

COMMENTS

CULTURAL FOUNDATIONS AND MYTHOLOGICAL NATURE OF HUMAN RIGHTS

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The author claims that the concept of human rights arose on European soil as a result of certain cultural, political, and economic factors. Its primary base is formed by Christian ideas, secularized with the dissolution of feudalism and the spread of capitalism. In particular, this concept synthesized the Christian ideas of God's likeness of man and the omnipresence of God: being god-like, man, like God, may be present in all things, though not in all at once. The main beneficiary was the bourgeoisie, who used personal rights to destroy feudal institutions, political rights to establish control over the state, and economic and social rights to mitigate class contradictions and distract their opponents. The religious origin of rights is the key to understanding their important features such as the absence of logical basis for human rights; helplessness of the law in front of acts that undermine the foundations of order and are marked as acts of self-realization; extraordinary diversity of rights, etc. There are several directions of human rights criticism (conservative, moderate-liberal, Marxist and Christian). All of them assume that human rights neither adequately reflect human nature, nor take into account some of its aspects. Indeed, man is not only an individual seeking to choose, but also a member of a collective who needs a recognition (conservatism); a being alienated from labor and racial life (Marxism); a believer seeking to avoid sin (early Christianity) and obedient to divine will (Islam); a being who suffers from constant suffering and seeks to be saved from it (Buddhism); a victim of civilization, oppressed by the flow of information and the need for constant choice. This inadequacy entails a destructive effect: the concept of rights creates a monochrome picture, on which, the human existence is reduced to act of will; gives rise to logical contradictions; destroys reality, monopolizing the axiological basis of cooperation; is used as a tool of submission



and domination; creates an absolute justa causa; alienates from existence and forms the basis for other levels of the mythological structure. The history of human rights is not complete: It seems that today humanity is on the eve of fundamental transformations, whose content and final result are difficult to predict.

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1. Human rights are rights that an individual has due to the fact of being a human. This simple statement implies several consequences. Firstly, the rights belong to an individual from birth, because a human is considered as such immediately after leaving the womb of the mother. Secondly, they exist independently of their recognition by others, since humanity does not depend on external recognition. Thirdly, they are inalienable, since humanity cannot be interrupted or taken away. Fourthly, they are equal, because all humans are such in equal measure.

Specialists in the field emphasize the universal character of rights and reveal their genealogy in the deep antiquity: the main religious systems; legal codifications of the Ancient East; Greek and Roman philosophy.¹ The institute of rights is considered as a great historical achievement, a result of a tense, centuries-old struggle against totalitarianism, and a sign of the advent of the Golden Age. These constructions, however, are not true. Any culture places humanitarian interests at the centre of its value system, but the ideas about its nature and political tools, which are necessary for its disclosure, differ significantly. The concept of rights, that has arisen in the European culture of the Modern History, considers man as an individual, endowed with free will and non-political subject whose purpose is revealed in the act of choice. In other cultures, these properties are either denied or are present only in the background.

2. Ancient culture explained the emergence of the world by the action of cosmic forces, which were, however, personified.² The Olympians, who ruled the world, did not create it, and therefore were limited in their actions by its general laws

¹ For example, Ishay claims that the rights cannot be associated solely with European history: “The concept of progressive punishment and justice were professed by Hammurabi’s Code of ancient Babylon; the Hindu and Buddhist religions offered the earliest defenses of the ecosystem; Confucianism promoted mass education; the ancient Greeks and Romans endorsed natural law and the capacity of every individual to reason; Christianity and Islam each encouraged human solidarity, just as both considered the problem of moral conduct in wartime.” Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* 7 (Berkeley: University of California Press, 2004).

² For example, Homer states: “For to the green earth’s utmost bounds I go, to visit there the parent of the Gods, Oceanus, and Tethys his espoused, Mother of all.” *The Iliad of Homer* 347 (W. Cowper (trans.), New York: D. Appleton & Co., 1860).



(Δίκη).³ The effect of these laws was extended to social life. Christianity abolished this paradigm. According to the Old Testament, the world did not arise spontaneously, but was created by God: “In the beginning God created the heaven and the earth” (Genesis 1:1). God, therefore, was exalted: He ceased to be a significant part of the order, subordinated to its laws, and became its sole creator and ruler. Thus, the objective order, which was determined by nature (inanimate and passive substance), was replaced by a subjective order deriving from the divine will. Man, who was recognized as a godlike creature, was exalted together with God: “And God created man in his own image, in the image of God he created him” (Genesis 1:27).⁴ Instead of blood ties with the gods, which were specific to ancient culture, a substantial relationship between man and God was established – more sacred and important, because thanks to them, man could resurrect after death and take a place next to God, and not just go into oblivion. New meanings were expressed directly in the Holy Scripture, which gave them an undeniable character and higher power.

Christian doctrine (represented by Augustine and Thomas Aquinas) reformulated the concept of freedom. While during the classic Antiquity this concept had mainly political connotations, in Christian culture it acquired ontological significance. Augustine claimed that free will is given by God, so that a person could earn a reward or punishment that express divine justice.⁵ Act of choice, therefore, was shifted to the system of ethical coordinates and began to influence the relations with God concerning salvation (and not the relations with other people concerning the common good).

3. Christian doctrine paved the way for the Renaissance, which proclaimed a new program under the guise of a return to ancient models. The key point of this program was the accent on the human ability to take any image, independently form personality and choose destiny. Thus, individuality (dissimilarity to others) became the main characteristic of human being, a fact that makes man human. This meant giving up the antic ideal of traditional virtues and the early Christian ideal of the ascension of the soul to God.⁶ The new ideal synthesized the Christian ideas

³ Pythia proclaimed in one of her prophecies: “No one may escape his destined lot, not even a god.” *Herodotus. Vol. 1* 117 (A.D. Godley (ed.), London; New York: W. Heinemann; G.P. Putnam’s Sons, 1920).

⁴ Ancient culture used metaphors associated with Godlikeness, only as a rhetorical adornment and only in relation to prominent personalities, such as Hercules, Orestes, Odysseus. See *Iliad* and *Odyssey* of Homer.

⁵ Hence the idea of two freedoms: a genuine one (from sin), bringing a person closer to God, and an animal one, which consists in following bad desires and separates a person from God.

⁶ According to Batkin, before the Renaissance, *I* was assessed adversely, or, in any case, perceived not by itself, but only in the context of involvement in a certain community. Allocation presupposed standardization, i.e. the greatest degree of inclusiveness and normativity, and, therefore, something opposite to individuality. The individual saw the highest dignity in following the pattern and being *himself* as little as possible. In the Renaissance, a transition was made to the substantiation of personality *from itself*; from now on life and death amaze not by repeatability, but by uniqueness. Баткин Л.М. Итальянское Возрождение в поисках индивидуальности [Leonid M. Batkin, *Italian Renaissance in Search of Individuality*] 3–31 (Moscow: Nauka, 1989).



of God's likeness of man and the omnipresence of God:⁷ being god-like, man, like God, may be present in all things, though not in all at once.⁸ It was most clearly set forth in the treatise of Mirandola *Oratio de hominis dignitate* (1496).⁹

Renaissance thinkers rarely raised the question of Godlikeness, preferring to characterize man with enthusiastic epithets ("a great miracle and a being worthy of all admiration," "partly heavenly and divine, partly finest and noblest of all mortal things"¹⁰); nevertheless, this fundamental concept could not be ignored by them, – the same Mirandola stated:

and that the saying of Aspah the Prophet, "You are all Gods and sons of the Most High," might rather be true.

In addition, this synthesis was clearly expressed in the works and artistic images of the Renaissance, whose greatness and uniqueness are determined not only by the talents of the authors, but also by the intellectual component. Good examples are Brunetto Latini's *Tesoro* and Dante's *Divine Comedy*, which claim to create a complete picture of the world; the fresco of the Sistine Chapel by Michelangelo, which depicts the creation of man, and perhaps the most famous image – the ambiguous smile of Mona Lisa, expressing at "the contrast between reserve and seduction, and between

⁷ The idea of omnipresence is also expressed in the Bible: "Who has measured the waters in the hollow of his hand and marked off the heavens with a span, enclosed the dust of the earth in a measure and weighed the mountains in scales and the hills in a balance" (Isaiah 40:12); "Am I a God at hand, declares the Lord, and not a God far away? Can a man hide himself in secret places so that I cannot see him? declares the Lord. Do I not fill heaven and earth? declares the Lord" (Jeremiah 23:23-24); "You hem me in, behind and before, and lay your hand upon me" (Psalms 139:5). Promoting this idea is largely the merit of Thomas Aquinas, who dedicated to it a treatise *De Ente et Essentia ad fratres et socios suos* and the eighth question of the first part of *Summa Theologiae*, containing the conclusion: "it must be the case that God exists within all things and intimately so." Thomas Aquinas, *Summa Theologiae* (A.J. Freddoso (trans.)) (May 4, 2020), available at <https://www3.nd.edu/~afreddos/summa-translation/TOC-part1-2.htm>.

⁸ Толстых В.Л. Ренессансное понимание достоинства и его влияние на современную концепцию прав человека // Правоведение. 2016. № 2. С. 48–61 [Vladislav L. Tolstykh, *Renaissance Understanding of Dignity and its Influence on the Modern Concept of Human Rights*, 2 Jurisprudence 48 (2016)].

⁹ According to Mirandola, when God created man, all images were already distributed. Then God gave Man an indefinite image: "We have given you, O Adam, no visage proper to yourself, nor endowment properly your own, in order that whatever place, whatever form, whatever gifts you may, with premeditation, select, these same you may have and possess through your own judgement and decision. The nature of all other creatures is defined and restricted within laws which We have laid down; you, by contrast, impeded by no such restrictions, may, by your own free will, to whose custody We have assigned you, trace for yourself the lineaments of your own nature ... We have made you a creature neither of heaven nor of earth, neither mortal nor immortal, in order that you may, as the free and proud shaper of your own being, fashion yourself in the form you may prefer. It will be in your power to descend to the lower, brutish forms of life; you will be able, through your own decision, to rise again to the superior orders whose life is divine." Giovanni Pico della Mirandola, *Oration on the Dignity of Man* (1496) (May 4, 2020), available at <http://web.mnstate.edu>.

¹⁰ Альберти Л.Б. Книги о семье [Leon B. Alberti, *On the Family*] 124 (Moscow: lazyki slavianskoi kultury, 2008).



the most devoted tenderness and a sensuality that is ruthlessly demanding – consuming men.”¹¹

Another important consequence of the above-mentioned synthesis was the transformation of the function of money. During Antiquity and the high middle ages, the criterion of the social status was a contribution to the common cause (*res publica*) or pedigree; money only increased the opportunities associated with this status. In modern society the role of money has become decisive. This is not about establishing a correlation between money and personal merit (hard work, talent, pedigree, etc.), and not about the admiration of a person who has and consumes material goods, inaccessible to others,¹² but about the respect shown to the *potency* of the rich person, i.e. to his ability to be anyone through buying anything. This potency is nothing more than a claim to Godlikeness. The roots of capitalism in this sense are much deeper than Weber believed and reflect not so much the belief of the modern bourgeoisie that it is divinely anointed,¹³ but the very essence of Christianity, which elevated man over the world.¹⁴

Medieval nominalism – a philosophical doctrine that only recognized the existence of particular objects and denied the existence of common ideas (universals) – also played a role in the genesis of rights. According to Ockham the reason for this denial was the absolute freedom of God, i.e. its unboundedness by nothing, including universals. On the philosophical field, nominalism supplanted Platonism and other doctrines that were calling for going beyond the limits of directly perceived reality, and *grounded* important philosophical categories, such as “freedom,” “value,” “world,” etc. In the sphere of politics, it became “the ideology of burgher individualism,”¹⁵ denying the value of feudal institutions.

4. The Reformation declared the possibility of direct contact between the believer and God, which does not require the mediation of the Pope and the priests, and

¹¹ Sigmund Freud, *Five Lectures on Psycho-Analysis: Leonardo da Vinci and Other Works* 108 (London: The Hogarth Press and the Institute of Psychoanalysis, 1957).

¹² Smith wrote that the rich “consume little more than the poor.” Adam Smith, *The Theory of Moral Sentiments* 246 (Strand; Edinburgh: A. Millar; A. Kincaid & J. Bell, 1761).

¹³ See Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (New York: Charles Scribner's Sons, 1958).

¹⁴ Marx wrote: “By possessing the *property* of buying everything, by possessing the property of appropriating all objects, *money* is thus the *object* of eminent possession ... That which is for me through the medium of *money* – that for which I can pay (i.e., which money can buy) – that am *I myself*, the possessor of the money. The extent of the power of money is the extent of my power. Money's properties are my – the possessor's – properties and essential powers ... Do not I, who thanks to money am capable of *all* that the human heart longs for, possess all human capacities?” Karl Marx, *The Power of Money in Economic and Philosophic Manuscripts of 1844*, Marxists Internet Archive (May 4, 2020), available at <https://www.marxists.org/archive/marx/works/1844/manuscripts/power.htm#:~:text=Shakespeare%20excellently%20depicts%20the%20real,the%20possessor%20of%20the%20money.>

¹⁵ Философская энциклопедия. Т. 4 [*Philosophical Encyclopedia. Vol. 4*] 91 (F.V. Konstantinov (ed.), Moscow: Sovetskaya entsiklopediya, 1967).



thus extended the idea of personal freedom, inspired by the Church, to relationships within the Church itself. This slogan had not only religious, but also political and economic significance: It followed that the claims of the Church to the legitimation of political power and economic preferences were unfounded. Having lost the ideological foundation, the political order became unstable, which was reflected in a series of religious wars and uprisings of the 16th–17th centuries. It became necessary to find a new foundation of political power which would relate to the idea of personal freedom. This role was played by the social contract theory.

All three main versions of this theory are based on the fact that in the state of nature people had unlimited rights (natural freedom), that they voluntarily refused in the interests of security when creating the state. According to Hobbes, the individual completely entrusts himself to the state;¹⁶ according to Locke, he only concedes the natural power to punish those who encroach on his rights;¹⁷ according to Rousseau, innate rights are not preserved, but are transformed into civil rights.¹⁸ Therefore, expression of individual will (albeit, existing only as a presumption and not accompanied by the granting of real political rights) became the source of political power and objective law, whose main function was defined as the protection of personal rights exercised through their restriction.

The social contract theory became the basis of a radical political transformation of the 17th century, during which the feudal political model was destroyed, right to private war was abolished, the modern state was established, and political nations were formed. The main initiator of this transformation (revolution) was the bourgeoisie, which sought to protect property, create unified markets, diminish the influence of other classes and conclude an alliance with the monarchy. Human rights were used as a tool of change: according to Marx, by recognizing only individual importance of life, they destroyed the feudal estates, corporations and guilds, divided civil society into selfish individuals and thereby attached them to the state.¹⁹ As a result, a duality of state and civil society, which was unknown to feudalism, emerged.

5. In the 17th century, personal rights were highlighted, as their protection was initially the main purpose of the state. By the end of the 18th century, the bourgeoisie had become strong enough to begin the struggle for control of the state. The culmination of this struggle was the American War of Independence (1775–1783) and

¹⁶ Thomas Hobbes, *Leviathan, or, the Matter, Form, & Power of a Commonwealth Ecclesiastical and Civil* (London: Andrew Crooke, 1651).

¹⁷ John Locke, *Two Treatises of Government* (London: Awnsham Churchill, 1689).

¹⁸ Jean-Jacques Rousseau, *The Social Contract, or Principles of Political Right* (Amsterdam: Marc-Michel Rey, 1762).

¹⁹ Karl Marx, *On the Jewish Question* in *Works of Karl Marx 1844*, Marxists Internet Archive (May 4, 2020), available at <https://www.marxists.org/archive/marx/works/1844/jewish-question>.



the French Revolution (1789–1799). Its outcome was the removal of the aristocracy from power, consolidation of the republican form of government (however, different from the ancient models) and general adoption of universal suffrage. The new model has spread not only in Europe, but also abroad.

In parallel to the struggle for control of the state, the bourgeoisie fought for *independence* from the state. The theoretical basis for this was liberalism, developing the ideas of Locke.²⁰ The liberal agenda included universal peace, free trade, decolonization, representative democracy and technological progress. Its gradual implementation in the late 19th – early 20th centuries ensured the dominance of the bourgeoisie in the political sphere and establishment of capitalism as the main mode of production and the only social model. The international law became one of the tools of liberalism. Its new reformative function overshadowed its traditional function of resolving interstate conflicts.²¹

New tendencies were supported by German classical philosophy, which definitively secularized (i.e. freed from the religious context) the idea of freedom. Hegel defined human history as progress in the awareness of freedom, of which the state is the main advocate and vehicle.²² Kant defined dignity as the ability of a rational being to self-determine and comprehend duty as a goal (“to legislate in the realm of goals”); autonomous will, committing acts based on beliefs is a matter of direct respect; this human quality is immanent, since nature and skill do not contain anything that can replace it.²³ While creating a semblance of discussion in essence, all these concepts do not overcome the ancient and deep-rooted religious myth about the will, but only adapt this myth to new circumstances and protect it from real alternatives.

The First World War, the Great October Revolution, the Great Depression, and nationalist and labor movements created a threat to liberal values and the political order derived from them. The liberal reaction was to develop the concept of the welfare state (*Sozialstaat*), redistributing resources and supporting social justice, emphasize protection of economic and social rights and develop the concept of the New Economic Order. Thus, there were concessions in favor of disadvantaged

²⁰ Constant claimed: “The aim of the ancients was the sharing of social power among the citizens of the same fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures.” Benjamin Constant, *The Liberty of the Ancients Compared with that of the Moderns* (1819) (May 4, 2020), available at <https://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819>.

²¹ See Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

²² Georg W.F. Hegel, *Vorlesungen über die Philosophie der Weltgeschichte [Lectures on the Philosophy of History]* (E. Gans (ed.), Berlin: Duncker & Humblot, 1837).

²³ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (M. Gregor (ed.), Cambridge: Cambridge University Press, 1998).



classes and developing countries, designed to ensure the stability of the existing order. These concessions, however, were either incomplete or only symbolic.

The end of the Cold War in the late 80s was perceived as a decisive victory of liberalism and the “end of history.”²⁴ The modern stage is characterized by the consistent dismantling sovereignty, erosion of social and economic rights (often carried out under the guise of their more effective implementation), development of information technologies that allow the manipulation of people and states, the emergence of a spectrum of somatic rights affecting the physical nature of man. Human rights began to be used as a pretext for intervention, destroying social organization and causing a sharp decline in the standard of living. All these changes reflect the formation of a new global model of power.

In the modern law and order, the idea of rights restrains the totalitarian aspirations of particular states, imposing on them the responsibility to establish a democratic system and protect rights, while simultaneously consolidating the international order. In the latter case, it is formulated as the main task of a global sovereign, not vulnerable to the disease of totalitarianism, and determines the emergence of the right to secession, sanctions regime, recognition issues, validity of treaties and reservations to them, sovereign immunities, etc.

6. The religious origin of rights is the key to understanding many of their important features. *Firstly*, it explains the absence of logical basis for human rights (the fact that they are set as an *a priori*, self-supporting truth²⁵), their claims to absolute priority (the status of “trumps”²⁶) and their intolerance.²⁷ *Secondly*, it explains the helplessness of the law in front of acts that undermine the foundations of order and are marked as acts of self-realization. Indeed, if man is omnipresent and this reflects divine providence, any incarnation is sanctioned by a higher power. In traditional

²⁴ Fukuyama states in his famous article: “What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government.” Francis Fukuyama, *The End of History?*, 16(3) *The National Interest* 3 (1989).

²⁵ During a discussion of the draft of the Universal Declaration presented by John Humphrey, Director of the human rights division of the U.N. Secretariat, Colonel William Roy Hodgson of Australia, erupted, saying that it seemed to him that there was no order in this document. He demanded to know from the Secretariat what was the philosophy behind this paper. The answer from Mr. Humphrey was that he could not oblige Colonel Hodgson “for the simple reason that [the draft] is based on no philosophy whatsoever.” As far as he was concerned, he had been asked to compile a list of rights for discussion purposes and that was what he had done. Sienho Yee, *Towards an International Law of Co-progressiveness* 290 (Leiden: Martinus Nijhoff Publishers, 2004).

²⁶ See Ronald Dworkin, *Taking Rights Seriously* 153 (London: Duckworth, 1978).

²⁷ De Benoist claims: “The ideology of human rights theoretically based on the principle of tolerance is in fact the bearer of the most violent intolerance, the most absolute challenge. The declarations of rights are declarations of war as well as declarations of love.” Де Бенуа А. Против либерализма. К четвертой политической теории [Alain de Benoist, *Against Liberalism. To the Fourth Political Theory*] 339 (St. Petersburg: Amphora, 2009).



societies, this problem was removed through an appeal to the public interest; today, an appeal to *another* private interest is more effective (hence the justification for actions that do not threaten the rights of others: homosexuality, euthanasia, cloning, etc.). The concept of public interest has lost its previous meaning: The principle of proportionality implies weighing public and private interests as equivalent while in traditional society, public interest prevailed initially.²⁸ *Thirdly*, it explains an extraordinary diversity of rights that permeate not only the public sphere, but also the spheres of intimate and family life, work and rest, religion and art, etc. It also explains the legalization of deviant behavior: The right to enter into a homosexual marriage or the right to *in vitro* fertilization is important not on its own, but as an extension of the ontological horizon. Moreover, they are much more important than the rights to enter into ordinary marriage or ordinary motherhood, which, by virtue of their commonness, do not extend the existential space.

The expansion of rights entails the formalization and standardization of relations (aspects of non-freedom and demoralization).²⁹ Formalization, i.e. the consolidation of clear and rationally calculated patterns is ensured through the use of a dry and senseless legal language. Standardisation, implying the mass reproduction of particular patterns, is ensured by the normativity of rights. Thus, the expansion of rights transforms the human existence, – it ceases to be a fate set by objective circumstances and personal choice, becoming the realization of the law. In the essay *Question Concerning Technology* Heidegger defines technology as “a way of revealing,” “which puts to nature the unreasonable demand that it supplies energy that can be extracted and stored as such.” The danger is that it could be denied to man, “to enter into a more original revealing and hence to experience the call of a more primal truth.”³⁰ This principle of reduction also applies to rights, which reveal the human existence only in a certain way, transform man into the legal construction (legal creature embedded in the body of Leviathan and designed to fill it with its energy) and exclude alternative forms of being.

7. Another paradox of rights is that the incarnation of a person in one image deprives him of the opportunity to incarnate into other images and thereby destroys dignity. Therefore, it is necessary to have dignity, without realizing it: To be an eternal buyer, wandering around the store, trying on different things, but never making

²⁸ An interesting aspect of the problem was revealed by the *Charlie Hebdo* case: the reaction to the murder was not the reaction of society as a whole, but of individuals who identified themselves with the dead journalists. Thus the enthusiasm evoked by the slogan *Je suis Charlie* reflects a more general trend of dissemination of individualism even in the field of criminal policy.

²⁹ The phenomenon of legalization was analyzed by Meckled-García and Çali, who define rights as a moral ideal and point out three problems: the law should not clarify a moral ideal; the law is not the only means of protecting a moral ideal; effectiveness of the law in protecting a moral ideal is not proven. *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law* 1–3 (S. Meckled-García & B. Çali (eds.), London: Routledge, 2006).

³⁰ Martin Heidegger, *Basic Writings* (New York: Harper & Row, 1977).



a choice; leaving without buying, but retaining purchasing power. So, the idea of dignity turns out to be close to postmodernity – the state of “oscillation as freedom.”³¹ This dialectical trend determines the nature of lawmaking and human rights activities aimed at upholding not specific *values*, but only their *possibility*.

The values themselves become uninteresting and pushed into the background; the phrase “I disapprove of what you say, but I will defend to the death your right to say it” (Hall) expresses the extreme degree of this paradox, which is no longer recognized as a paradox. Neither international law nor internal law seeks to ensure the real *enjoyment* of the rights by the masses; neither the European Court of Human Rights nor any other authority is concerned that so few people exercise the freedom of speech in the public sphere or use freedom of conscience to form firm and sincere convictions. Being ignored by the law, realization of rights on governments and capital, and not on the principle of formal equality:

The only human right which is universally enforced is the right of the rich to get richer.³²

The priority of opportunity changes human relationships. People increasingly plan and talk about plans and implement them less and less: Thus, thinking of possibility affirms the illusion of immortality, that the death changed into, and the illusion of equality, that the inequality did. Without realizing dignity, man does not individualize and remains “a man without definition,”³³ “a man without properties, an individual in the capacity of his own potential,”³⁴ – someone who was described in the following way: “I know your works: You are neither cold nor hot. Would that you were either cold or hot! So, because you are lukewarm, and neither hot nor cold, I will spit you out of my mouth” (Revelation 3:15-16). Such a person is the ideal unit of representative democracy, a point of pure reference, which can be invoked to justify any political program, and which will never ask whether the promise made to it is fulfilled, simply because the only thing, that interests him, is promises.

8. In legal discourse, the concept of rights reigns almost completely. Beyond this discourse, it is subjected to criticism, which, however, is marginal, i.e. not known by broad masses and not supported by political elites. The conservative criticism is based on the claim that man is determined through social relations and needs recognition. Insisting on the autonomy of the individual, rights suppress human nature, break social ties and generate anarchy. The main theses of this criticism were

³¹ Gianni Vattimo, *The Transparent Society* 10–11 (Cambridge: Polity Press, 1992).

³² Philip Allot, *The Health of Nations: Society and Law Beyond the State* 92 (Cambridge: Cambridge University Press, 2002).

³³ Claude Lefort, *L'Invention démocratique* 64 (Paris: Fayard, 1981).

³⁴ Batkin 1989, at 169.



set forth by Burke in *Reflections on the Revolution in France* (1790). The moderate-liberal criticism is adjacent to the conservative one and set forth by Bentham in *Anarchical Fallacies* (1816). Bentham doubts the need for rights: In a country where power belongs to the people, everything has been done to prevent abuse. Freedom, given by the rights, refers to the wild condition; thanks to the state man came out of this condition, obeyed the laws and connected himself with others. There were no rights prior to the establishment of governments: a right implies guarantees of future use, but in the wild condition man does not have such guarantees.

Marxism sees human rights as an instrument for the destruction of feudal institutions and the creation of a modern state. Through citizens' rights, man lives in a political community and considers himself as a means; through human rights, he acts as a private individual and regards other men as a means. Citizens' rights are subordinated to human rights: the political community degrades itself into a simple means to preserve human rights. Under these conditions, human emancipation is impossible; it will be accomplished only when "the real, individual man re-absorbs in himself the abstract citizen, and as an individual human being has become a *species-being* in his everyday life."³⁵ Thus, like conservatives, Marx proceeds from the social nature of man, but unlike them, he believes that this nature is not revealed even in traditional societies based on economic exploitation. The issue of rights also relates to the concept of alienation, outlined by Marx and developed by neo-Marxists (Frankfurt School and Fromm): by separating power and society, rights alienate man from politics; by defending the capitalist property, they alienate man from his labor; by imposing false needs, they alienate man from his nature.

The Christian criticism is based on the fact that man is not autonomous but is connected with God. Rights, that focus on choice determined by one's own preferences, and not by the divine will, seek to break this bond. In politics, this leads to the spread of immoral notions and practices and the undermining of the common good. Christian criticism is based on the concept of two freedoms, outlined by St. Augustine and developed by Thomas Aquinas. Natural freedom implies following one's own desires and makes man a slave of sin, "Everyone who practices sin is a slave" (John 8:34). Freedom from sin implies obedience to the commandments and is a condition of salvation, "If the Son sets you free, you will be free indeed" (John 8:36). Human rights express the first freedom and impede the realization of the second one. The catholic criticism was formulated in several papal encyclicals of the 19th century, in particular, in the Encyclical of Leo XIII *Libertas praestantissimum donum* (1888).³⁶ In the second half of the 20th century the Vatican changed its position and supported

³⁵ Marx, *supra* note 19.

³⁶ Pope Leo XIII, *Libertas: Encyclical on the Nature of Human Liberty*, The Holy See (May 4, 2020), available at http://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_20061888_libertas.html. See also Encyclical of Pius VI *Adeo Nota* (1791), Encyclical of Gregory XVI *Mirari Vos* (1832), Encyclical of Pius IX *Quanta Cura* (1864).



the concept of rights.³⁷ Orthodox criticism of rights was formulated in *The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights* (2008).³⁸

Islam defines human rights as a divine gift and requires them to be exercised in accordance with the Sharia. This implies a ban on anti-Islamic proselytism, an emphasis on the duties of man before God, assumption of the death penalty and corporal punishment, differences in the status of men and women, etc. Thus the Islamic concept of rights *de facto* is a completely independent concept which has little to do with the western one.³⁹ It is set forth in the Cairo Declaration on Human Rights in Islam (1990).⁴⁰ It should be noted that the Quran does not mention the idea of the human Godlikeness: Allah created man "In whatever shape He willed" (Quran 82:8). This idea, however, can be derived from some Hadiths, the correct interpretation of which is the subject of discussion.⁴¹

9. Modern criticism mainly develops classical arguments. Soviet authors used both conservative and Marxist arguments and saw in human rights a threat to sovereignty and an instrument of imperialism. During discussing the draft of the Universal Declaration, Vyshinsky stated:

Human rights are unthinkable outside the state. The very concept of law is a state concept. Moreover, human rights are unthinkable without their being protected and protected by the state. Otherwise, human rights turn into an empty abstraction.⁴²

Neo-Marxist Lefort writes that a society of free and equal people is indefinable; in modern politics, man acts through intermediaries; therefore, his rights are only

³⁷ See Encyclical of John XXIII *Pacem in Terris* (1963), Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (1965), Addresses of Popes to the U.N. General Assembly, etc.

³⁸ The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights, The Russian Orthodox Church (May 4, 2020), available at <https://mospat.ru/en/documents/dignity-freedom-rights/>.

³⁹ According to Syukiyaynen, "Modern Islamic law formally recognizes most human rights and freedoms in their liberal interpretation, but makes them dependent on compliance with imperative regulations of Sharia, which significantly changes the very nature of the institution of human rights." Сюкияйнен Л. Современные религиозные концепции прав человека: сопоставление теологического и юридического подходов // Право. Журнал Высшей школы экономики. 2012. № 3. С. 28 [Leonid Syukiyaynen, *Modern Religious Concepts of Human Rights: A Comparison of Theological and Legal Approaches*, 3 Law. Journal of the Higher School of Economics 7, 28 (2012)].

⁴⁰ See Syed Abul 'Ala Maudoodi, *Human Rights in Islam* (Lahore: Islamic Publications Ltd., 1977).

⁴¹ See, e.g., the *Hadith* № 2612 of Sahih Muslim ("When any one of you fights with his brother, he should avoid his face for Allah created Adam in His own image" ((May 4, 2020), available at <https://sunnah.com/muslim/45>).

⁴² About the speech on the draft Declaration of Human Rights at the General Assembly session on 10 December 1948, see Вышинский А.Я. Вопросы международного права и международной политики [Andrey Ya. Vyshinsky, *Issues of International Law and International Politics*] 379–388 (Moscow: Gosizurdat, 1951).



proclaimed, but not realized. Focusing on the expression of identity, the concept of rights takes the individual out of the community and destroys power, law and knowledge.⁴³ Žižek reproduces a part of the Bentham arguments: Human rights are a form of fundamentalism and, while displacing the politics, they provoke non-political conflicts; offer a limited range of options and impose a modus of individual choice (forbid from taking anything without an act of choice); create a pretext for intervention and prohibit collective reform.⁴⁴ Baudrillard sees in rights an evidence of alienation:

If something goes without saying, then every right becomes spare, but if it becomes necessary to establish a right in relation to one or another thing, then this means that this thing itself is approaching its own destruction. So, the right to water, air, space “confirms” the rapid disappearance of all these elements.⁴⁵

Agamben develops the basic idea of Burke that rights provoke the state violence and act as a vehicle of totalitarianism:

The spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individuals' lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.⁴⁶

Van Dun blames Marx for the expansion of rights. Marx called for the unification of man with humanity. This gnostic position asserts the universal man, which overshadows an individual with his needs. The cult of the universal man masks the lack of respect for oneself and others, destroys the law and strengthens hedonism.⁴⁷ The critical thought denies the natural character of rights and claims that their main function is to confront the state. This ensures a balance between the requirements of order and autonomy. This balance is the essence of the liberal theory. Not being natural, human rights are not defined: Their content depends on the will of political

⁴³ Lefort 1981, at 62–69, 170–173.

⁴⁴ Slavoj Žižek, *Against Human Rights*, 34 *New Left Review* 115 (2005).

⁴⁵ Бодрийяр Ж. Прозрачность зла [Jean Baudrillard, *The Transparency of Evil*] 127–131 (Moscow: Dobrosvet, 2000).

⁴⁶ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* 72 (D. Heller-Roazen (trans.), Stanford: Stanford University Press, 1998).

⁴⁷ Frank van Dun, *Les Droits de l'Homme et la crise du droit* (Institut Euro-1992, 1998).



actors. This will is determined by factors specific to each society: economic formation, form of the state, social and political challenges, etc.⁴⁸

10. The inadequacy of explanation of human nature through the prism of the individual will is obvious. Man is not only an individual seeking to choose, but also a member of a collective who needs recognition (conservatism); being alienated from labor and racial life (Marxism); believer seeking to avoid sin (early Christianity) and obedient to divine will (Islam); who suffers constantly and seeks to be saved from it (Buddhism); victim of civilization, oppressed by the flow of information and need for constant choice (Baudrillard, Žižek). Thus, the idea of rights emphasizes only certain aspects of reality and ignore (cut off) the rest. Because of this, it is a *myth*.⁴⁹

The destructive impact of this myth is manifested in the following. *First*, it creates a monochrome picture, on which the being of a person is reduced to an act of will; the doctrine based on it operates with a narrow circle of arguments and is not capable of the three-dimensional vision of reality. *Second*, it gives rise to logical contradictions: the idea of rights is not adapted to the conflicts of individuals and situations of voluntary waiver of rights; does not cope with the role of common standard; is ineffective if an individual is separated from the collective (the Arendt's paradox). Within the discourse of international law, it conflicts with the idea of sovereignty, which also reflects the idea of will; in the absence of a third force, this conflict does not have a logical solution and can only be overcome in a political way (hence the ambiguity of such issues as the impact of rights on immunities or reservations). *Third*, it destroys reality, monopolizing the axiological basis of cooperation and, as a result, blocking real cooperation in overcoming poverty, protecting the environment, state-building, etc. Its contribution to the real well-being of people cannot be completely denied – this contribution, however, takes a back seat to the disasters provoked by it. *Fourth*, it is used as a tool of submission and domination. It creates an absolute *justa causa*, relying on which the West instigates civil wars, intervenes in internal affairs and destroys entire countries. *Fifth*, it alienates from existence. Indeed, rights create a new kind of man – man who chooses (*Homo Elehit*) and is unable to reveal his own nature and see the reality in its entirety. Moreover, the choice, that rights offer, is a hoax: Commodities, cultural phenomena and political ideas are not much different from each other and seem to be created as a plurality with only one purpose – to keep attention. *Sixth*, it forms the basis for other levels of the mythological structure: No matter how brave or educated a person is and no matter how far he goes in the

⁴⁸ See Martti Koskenniemi, *The Politics of International Law* 131–167 (London: Hart Publishing, 2011).

⁴⁹ Burke wrote: "In the gross and complicated mass of human passions and concerns, the primitive rights of men undergo such a variety of refractions and reflections that it becomes absurd to talk of them as if they continued in the simplicity of their original direction. The nature of man is intricate; the objects of society are of the greatest possible complexity: and therefore no simple disposition or direction of power can be suitable either to man's nature or to the quality of his affairs." Edmund Burke, *Reflections on the Revolution in France* (London: J. Dodsley, 1790).



fight against global deception, in the end he always faces an opponent who cannot be defeated – his own individuality.⁵⁰

The general conclusion is that human rights are something more than the product of Modern History, resulting from the development of humanistic ideas within legal doctrine. They are organically and inextricably linked with the religious concepts of the mature Middle Ages and reflect the idea of Godlikeness that forms a very special personality type transcendental to Western civilization. Consequently, challenging rights within a purely legal discourse is a hopeless affair, – legal doctrine does not reach deep ontological levels. Thus, an alternative can be found only outside of positive law and only under certain historical conditions. The world is changing: Its fragmentation, the West's loss of leadership and general crisis of Western culture – all of which can cause the corrosion of this dominant personality type and its replacement by a new type.

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⁵⁰ This structure consists of five levels. The first, basic level is formed by the ideas of sovereignty and rights; the second – by the liberal ideas of the 19th century (peaceful settlement of disputes, international governance, free trade, humanization of war, etc.); the third – by the idea of an international crime formulated after the Second World War and applicable to the actions of states (aggressive war) and the actions of individuals (terrorism), the fourth – by the neoliberal ideas of the second half of the 20th century (general sovereign, sustainable development, common heritage, monetarism, responsibility to protect, etc.); the fifth, emerging level – by the idea of technology.



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