Human rights and globalisation – Are human rights a "Western" concept or a universalistic principle?[1*]

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ABSTRACT

This paper represents an edited version of the authors' STIAS lecture at the Stellenbosch University in 2014. It deals with the global human rights discourse, as the integrity of human persons all around the world is at stake, showing the necessity and the universality of human rights. Therefore the author explores two basic kinds of attitudes towards human rights, namely 1) forms of human rights optimism – e.g. the argument that globalisation as such leads to a universal acknowledgement of them – and 2) variants of human rights scepticism, in which the author sees those rights practically disregarded, the "Western" concept challenged, and a human rights exceptionalism spreading. Subsequently he asks for what kind of universality of human rights we may argue and how cosmopolitan ethics may support this universality.

1. INTRODUCTION

The first two pages of the Cape Times on a single day show how endangered human rights are in the present time. These two pages report among other news on the "unspeakable suffering of children" in Syria, the "mass torture of Iraqi women", the "public lynching of a suspected ex-rebel by soldiers" in the Central African Republic, the drowning of seven illegal migrants "as they tried to swim to the Spanish enclave of Ceuta from a beach in neighbouring Morocco", the conflict about the rights of parliament in the Ukraine, the investigation on an "alleged massacre of dozens of civilians by army troops" during the bloody civil war in El Salvador in 1981, and finally the violent protests in different parts of South Africa in 2014, that have "claimed nine lives, allegedly at the hands of police, in five weeks" (*Cape Times,* Friday, February 7, 2014, p. 1f.).

In all these cases, reported on one single day on the first two pages of a newspaper, basic human rights are at stake. When we receive those reports on torture, sexual abuse or recruitment of children for combat, the illegal detention of women for months or years, their ill-treatment and rape by security forces, the application of lynch law, the desperate ways of refugees to help themselves, the disregard of the status of non-combatants, the violent reaction of the police to violent excesses of protest – when we reflect these attacks on the integrity of human persons it becomes difficult to doubt the content, the necessity and the universality of human rights. Whenever elementary rights are bluntly violated these rights themselves gain evidence. Scepticism regarding these rights seems even to be cynical. It seems comparably cynical to ignore the extension and the intensity of human rights violations in our times.

However different kinds of attitudes characterise the human rights discourse in our days. On the one hand we observe different forms of human rights optimism guided by the conviction that globalisation, economic progress and legal measures foster human rights. On the other hand we observe also some variants of human rights scepticism, for instance regarding the amount of human rights violations, the weaknesses of traditional foundations of human rights or the pluralism of world cultures, which is seen as incompatible with the idea of universal human rights.

In the following I will briefly look on today's human rights optimism and then move to the sceptical arguments. I will then ask more specifically for what kind of universality of human rights we may argue and how cosmopolitan ethics may support this universality.

Before we enter the avenue marked by these points we have to remember that human rights are not a passe-partout for all problems at hand. The most obvious limitation is

that human rights do not immediately describe our obligations and responsibilities to the fabric of a community. Neither the protection of civil and political rights nor the promotion of social, economic and cultural rights is sufficient for the coherence of society. Daniel E. Lee and Elizabeth J. Lee correctly state in using a quote of theologian Karl Barth that goes back more than half a century: "It is far easier to make rights claims of a confrontational nature than it is to weave the fabric of community, fabric that includes the bonds of obligations and responsibilities as well as affirmations of individual rights. The task of weaving the fabric of community is even more daunting in an era of globalization in which we have, to use the language of the theologian Karl Barth, both near neighbours and distant neighbours" (Lee/ Lee 2010:34). But in correctly trying to avoid an overestimation of the range of human rights, we should also avoid the other mistake – namely to underestimate them. They are the decisive protection-shield for the inalienable dignity of human persons. They express in an incomparably clear manner that no human person can only be seen as an instrument of a foreign will or as an object of foreign domination. Moreover every human person has to be seen as an end in itself and as the subject of her own life story.

Whether this understanding of the individual human person gifted with an inviolable dignity is appropriate and can be preserved under the conditions of globalisation is one of the crucial questions of our times. It is difficult to evade this question, but it is also difficult to find answers.

2. HUMAN RIGHTS OPTIMISM

In present times we find three major arguments in favour of the universal validity of human rights. The first argument says that globalisation as such leads to a universal acknowledgement of human rights. The second argument assumes that economic progress leads to democracy and human rights. The third argument refers to the legal character of human rights, proclaimed not only by single states, but as well by the United Nations, ratified by most countries, entering in the meantime the sphere of international customary law.

Let us briefly review these three kinds of arguments.

a) Globalisation includes the respect for human rights.

In an empirical study on the development in 106 selected countries between 1981 and 2004 three economists – Axel Dreher, Martin Gassebner and Lars-H.R. Siemers – ask whether the inclusion of a country in the process of globalisation and the extent of economic freedom influence the protection and the promotion of human rights

in the respective country. The answer can be summarized as follows: A relatively high degree of globalisation in its economic, social and political dimensions and an effective protection of individual property and economic freedom improve the human rights practice of the respective countries and increase significantly and robustly the protection of personal life and physical integrity. "Empowerment rights", that means the rights to participate in political, social and economic processes are not comparably promoted (Dreher a.o. 2012).

If one looks deeper into the analysis given by the authors one observes that they are guided by the assumption that the international community has a clearer understanding of the basic character of rights relating to life and physical integrity (the so-called negative freedom rights) than of rights relating to political, social and economic participation. Therefore they assume that the global community is less effective in promoting empowerment rights than protection rights. Their argument is therefore not so much on the effects of economic globalisation but more on global communication. Without saying it they follow the idea of the philosopher Immanuel Kant more than two hundred years ago. He described his own present as a time in which the violation of rights at one place on the globe could be perceived at all other places. And he was convinced that in this moment in history the notion of a common law for all citizens on the globe, a truly "cosmopolitan law" (*Weltbürgerrecht*) would not longer be an exaggerated idea of some extravagant thinkers but a reality (Kant 1964:216f.). That conviction is applicable to our own present even more than to Kant's times. Following this idea not economic globalisation and the exercise of economic freedom but rather the worldwide spreading of news on the violation of human rights nurtures the hope that these rights will step by step gain global recognition.

b) Economic progress leads to democracy and human rights

In 1992 American political scientist Francis Fukuyama proclaimed an "end of history" (Fukuyama 1992). His optimism was nurtured by the fall of the Berlin Wall and the end of the division between East and West, between capitalism and communism, and not to forget by the concurrent events in South Africa, namely the release of Nelson Mandela and the unbanning of the liberation movements. Fukuyama expected that these events that changed our world so dramatically would inevitably lead to the global spread of free-market economies and immediately alleviate the establishment of democratic governments. On this way a final stage of human socio-cultural development and of global governance would be reached.

This kind of economic determinism anticipates an inevitable progress towards democratic government and respect for human rights as the result of economic

growth and welfare on the basis of free market economies. This expectation was often repeated in the years after 1990. But it became in many ways falsified over the last two decades. Economic progress is not stable at all, as recent crises demonstrate. Economic growth produces a social division that eventually endangers democratic commitment. And there is no automatic transition from free market economy to democracy, China being the most prominent example for that. Some may speculate on the question how long the coexistence of a capitalistic free market and an authoritarian one party-regime will endure in China. But even when this country eventually will move in later years to a democratic form of government it will be difficult to explain this move following the deterministic model of market economy inevitably leading to democracy and human rights.

In addition we have to remark at this point that human rights optimists work with a rather restricted concept of these rights. They concentrate in general on a part of civil and political rights, namely on the negative freedom rights. They see them mainly as rights that protect the individual against the misuse of state power. They concentrate on the rights of "possessive individualism" and the protection of the physical integrity of the individual person. The deterministic view of history as an economy-driven continuous progress is therefore combined with a restricted individualistic concept of human rights.

We may observe that such a kind of economic determinism exists also in an opposite sense. The counterpart to an optimistic picture of history as progress is the pessimistic picture of history as decline. This decline may even be described as inevitable as the progress. We all know intellectual paintings of today's global realities of comparably deterministic character but of opposite content. They declare that globalisation irreversibly leads to the distortion of human rights. The central argument is the increase of social disparity, the marginalising of a trans-national precariat, the coincidence between the enormous wealth of a small minority and the depressing poverty of billions of people on our globe (Fraser 2011).

It is necessary to put these realities at the centre of our awareness. But that does not automatically mean that we interpret them in the scheme of an inverse progress theory, namely the conception of an inevitable history of decline. To the contrary: Whoever chooses this pattern of interpretation runs the risk to follow exactly the same structure of economic determinism which one wants to overcome, but merely in the opposite direction.

c) Human rights gain universal validity through law

Let us start with the South African example. The transition from a system of racism and inequality to a free and democratic state is most clearly symbolised by the way in which the South African Constitution of 1996 incorporates human rights as its most essential point of reference. This reference begins with the equal dignity of every human person. The basic duty not only of the state and its institutions, but of everybody is to recognise and to respect the dignity of the other. Human rights in this respect have not only to do with protection and the avoidance of the misuse of power, but they have basically to do with mutual recognition. They have to do with the insight that every human being cannot be reduced to a mere instrument obeying the will of another but is, to quote again Immanuel Kant, "an end in him- and herself" (Kant 1956:68). It was Laurie Ackermann, who inaugurated the HF Oppenheimer Chair of Human Rights Law at Stellenbosch University who most recently emphasised the relevance of such a concept of human dignity for the understanding of the South African Constitution (Ackermann 2012).

The term of human dignity stands for the conviction (to quote the philosopher Kwame Anthony Appiah), that "everybody matters" equally (Appiah 2006). Therefore Laurie Ackermann sees human dignity as the "lodestar for equality in South Africa". Especially the value of equality has to be seen from the perspective of the "inherent human dignity" of every human person (s. 10 of the Constitution). Whenever you call for equality you have to ask: Equality in which respect? Human beings are different by nature, by life conditions, by societal circumstances, by personal biographies, by individual decisions. Under which perspective are they however to be seen as equal? This perspective is human dignity. Because the inherent dignity of every human being is equal, they have to have a comparable access to freedom, they have to be treated as equal before the law, they are entitled not to live in hunger and poverty, they have the right to equally participate in politics, society and economy, and therefore they have a right to basic education and emergency medical treatment and so on.

What I described in following Ackermann is not only the content of the South African Constitution. You find it elaborated in this country's constitution in a very convincing way, but you find a comparable basic structure in other democratic constitutions as well. Finally you find this basic structure in the Universal Declaration of Human Rights and the series of covenants voted through by the United Nations Organisation and ratified in general by a great number of UN member states.

You could easily state that the universality of human rights is proven by the fact that they are formulated on the most universal platform imaginable, namely the "United

Nations" and ratified by an overwhelmingly large number of states. However we are confronted with a broad stream of human rights scepticism.

3. HUMAN RIGHTS SCEPTICISM

The validity of the law has always to be examined at least in three dimensions. These are legal validity, social validity and conceptual validity or justification. Even if we take the legal validity of human rights for granted, their social validity is under pressure. And their conceptual validity is highly debated. We start with the problem of social validity.

a) Human rights are practically disregarded

The new discipline of human rights geography shows enormous differences in the respect for and the advancement of human rights. In many countries of the global South, including South Africa, the debate concentrates often on social and economic rights (Liebenberg 2010). But the debate has also to take into account the aspects of civil and political rights, of cultural rights like the freedom of expression or the freedom of religion. Human rights geography is in fact "a geography of human rights abuses" (Selya 2012). This geography shows big differences between different regions on the globe in the rates of human rights abuses per million population (Selya 2012:tab.6).

In the year 2000 political leaders from around the globe vowed to "spare no effort to promote … respect for all internationally recognized human rights". In their Millennium Declaration they committed themselves to the eight Millennium Development Goals, among them the reduction of starvation by 50 %, but also to the reduction of maternal and child mortality. But in fact more than 800 million people on the globe are starving, over 350 000 women die every year from pregnancy or childbirth-related causes, over seven million children under the age of five die, most of them from preventable causes like starving, malnutrition, lack of clean water (Kuruvilla a.o. 2012). Religious bodies all over the world lament the extent to which religious freedom is violated and religions are politically exploited – often in a way that intensifies hatred and legitimizes violence (World Council of Churches 2013). Most recently, civil society organisations in South Africa including different religious organisations started a campaign to end violence against women and children. They hope that a rising awareness for this issue will contribute to a meaningful change (Omar 2014:13). These examples prove that human rights, seen from an empirical perspective and judged on the level of their social validity, are by no means "universal".

How is the picture when we look on it from a conceptual perspective, from the perspective of justification?

b) The "Western" concept of human rights is challenged

The Universal Declaration of Human Rights of December 10, 1948 begins its preamble with the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" as "the foundation of freedom, justice and peace in the world". Its first Article underlines the relationship between the inherent dignity of every human person and her rights in saying: "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." On this basis the Universal Declaration is proclaimed "as a common standard of achievement for all peoples and all nations" determined "to promote social progress and better standards of life in larger freedom" (Brownlie/Goodwin-Gill 2006: 24).

Evidently the document justifies the universal validity and applicability of human rights with the inherent dignity of all human persons. The explication of this dignity says that human beings are "endowed with reason and conscience". Some find in these words an allusion to the Christian concept of "conscience," as well as to the thinking of the Enlightenment, that took the reasonableness of the human person as basis for her inherent dignity. When the declaration pleads for "brotherhood" one can see this as an allusion to the ideals of the French Revolution (*"liberté, égalité, fraternité"*).

Therefore the declaration was again and again criticised with the argument that it represented a conception of the human person that was developed in the Western tradition during the 18th century, That was indeed the time when the first declarations on human rights (the Virginia Bill of Rights of 1776 and the French "Déclaration des droits de l'homme et du citoyen" of 1789) were proclaimed. In the thinking of the European Enlightenment the autonomy of the person is based on her reasonableness.

During the 19th century exactly this kind of genealogy provoked a strong opposition among Christian churches against the idea of human rights. That changed only with the end of World War II in 1945. Following the Universal Declaration of Human Rights the opinion began to prevail that the ideas of the Enlightenment were a secularised transformation of the conception of the human person in the Judeo-Christian tradition. Theological interpretations now strengthened the religious dimension of the idea of an "inherent dignity". To characterise human beings as equal in dignity irrespective of all their differences presupposes a self-transcendence of the human person that relates her to an instance conferring such an inherent

equal dignity to her. The term "image of God" became central for that approach. Taking into account that such an approach may not develop a convincing or even binding force for adherents of other religions or for persons without religion Jewish and Christian theologians felt obliged to offer the concept of the human person created in the image of God as a point of reference for the inherent equal dignity of all.

But there is a vast variety of interpretations proposed in newer theological literature for the meaning of the term "image of God": the domination of humanity over the non-human nature (*dominium terrae*), the dialogical connection of human beings with God und their fellow human beings, the compassionate solidarity with all the other creatures, the calling to witness God's revelation to the world, to name only some of them (Welker 2006:327). The variability of interpretations indicates a metaphorical richness of this tradition, but does not so easily lead to a clear and unambiguous concept of human dignity. Therefore some argue that religious references in general and especially the image of God-metaphor make human dignity an "empty formula" (Pöschl/Kondylis 1992: 637ff.). The sentences on human dignity and its inviolable and inalienable character are therefore seen by some as "program sentences" without any concrete impact for certain fields of application. Any clear contours of human dignity seem to disappear under such kind of critique. The consequences for problems of high relevance, for instance in the fields of life sciences and medicine, are enormous. A German legal expert commented already ten years ago: "Human dignity was inviolable" (Böckenförde 2003, my italics). Whoever is confronted with the big questions of bioethics has to deal again and again with the future of human dignity.

Discourses on the proper meaning of human dignity are important. But no single religious or philosophical interpretation can serve as the one and only foundation of human rights. We have rather to develop an "overlapping consensus" (Rawls 1986:133-172). People have to critically reflect their specific worldviews in a direction that strengthens not only their own religious or cultural identity but promotes at the same time shared values and mutually respected rights. Only through an overlapping consensus among different interpretations the idea of universal human rights can gain plausibility. By such a discourse the values inherent in different traditions can be generalised. They are not universal just from the beginning, but take part in a pluralism of values. It is mostly the experience of their violation what provokes the process of "value generalisation", as Hans Joas, a well-known German sociologist, calls it (Joas 2008, cf. Joas 2000, 2013). For that purpose openness for different foundations is crucial for any idea of universal human rights. For anyone who is convinced that his or her reasons to accept universal human rights are the most

convincing it is difficult to develop such openness. However that seems to be the only way to overcome the exclusive dependency of the idea of human rights upon specific worldviews and conceptions of the human person.

c) Human rights exceptionalism is spreading

As long as the idea of human rights exists there is an on-going search for reasons to state certain exceptions. When the emigrants from Great Britain settled in North America and confessed in 1776 that all human beings are by nature free and independent, they did not worry about holding black people as slaves. When the French revolutionaries in 1789 proclaimed the equal rights of human persons and citizens, they addressed practically only the rights of men and ignored deliberately the rights of women (Reuter 2013:247). When the United States applauds the ideas of dignity and freedom they do it without drawing all the necessary consequences. They continue the practice of the death penalty and regard in every war on terror their own security as more important than the human rights of the adversary (Smit 2014).

But in our time a new kind of exceptionalism has emerged. This is cultural exceptionalism. Binding the idea of human rights exclusively to "Western" values has become a good argument for constructing exceptions on cultural grounds. The debate on "Asian values" was of specific importance in this respect. With growing intensity after 1990 Asian participants in the debate opposed the idea that human rights could really appeal for universal validity. They saw in them a one-sided emphasis on individual rights and freedoms to the detriment of family values and the rights of communities. They wanted to emphasise the role of local leaders replacing the autonomy of the individual. A collective decision on the participation in clinical trials for instance was not seen as a restriction of the informed consent of the single participant. Comparably representatives of Islam argued for the father's right to decide on questions regarding his wife or his children, especially his daughters. Arranged marriages for instance were interpreted as not interfering with women's rights. Ministers of Asian States declared in 1993 frankly that universal Human Rights should not restrict the principles of sovereignty and non-interference in the affairs of the respective states. In addition they argued for greater emphasis on economic, social and political rights over civil and political ones. In fact they put in question the unity and indivisibility of human rights formally declared by the Human Rights Conference in Vienna the same year (Donnelly 2007; Pogge 2008:52-54; Freeman 2011:119-155). You have to address comparable problems when it comes to the inclusion of vernacular rights into the rule of law. As far as South Africa is concerned, President Jacob Zuma explicitly declared in November

2012 that African problems should be solved "the African way, not the white man's way". And he added: "Let us not be influenced by other cultures and try to think the lawyers are going to help. … We are Africans. We cannot change to be something else" (SAPA, November 2, 2012, quoted by Smit 2014). Cultural relativism puts into question the universality as well as the indivisibility of human rights. Is there a way out?

4. WHAT KIND OF UNIVERSALITY?

a) Universality of suffering and compassion

Cultural relativism with regard to human rights emerges from two problematic narratives on the genesis of human rights, which I mentioned already. One narrative derives human rights from the Jewish-Christian tradition of the human person as the "image of God", the other resorts to the Enlightenment concept of human autonomy based on human reasonableness. But as Hans Joas in his splendid book on the "sacredness of the person" demonstrates, none of these two narratives is valid (Joas 2013). Over centuries or even millennia the Jewish-Christian understanding of the human person did not lead to the formulation of universal human rights. It is only in retrospect that we identify an egalitarian universalism in the sources of Jewish and Christian faith. That retrospect finally induced Christian churches, reluctantly enough, to recognise this egalitarian universalism in its mundane form, namely as secular human rights. It took some decades until theologians explicitly formulated a theological interpretation of modern human rights (e.g. Huber/Tödt 1988). Something comparable is true with regard to the Enlightenment concept of human autonomy. For two hundred years it was applied only very selectively. Slavery, racism, sexism, ethnic cleansing, group-focused enmity and others hindered and still hinder a really universal acknowledgment of human rights. The impulse to transcend the boundaries given by these restrictions did not so much originate in theoretical reflections; it emerged much more from the concrete experiences of violence and humiliation, of disrespect and enslavement, of oppression and exploitation. Hans Joas uses in his "new genealogy of human rights" the examples of torture and slavery, the traumatisation of people by such kinds of violence, the solidarity among them and the growing compassion of others as the way in which a feeling for the "sacredness" of the person emerged. It was necessary that in a process of self-transcendence people realized that they were more than the humiliated objects of despotic arbitrariness under which they had to suffer, often from day to day. In their revolt against their own dehumanization they realized what it means to be human: namely to have an equal dignity irrespective of gender and age, status

and wealth, colour and race, belief and conviction. They asked for a human right in the most elementary sense of the word, a right given with the human existence as such. They asked for the right to be treated as human beings, or, as Hannah Arendt expressed it so convincingly: "the right to have rights" (Arendt 1949:754-770; Arendt 1993:452ff.).

Arendt's formulation refers not to the struggles of the 18th century, in which the first catalogues of human rights were formulated. She coined the formula of "the right to have rights" in the time in which the United Nations were founded and the Universal Declaration of Human Rights was proclaimed. Arendt refers to the experience of refugees from Nazi-Germany, the Soviet Union or other places, which had no rights in the country where they asked for refuge. What are the rights of a stateless refugee? Should he or she not at least have a right to have rights?

This experience coincided with the traumatic events of the 20th century leading to the mass murder of European Jews by Nazi Germany and to genocidal actions also in other parts of the world since the Herero-unrest in 1904 or the Armenian catastrophe of 1915. Once again the suffering of people and the compassion with their destiny made obvious that we cannot speak about rights without applying them to every human person. It is not pure contingency that the first convention on a specific aspect of human rights was proclaimed by the United Nations the day before the vote on the Universal Declaration of Human Rights. It was the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 (Brownlie/Goodwin-Gill 2006:284-287). The next convention that followed in 1951 was the Convention Relating to the Status of Refugees of 1951 (Brownlie/Goodwin-Gill 2006:288-303). It is true that the idea of universal human rights emerged from the abysses of the "moral history of the twentieth century" (Glober 2001). It is this history that gives Jonathan Shay's statement its severe evidence: "The understanding of trauma can form a solid basis for a science of human rights" (Shay 1994:209).

It may not be too difficult to develop an understanding for this kind of "new genealogy of human rights" in a South African context. The suffering of the majority of South Africans under the Apartheid regime, the solidarity with its victims, the growing revolt against this deprivation of rights and the compassion of people and groups around the world attributed to human rights their specific weight for the new South Africa. Therefore it has to be remembered that the universality of human rights is in the first instance due to suffering and compassion.

There are strong reasons to support this approach to the universality of human rights from a theological perspective. A Christian understanding of the human person takes especially into account the vulnerability of humans and looks on the status

of a society from the perspective of the most vulnerable members of this society (Koopman 2007). It considers the inviolability of human dignity with the eyes of those whose dignity is endangered by hunger and illness, poverty and loneliness, refuge und migration, violence and war. The preferential option for the vulnerable and their suffering is mandatory for a Christian perspective on human dignity and human rights.

b) Universality of recognition and communicative freedom

In 2011 Seyla Benhabib, professor of political science and philosophy at Yale University, published a series of essays on human rights (Benhabib 2011). Her starting point is Hannah Arendt's formula of the "right to have rights". And she brings Arendt into dialogue with Raphael Lemkin who was the father of the UN Genocide Convention. Whereas Hannah Arendt understands the "right to have rights" primarily as a "right to membership in a political community" Benhabib conceives this basic right as "the claim of each human person to be recognized as a moral being worthy of equal concern and equally entitled to be protected as a legal personality by his or her own polity, as well as the world community" (Benhabib 2011:62). And she endorses a statement of Rainer Forst, who writes: "Human rights secure the equal standing of persons in the political and social world, based on a fundamental moral demand of respect" (Forst 2010:718).

For the universality of human rights it is not sufficient to refer to the legal status of these rights and to state that they belong since some decades to the international customary law. There has to be some justification for that status. The legal universality of human rights has to rest on a moral universalism. Benhabib finds this moral universalism in the "equal respect for the other as a being capable of communicative freedom" (Benhabib 2011:64). Communicative freedom means the capacity to accept or reject reasons for the possible validity of a commonly accepted norm. Communicative freedom in this sense is presupposed whenever we enter with another person in a discourse. Communicative freedom is a precondition of communication and an a priori for every human community of communication (Apel 1973).

Respect for the other in Benhabib's sense implies two dimensions. It refers to the generalized other and to the concrete other. "The standpoint of the 'generalized' other requires us to view each and every individual as a being entitled to the same rights and duties we would want to ascribe to ourselves" (Benhabib 2011:69). In the language of Christian ethics the standpoint of the "generalized other" follows the "Golden Rule" to treat others the same way we want to be treated by them. The relation to the "generalized other" is guided by the norms of equal respect and

reciprocity. "The standpoint of the 'concrete other' … requires us to view each and every being as an individual with an affective-emotional constitution, concrete history, and individual as well as collective identity" (Benhabib 2011:69). The concrete other needs our compassion and solidarity; our relation to him follows the rule to love your neighbour, even your enemy. The relation to the "concrete other" is guided by the norms of empathy and solidarity.

A justification of human rights on the basis of mutual recognition of communicative freedom is preferable not only on philosophical but also on theological grounds. It takes the egalitarian universalism seriously that binds philosophical and theological ethics together. It concentrates on one "principle of rights" that is universalistic, namely the right to have rights. It distinguishes from this principle the "schedule of rights" that substantiates this principle with respect to different dimensions and regarding specific contexts (Benhabib 2011:73-75, 79-82). The codification of human rights on global, regional and national levels and the work on their protection and implementation are good examples for this difference between the principle of rights and the schedule of rights. So I should not say that human rights are universalistic principles but that they rest on a universalistic principle of rights. I call this principle universalistic because it is a principle of moral justification and not simply of legal validity.

It is evident that this approach transcends a purely individualistic justification of human rights. This justification is rather grounded in a relational understanding of the human person entering dialogues with others and cooperating with them on common grounds. It includes an element of self-transcendence insofar the communicative freedom of the other is respected independently of the extent to which the other is able or willing to make use of this communicative freedom.

For a last remark I return to the way in which Seyla Benhabib makes reference to Hannah Arendt and Raphael Lemkin. Arendt learned from her analysis of totalitarian regimes what Lemkin learned from his confrontation with the genocide: Whoever wipes plurality off our life-world destroys this world itself. This means that our perception of the world depends on the plurality of perspectives. In extinguishing one of those perspectives we destroy the world. As much as we have to mourn the victims of violence brought to death by tyranny or war, we also have to lament that we lost a perspective on the world, a part of the world as such. Therefore we have to defend the plurality of perspectives on the world represented by people in their individual diversity as well as in the variety of their cultures and religions. Equality therefore means the equality of the different. The inherent dignity of every human person provokes our recognition of the different (Huber 2011).

c) Universality supported by cosmopolitan ethics

A long-standing tradition emphasises that human rights are entitlements towards the state. Therefore the importance of human rights for the legislation, the governance and the adjudication are often at the centre of human rights research. But human rights need advocacy. They are therefore an important topic for civil society. In addition human rights have to be applied to global realities. Therefore they need a global or cosmopolitan awareness. Trans-national actors in civil society, among them the ecumenical bodies of Christianity may and should act as advocates of human rights.

The struggle against Apartheid included in my understanding this element of cosmopolitan advocacy that transcended the borders of states and continents. Nowadays we find many examples for the urgency and the relevance of initiatives emerging from civil society in favour of human rights. Each of those initiatives deserves detailed analysis and interpretation. But that is a separate task for another occasion. Today I will only mention three of them. I have in mind the campaigns against child labour that brought trans-national corporations – at least some of them – to more respect for children's rights, the Treatment Action Campaign, that changed the South African Government's attitude towards antiretroviral medication completely, and the on-going campaigns in different parts of the world in favour of non-citizen's rights.

• *Child labour*

For a long time trans-national corporations argued that they have only to respect the existing law in the place where they invest. Therefore they used child labour especially in sports and textile industry whenever it was not forbidden in the respective country. Only after public campaigns, partly related to international sport events and to the public interest they attracted, trans-national corporations restricted child labour not only for themselves but also for their suppliers. For instance the Global Sullivan Principles of Social Responsibility state that the signatories "refrain completely from use of child labour. We define child labour as being below the minimum legal working age according to local law, or under the age of fourteen, whichever is greater" (Lee/Lee 2010:72).

• *Sufficient health care*

The South African Constitution attributes in its Bill of Rights to everyone the right to have access to health care services, including reproductive health care (s. 27). However under President Thabo Mbeki a big conflict arose on the use of antiretroviral drugs against the pandemic of HIV/AIDS. Only through the actions and court cases filed by the Treatment Action Campaign (TAV) the question was

brought into motion and finally became decided by the South African Constitutional Court in 2002. Nowadays South Africa has the largest publicly provided AIDS treatment programme in the world – a tremendous example of the possible effect of cosmopolitan human rights campaigns emerging from civil society (Wolff 2011; Cameron 2014:139-200).

- *The rights of "non-citizens"*

Finally we return to Hannah Arendt's and Seyla Benhabib's insight that the core of human rights is the right to have rights. A central issue with respect to human rights is nowadays the question which rights could and should be given to non-citizens, among whom we have to distinguish a lot of different groups: stateless persons, asylum seekers, rejected asylum seekers, refugees, migrants and trafficked persons, to name the most important of them (Weissbrodt 2008). The degree to which a society accepts and respects the rights of those groups depends to a high degree not only on their legal status in the respective country, but also on the willingness of civil society to take care of them.

The globalisation of our days puts cosmopolitan ethics (or, as some prefer to say: global ethics) at the centre of ethical reflection. The core of cosmopolitan ethics is empathy. For a long time empathy like altruism, compassion and solidarity were seen as abstract and unrealistic expectations with regard to human behaviour. But in this respect we experience a paradigm shift in the scientific debate. Empathy is deeply rooted in the evolution of humankind (de Waal 2009). The capacity for mutual understanding develops early in childhood (Hrdy 2009). The question is not how such a capacity can emerge but what makes it to disappear. The painful question, as Carol Gilligan poses it, is how we lose the capacity to love (Gilligan 2014). Theology has to take this reversal of the question very seriously, because theological anthropology begins with the insight that the human person is relational in essence. The relational character of the human person stays therefore at the centre of the theological understanding of human rights (Botman 2006) and is the starting point for a theological reflection on cosmopolitan ethics. Therefore cosmopolitan ethics does not ignore the more narrow forms of community, because for the relational character of the human person the experience of belonging is of central importance (De Villiers 2014). But it overcomes all kinds of exclusivism that emphasises the value of the narrow communities at the expense of those who do not belong to them. It takes seriously what Martin Luther King observed already in his Letter from Birmingham Jail half a century ago: "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. What affects one directly affects all indirectly" (quoted by Gilligan 2011).

Cosmopolitan ethics has to make this paradigm shift its point of departure. But it has also to take into account that for all ethics "the ought implies the can" (Lee/Lee 2010:76f.). Nobody can take care of all distant neighbours at the same time. Cosmopolitanism is, however, a necessary critical principle in avoiding an exclusivism that also in our days often takes totalitarian forms denying the rights of disrespected people (Benhabib 2011:8-19). Cosmopolitanism takes seriously that everybody matters equally and that human persons have a right to have rights not only as citizens of their respective states but "in virtue of their humanity" (Benhabib 2011:13).

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