

Human Rights As European Values

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“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.”

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1. Historical Vectors of Today's Europe

FROM A civilizational vantage point, today's Europe is the product of several ideological vectors. One of them was the development of Greek philosophy, with its significant contribution to fields such as the theory of ideas, logic, dialectic, and rhetoric. Another important vector was the development of Roman law, which consecrated the existence of law as a judicial science relatively autonomous in regard to politics and religion, while the development of Christianity came to promote, in its turn, values such as monotheism, patriarchy, the mission, and the love of one's neighbor. The emergence of the ethos of chivalry and of courtly love contributed to the same process by promoting the chivalrous virtues and behavior, while the advent of experimentalism and rationalism came to set experiment and reason at the very foundation of knowledge, stimulating the search for structural laws. The for-

mulation of human rights set natural law in opposition to positive law, while the development of nation-states gave renewed strength to ideas such as citizenship and constitutionalism. Last but not least, the emergence of a social market economy has demonstrated that high economic performance and social autonomy can be achieved through competitiveness and innovation.

The outcome of all these developments is the *common heritage of Europe*, which we can see as a sum total of values, as indicated in Article 2 of the Treaty on European Union and in the Treaty of Lisbon: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

If we consider the various definitions of the European identity proposed in the media, when it comes to the common European heritage we could use the following formula: in principle, the common heritage consists of the particular forms in which the peoples of Europe developed civilization and culture.

Looking at the historical becoming of Europe, we can say that Europe ends where the dialectic and democratic spirit (of Greek extraction), the judicial spirit of the rule of law (of Roman extraction), the spirit of brotherhood (of Christian extraction), the spirit of freedom and equality (a legacy of the Enlightenment), and the separation between state and church (Cavour, Briand) met with failure, where a certain manner of developing the arts (main aesthetic trends such as the Renaissance, the Baroque, Classicism, Romanticism, Realism, Art Nouveau) and the sciences (the scientific spirit grounded in experiment, as developed by Roger Bacon and Francis Bacon) also failed to take hold.

All these developments proceed at a slow pace and require a dialectic social cohabitation within a specific state framework.

2. The Anthropological Foundations of State Organization

IN ORDER TO survive, an individual requires food and security (that is, protection against threats). For an entire group to survive, we also have to factor in reproduction (that is, the production of offspring), which naturally increases the need for food and security. In order to secure the necessary food and ensure safety one needs *resources*, meaning a “bountiful” territory that can be controlled and circulated as necessary. However, only an organized community can secure and guarantee such resources.

Consequently, in order to satisfy his own needs, each human individual is dependent upon another. All human beings have similar needs, which is probably the anthropological foundation of the recurrent idea whereby all human beings are equal. At the same time, however, each individual displays distinct features. The existing similarities engender solidarity with the others, and the development and preservation of one's own identity (Germ. *Selbstartigkeit*, self-identity) implies the acceptance of otherness (Germ. *Andersartigkeit*, hetero-identity) and pluralism.

This individual identity, combined with solidarity and with the acceptance of otherness, represents the human *dignity* of an individual. Consequently, human dignity could be defined as the human endeavor to ensure, for oneself and for the others (reciprocity) a secure and fruitful existence.

Solidarity with the others, acceptance of diversity and the solving together of common problems make it essential that people ground their actions in certain *ethical norms*, such as honesty, dedication, moderation, and understanding. The observance of such norms engenders trust.

Human dignity can only be achieved if there are guarantees concerning general safety, general freedom, general equal treatment, as well as the general right to ownership. As pre-requisites for human dignity, these elements could be considered *fundamental inalienable rights*, in the sense that they cannot be the object of negotiation. To the extent in which we are willing to defend them, they are fundamental values. However, these values can only be guaranteed in the framework of organized communities. In order to prevent a majority from taking undue advantage of fundamental guarantees, the best course of action is to institute the rule of law in the form of a direct or indirect, but definitely participative, representative parliamentary democracy, ensuring the separation of powers and the functioning of a multi-party parliamentary system. This rule of law must be in agreement with the general interest, namely, striving towards the common good, towards general well-being: "Denn Demokratie ist die Lebensform, in der Selbstbestimmung—rechtlich geschützt—möglich ist" (Lübbe 2012).

3. An Explanation of the Basic Concepts

FUNDAMENTAL RIGHTS, which we deem to be the basis of the definition given to human dignity, are highly abstract concepts, developed and elaborated upon by philosophers and politicians ever since Antiquity. Linguists are called upon to examine and compare the usage of these concepts in a variety of contexts, to identify their distinctive core semantic traits, to determine the actant models (*who* participates, *how* and to *what* process) and come

up with operational definitions, which could be used in reaching an agreement on a common and solidary existence. In keeping with this method, the basic concepts of *security*, *freedom*, *equality*, *property* and *social welfare* can be described as follows:

SECURITY. As a fundamental right, this is the security guaranteed to all individuals by the political system, and it is understood as covering the integrity of a person and of its property, alongside the freedom of expression, action and movement; not even equality before the law can question the security of individuals and especially of their property. The security of individual citizens depends upon the internal and external security of their state, but this reality must not be abusively or arbitrarily used by the state authorities against individual citizens.

FREEDOM. In its Article 4, the Déclaration des droits de l'homme et du Citoyen of 26 August 1789 defines freedom in rather general terms: “La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui: ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la loi.”

We distinguish three essential components of freedom. On the one hand, we have the freedom of movement, which means that an individual is not to be prevented from going wherever he or she wants. From a social point of view this means that an individual cannot be kept in slavery or serfdom, and from a territorial point of view it means that individuals can travel without impediment within the boundaries of their state. The hyponymous concepts include the freedom of assembly, of residence, the freedom to travel and, in a broader sense, to engage in trade. The opposed concepts are slavery, serfdom, arbitrary arrest or imprisonment. Arbitrary arrest is countered by the principle of habeas corpus, which means that a defendant is to remain free until such time as a court rules on the legality of his or her arrest. If individual freedom is an ideal, then those who are not free will try to gain this freedom.

Second comes the freedom of thought, meaning that no one can prevent individuals from freely expressing their thoughts for as long as they do not transcend the boundaries of conventional morality. The synonymous concept is that of freedom of expression, and the hyponymous concepts are freedom of religion, freedom of the press, freedom of education and the free and secret ballot. Its antonyms include censorship, forced religion, and the interdiction to speak in public.

The third aspect concerns freedom of action, whereby no individual should be prevented from deciding how to live his or her life. In this case, however, individuals must respect the code of moral conduct, the absence of which would

mean libertinism. Freedom of action also includes the right to freely exercise a profession.

EQUALITY. The concept of equality is a relational one which involves a comparative relation of the kind “A + being equal + to B.” The comparison entails a certain property, possibly quantified (*tertium comparationis*), the existence or non-existence of which can be used as a criterion in determining or certifying equality or inequality. Social and political equality can be defined as the situation of a person who, in the framework of a group or of a society, does not differ from the others when it comes to the obligations towards society or, on the other hand, to individual rights. In this context, in order to determine the existence of equality among citizens, we could take as *tertia comparationis* elements such as their treatment before the law, the possibility of participating in the political decision-making process, the possibility of holding public office, the obligation to pay tax, but also the existence of educational and development opportunities for all, as stipulated by the Universal Declaration of Human Rights of 1948, in its Article 2: “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The antonym of equality is represented by unjustified “distinctions,” as indicated in Article 1 of the Déclaration des droits de l’homme et du Citoyen of 1789: “Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l’utilité commune.”

OWNERSHIP/PROPERTY. Anyone has the right to possess an asset received or lawfully gained, but only in keeping with the law. This right also means the right of excluding others from the usufruct of one’s property. Ownership can be direct or indirect. Direct ownership can apply to things like real estate or land (an estate, a building, or a company) or to movable assets (clothing, household items, tools, cattle, merchandise, weapons, or precious metals). Indirect ownership applies to securities (stocks, currency, mortgages). Assets can also be immaterial (intellectual property, whereby an author can freely benefit from his or her creations). The holders of this right can be private individuals, a group of people (for instance, an association), state institutions (e.g., a university) or, according to some, the state itself. To the benefit of the community, the state can protect but also limit ownership rights.

UTILITY AND THE COMMON GOOD. Common utility means the undertaking of a maximum number of possible actions by the individual members who live in a state, in order to meet some fundamental needs at the maximum possible level for a maximum number of people. The more or less successful fulfillment

of these needs is the common good or social welfare. This can be achieved only if individuals accept the fact that they must always consider the wellbeing of others. Common utility and the common good operate within a metonymical relation (cause-effect). The antonym of the common good is the exclusive self-interest.

4. Texts on the Rights of Man

FUNDAMENTAL CONCEPTS such as freedom and equality, related to the very essence of the human being, are already discussed by Aristotle, but only in the context of certain possible forms of the state: “Of forms of democracy first comes that which is said to be based strictly on equality. In such a democracy the law says that it is just for the poor to have no more advantage than the rich; and that neither should be masters, but both equal. For if liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost” (*Politics* IV, 4).

The basis of a democratic state is liberty; which, according to the common opinion of men, can only be enjoyed in such a state; this they affirm to be the great end of every democracy. One principle of liberty is for all to rule and be ruled in turn, and indeed democratic justice is the application of numerical not proportionate equality; whence it follows that the majority must be supreme, and that whatever the majority approve must be the end and the just. . . . This, then, is one note of liberty which all democrats affirm to be the principle of their state. Another is that a man should live as he likes. This, they say, is the privilege of a freeman, since, on the other hand, not to live as a man likes is the mark of a slave. (Politics VI, 2)

On the other hand, in the traditional treatises on the art of politics (Germ. *Staatskunst*), especially in the *Specula regum* (Germ. *Fürstenspiegel*), the *common good* is seen as the main objective of a community and the responsibility of a virtuous leader. Thus, Thomas Aquinas (*De regimine principum*, I, 1) contended: “Si ergo naturale est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur. Multis enim existentibus hominibus et unoquoque id, quod est sibi congruum, providente, multitudo in diversa dispergeretur, nisi etiam esset aliquis de eo quod ad bonum multitudinis pertinet curam habens; sicut et corpus hominis et cuiuslibet animalis deflueret, nisi esset aliqua vis regitiva communis in corpore, quae ad bonum commune omnium membrorum intenderet.”

In a state, therefore, the initial tendency is to lay stress on the community and ascribe less importance to individuals. The community is more important than the individual, and the latter must defer to the community. Social power structures tend to limit individual freedom and an individual's possibility of choosing from among several alternatives, of refusing something and proposing something else instead. The gradual and incremental rise of individuality begins with the Renaissance. It is especially in the 18th century that we see a proliferation of the ideas regarding the so-called natural rights. Without overlooking the importance of the community, attempts are nevertheless made at highlighting certain general individual rights. In his *Leçons de droit de la nature et des gens* (1769) the Swiss-Italian Enlightenment thinker Fortuné Barthélemy de Felice (1723–1789) defined natural right as follows: “Par loi naturelle on entend une loi que Dieu impose à tous les hommes, & qu'ils peuvent découvrir & connoître par les seules lumières de leur raison, en considérant avec attention leur nature & leur état. Le droit naturel est le système, l'assemblage ou le corps de ces mêmes lois” (I, 7).

Starting from this natural right and with numerous arguments, he concludes that all human beings are their own masters, that all are equal when it comes to social participation and happiness, that all give special attention to security and that all have the right to own property:

La liberté naturelle est le droit que tous les hommes ont par leur nature, de disposer de leurs personnes, de leurs actions, de leurs biens, de la manière qu'ils jugent la plus convenable à leur bonheur, sous la condition qu'ils ne blessent en rien leurs devoirs, ni par rapport à Dieu, ni par rapport à eux-mêmes, ni par rapport aux autres hommes. (I, 16)

Voici donc proprement en quoi consiste l'égalité dont il s'agit: c'est que tous les hommes ont un droit égal à la société & au bonheur, tellement que, toutes choses d'ailleurs égales, les devoirs de la sociabilité imposent à tout homme envers un autre une obligation également forte & indispensable, & qu'il n'y a aucun homme au monde qui puisse raisonnablement s'attribuer quelque prérogative à cet égard au-dessus des autres. (I, 19)

La première loi générale de la sociabilité, c'est de ne faire du mal à personne, & par conséquent de réparer celui qu'on a causé. C'est ici une loi absolue & générale; car c'est une conséquence de l'égalité naturelle; & comme nous sommes en droit d'exiger des autres hommes qu'ils ne nous fassent aucun mal, nous devons convenir qu'ils ont le même droit par rapport à nous. . . . La maxime que nous recommandons tend donc à mettre en sûreté notre vie, notre personne, notre honneur, nos biens, & tout ce qui nous appartient légitimement: c'est-à-dire, non seulement ce que nous tenons immédiatement de la nature, mais encore tout ce [que] nous avons

acquis en vertu de quelque convention ou de quelque établissement humain, qui sans cela deviendroient entièrement inutiles. (I, 20)

Personne ne peut refuser à l'homme le droit naturel de pourvoir à sa conservation: ce premier droit n'est en lui-même que le résultat d'un premier devoir qui lui est imposé sous peine de douleur & de mort. . . . Or il est évident que le droit de pourvoir à sa conservation, renferme le droit d'acquérir par ses recherches & ses travaux, les choses utiles à son existence, & celui de les conserver après les avoir acquises. Il est évident que ce second droit n'est qu'une branche du premier; on ne peut pas dire avoir acquis ce qu'on n'a pas le droit de conserver; ainsi le droit d'acquérir & le droit de propriété ne forment ensemble qu'un seul & même droit, mais considéré dans des temps différents. C'est donc de la Nature même que chaque homme tient la propriété exclusive de ce qu'il a acquis pour sa conservation par ses recherches & ses travaux. (I, 25)

These ideas on the rights that nature bestowed upon each human being triggered the revolt against royal and ecclesiastical authority, the revolt against absolute monarchies and against the privileged society of the Old Regime, the revolt that led to the independence of the thirteen American colonies of Britain, to the French Revolution, to the abolition of feudal rights, to the creation of a citizens' state, of the modern constitutions. Natural rights and democratic constitutions are essentially ideals whose development in text form and practical implementation involved a slow and lengthy process.

The explicit statement of certain rights led to the emergence of a new genre of texts, more precisely to the American Declarations of Rights, of European Enlightenment extraction (the first Declaration: The Virginia Declaration of Rights, 12 June 1776), and to the Déclarations des droits de l'homme et du citoyen (the first Declaration: Déclaration des droits de l'homme et du Citoyen, 26 August 1789). These texts are open lists of short articles or paragraphs consisting of declarative sentences which, on the other hand, state that certain qualities are inherent to human nature and, on the other, define certain attributions granted to state authorities:

SECTION 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them. (Virginia Declaration of Rights)

Article premier. Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

Art. 2. Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté et la résistance à l'oppression.

Art. 3. Le principe de toute souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément. (Déclaration de droits de l'homme et du Citoyen du 26 août 1789)

We find here references to certain essential characteristics of human beings, and also to the national rule of law. *Obligations*, the semantic complement of *rights*, are less or barely touched upon. They are explicitly stated in the French declaration of 1795 (Déclaration des droits et des devoirs de l'homme et du citoyen), but even in this case the rights are dealt with in 22 articles, with the obligations given only 9. The first Romanian Constitution of 1866 includes a tentative hint at obligations, in its Article 10: "There shall be no class distinction within the State. All Romanians are equal before the law and shall contribute without distinction to the fulfilment of fiscal and public obligations."

The institution of the democratic rule of law is therefore envisaged in terms of the state authorities that are to undertake or not to undertake specific actions in the interest of the citizens. The interest of the citizens includes the possibility of pursuing freedom, equality, security and property in society. These four possibilities, deemed essential, alongside the rule of law, are the pillars of the universal human rights. They are not self-evident, as indicated by the fact that the authors of the declarations considered it necessary to explain that rights are natural and imprescriptible. The basic reasoning (Germ. *Gedankengang*) underlying the understanding of universal rights in general is not explicitly stated, but it could be the following: "The human individual can live best in a liberal society, favorable to civil and political rights. Such a society becomes possible if individuals are granted comprehensive intellectual and physical freedom, if all enjoy equal treatment before the law, if their security is guaranteed and they are given the possibility to own their means of existence. These states often come under threat and must therefore receive special protection and verbalization."

Freedom, equality, property and security are present, as fundamental concepts, in all modern democratic constitutions, in the preambles (see the French Constitutions of 1791, 1793, 1795, 1848) or in the form of specific introductory articles (see the French Constitutions of 1814 and 1830, the Belgian Constitution of 1831, Art. 6, 7, 11, 14, 17, 18, 19, 20, the Romanian Constitution of 1866, Title II with its 26 articles). Freedom, in particular, is often envisaged under several aspects (for instance, individual freedom, freedom of thought,

freedom of education, freedom of the press, or freedom of assembly). It takes a long time for these conceptual elements to be acquired. This is why, after the new Constitution of Tunisia was adapted on 26 January 2014, legal expert Yadh Ben Achour argued: “Cette constitution est révolutionnaire pour son article 6 qui instaure la liberté de conscience . . . poser comme principe la liberté de conscience est quelque chose de tout à fait inédit dans le monde arabe, voire au-delà” (*Le Monde*, 1 February 2014, p. 6).

The horrors of World War II determined the United Nations (UN), an organization founded in 1945, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (United Nations Charter of 26 June 1945, Preamble) and set up a commission “for the promotion of human rights” (Art. 68). Under the leadership of Eleanor Roosevelt, the commission outlined a general compromise framework for the defense of human rights. The Universal Declaration of Human Rights, while not legally binding, was adopted by the General Assembly on 10 December 1948. The text includes a rather lengthy explanatory preamble and 30 articles. In what concerns the content, it preserves the core ideas of the American and French declarations (rule of law and freedom, equality, security and property as fundamental rights). The authors, however, contributed to the semantic and pragmatic development of the genre, by clearly expressing causal relations and highlighting certain aspects. The novel elements include, on the one hand, the initial introduction of the highly abstract concept of dignity and, on the other, the explicit references to gender equality, social progress, and brotherhood: “Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom” (Preamble). “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” (Art. 1).

The core of social rights could already be found in the French Constitution of 1848: “La République doit protéger le citoyen dans sa personne, sa famille, sa religion, sa propriété, son travail, et mettre à la portée de chacun l’instruction indispensable à tous les hommes; elle doit, par une assistance fraternelle, assurer l’existence des citoyens nécessiteux, soit en leur procurant du travail dans les limites de ses ressources, soit en donnant, à défaut de la famille, des secours à ceux qui sont hors d’état de travailler” (Préambule, Art. VIII).

In its Articles 22–27, the Universal Declaration of Human Rights explicitly lists these social rights. The importance of brotherhood as a norm of conduct can also be found in the French Constitution of 1848: “Elle [sc. La Répub-

lique française] a pour principe la Liberté, l'Égalité et la Fraternité" (Préambule, Art. IV).

Freedom and security as fundamental rights are completed by the general right to life and by the ban on slavery and torture: "Everyone has the right to life, liberty and security of person" (Art. 3); "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms" (Art. 4); "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Art. 5).

These specifications as well were already present in the various traditional declarations and constitutions, especially in the Virginia Declaration of Rights, which speaks about "the enjoyment of life and liberty," and in the French Constitution of 1848 (cf. Art. 6: "L'esclavage ne peut exister sur aucune terre française").

The Universal Declaration of Human Rights of 1948 is a remarkable development of the European "Declaration of Human Rights" text genre. While not a binding source of law, it remains a semantic and formal model for the new "declarations"—the Convention for the Protection of Human Rights and Fundamental Freedoms (today the European Convention on Human Rights) of 1950 and the Charter of Fundamental Rights of the European Union of 2000—as well as for some new constitutions. Thus, the Constitution of Romania of 2003 says in its Article 1 (3): "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed."

The Charter of Fundamental Rights of the European Union has been integrated into the Treaty of Lisbon of 2007 and is legally binding (cf. Treaty on European Union, art. 6 (1): "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."

5. Conclusions

BEGINNING WITH the Enlightenment Age in Europe, the outlining of individuality, on the basis of principles such as freedom, equality, security and property, has gradually led to a new understanding of power relations in general and of the relations between men and women, parents and chil-

dren, governors and governed, in particular. Since that moment, in the modern states organized along the European model, people have been struggling for balance in a constantly dynamic exchange between individual and state rights, between fundamental rights and the needs of the state, between rights to protection and rights to power.



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Abstract

Human Rights As European Values

The study analyzes the core values underlying contemporary European civilization, starting from their historical roots (Greek philosophy, Roman law, Christian values, the medieval code of chivalry and courtly love, rationalism and experimentalism). Also reviewed are the basic concepts of security, freedom, equality, property and social welfare. The author continues with a survey of the main texts devoted to human rights, from the writings of Aristotle and Thomas Aquinas to documents such as the Constitutions of France and Romania, the European Convention on Human Rights, the Universal Declaration of Human Rights, the Declaration des droits de l'homme et du Citoyen, etc.

Keywords

human rights, core European values, security, freedom, equality, property