

The Postnational Constellation

Political Essays

Jürgen Habermas

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by Max Pensky

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within their own national arenas; thus they ought not to be punished for operating on the cooperative procedures of a cosmopolitan community rather than those of national independence. Innovations will not happen if the political elites cannot find any resonance with the already transformed value orientations of their electorates. But if the self-understanding of governments only changes under the pressure of an altered domestic climate, then the crucial question is whether, in the civil societies and political public spheres of increasingly interconnected regimes, whether here, in Europe and in the Federal Republic of Germany, a cosmopolitan consciousness – the consciousness of a compulsory cosmopolitan solidarity, so to speak – will arise.

The re-regulation of the world society has, until now, not even taken the shape of an exemplary project for which one could provide examples. Its first addressees are not governments but citizens, and citizens' movements. But social movements crystallize around normatively liberating perspectives for resolving conflicts that had previously appeared insoluble. The articulation of a vision is also the task of political parties that have not yet entirely withdrawn from civil society and barricaded themselves into the political system. Parties that don't simply cling to the status quo need a perspective that moves beyond it. And the status quo today is nothing other than the whirlpool of an accelerating process of modernization that has been left to its own devices. The political parties that are still able to exert any formative influence also have to muster the courage for forward thinking in other respects. Within the national sphere – the only one that they can currently operate in – they have to reach out toward a European arena of action. And this arena, in turn, has to be programmatically opened up with the dual objective of creating a social Europe that can throw its weight onto the cosmopolitan scale.

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Remarks on Legitimation through Human Rights

In this essay I use the term "legitimation" (and the associated term "legitimacy") in a doubly restricted sense: I am referring, first, to the legitimation of political systems and, second, only to the legitimation of constitutional democracies. I begin by recalling a proposal I have made for reconstructing the internal relation between democracy and human rights.¹ I then briefly examine a few of the aspects under which this Western style of legitimation is criticized today – whether in the discourse among Western theorists or in the discourses between other cultures and the West.

I. The Procedural Justification of Constitutional Democracy

Let me begin by explicating the concept of political legitimation. Social orders in which authority is organized through a state – orders that can, for example, be distinguished from tribal societies – experience a need for legitimation that is already implicit in the concept of political power. Because the medium of state power is constituted in forms of law, political orders draw their recognition from the legitimacy claim of law. That is, law requires more than mere acceptance; besides demanding that its addressees give it *de facto* recognition, the law claims to *deserve* their recognition. Consequently, all the public justifications and constructions that are intended to redeem this claim

to worthiness of recognition are part of the legitimation of a government constituted through law.

This holds for all governments. Modern states are characterized by the fact that political power is constituted in the form of positive law, which is to say: enacted and coercive law. Because the question regarding the mode of political legitimation is bound up with this legal form, I would like first to delineate modern law by describing its structure and mode of validity. Only then can I discuss the kind of legitimation associated with such law.

(1) Individual rights make up the core of modern legal orders. By opening up the legal space for pursuing personal preferences, individual rights release the entitled person from moral precepts and other prescriptions in a carefully circumscribed manner. In any case, within the boundaries of what is legally permitted no one is legally obligated to publicly justify her action. With the introduction of individual liberties, modern law – in contrast to traditional legal orders – validates the Hobbesian principle that whatever is not explicitly prohibited is permitted.² Whereas morality primarily tells us what our obligations are, law has a structure that gives primacy to entitlements. Whereas moral rights are derived from reciprocal duties, legal duties stem from the legal constraints on individual liberties. This conceptual privileging of rights over duties is implicit in the modern concepts of the legal person and the legal community. The moral universe, which is unlimited in social space and historical time, includes all natural persons with all the complexities of their life histories. By contrast, a legal community, which has a spatio-temporal location, protects the integrity of its members only insofar as they acquire the artificial status of bearers of individual rights.

This structure is reflected by the law's peculiar mode of validity. In the legal mode of validity we find the facticity of the state's enforcement and implementation of law intertwined with the legitimacy of the purportedly rational procedure of lawmaking. Modern law leaves its addressees free to approach the law in either of two ways. They can consider norms merely as factual constraints on their freedom and take a strategic

approach to the calculable consequences of possible rule-violations, or they can comply with the regulation "out of respect for the law." Kant already expressed this point with his concept of legality, which highlighted the connection between these two moments without which legal obedience cannot be reasonably expected of morally responsible persons. Legal norms must be so fashioned that they can be viewed simultaneously in two different ways, as laws of coercion and as laws of freedom. It must at least be possible to obey laws not because they are compulsory but because they are legitimate. The validity of a legal norm means that the state guarantees both legitimate lawmaking and *de facto* enforcement. The state must ensure both of these: on the one hand, the legality of behavior in the sense of an average compliance that is, if necessary, enforced through penalties; on the other hand, a legitimacy of legal rules that always makes it possible to comply with a norm out of respect for the law.

However, for the legitimacy of the legal order another formal characteristic is especially important, namely the positivity of enacted law. How can we ground the legitimacy of rules that are always able to be changed by the political legislator? Constitutional norms too are changeable; even the basic norms that the Constitution itself has declared non-amendable share, along with all positive law, the fate that they can be abrogated, say, after a change of regime. As long as one was able to fall back on a religiously or metaphysically grounded natural law, the whirlpool of temporality enveloping positive law could be held in check by morality. Even temporalized positive law was at first supposed to remain subordinate to, and be permanently oriented by, the eternally valid moral law, which was conceived of as a "higher law." But in pluralistic societies such integrating worldviews and collectively binding ethical systems have disintegrated.

Political theory has given a twofold answer to the question of legitimacy: popular sovereignty and human rights. The principle of popular sovereignty lays down a procedure that, because of its democratic features, justifies the presumption of legitimate outcomes. This principle is expressed in the rights of communication and participation that secure the public autonomy of politically enfranchised citizens. The classical

human rights, by contrast, ground an inherently legitimate rule of law. These rights guarantee the life and private liberty – that is, scope for the pursuit of personal life-plans – of citizens. Popular sovereignty and human rights provide the two normative perspectives from which an enacted, changeable law is supposed to be legitimated as a means to secure both the private and civic autonomy of the individual.

(2) However, political philosophy has never really been able to strike a balance between popular sovereignty and human rights, or between the “freedom of the ancients” and the “freedom of the moderns.” Republicanism, which goes back to Aristotle and the political humanism of the Renaissance, has always given the public autonomy of citizens priority over the pre-political liberties of private persons. Liberalism, which goes back to John Locke, has invoked (at least since the nineteenth century) the danger of tyrannical majorities and postulated the priority of human rights. According to republicanism, human rights owed their legitimacy to the ethical self-understanding and sovereign self-determination achieved by a political community; in liberalism, such rights were supposed to provide inherently legitimate barriers that prevented the sovereign will of the people from encroaching on inviolable spheres of individual freedom. In opposition to the complementary one-sidedness of these two traditions, one must insist that the idea of human rights – Kant’s fundamental right to equal individual liberties – must neither be merely imposed on the sovereign legislator as an external barrier nor be instrumentalized as a functional requisite for democratic self-determination.³

To express this intuition properly, in what follows I start with the following question: What basic rights must free and equal citizens mutually accord one another if they want to regulate their common life legitimately by means of positive law? This idea of a constitution-making practice links the expression of popular sovereignty with the creation of a system of rights. Here I assume a principle that I cannot discuss in detail, namely, that a law may claim legitimacy only if all those possibly affected could consent to it after participating in rational discourses. As participants in “discourses,” we want

to arrive at shared opinions by mutually convincing one another about some issue through arguments, whereas in “bargaining” we strive for a balance of different interests. (One should note, however, that the fairness of bargained agreements depends in turn on discursively justified procedures of compromise formation.) Now, if discourses (and bargaining processes) are the place where a reasonable political will can develop, then the presumption of legitimate outcomes, which the democratic procedure is supposed to justify, ultimately rests on an elaborate communicative arrangement: the forms of communication necessary for a reasonable will-formation of the political lawgiver, the conditions that ensure legitimacy, must be legally institutionalized.

The desired internal relation between human rights and popular sovereignty consists in this: human rights institutionalize the communicative conditions for a reasonable political will-formation. Rights, which make the exercise of popular sovereignty possible, cannot be imposed on this practice like external constraints. To be sure, this claim is immediately plausible only for political rights, that is, the rights of communication and participation; it is not so obvious for the classical human rights that guarantee the citizen’s private autonomy. The human rights that guarantee everyone a comprehensive legal protection and an equal opportunity to pursue her private life-plans clearly have an intrinsic value. They are not reducible to their instrumental value for democratic will-formation.

At the same time, we must not forget that the medium through which citizens exercise their political autonomy is not a matter of choice. Citizens participate in legislation only as *legal* subjects; it is no longer in their power to decide which language they will make use of. Hence the legal code as such must already be available before the communicative presuppositions of a discursive will-formation can be institutionalized in the form of civil rights. To establish this legal code, however, it is necessary to create the status of legal persons who as bearers of individual rights belong to a voluntary association of citizens and can, when necessary, effectively claim their rights. There is no law without the private autonomy of legal persons in general. Consequently, without the classical liberty

rights, in particular the basic right to equal individual liberties, there also would not be any medium in which to legally institutionalize the conditions under which citizens could participate in the practice of self-determination.

This shows how private and public autonomy reciprocally presuppose one another. The internal relation between democracy and the rule of law consists in this: on the one hand, citizens can make appropriate use of their public autonomy only if, on the basis of their equally protected private autonomy, they are sufficiently independent; on the other hand, they can realize equality in the enjoyment of their private autonomy only if they make appropriate use of their political autonomy as citizens. Consequently, liberal and political basic rights are inseparable. The image of kernel and husk is misleading – as though there were a core area of elementary liberty rights that would have priority over rights of communication and participation.⁴ For the Western style of legitimation, the co-originality of liberty rights and the rights of citizens is essential.

II. The Self-criticism of the West

Human rights are Janus-faced, looking simultaneously toward morality and the law. Their moral content notwithstanding, they have the form of legal rights. Like moral norms, they refer to every creature “that bears a human face,” but as legal norms they protect individual persons only insofar as the latter belong to a particular legal community – normally the citizens of a nation-state. Thus a peculiar tension arises between the universal meaning of human rights and the local conditions of their realization: they should have unlimited validity for all persons – but how is that to be achieved? On the one hand, one can imagine the global expansion of human rights in such a way that all existing states are transformed – and not just in name only – into constitutional democracies, while each individual receives the right to a nationality of his or her choice. We are obviously a long way from achieving this goal. An alternative route would emerge if each individual attained the effec-

tive enjoyment of human rights immediately, as a world citizen. In this sense, Article 28 of the United Nations Declaration of Human Rights refers to a global order “in which the rights and freedoms set forth in this Declaration can be fully realized,” but even the goal of an actually institutionalized cosmopolitan legal order lies in the distant future.

In the transition from nation-states to a cosmopolitan order, it is hard to say which poses the greater danger: the disappearing world of sovereign subjects of international law, who lost their innocence long ago, or the ambiguous mish-mash of supranational institutions and conferences, which can grant a dubious legitimation but which depend as always on the good will of powerful states and alliances.⁵ In this volatile situation, human rights provide the sole recognized basis of legitimation for the politics of the international community; nearly every state has by now accepted, at least on paper, the United Nations Declaration of Human Rights. Nevertheless, the general validity, content, and ranking of human rights are as contested as ever. Indeed, the human rights discourse that has been argued on normative terms is plagued by the fundamental doubt about whether the form of legitimation that has arisen in the West can also hold up as plausible within the frameworks of other cultures. The most radical critics are Western intellectuals themselves. They maintain that the universal validity claimed for human rights merely hides a perfidious claim to power on the part of the West.

This is no accident. To gain some distance from one's own traditions and to broaden limited perspectives is one of the advantages of occidental rationalism. The European history of the interpretation and realization of human rights is the history of such a decentering of our way of viewing things. So-called equal rights may have only been gradually extended to oppressed, marginalized, and excluded groups. Only after tough political struggles have workers, women, Jews, Romanies, gays, and political refugees been recognized as “human beings” with a claim to fully equal treatment. The important thing now is that the individual advances in emancipation reveal in hindsight the ideological function that human rights had also fulfilled up to that time. That is, the egalitarian claim to universal validity and

inclusion had also always served to mask the *de facto* unequal treatment of those who were silently excluded. This observation has aroused the suspicion that human rights might be reducible to this ideological function. Have they not always served to shield a false universality – an imaginary humanity, behind which an imperialistic West could conceal its own way and interests? Following Martin Heidegger and Carl Schmitt, Western intellectuals have read this hermeneutic of suspicion in two ways, as a critique of reason and as a critique of power.

According to the first reading, the idea of human rights is the expression of a specifically Western notion of reason that has its origins in Platonism. Spurred by an “abstractive fallacy,” this notion leaps beyond the boundaries of its original context of emergence, thus exceeding the merely local validity of its alleged universality. The critique of reason contends that every tradition, worldview, or culture has inscribed its own – always incommensurable – standards for what is true and false. But this leveling critique fails to notice the peculiar self-referential character of the discourse of modernity. The discourse of human rights is also set up to provide *every* voice with a hearing. Consequently, this discourse itself sets the standards in whose light the latent violations of its own claims can be discovered and corrected. Lutz Wingert has called this the “detective aspect” of human rights discourses: human rights, which demand the inclusion of the other, function at the same time as sensors for exclusionary practices exercised in their name.⁶

The variants of the critique of power proceed somewhat more awkwardly. They too deny the claim to universal validity by referring to the genetic priority of a suppressed particularity. But this time a reductionistic feint suffices. The normative language of law can supposedly reflect nothing else but the factual claims to power of political self-assertion; according to this view, consequently, universal legal claims always conceal the particular will of a specific collectivity to have its own way. But the critics of power forget that the more fortunate nations learned in the eighteenth century how sheer power can be domesticated by legitimate law. “He who says ‘humanity’ is lying” – this familiar piece of German ideology only betrays a lack of historical experience.⁷

Western intellectuals should not confuse their discourse over their own Eurocentric biases with the debates in which members of other cultures engage them. True, in the cross-cultural discourse we also encounter arguments that the spokespersons of other cultures have borrowed from European critics in order to show that the validity of human rights remains imprisoned, despite everything, in the original European context. But those non-Western critics, whose self-consciousness comes from their own traditions, certainly do not reject human rights lock, stock, and barrel. The reason is that other cultures and world religions are now also exposed to the challenges of social modernity, just as Europe was in its day, when it in some sense “discovered” or “invented” human rights and constitutional democracy.

In what follows I will take the apologetic role of a Western participant in a cross-cultural discussion of human rights. My working hypothesis is that the standards of human rights stem less from the particular cultural background of Western civilization than from the attempt to answer specific challenges posed by a social modernity that has in the meantime covered the globe. However we evaluate this modern starting point, human rights confront us today with fact that leaves us no choice and thus neither requires, nor is capable of, a retrospective justification. The contest over the adequate interpretation of human rights concerns not the desirability of the “modern condition,” but rather an interpretation of human rights that does justice to the modern world from the viewpoint of other cultures as well as our own. The controversy turns above all on the individualism and secular character of human rights that are centered in the concept of autonomy.

For the purposes of clarity I base my metacritical remarks on a description that provides a frank expression of the Western standards of legitimacy. The above reconstruction of the relation between liberty rights and the rights of citizens starts from a situation in which we assume that free and equal citizens take counsel together on how they can regulate their common life not only by means of positive law but also legitimately. I recall in advance three implications of this proposal, which are relevant for the further course of the argument:

(a) This model begins with the horizontal relationships that citizens have with one another. Only in a second step, and thus only on an established rights basis, does the model introduce the relationships that citizens have to the functionally necessary state apparatus. This allows us to avoid the liberal fixation on the question of how one controls the state's monopoly on force. Although the liberal question is understandable from the perspective of European history, it shoves the more innocuous question about the solidaristic justification of a political community into the background.

(b) In the model I propose, the starting question assumes that we can take the medium of enacted, coercible law more or less at face value as effective and unproblematic. Unlike classical contract theory, the proposed model does not treat the creation of an association of legal persons, defined as bearers of individual rights, as a decision in need of normative justification. A functional account suffices as justification, because complex societies, whether Asian or European, seem to have no functional equivalent for the integrative achievements of law. This kind of artificially created norm, at once compulsory and freedom-guaranteeing, has also proven its worth for producing an abstract form of civic solidarity among strangers who want to remain strangers.

(c) Finally, the model of constitution-making is understood in such a way that human rights are not pre-given moral truths to be discovered but rather are constructions. Unlike moral rights, legal rights, quite clearly, must not remain politically non-binding. As individual or "subjective" rights, human rights have an inherently juridical nature and are conceptually oriented toward positive enactment by legislative bodies.

These reflections change nothing about the individualistic style and secular basis of legal systems based on human rights; indeed, they emphasize the centrality accorded to autonomy. At the same time, however, they cast a different light on the criticisms one hears in the cross-cultural discourse, which targets both aspects of Western legal systems.

III. The Discourse between the West and other Cultures: "Asiatic Values"

As became evident at the Vienna Conference on Human Rights, a debate has got underway since the 1991 report of the Singapore government on "Shared Values" and the 1993 Bangkok Declaration jointly signed by Singapore, Malaysia, Taiwan, and China. In this debate the strategic statements of government representatives are in part allied with, and in part clash with, the contributions of oppositional and independent intellectuals. The objections are essentially directed against the individualistic character of human rights. The critique, which invokes the indigenous "values" of far-eastern cultures shaped by Confucianism, moves along three lines. Specifically, the critics (1) question the principled priority of rights over duties, (2) appeal to a particular communitarian "hierarchy" of human rights, and (3) lament the negative effects that an individualistic legal order has on the social cohesion of the community.

(1) The core of the debate lies in the thesis that the ancient cultures of Asia (as well as the tribal cultures of Africa⁸) accord priority to the community over the individual and do not recognize a sharp separation between law and ethics. The political community is traditionally integrated more by duties than by rights. The political ethic recognizes no individual rights, but only rights that are conferred on individuals. For this reason, the individualistic legal understanding of the West is supposedly incompatible with the community-based ethos that is deeply anchored in a particular tradition and that requires individual conformity and subordination.⁹

It seems to me that the debate takes a false turn with this reference to cultural differences. In fact, one can infer the function of modern law from its form. Individual rights provide a kind of protective belt for the individual's private conduct of life, and in two ways: rights protect the conscientious pursuit of an ethical life-project just as much as they secure an orientation toward personal preferences free of moral scrutiny. This legal

form is tailored to the functional demands of modern economic societies, which rely on the decentralized decisions of numerous independent actors. However, Asiatic societies too deploy positive law as a steering medium in the framework of a globalized system of market relations. They do so for the same functional reasons that once allowed this form of law to prevail in the Occident over the older guild-based forms of social integration. Legal certainty, for example, is one of the necessary conditions for a commerce based on predictability, accountability, and the preservation of trust. Consequently, the decisive alternatives lie not at the cultural but at the socioeconomic level. Asiatic societies cannot participate in capitalistic modernization without taking advantage of the achievements of an individualistic legal order. One cannot desire the one and reject the other. From the perspective of Asian countries, the question is not whether human rights, as part of an individualistic legal order, are compatible with the transmission of one's own culture. Rather, the question is whether the traditional forms of political and societal integration can be reasserted against – or must instead be adapted to – the hard-to-resist imperatives of an economic modernization that has won approval on the whole.

(2) These reservations about European individualism are often expressed not for normative reasons but with a strategic intention. This intention can be recognized insofar as the arguments are connected with the political justification of the more or less "soft" authoritarianism that characterizes the dictatorships of developing nations. This is especially true of the dispute over the hierarchy of human rights. The governments of Singapore, Malaysia, Taiwan, and China appeal to a "priority" of social and cultural basic rights in an effort to justify the violations against basic legal and political rights of which the West accuses them. These dictatorships consider themselves authorized by the "right of social development" – apparently understood as a collective right – to postpone the realization of liberal rights and rights of political participation until their countries have attained a level of economic development that allows them to satisfy the basic material needs of the population equally. For a population in misery, they claim, legal equality and freedom of

opinion are not so relevant as the prospect of better living conditions.

One cannot convert functional arguments into normative ones this easily. True, some conditions are more beneficial than others for the long-term implementation of human rights. But that does not justify an authoritarian model of development, according to which the freedom of the individual is subordinated to the "good of the community" as it is paternalistically apprehended and defined. In reality, these governments do not defend individual rights at all, but rather a paternalistic care meant to allow them to restrict rights that in the West have been considered the most basic (the rights to life and bodily integrity, the rights to comprehensive legal protection and equal treatment, to religious freedom, freedom of association, free speech, and so forth). From a normative standpoint, according "priority" to social and cultural basic rights does not make sense for the simple reason that such rights only serve to secure the "fair value" (Rawls) of liberal and political basic rights, i.e. the factual presuppositions for the equal opportunity to exercise individual rights.¹⁰

(3) The two arguments above are often linked with a critique of the suspected effects of an individualistic legal order, which appears to endanger the integrity of the naturally emergent living systems of family, neighborhoods, and politics. According to this critique, a legal order that equips persons with actionable individual rights is set up for conflict and thus at odds with the orientation of the indigenous culture toward consensus. It helps if we distinguish the principled reading of this criticism from a political reading.

From the principled point of view, the reservations about the individualistic style of European human rights are backed by the justified critique of an understanding of rights that stems from the Lockean tradition and that has been revived today by neo-liberalism. This possessive individualism fails to recognize that legally protected individual rights can only be derived from the pre-existing, indeed intersubjectively recognized norms of a legal community. It is true that individual rights are parts of the equipment of legal persons; but the status of legal persons as

rights-bearers develops only in the context of a legal community which is premised on the mutual recognition of its freely associated members. Consequently, the understanding of human rights must jettison the metaphysical assumption of an individual who exists prior to all socialization and, as it were, comes into the world already equipped with innate rights. However, dropping this "Western" thesis also makes its "Eastern" antithesis unnecessary – that the claims of the legal community have priority over individual legal claims. The choice between "individualist" and "collectivist" approaches disappears once we approach fundamental legal concepts with an eye toward the dialectical unity of individuation and socialization processes. Because even legal persons are individuated only on the path to socialization, the integrity of individual persons can be protected only together with the free access to those interpersonal relationships and cultural traditions in which they can maintain their identities. Without this kind of "communitarianism," a properly understood individualism remains incomplete.

In contrast to the principled critique, the political objection to the disintegrating effects of modern law is rather weak. The processes of economic and social modernization, which are both accelerated and violent in the developing nations, must not be confused with the legal forms in which social disintegration, exploitation, and the abuse of administrative power occur. The only means of countering the factual oppression exercised by the dictatorships of developing nations is a juridification of politics. The integration problems that every highly complex society has to master can be solved by means of modern law, however, only if legitimate law helps to generate that abstract form of civic solidarity that stands and falls with the realization of basic rights.¹¹

IV. The Challenge of Fundamentalism

The attack on the individualism of human rights targets one aspect of the underlying concept of autonomy, namely the liberties that are guaranteed to private citizens *vis-à-vis* the

state and third parties. But citizens are autonomous in a political sense only when they give themselves their laws. The model of a constitutional assembly points toward a constructivist conception of basic rights. Kant conceived autonomy as the capacity to bind one's own will by normative insights that result from the public use of reason. This idea of self-legislation also inspires the procedure of democratic will-formation that makes it possible to base political authority on a mode of legitimation that is neutral toward worldviews. As a result, a religious or metaphysical justification of human rights becomes superfluous. To this extent, the secularization of politics is simply the flip-side of the political autonomy of citizens.

The European conception of human rights is open to attack by the spokespersons of other cultures not only because the concept of autonomy gives human rights an individualistic character, but also because autonomy implies a secularized political authority uncoupled from religious or cosmological worldviews. In the view of Islamic, Christian, or Jewish fundamentalists, their own truth claim is absolute in the sense that it deserves to be enforced even by means of political power, if necessary. This outlook has consequences for the exclusive character of the polity; legitimations based on religions or worldviews of this sort are incompatible with the inclusion of equally entitled non-believers or persons of other persuasions.

However, a profane legitimation through human rights, and thus the uncoupling of politics from divine authority, poses a provocative challenge not only for fundamentalists. Indian intellectuals, such as Ashis Nandy, have also written "anti-secularization manifestoes."¹² They expect the mutual toleration and cross-fertilization of Islamic and Hindu religious cultures to develop more from a reciprocal interpenetration of the modes of religious perception of both cultures than from the neutrality of the state toward worldviews. They are skeptical about an official politics of neutrality that merely neutralizes the public meaning of religion. Such considerations, however, combine the normative question – how one can find a shared basis for a just political life in common – with an empirical question. The differentiation of a religious sphere separate from the state may in fact weaken the influence of

privatized "gods and demons." But the principle of toleration itself is not directed against the authenticity and truth claims of religious confessions and forms of life; rather, its sole purpose is to enable their equally entitled coexistence within the same political community.

The central issue in the controversy cannot be described as a dispute over the relevance that different cultures each give to religion. The conception of human rights was the answer to a problem that once confronted Europeans – when they had to overcome the political consequences of confessional fragmentation – and now confronts other cultures in a similar fashion. In any event, the conflict of cultures takes place today in the framework of a world society in which the collective actors must, regardless of their different cultural traditions, agree for better or worse on norms of coexistence. The autarkic isolation against external influences is no longer an option in today's world. However, the pluralism of worldviews is also breaking out inside societies that are still conditioned by strong traditions.

Even in societies that, culturally speaking, are comparatively homogenous, a reflexive reformulation of the prevailing dogmatic traditions is increasingly hard to avoid.¹³ The awareness is growing, first of all among the intellectuals, that one's own religious truths must be brought into conformity with publicly recognized secular knowledge and defended before other religious truth claims in the same universe of discourse. Like Christianity since the Reformation, traditional worldviews are thus being transformed into "reasonable comprehensive doctrines" under the reflexive pressure generated by modern life circumstances. This is how Rawls designates an ethical worldview and self-understanding that has become reflexive, open to reasonable disagreement with other belief systems, but also able to reach an understanding with them on the rules of equal coexistence.¹⁴

My apologetic reflections present the Western mode of legitimation as an answer to general challenges that are no longer simply problems just for Western civilization. Naturally, this does not mean that the answer found by the West is the only one or even the best one. To this extent, the current debate

provides us with an opportunity to become aware of our own blind spots. However, hermeneutical reflection on the starting point of a human rights discourse among participants of different cultures draws our attention to normative contents that are present in the tacit presuppositions of any discourse whose goal is mutual understanding. That is, independently of their cultural backgrounds all the participants intuitively know quite well that a consensus based on conviction cannot come about as long as symmetrical relations do not exist among them – relations of mutual recognition, mutual role-taking, a shared willingness to consider one's own tradition with the eyes of the stranger and to learn from one another, and so forth. On this basis, we can criticize not only selective readings, tendentious interpretations, and narrow-minded applications of human rights, but also that shameless instrumentalization of human rights that conceals particular interests behind a universalistic mask – a deception that leads one to the false assumption that the meaning of human rights is exhausted by their misuse.