individual a bourgeois ideology, designed only to protect the anarchic competition of the capitalistic market and to safeguard the privileges of the propertied middle classes. This critical insight into the cultural relativity of the conception of human rights formulated by the European and American 'Enlighteners' has been consolidated in the international debates of the past two decades. In the debates of the United Nations, representatives of Islamic states, politicians from underdeveloped societies of the South and Chinese specialists on human rights have, time and again, accused 'the West' of portraying a one-sided or, indeed, false picture of man and his rights with its concept of the individual and the latter's inalienable civil rights and liberties.

The concept of human rights set forth by the Enlightenment of the West is indeed shaped by a special and, therefore, particular cultural tradition. The proclamation of universal human rights in the late eighteenth and early nineteenth centuries was tied to the endeavours of the new bourgeois groups to enforce their political claims to power and social interests. Nonetheless, this indisputable historical and cultural determinedness of western ideas on human

rights does not yet say anything about the question of its possible validity. The idea of human rights only makes sense if it applies to every human being, regardless of particular cultural or biophysical moulding. Whoever relinquishes the claim of general validity does away with the concept of human dignity, the intrinsic value of the human being. Human rights are human rights only if they apply to all human beings. In this respect, they necessarily embrace a 'universalistic' standard. In the following, we seek to elucidate the conflicts that result from 'relativistic' interpretations with two examples: the controversial interpretation of human rights in Christianity and the current debates on human rights in Islam.

2 CHRISTIANITY AND HUMAN RIGHTS

Representatives of Islamic organisations and politicians from states which have not, or only minimally, been shaped by Christianity often raise the objection that 'western' concepts of human rights, with their fixation on the free individual, are only a secular articulation of Christian ideas. Traumatized by the experiences of colonial repression and a cultural hegemony of the West which is still very much alive, they see the endeavours of Western states to accomplish the maintenance of at least minimal standards of human rights world-wide, by way of political diplomacy and economic pressure, as a continuation of the Christian mission by other means. To a certain point, this critical view is warranted: for, historically, the concepts of human rights from the Enlightenment of the eighteenth century are rooted firmly in old Christian ideas on the image of God in man, that is to say, on the special 'dignity' of God's most superior creature. The concept 'human rights' dates back to the discourse on virtue in antiquity, especially Cicero. Later, at the beginning of the modern age, the term played a prominent role in the ethical debates of the philosophers of the Italian Renaissance. Thus, Pico della Mirandola, for instance, understood the divine seed or special dignity of man as lying in our kinship with God, in our god-like capacity to unite and incorporate in ourselves a microcosm of infinite possibilities, to wit, our freedom. The Puritan poet, John Milton, claimed in the seventeenth century that all men are born free by nature because they are born in the image of God. Many 'enlightened' or 'liberal' theologians of the late eighteenth century rooted the dignity of man in his autonomy. Following the 'Virginia Bill of Rights' of 1776, in which human rights were codified for the first time by constitutional law, and the '*Déclaration des droits de*

l'homme et du citoyen' of the French National Assembly of 1789, they declared the 'holy rights of mankind' to be the concretion of the ethic of universal brotherhood, preached by Jesus of Nazareth in the Sermon on the Mount. In countless commentaries on the French Revolution and political 'sermons', 'enlightened' Protestant theologians demanded new constitutions in Germany too, which would, by way of general human rights, restrict the authoritarian subjugation of citizens. Followers of Kant, the so-called theological rationalists, sought to found the dignity and rights of man on the basis of natural rights, i.e. by tracing human rights back to the nature, essence and reason of human beings, and to present this argumentation as historically derivative of the true and 'pure' Christianity of Jesus, viz. not yet adulterated by the Church. The article on 'Human Rights' (*Menschenrechte*), published in Meyer's lexicon in 1852, is representative of this type of theological apologia: "Human rights are rights which safeguard a human being's free and self-determining personality in a community with others, without which no one can live according to his rational and moral determination. They befit every man as such, without any conditions (contract, law, etc.), are grounded in human nature and, therefore, eternal and intrinsic [...]. We must seek the first burgeoning of this thought and the belief in these rights in Palestine. The teaching of Christ, which rests on the principle of equal rights for all men and insists, above all, on the purification of the heart and the practice of love and justice in interrelations between human beings, this teaching removed the first impediments obstructing the ascertainment and recognition of eternal human rights. Christ stood above the prejudices of a limited Judaism; he lived and died for the idea of mankind. Of course, Christianity did not remain in its original state of purity for long. The idea of mankind was replaced by the idea of the Church, and human love and justice by the contrast between the clergy and laity. Nevertheless, the seeds that Jesus scattered did not fall on completely bad soil and some bore bountiful fruit" (Meyer 1852:230-231).

As of yet, very little research has been done into the controversial debates on human rights in the theology and churches of the early nineteenth century. It is clear, however, that the supporters of the human rights idea, influenced by Kant, had already become a minority in the 1820's. The majority, in both German Protestantism and Catholicism, fiercely criticised this idea and

concept of human rights on theological grounds. In full agreement with conservative Catholic theologians, the theologians of politically conservative Lutheranism claimed that the progressive-liberal idea, born of the Enlightenment, on the natural dignity and freedom of the individual was inconsistent not only with Christian teaching but also with the elementary experiences of human beings. The 'free individual', they contested, is an unrealistic, abstract concept; in reality, the human being is capable of living only together with others in a community. Moreover, they argued, the liberal understanding of freedom, based on self-determination and autonomy, contradicts the profound sinfulness of the human being, who is by no means free but captivated by the power of evil and governed by egoistic drives. Thus, a Christian ethic must not be based on the illusory assumption of man's autonomy but should, rather, aim at grasping man in his relationship to God which is encumbered by sin. For this reason, the main currents in the theological ethics of the nineteenth and twentieth centuries focused on the communal ties of the sinner and the duties of the individual vis-à-vis the state and the shelter of his community, rather than on the human rights of free individuals. The more the conservative theologians of the nineteenth and twentieth centuries saw the sinner in man, the greater they emphasised the necessity of strong political authority (contending that only a strong, authoritarian state could successfully restrain the sinful egoism of individual citizens!) and the importance of integrating the individual into the security of such moral communities as the family, church and nation state. In this approach to ethics, with its orientation towards the community, it was incomprehensible to speak of man's elementary (natural) rights, *before* he became a 'political being', and to assert these rights *against* the state.

This dissociation of the Church and mainstream theology from the idea of human rights was fortified by a dogmatic way of thinking which was fixated on metaphysical super-subjects, such as 'God, the Creator', 'the created world', 'the cosmos' or 'the human being', and could only fail to address the question of the individual's own rights. Traditionally, theologians were accustomed to seeing man 'from the divine perspective', that is to say, as a creature within the framework of God's creation as a whole. Until well into the twentieth century, theological thought patterns were in the main cosmologically orientated, shaped by the claim of being able to grasp the whole of

the world (and its history) ‘from God’ and, then, to comprehend man from within this cosmological context. This cosmological approach prevented theologians from grasping the fundamental independence of mankind. Following dogmatic doctrines, such as the teachings of the Church on the divine creation of the world and man, it seemed natural to view mankind primarily from his interconnectedness with the metaphysical whole and then concretise the ontological categories – man’s createdness and natural dependence – in terms of social or political communality.

Even those theologians who claimed to support the turn in the late eighteenth century towards the ‘free subjectivity of man’ had considerable difficulties in accepting the *absolute independence of the individual* underlying the idea of human rights. The Hamburg systematic theologian Traugott Koch has shown in his analysis of the concept ‘human dignity’ how difficult it was (and still is!) for theologians to adopt the modern idea of human rights. Even though ‘human dignity’ is an ancient Stoic and Christian concept, the idea of the unconditional dignity of the individual is, nonetheless, specifically modern and presupposes that man be an absolute “end in himself” (Immanuel Kant), independent of his communal ties. For theologians this means that the idea of the intrinsic value of man is to be conceived over against God. The concept of human dignity requires that every individual be accorded an absolute, godly quality and that he or she be conceived not merely in a hierarchical model (as in all conventionalist theologies) as a finite being created by our divine Maker. “Only by conceiving man as a being which is not swallowed by finite, passing circumstances, but whose task is to shape these conditions, and as a being which is therefore [!] capable of being God’s equal or adversary and godless; only by grasping man as something godly and absolute in *himself* [...] only then is man vested with unconditional and inalienable dignity. And this cannot be reduced or rendered reducible, not even by a ‘monotheistic concept of God’ [...] Human dignity means that man, as a being conscious of his self, is not bound by the conditions of his life, by how he actively presents himself and how he is seen by others. In this ability to detach himself, man transcends finitude: he is as a finite being infinite and possesses his own absoluteness, equal to God. This freedom of the human being as a subject is his dignity.”(Koch 1991:96-112) It is not difficult to understand why

many theologians shied and continue to shy away from such an intellectual consequence.

Even when the United Nations passed the 'Universal Declaration of Human Rights' and the states of the Council of Europe rendered human rights legally recoverable, the discussions in theology and the churches were still shaped by critical disassociation and disapproval. Both in Catholicism and in Protestantism, prominent theologians in the 1950's protested against 'human rights' with reference to the absolute validity of God's law. They called for new ideals of a Christian state, based on moral norms established by revelation. By the late 1960's, however, the climate of theological discourse began to change drastically. Within a few years, both denominations witnessed a "turn of great magnitude from the rejection to the recognition of human rights" (Martin Heckel). This radical change was provoked above all by discussions within the ecumenical movement. Practical, political challenges, such as the experience of South Africa's racist politics of Apartheid or the diverse violations of human rights in Third World countries governed by military regimes, induced theological ethicists to take up human rights as a central theme in theological ethics.

In connection with this rapid reevaluation of 'human rights', historical derivations which trace the idea primarily back to Christian traditions have gained in relevance. Not only theologians but also many historians of law have investigated the Christian moulding of modern law in the last years. In the light of this research, it has become clear how strongly the concepts of freedom, developed by many 'Enlighteners', have also been influenced by elements of a deep and specifically Christian respect for the individual. However, reconstructing and mapping these complex processes behind handed-down traditions concerns only the historical dimension of such ideas. Human rights are not valid because the concept of human dignity is shaped by a blend of elements belonging to ancient Stoic and Christian traditions. The historical genesis has no constitutive function for the validity of human rights: for they apply everywhere and at all times.

Even after this rapid theological reception of human rights, one could find considerable resistance in all Christian confessions against the classical-liberal understanding of human rights as protective rights of the individual. Above all in ecumenical

discussions, the civil rights and liberties of the individual are subordinated to 'social human rights' – as an unconscious continuation of the social-conservative critique of modern individualism. Here, public welfare and solidarity, equality and justice, communicative freedom and brotherly love are exploited as concepts with which to relativise or weaken the individual's legal entitlement to 'natural' freedom (viz. freedom preceding all socialisation). It is, for this reason, untenable to describe the international controversies surrounding human rights as a dispute between cultures in which the West, shaped by Christianity, acts as the defender of individual civil rights and liberties, while the East and the South, shaped by Islamic, Confucian or other non-Christian religious traditions, act as the critics of modern human rights individualism. For corporatist thought patterns, used to negate or relativise individual claims to freedom, shape not only the non-western discourse on human rights, but also the interpretation of the latter advanced by many Christian theologians.

Great differences exist between the diverse Christian denominations in their openness towards the modern individualism behind the idea of human rights. Due to its religious and ethical traditions, the Reformed Protestantism of Western Europe and the United States reveals a far greater, inner affinity to the basic right to the freedom of worship and conscience than the Lutheran churches born of the Wittenberg Reformation. To date, Catholicism continues to wrestle with a consistent approach of connecting the reception of the human rights tradition of the Enlightenment with the basic corporatist orientation of its 'social teachings'. By and large, these traditions of Western Europe's Enlightenment have remained foreign to the orthodox churches of the East. For the most part, the latter see themselves as state churches and the separation of law and religion as a secularist, atheistic error. They condemn the 'ideological neutrality' of the modern constitutional state as political godlessness. For the orthodox churches, the inalienable rights of the individual are an expression of a sinful autonomisation of the subject, setting the individual apart from the community of the people and church. Their symbolic religious language is permeated through and through with an authoritarian paternalism which feeds on a resolute and uncompromising theological disassociation from all traditions of the Enlightenment. It is therefore inadmissible to assert a particular historical-genetic or intellectual-political closeness between modern

human rights individualism and Christianity as a whole (cf. Graf 2004).

3 CONCEPTS OF HUMAN RIGHTS IN ISLAM

In Western discussions, 'Islam' is often seen as a relatively closed, unified revealed religion. Yet Islam is just as multiform and contradictory as Christianity. The over one billion men and women who see themselves as faithful Muslims combine their religious ideas with very different interpretations of the world and rules of conduct. It would be a mistake to let our perception of Islam be guided merely by the new, anti-western, 'fundamentalist' groups which have seized power in various Islamic societies, above all in the Middle East, and pursue a new Islamisation of political order. In particular, the Islamic debates on human rights reveal that, aside from the fundamentalist programmes on a new unity of religion and politics, there are also representatives of a relatively open and liberally minded Islamic reform movement who deserve attention.

Discussions on human rights in Islamic organisations have been underway since the 1960's and can, for the sake of simplification, be summarised under three positions:

- a religiously founded rejection of the (Western) idea or principle of human rights
- concepts of human rights as proposed by Islamic orthodoxy
- attempts by liberal Islamic modernists to formulate cultural syntheses between Western human rights individualism and Islamic traditions

Many Islamic theologians and representatives of 'fundamentalist' groups see 'human rights' as incorporating only a 'western' ideology that has served merely to justify imperialistic infiltration and cultural dominance. Since it is demanded of every devout Muslim to be unconditionally faithful to the law of God, the sharia, they argue that, in principle, the freedom of the individual, as propagated by Western 'Enlighteners' vis-à-vis state and society, can only be condemned as a sinful betrayal of God's goodness and the divine order of Creation. The divine law of the sharia applies to all areas of human life, they contest, so that the allegedly rational Western idea of severing law from religion, as well as the concept of the autonomy of the political sphere, fundamentally contradicts God's ruling. It is not our individual freedom over against society, but our

duties within the community that are fundamental to the law of God. This rejection of the principle of human rights stems from the belief in an order that has been revealed by God, once and for all, and precedes all human legislation. Because, according to Islamic fundamentalists, 'human rights' are essentially inconsistent with the law of the sharia, they are to be dismissed on religious grounds.

In turn, this 'fundamentalist' critique has reinforced the belief of many liberal intellectuals of the West that Islam represents a pre-modern religion whose normative kernel, viz. the God-given law of the sharia, challenges the idea of the civil rights and liberties of every individual man and woman. It pays to remember, however, that this fundamentalist-religious criticism directed at the concept of human rights is not specifically Islamic, but, under a different guise, also confronts us in Christian groups and societies, even today. A number of structural similarities can be identified between the traditions of the conservative-Christian criticism of the Enlightenment and the religious dismissal of human rights in Islamic fundamentalism. Both, for instance, attach greater importance to the revealed order of God over and above the natural right of the individual, give precedence to the community of the many over the one, challenge the functional differentiation between religion and politics, and both chide the 'sinfulness' of modern individualism.

As human rights gained acceptance as a fundamental principle of international law, it was no longer possible for Islamic states to adhere to a religious rejection of human rights on principle. From the 1960's, representatives of Islamic orthodoxy tried to influence the international discussions by way of specifically Islamic conceptions of human rights. In 1970, Sultanhussein Tabandeh, religious leader of a Shiite order, published 'A Muslim Commentary on the Universal Declaration of Human Rights' (London 1970). Since then, several other Islamic organisations have presented their own ideas on human rights. In 1981, the European Council of Islam issued a 'Declaration of Human Rights in Islam' and, in 1990, the Islamic Conference, seated in Cairo, passed their Cairene 'Declaration of Human Rights in Islam'. Following suit, several Arabic states put forward their own declaration (Abu-Sahlieh 1994). In these texts, orthodox Muslims sought to appropriate human rights. Neither Christianity nor the European-American Enlightenment, announced Sultanhussein Tabandeh, had invented the dignity and elementary rights of man, but first and foremost Islam. The sharia, he explained,

captured man's dignity and rights with far greater perfection than the declarations of the United Nations. This attempt to found universal human rights on the basis of Islamic tradition (that is to say, on an orthodox interpretation of this tradition) reflects the interest to grasp the rights of man in a significantly different way to that of Western rationalism. Central elements of the Western tradition of human rights are explicitly abandoned. In keeping with the dictates of the sharia, central norms of international law are either watered down or programmatically warped. The Islamic modernist and jurist A. An-Na'im (1990) the American political scientist Mayer (1991) and the Islam scholar Christoph Bürgel (1991) have shown that in these Islamic outlines it is precisely the dignity *of the individual* which is being undermined, i.e. that which the tradition of the Western Enlightenment deemed inviolable. Indeed, nowhere in these propositions do we find an acknowledgement of the independence of the individual over against the political community; nowhere is the function of codified human rights identified as serving to safeguard the 'natural' dignity and freedom of the one vis-à-vis the many. On the contrary, the basic right of religious freedom is discarded and the right of religious practice propagated for Islam alone, thereby curtailing the religious freedom of other religious groups in Islamic societies in a number of ways. In the theocratic mental horizon of the sharia, the priority of the community over the individual is so determinant that human rights are conceived primarily as duties of the individual within his or her social group. Thus, 'duties' of the sharia which run counter to the western understanding of an individual's freedom can be pronounced the epitome of human rights. In the human rights catalogues of Islamic orthodoxy, we find restrictions on the right of freedom from injury, the propagation of the inequality of the sexes (i.e. the religious, cultural and legal dominance of men over women) and a range of passages which discriminate against minorities such as dissenting individuals. However, it is the rejection of the individual's freedom of worship and conscience, in particular, that flies in the face of both the principle of the humans rights tradition of the West, viz. the pre-societal dignity of the individual, and the understanding of universal human rights as it stands in its legally binding codification of the UN.

The criticism of this orthodox-Islamic conception of human rights voiced by Islamic modernists is often more biting than that of

European or American intellectuals. Rather than trying to relativise human rights, so that the latter might be brought in line with the sharia, they set themselves the task of re-interpreting and reforming the sharia to accord with the generally accepted western formulation of the rights of the individual. In many respects, Islamic modernists can be likened to the Christian 'liberal theologians' of the eighteenth and nineteenth centuries who, in the spirit of a humanitarian Christianity, sought to justify the Enlightenment. By way of a free and critical appropriation of their own religious traditions, these Islamic reformers seek to interpret the individualism behind human rights as a legitimate realisation of the original intentions of Islam. The revealed message of salvation, they argue, applies to the individual so that his or her independence vis-à-vis the community also belongs, in principle, to the true essence of Islam. Moreover, in the central passages of the Koran there is no mention of a theocratic shaping of political order or mention of the inferiority of women as being the will of God, the Creator. Islamic modernists, whose position is represented in the Federal Republic of Germany by the political scientist in Göttingen Bassam Tibi, for example, therefore call for far-reaching religious and cultural reforms to bring to light the original, liberal impetus of Islam. The handed-down religious culture of Islam, they claim, should be freed from the ballast of secondary dogmatic and juridical infiltration.

Nonetheless, this emancipatory pathos with which reformist Muslims extol Islam as a 'religion of freedom' cannot conceal the fact that they continue to represent only a relatively small minority in the Islamic discourse on human rights. As regards the social background of its supporters, Islamic reformism chiefly finds its backing only from city-dwelling citizens of the middle classes, from representatives of the technological intelligentsia and from younger, western-minded, emancipatory women belonging to families of the old upper strata of society. In most Islamic societies, the reception of reformist ideas remains restricted to a relatively small, middle-class elite. As a result of the growing political pressure of fundamentalist groups, many Islamic modernists are in danger of being politically persecuted by the government of their native countries. According to the regulations of the sharia, they can be declared a 'kafir' (i.e. infidel) or 'murtad' (i.e. an apostate who has deserted the true faith). Such pronouncements enable orthodox priests to initiate religious-legal proceedings against reformist-Islamic intellectuals and strip

them of their basic civil rights. Even a cautious word of criticism directed against religious authorities is often punished with a lengthy prison sentence. Beyond compulsory divorces, censorship, bans from their profession and other repressive measures, some have even been sentenced to death. In addition, we find the legally enacted discrimination of women, who are refused a range of the rights granted to men, particularly in marriage law, family law and, most of all, in divorce laws.

4 INTERCULTURAL DISCOURSE

Even though Islamic modernists represent only a small and, at that, oppressed minority, within the framework of intercultural or inter-religious dialogue they are the most important interlocutors for all those who seek, amidst the on-going dispute over the different interpretations of the European tradition of human rights, to protect its normative kernel, i.e. the civil rights of the individual. In the intercultural discourse of the past years, a broad agreement has been reached that human rights are open to various lines of argumentation. They do not rely for their justification on the argumentation of the Christian-based, European tradition of natural rights or the differentiation between law and ethics, expounded by Immanuel Kant and his followers. Pictures of the ‘dignity of man’ have been handed down not only by Christianity (or the confessional form of Christianity shaped by the Enlightenment), but also by other religious traditions. Thus, ideas on the dignity and rights of man form “a type of communicative interface which facilitates the dialogue between the Christian-oriented concept of ethics and other approaches outside this tradition” (Thomas Hoppe). In this respect, the process of establishing human rights allows a ‘relative universalism’ (Jack Donnelly): what applies to all can be justified by each and every individual in his or her own particular way (and thus rendered acceptable to one’s own particular group). In view of the particularity of one’s own religious or ethical tradition, the reasoning of others can be interpreted as an enrichment, and possibly also as a deepening, of the idea and principle of human rights.

However, this openness for a variety of different justifications is not unlimited. All are bound by the normative kernel of that to be founded, the idea of the natural rights of each and every man and woman. Some of the argumentative approaches to the ‘dignity of man’ in the current intercultural debates on human rights threaten to

delegitimise rather than justify the protective rights of the individual in relation to the state. In particular, the proposals advanced by representatives of Islamic orthodoxy are decidedly destructive of the normative core of human rights, undermining the idea of the individual's civil rights and liberties.

Whoever wishes to preserve the normative core of the human rights tradition of the West is necessitated to counter those conceptions which subordinate the civil rights and liberties of the individual to ideas of the general good or common weal of all. Furthermore, one must stress that human rights are more than mere moral standards, ethical postulates or religiously founded 'ideas of the Good'. What is crucial is the recognition of human rights as such, as the subjective rights of the individual which precede all legislation enacted by the state; it is paramount that states be forced to respect the individual's sphere of freedom and that, in cases of conflict, legal proceedings can also be taken against the state in question. Where this legal protection of the individual is diminished and human rights debased to a more or less non-binding idea of 'the good', beside other such ideas, we relinquish the decisive achievement of the European-American modern age: the commitment of state law to the 'natural' civil rights and liberties of the individual. Whoever seeks to defend and safeguard this achievement is required to speak out against such tendencies that deprive human beings of their rights. This does not involve calling for a 'Holy War', in the name of individual freedom, or declaring a 'clash of civilisations'. Nevertheless, intellectual sincerity compels us to bid farewell to the all too harmonious portrayals of intercultural or inter-religious dialogue in the 'global society'. Differences in the interpretation of human rights are to be dealt with in argumentative conflicts; without these disputes we cannot hope to adequately enforce the human right to individual freedom in international law.

Consulted literature

Abu-Sahlieh, Sami A. Aldeeb. 1994. *Les Muskmans face aux droits de l'homme. Religion & droits & politique*. Etude et Documents.

An-Na'im 1990. *Toward an Islamic Reformation*. Syracuse.

Burgel, C 1991. *Allmacht und Mächtigkeit. Religion und Welt im Islam*, München.

Graf, F W 2004. *Die Wiederkehr der Götter. Religionen in der modernen Kultur*. München.

Koch, T 1991. Menschenwürde als das Menschenrecht – Zur Grundlegung eines theologischen Begriffs des Rechts. *Zeitschrift für evangelische Ethik* 35 (1991), 96-112.

Mayer, A E1991. *Islam and Human Rights*. Boulder/Co.

Meyer, J 1852. s.v. Menschenrechte, in Meyer, J (hrsg). *Das grosse Conversations-Lexicon für die gebildeten Stände*, Hildburghausen/Amsterdam/Paris, sect. I, vol. 21 (1852), 230-231.