Against Superciliousness

Revisiting the Debate 60 Years after the Adoption of the Universal Declaration of Human Rights

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Abstract ■ This text will analyze the commonly accepted philosophical foundation of human rights, the international system of protection of human rights and selected perspectives of activists. It argues that dominant European, North American and Australian discourses of human rights do not describe human rights as such but only constitute specific expressions of human rights, and attempts to outline the characteristics of these discourses. It concludes that the limitations of a concept of human rights based on the exclusive reference to the state, as well as on Eurocentrism and processes of *othering*, can only be overcome through intercultural polylogues based on respect and equality. Rather than focusing on the concept of rights and their development, this text focuses on the concepts of humans and human dignity.
Keywords ■ activism ■ history ■ human rights ■ othering ■ theory

Since the adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, social scientists have been discussing a variety of aspects of the international human rights idea. Early discussions of the UDHR by anthropologists included the fear that the document would 'not be convincing to the Indonesian, the African, the Indian, the Chinese, if it lies on the same plane as like documents of an earlier period' (Executive Board of the American Anthropological Association, 1947: 543), and since then the relationship between culture and rights has been discussed at different levels (e.g. Cowan, 2006; Cowan et al., 2001; Dembour, 1996; Handwerker, 1997; Parekh, 2000; Wilson, 1997, etc.). One trend criticizes human rights as 'an expression of the only global superliberalism' (Goodale, 2006: 494), while others challenge 'anthropologists and other scholars to take the next steps and involve themselves more centrally in the human rights concerns of the people with whom they work' (Nagengast, 2004: 216) and call for 'critically engaged activist research' (Speed, 2006). In certain cases, this includes taking risks and living in situations of conflict and danger (see e.g. Nordstrom and Robben, 1995).

The relationship between the international human rights regime and local practices has frequently been described as based on a contradiction between 'Western' or 'universal' concepts, and 'the local'. I will challenge this very assumption and argue that the international human rights system

is the result of 'entangled modernity' (Randeria, 1999), as it could not have come into existence without the insistence of non-Western countries. In the process of the development of the international human rights system, a variety of 'local' concepts have influenced the outcome, while both 'local' Western and non-Western values have been considered a contradiction to the idea of human rights. An approach based on the concept of entangled modernity challenges the very assumption of the origin of the human rights concept in the 'West' and the idea that human rights are a 'gift of the West to the rest' (Baxi, 2002: 24) and argues that it is not human rights itself which are 'Western', but that dominant forms of perception and the construction of the history of human rights are based on Western and especially Eurocentric predilections. This project requires the clarification of key terms: first, what is meant by Western, second, what are human rights, and third, how does Eurocentrism inform human rights discourses?

While the 'East' and the 'West' describe directions and not specific locations, the term 'West' is used in social sciences as well in everyday language for describing a place. Without going into further details about the history of the term, currently 'the West' describes the USA and Canada, Australia, New Zealand and specific parts of Europe. It thereby disregards, on one hand, the significant differences in the understanding of human rights in these regions, and, on the other, obscures the fact that the application of the term 'the West' to the entire European continent is of recent date. The flexibility (or arbitrariness) of the use of the term 'Western' is especially obvious when the accession to the European Union (EU) is described as an accession to a 'European' or 'Western community of values', based on 'principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law' (European Community, 2002: Article 6). In political discussions about the possible accession of Serbia or Turkey, war and disrespect for human rights are repeatedly described as a contradiction to European values (Katholische Kirche in Österreich, 2006; Hagelüken, 2004; Petritsch, 2005; etc.).

The term 'human rights' consists of many layers. It includes the level of international law, and perceptions of the history of philosophy and ideas; it is an important concept for human rights activists; it can be a concept harshly criticized by opposed individuals and groups (see e.g. an instructive analysis by Speed, 2008); and it has been misused repeatedly by powerful politicians. While for many analysts the development of the idea of rights is crucial for the idea of human rights, but also closely related to postcolonialism and neoliberalism (Goodale, 2006; Hale, 2004; etc.), I argue that the dignity of all human beings is a central value of human rights, and that this idea materializes in the prohibition of discrimination. At a practical level, Baxi's useful distinction between the politics *for* human rights and the politics *of* human rights (Baxi, 2006 [2002]: 57) helps to distinguish between whether a specific policy aims at the realization of a life in dignity for all human beings, or aims at the accomplishment of

political or economic goals by using the concept of human rights as a pretext.

Eurocentrism describes both an attitude and a method which focuses selectively on those aspects of Europe which are considered positive, and uses them to draw conclusions about the rest of the world. In this sense, for example, the Enlightenment is referred to as the key factor for the development of the idea of human rights in the 'West', while its sexist and racist aspects are not equally recognized. To withdraw from a position of Eurocentrism means to accept 'histories instead of history, geographies instead of geography, ethnologies instead of ethnology' (King, 2002: 68), and hence substitute for one single and dominant version of history a variety of perceptions and representations.

In this text, I will analyze the commonly accepted philosophical foundation of human rights, the international system of protection of human rights, and the perspectives of selected activists. I argue that European, North American and Australian discourses of human rights do not describe human rights as such but only constitute specific expressions of human rights, and will then outline the characteristics of these discourses. By doing so I do not wish to further reiterate the dichotomy between the 'West' and the 'rest', but to take into account current power relations, and that specific European concepts like the sovereignty of the state have been spread and established worldwide through colonialism. Contradictory developments are evident when the state on the one hand is supposed to respect, promote and protect human rights, but at the same time international financial institutions, as well as current processes of economic neoliberal globalization, limit the influence of the state with regard to economic issues, including the redistribution of wealth. I conclude that the limitations of a concept of human rights based on exclusive reference to the state, on Eurocentrism and processes of *othering* can only be overcome through detailed analysis, and dialogues and cooperation based on respect and consciousness about power imbalances among the involved individuals.

This text does not deal with the arguments of regimes that reject human rights as 'Western', because the rejection of human rights with reference to culture is not applied exclusively by 'non-Western' governments. As Volpp (2000) has pointed out so aptly in a similar context, in discourses about human rights the central question is not about supposed 'traits' of different cultures, but under what circumstances culture is used as an argument.

Different levels of the concept of human rights

The perception of the alleged Western-ness of human rights refers mainly to its philosophical basis and to the creation of the international legal human rights system. Both aspects stress the development on the legal level,

and the concept of law and rights. The analysis of these two levels will be complemented by the perspective of human rights activists from different countries. Many human rights activists and some academic analysts stress the concept of humans and the idea of human dignity as central to human rights.

The history of the idea of human rights in Europe and North America

The evolutionary (self-)image of the origin of human rights in the West is based on the construction of a genealogy of selected documents of different linguistic and legal traditions. Thomas Hobbes, John Locke, David Hume, Jean-Jaques Rousseau, Immanuel Kant, as well as Edmund Burke et al. are considered the masterminds of the idea, and the trend-setting legal documents are considered to be the Magna Carta (1215), the English Bill of Rights (1689), the Declaration of Independence of the USA (1776), the US-American Constitution with its first ten amendments (1789 and 1791), as well as the French *Déclaration des Droits de l'Homme et du Citoyen* (1789). This reasoning for the Western traits of human rights is based on four methodological mistakes.

First, the 'Western-ness' of human rights concepts is derived exclusively by reference to Western philosophy and juridical texts. But such a conclusion would only then be epistemologically justified if philosophical and juridical documents of other language traditions (e.g. Arabic, Aymara, Chinese, Farsi, Hausa, Hebrew, Hindi/Urdu, Japanese, Sanskrit, Vietnamese, etc.) were also analyzed and no hints of key human rights values could be found in them.

Second, in arguing for the Western-ness of the human rights concept, the tendency is to refer almost exclusively to those documents which appear not to contradict human rights concepts. The consequence is that in the area of philosophy and law, several tendencies are conspicuously excluded: first, the philosophers and theorists of racism and anti-Semitism such as Arthur Gobineau or Houston Steward Chamberlain; second, counter-tendencies to the Enlightenment, for example the German Romantic movement, which, according to Ian Buruma and Avishai Margalit (2004) has served as a basis for a variety of occidentalisms; or, third, philosophers like Theodor A. Adorno or Max Horkheimer who describe totalitarian ideologies and despotism as central components of the Enlightenment. Similar omissions are made on the level of legal documents: throughout centuries, racist colonial laws, the juridical protection of slave trade and slave keeping are 'forgotten', as well as the Nuremberg laws, the discriminatory remuneration system of the soldiers from the colonies during the Second World War or discriminatory laws against Afro-Americans in the USA.

Third, also the above-mentioned philosophers and legal texts are read and interpreted selectively, and a closer look at them gives rise to doubt: Hobbes, influenced by experience of ongoing civil wars, imagines a

sovereign and powerful state Leviathan, where the individual had no more rights than the right to life (Belden Fields, 2003: 10f.). Locke added the right to property, but referred to the Bible to affirm the idea of the exercise of absolute governmental and male power (Locke, 2003 [1689]). Rousseau developed his social contract with the aim of establishing a society which allowed everyone to life in freedom within a society. However, according to him, this social contract could only be concluded between male adults and the state. Furthermore, it depended on the productive and climatic conditions of a country and was inappropriate, he argued, for regions colder or hotter than his own (Rousseau, 1988 [1762]). Hume considered Africans as well as all other non-white people as 'naturally inferior to whites' (quoted by Firla, 1997: 8). Kant concluded that black people were not capable of deep emotions (Firla, 1997: 7) and adopted Montesquieu's theory of the relationship between skin color and intellectual capacity in order to defend slavery (Firla, 1997: 9–12). The creator of the categorical imperative furthermore explicitly excluded women and wage-dependent people from his theories of liberty (Moser, 2001). Andrea Maihofer argues that the concept of qualitative differences between sexes and races is based on the idea of biological differences, which is a 'constitutive part of Enlightenment thinking' (2001: 127). According to this historical context, the legal documents aimed at securing the privileges of white, wealthy males and did not oppose slavery, racism or discrimination against women.

Von Senger (1993) therefore rejects the idea of a straight historical derivation of the UDHR from these documents and suggests a division of two periods of legal history: whereas during the first period the concept of humanness was applied only to selected people, with the UDHR it is at least judicially extended to all human beings. For Mbaya, as well, the recognition that every human being has dignity, a right to respect and equality is a 'fundamental disruption' with the past, 'in which human rights were solely the rights of privileged minorities – Europeans, whites, Christians and men' (1994: 331). Similarly, Baxi develops the concept of *contemporary human rights*, which includes all people and gives voice to their experience of suffering, and distinguishes it from *modern human rights,* based on the racist and sexist perceptions of the European Enlightenment (Baxi, 2002: 25–41 and further elaborated in Baxi, 2006 [2002]).

Fourth, the insistence on the importance of this constructed history of the idea of human rights implies that this equals its translation into practice. This perception helps to obscure European, North American and Australian colonial, migration, asylum and trade policies, as well as the politics *of* human rights.

Contrary to the perception of the exclusiveness of human rights in Western thought, human rights activists all over the world argue that the demand of the 'golden rule', to 'treat others as you want to be treated', can be found in numerous religions and traditions, and they quote passages from Confucian, Jewish, Muslim, Christian, Jain, Buddhist and Hindu

scripts (Annan, 1999; Küng and Kuschel, 1993: 82) to make their point. Similarly, activists from all over the world refer to local traditions of human rights and to sources which are much older than the Western philosophical texts. The Iranian lawyer and Nobel Prize laureate Shirin Ebani (2003) invokes Islam as well as the 2500-year-old declaration of Cyrus the Great as sources for her activism, since Cyrus had declared that 'he would not reign over the people if they did not wish it', and the 14th Dalai Lama, as well as the Burmese Aung San Suu Kyi and the Korean Nobel Prize laureate Kim Dae-Jung refer explicitly to 'Asian values' and religions as an inspiration for their work (Aung San, 1991; Dae Jung, 2000; Dalai Lama, 1989).

The history of the concept of human rights is constructed in accordance with the same Eurocentrism which considers European (or 'white' US American) history as world history, and which excludes the voices of those humans who are not wealthy, not 'white' and not male. Attempts to relativize such constructions of history are often based on a comparison of Asian, African, indigenous American and European concepts, or aim at a dialogue between them. Nevertheless, such an approach runs the risk of increasing the separation between 'the West and the rest', instead of overcoming it in a communication among multiple voices. Importantly, efforts to distinguish positions according to different regions can easily obscure the personal experiences and power imbalances which inform different definitions of human rights.

Human rights as a figure of international law

The international human rights system and its documents are repeatedly considered as Western, and the UDHR has been reproached for reflecting exclusively Western values. A closer look at the process of the creation of the UDHR, however, helps to broaden this perception and lends support to the concept of entangled modernity.

The following analysis should not make us forget that elaborating international human rights standards is a highly political procedure, where countries choose their representatives, change them as power relations change in the country, and instruct them to defend certain positions. Ongoing internal conflicts, pre-election times and other situations of crisis or instability influence the voting behavior of delegates. Countries do not represent cultures, but their representatives do reflect cultural traits and internal hierarchies according to gender, ethnicity, social status, etc., and this is true for delegates from all over the world. Common citizens of any country hardly ever know who their delegates are and what they are voting for at the United Nations (UN), nor are they aware of the pressures on these delegates. While by no means do I wish to equate 'individuals', 'countries' and 'culture', in the context of the UN individual delegates are assigned the power to speak for their country, and under certain circumstances these delegates raise and interpret cultural issues. In no UN member country, have such statements first been approved by its citizens,

and voting rights are normally not withdrawn from regimes exercising repression, and even genocide, no matter where they are located.

According to her detailed analysis of the available records, Waltz concludes that the Great Powers aimed at securing their spheres of power established after the Second World War: during the UN foundation conferences of the Great Powers in 1944, only the USA and China wished to include human rights issues in the UN Charter. Great Britain feared that the use of human rights language 'would fuel unrest and threaten the empire' (Waltz, 2002: 440), and the USSR considered human rights a contradiction to Stalinism. Moreover, from 1945 onwards, the USA manifested reservations towards the project of human rights. China was the only Great Power plainly supporting the idea of human rights in the UN system, and expressed its willingness 'to cede as much . . . sovereign power as may be required' (Waltz, 2001: 51). Later on, the representative of war-ridden China would repeatedly support measures for non-discrimination and for equal rights for all – policies rejected by Great Britain and the USA due to their colonial and internal politics (Renteln, 1990: 21).

The Latin American states, and especially Panama, elaborated a draft of human rights, and wished to see it incorporated into the UN Charter (Waltz, 2001: 61). Panama was supported by Chile, Cuba and Mexico. Their motion did not pass, but in coalition with the Philippines and Lebanon a certain degree of success was obtained (Glendon, 2003: 29). The delegations from Australia, France, Latin America and New Zealand achieved the inclusion of eight references to human rights in the UN Charter (Waltz, 2002: 441). Brazil, the Dominican Republic, France, Mexico, Panama and Uruguay requested more power for the UN (Waltz, 2001: 62), and several non-Western countries showed their disappointment about the lack of human rights in the Charter. Bertha Luz from Brazil and Minerva Bernardino from the Dominican Republic insisted on the inclusion of the 'faith . . . in the equal rights of men and women' in the preamble of the UN Charter (Pietilä, 2002: 10), and Jessie Street from Australia achieved the incorporation of the League of Nations' principle which made all positions within the United Nations Organization (UNO) available for women (Pietilä, 2002: 11). Under the leadership of China, non-Western states also struggled for the inclusion of provisions against racism in the UN Charter, and they succeeded (von Senger, 1993: 84f.).

The delegations that participated in the sessions and voting on the UDHR from 1945 to 1948 are shown in Table 1.

Several contemporary states still did not exist independently after the Second World War, and many of them would gain their independence only after long and cruel wars. But many European countries did not participate in the drafting process as well: apart from several small states, demographically large countries like Germany, Spain and Italy were excluded from the drafting process. The citizens of these three countries alone outnumber the citizens of the ten European countries which voted in favor

Table 1   Participating states during the drafting of the UDHR

Continent	Country	Number
Europe	Belarus, Belgium, Czechoslovakia, Denmark, France, Greece, Iceland, Luxembourg, Netherlands, Norway, Poland, Russian Federation, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, Yugoslavia	16
Asia and Oceania	Afghanistan, Australia, Burma, China, India, Indonesia, Iran, Iraq, Lebanon, New Zealand, Pakistan, Philippines, Saudi Arabia, Siam, Syria, Turkey, Yemen	17
Americas	Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, USA, Venezuela	22
Africa	Egypt, Ethiopia, Liberia, South Africa	4

of the UDHR. All six communist European countries abstained, based on the – European – ideology of Marxism. On 10 December 1948, only 10 out of 16 European states voted in favor of the UDHR.

Table 2 shows the final voting of the delegates.

From Asia and Oceania, 15 states participated in the discussions and voting at the UN General Assembly, and only one state (Saudi Arabia) abstained from the voting, and one was absent (Yemen). From the Americas, all independent states participated, and 21 states voted in favor of the UDHR. From still largely colonized Africa, only Egypt, Ethiopia, Liberia and South Africa could participate at the UN. Boer-dominated South Africa, where in 1948 the National Party had just won elections, was the only African country which abstained. Ethiopia, which had never been completely colonized by Europe, Liberia which reached independence from the USA in 1847, and still-colonized Egypt voted in favor of the UDHR. Latin America was the region present with the largest number of delegations and outnumbered the European and Anglo-American delegations including Australia. India and China, the delegations of the two most populous states of the world, participated in the drafting process and agreed with the UDHR, as did Iran, Thailand and Turkey, which were never completely colonized by European powers. Most of the abstentions from the voting for the UDHR came from the European participants.

The heterogeneous regional participation is also reflected in the discussions about the content of the UDHR. The aims of and reasons for the UDHR are the result of a process of long discussion, and expressed in its preamble:

Table 2   Delegations according to states and continents

Continent	Final voting	Number
Europe	*For UDHR*: Belgium, Denmark, France, Greece, Iceland, Luxembourg, Netherlands, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland	10
	Abstained/Absent: Belarus, Czechoslovakia, Poland, Russian Federation, Ukraine, Yugoslavia	6
	TOTAL EUROPE	**16**
Asia and Oceania	*For UDHR*: Afghanistan, Australia, Burma, China, India, Indonesia, Iran, Iraq, Lebanon, New Zealand, Pakistan, Philippines, Siam, Syria, Turkey	15
	Abstained/Absent: Saudi Arabia, Yemen (absent)	2
	TOTAL ASIA AND OCEANIA	**17**
Americas	*For UDHR*: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, USA, Bolivarian Republic of Venezuela	21
	Abstained/Absent: Honduras (absent)	1
	TOTAL AMERICAS	**22**
Africa	*For UDHR*: Egypt, Ethiopia, Liberia	3
	Abstained/Absent: South Africa	1
	TOTAL AFRICA	**4**

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . .

> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

The aim of the UDHR is the peaceful coexistence of all human beings, as well as the avoidance of rebellion and war – and *not* to please everybody or to include *all* cultural values: those states whose governments had favored war and violence – the European fascist and recently liberated countries, as well as Far Eastern Japan – were excluded from elaborating the text of the UDHR.

According to the first Chairman of the Human Rights Commission (HRC), the Canadian John Humphrey, the draft of the Chilean lawyer Alvaro Alvarez, introduced by Latin America (Waltz, 2001: 58), as well as

the Panamanian 'Statement of Essential Human Rights' presented in 1945, served as a basis for the further elaboration of the UDHR. The first compendium of the HRC included comments and statements by both individuals and associations about the project of the UDHR and comprised more than 400 pages. Humphrey's representative and Vice-Chair of the HRC, the Chinese Peng Chen Chang, was reportedly very concerned that the UDHR should not be limited to Western positions. He frequently quoted Chinese proverbs and repeatedly advised the UN delegates to read Confucius (Waltz, 2001: 59). According to Humphrey, Peng was one of the first who envisioned the UDHR as an initial step towards a binding treaty and the formulation of rules for its implementation (Waltz, 2001: 60).

From the end of September until the passing of the document on 10 December 1948, the Lebanese Charles Malik chaired the daily sessions of the HRC. Whereas the USA had wished to finish the discussions in a few days, Malik insisted on discussing the whole text, article by article, considering all objections and provisos (Waltz, 2001: 56). In his private records, John Humphrey considered Charles Malik and Peng Chen Chang as the 'two main intellectuals' of the discussion (quoted in Waltz, 2002: 443).

The interpretation of the UDHR as reaction exclusively to the Holocaust (Nowak, 2002, etc.) marginalizes other experiences of this time. These include the lack of suffrage for women in Switzerland and for most of the citizens of the British Empire, as well as the lack of legal provisions against the lynching of Afro-Americans in the USA and opposition to the racist regime in South Africa (Waltz, 2001: 53). It was especially the delegates from South Asia and China who did not shy away from debates with the USA, and who repeatedly argued in favor of the 'basic human right of racial equality'. By doing so, China followed the example of Japan, which had tried unsuccessfully to convince the League of Nations to make a declaration against racism (von Senger, 1993). Hence, before the Great Powers developed the concept of human rights as an ideological weapon during the Cold War, many less powerful states used the very same concept to argue for their independence and self-determination and insisted on the universality of human rights (Waltz, 2001: 64f.).

The reference to 'barbarous acts which have outraged the conscience of mankind' in the preamble of the UDHR resonated with meaning for many non-European delegates: Latin America had been very deeply involved in the Spanish Civil War, and was very concerned about the bombing of Guernica. During the conquest of Nanking in 1937, 200,000 Chinese had been killed, and China was the country with the second highest toll of victims during the Second World War. In India and Pakistan, the partition of the two countries in 1947 provoked cruel expulsions and created millions of refugees. The frequent repetition of the notion that the UDHR and its preamble refer only to the Holocaust also perpetuates the eclipsing of acts of war outside Europe; it annihilates the memory of the soldiers and the dead of the colonies, or of bombed cities like Manila,

for which no reconstruction plan like the Marshall Plan in Europe was elaborated and financed. It helps to efface the fact that thousands of non-white soldiers had to fight for the Allies as well as for the Fascist forces, in more dangerous places but with fewer supplies and for a lower salary than their white counterparts. It also conveniently neglects the executions and massacres by the colonial powers of those non-white soldiers who protested against this treatment and asked for the independence of their countries (Rheinisches JournalistInnenbüro, 2005).

Colonial discrimination was also obvious in discussions about the validity of human rights in Article 2: the Egyptian delegate stressed the validity of human rights in all territories and wished to include in the UDHR that 'no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty', while the colonial powers tried to defend a limited validity of human rights (Waltz, 2002: 445). Pakistan argued that the 'the greatest deprivation a people could suffer was to be denied its political independence', and expressed the 'intellectual conviction that freedom [is] indivisible' (Waltz, 2001: 66). Saudi Arabia asked for the explicit inclusion of the right to self-determination and its motion was supported by a variety of Asian countries. But the resistance of the colonial powers was too strong and a corresponding passage could only be included as the first article of the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966 (Waltz, 2001: 66, 2002: 445).

As Waltz points out, the UDHR also owes its forthright language in other areas of anti-discrimination to delegates from outside Europe: the Indian delegate Hansa Mehta was supported by the Dominican Minerva Bernardino and Pavlov (USSR) (Waltz, 2001: 63) in her insistence on gender-sensitive language and succeeded against Eleanor Roosevelt (USA), who defended 'men' as a generic term (Waltz, 2001: 63). The Pakistani delegate Shaistra Ikramullah defended the right to marry only with the consensus of the spouses and a minimum marital age (Article 16) against Saudi Arabia. She argued that the Muslim marital law does protect women wherever it is applied properly, but that this article served as a protection against child marriage (Waltz, 2001: 55). The USA, on the other hand, voted against the Russian motion for equal rights for both partners after divorce (Waltz, 2004: 820).

The prohibition of torture and its cultural meaning, an issue which has been raised repeatedly (e.g. An-Na'im, 1992), was already discussed at the HRC. Whereas Cuba wished to include cultural differences, the Philippines rejected this position by arguing that it would have provided an excuse for the gross violations exercised by the Nazi regime (Waltz, 2001: 55). In a broad intercultural coalition, many states objected to the original version of Article 14, which would have allowed refugees the right to 'seek and to

be granted in other countries asylum from persecution'. In the face of fleeing Palestinians, all Muslim states except Pakistan and Egypt voted *against* the inclusion of the right to be 'granted' asylum and changed it to the weaker term to 'enjoy' asylum (Morsink, 1993: 383–9). Article 18, the right to freedom of thought, conscience and religion, led to heated discussions: before the USSR tried to explicitly restrict religious freedom, this right had not even been included in the UDHR. The then newly elaborated draft included the right to freedom of thought, conscience and religion, although only the right to change one's religion was made explicit. The Saudi Arabian delegate Baroody criticized this unequal treatment (Waltz, 2004: 814). India defended the right to conversion (Waltz, 2004: 816), and the Pakistani delegate Muhammad Zafrullah Khan argued in the General Assembly for freedom of religion, based on the Koran (Waltz, 2004: 816). Saudi Arabia repeated its protest, referring to abuse of power by Christian missionaries (Waltz, 2004: 817).

Latin America, the Soviet bloc, Muslim countries and many Asian countries favored the idea of social and economic rights (Articles 22–7). Mexico referred to the achievements of the Mexican revolution (Waltz, 2001: 55), and the Saudi Arabian delegate proudly described the principle of *zakat* and the system of social security in Islam (Waltz, 2001: 63). Syria wished to include the concept of 'social justice', but could not find a majority. The delegates of the Philippines and China proposed the right to food and clothing (Article 25) (Waltz, 2002: 444).

The UDHR acknowledges group rights by recognizing the right of ownership in association with others (Article 17), and the right to practice religion collectively (Article 18). Article 29 stresses the duties of the individual towards society as well as the limitation of all rights for the purpose of securing due recognition and respect for the rights and freedoms of others. Article 30 aims at achieving a balance among all rights.

The chairpersons of the HRC reported to the UN General Assembly on 9 December 1948, that 85 sessions had been necessary for the discussion of the draft of the UDHR, and that 18 out of 29 articles had been adopted unanimously. In total, during two years more than 50 states had participated in the process (Waltz, 2001: 56).

In her analysis of the UN sessions, Susan Waltz concludes:

> Throughout the draft and discussion phase, the US resisted reference to discriminatory practices and to socioeconomic rights; colonial powers resisted the idea of universal extension of rights; and the USSR adamantly opposed the idea of inherent rights that could not be rescinded by the state. (2002: 445)

All Western powers opposed central aspects of the idea of human rights which were of crucial interest for non-Western countries in their struggle against colonialism and racism.

After having passed the UDHR, the majority of states voiced their support for the elaboration of *one* international covenant, comprising all

rights as set out in the UDHR. Due to the strong resistance of the USA against the recognition of economic, social and cultural rights, the UN agreed in 1951, with a weak majority, to develop two separate covenants (Waltz, 2004: 805).[1] In spite of this concession, in the same year the USA under President Eisenhower completely withdrew from participation in the international human rights system (Waltz, 2002: 443). US Senator John Bricker, for example, described human rights in the early 1950s as 'completely foreign to American law and tradition' and wished to 'bury [it] so deep that no one holding office will ever dare to attempt its resurrection' (Lauren, quoted in Waltz, 2004: 839). Great Britain tried to reduce the applicability of human rights in its colonized territories until 1954 (Waltz, 2004: 831).

The adoption of both Covenants in 1966 took place during the Cold War, and with the participation of many new and independent states. Whereas during the 1940s several states had wished to create implementation measures for human rights at the international level, this desire soon disappeared completely (Waltz, 2004: 836). Since then, nearly all states of all continents have signed both Covenants at the same time, and several states have not signed either of them.[2] Hence the frequently raised assertion that non-Western countries put more emphasis on economic, social and cultural rights cannot be proved by the ratifications of the Covenants. In fact, the nearly always simultaneous ratification of both Covenants confirms Amartya Sen's (1999) thesis about the interconnectedness of the conceding of political and economic rights.

Seen against the background of world wars and colonialism, decades of Cold War, economic neoliberalism and the current 'war on terror', the UDHR appears to be a fragile product of fortunate historic moments rather than the logical result of a linear development spearheaded by the West. It was also only not until the Vienna Declaration and Program of Action was adopted at the World Conference on Human Rights in 1993 that the UN would again pass a document which recognizes political and civil as well as economic, social and cultural rights for all human beings. The analysis of the processes of how human rights documents are elaborated shows that the wish to exclude certain people from the enjoyment of human rights is universal and is found in all regions of the world. This includes the creation of the World Trade Organization (WTO) and its regime of international law parallel to the UNO, whose corpus of regulations allows wealthy states and transnational companies to increase economic advantages due to weak social and environmental norms in the countries of the 'South'. It also includes so-called preventive self-defense, or war grounded in suspicion, which is described by Baxi as 'with no recent precedent in international law' (2005: 7), and restrictive migration policies which kill thousands of people at the boarders of Europe and the USA.

Human rights activism

For activists, human rights are much more than a legal system. They are a form of social action (Baxi, 2002: v) as well as political aspiration (Dembour, 1996: 19) and resistance, rooted in the experience of human suffering. During two decades of human rights activism mainly but not exclusively with Amnesty International (AI), I have had the opportunity to discuss issues of cultural difference and human rights norms with many activists inside and outside the organization. While many do not deem it necessary to refer to specific local cultural values in order to defend human rights, several refer to personal experience as well as local norms and values which led to their commitment to human rights. Most of them are not as famous as Nobel Prize laureates or the Bangladeshi Irene Khan, Secretary General of AI. When she took over this function in August 2001, press agencies worldwide announced: for the first time, a woman takes over this position – and for the first time a Muslim! Irene Khan herself, however, adverted that when her predecessor Pierre Sané from Senegal had taken over the position, no newspaper commented about his Christian religious affiliation. As a practicing Muslim, she does not see a contradiction between her faith and her commitment to human rights (Khan, personal communication August 2001).

Human rights activist Samuel Zan Akologo from Northern Ghana regards the education he received from his rural parents, as well as personal experience of discrimination, as the source for his human rights work:

> Basically I would say my involvement in human rights dates back to my childhood in the early 1960s. Growing up as a child, my father had always the idea of equal dignity of human beings. He had been given a praise name that means 'no human being is more important than the other' – '*Tu ka nyani taaba*'. So already that was the foundation. But also growing up in Dagomba state as somebody from a minority tribe I had to live with discrimination and being stereotyped. And so I grew up with this consciousness of trying to fight against such discrimination. . . . When I later had the opportunity and came into contact with Amnesty, it was then so natural for me to work with others to start an Amnesty group as long ago as 1989. So that's been my involvement and it was basically a motivation to live out the values and fundamental principles I believed in, and I found a good place in human rights and Amnesty International. (Akologo, interview March 2005)

And an Indian activist who wishes to stay anonymous, refers to the living conditions of the Adivasi and Dalit in Tamil Nadu as a reason for his activism:

> It is the first-hand experience of poverty, illiteracy, ill health, poor housing and lack of basic amenities that is appalling. . . . Whole families living in shacks as bonded laborers in brick kilns and being paid a pittance etc., such life situations are very disturbing and one reaches out to the poor in one's area and wants to empower them to protest and seek justice. (F.T., email July 2004)

While internationally known human rights activists often become part of the middle class, their origins vary and can be very modest. This is even truer for local activists where not Western influence, but familial context, personal experience and suffering, as well as the search for possibilities to advocate for one's personal convictions, motivate their commitment to human rights.

Frequently, activism is framed in the context of colonialism or Western-dominated neoliberal economic policies and expresses itself *against* Western perceptions of human beings. Irma Alicia Vásquez Nimatuj perceives her struggle against the discrimination against indigenous women in independent Guatemala as a struggle against ongoing colonial patterns of racism. The Maya-Kiché became famous in Guatemala in June 2002 when she took legal steps against a restaurant which had denied her access because she was using indigenous attire:

> I interpret it the following way: for the owner of the place, as a Mayan woman, I do not deserve entering his restaurant – my place would be outside where I would have to wait like a dog until my colleagues come out again. This violation asserts me that the perception of the Guatemalan elites about the role of us, the Mayans, has hardly changed in practice. *They continue to perpetuate a colonial model, enslaving and discriminatory.* . . . . I am part of the indigenous people, and as a woman who has had access to formal education, I can't be indifferent towards this reality. I have every right to work for the equality of indigenous peoples and women in my country. (Irma Alicia Velásquez Nimatuj, e-mail July 2004, my emphasis).

Human rights activism frequently leads to transnational cooperation. Activists who have gained experience in international networking can reject reductionist perceptions of cultural values, question dominant cultural concepts and ask, for example, how a distinction between local and world-wide patriarchal culture can be made:

> Is what my father told me and the things that I take from him, are they Pakistani culture? Are they patriarchal? Are they a mixture of patriarchal and Pakistani culture? . . . I am sure a mixture of patriarchy is in this, certain behaviors have nothing to do with Pakistani culture, have just to do with being a man. . . . Once I stopped being a girl and moving out of my home, and had experiences with other men who were not Pakistanis, Greek, Italian, Swiss, German, Chinese, Indonesian – I realized that these values, which I had been given in some respects, which I had always thought were Pakistani, were actually not Pakistani at all, they were male values, they were patriarchal values, they were global male values. And I am like – oh shit! They are everywhere! That's not Pakistani! . . . Often what you are told about culture is a lie or, let's say, a creation of male imagination about how a female in their culture should behave. (F.S., interview August 2004)

Several activists stressed the need to focus on common concepts and not to insist on specific cultural values, and consider human rights as a kind of 'orientation map' (Santos, 1988): 'This is not about giving priority to specific cultural values, I think they are overlapping and allow us to position

our work within specific cultural settings, and that's important' (Irma Alicia Velásquez Nimatuj, email July 2004).

Where specific values have been transmitted explicitly, activists with experience of intercultural human rights activism raise the question whether that provides enough grounds for ascribing this value to a specific culture. F.T. from India, for example, finds an analogy between a concept of the Adivasi in southern India and the book of a US-American Christian:

> Among adhivasas, the basic concept is 'we are all one' – the nature, the spheres, the spirits, the community, the forests, the land, the wild animals etc. And this holistic concept permeates their culture and their values, and so there is lot of respect for women. . . . This concept is prevalent among all the tribal communities in Tamil Nadu. Interestingly I found this concept echoed by that famous writer – Neale Donald Walsch in his three volume books *Conversations with God.* (F.T., email July 2004)

Similarly, after reading a Jewish author, F.S. from Pakistan questions whether her father's conviction that a critical distance from state authorities is Islamic, and suggests instead that it might in fact be a universal value.

The arguments of these activists show that it is *possible* to argue for human rights commitment in different cultural contexts, that activists consider their activism as chosen by themselves, and that they do not consider their reference to human rights as due to some sort of 'Western influence', but as their own agency. Outside of the rich countries of the world, however, arguments for human rights have a strong and long tradition of including critiques against colonialism and neocolonialism.

Traits of Western human rights discourses

When the crucial human rights value of anti-discrimination can potentially be found in all cultures, and when people from all cultural contexts argue for human rights e.g. (see Baxi, 2002; Keck and Sikkink, 1998), what then is intrinsic to current Western discourses about human rights, and how does Western dominance express itself in human rights discourses? I have identified two aspects of these discourses: the close relation with the state, based on the idea of its sovereignty, and Euro-centrism and *othering* as a strategy of perceiving the West and the other in a situation of supremacy and power imbalance respectively.

The close relation with the state
The UDHR points out in Article 29 that everyone is responsible for achieving human rights. Nevertheless, especially Western rights discourses are strongly linked to the state, and more precisely, to 'one's own' state. This leads to restrictions in the recognition of the whole range of human rights of migrants and refugees, and is one of the reasons why violence perpetrated by family members was only recognized as a human rights violation in the 1990s by making use of the concept of due diligence: the

state is not only responsible for not committing violations of human rights, but also for offering protection from, and legal remedies for violence committed by private actors. The importance of rights towards the state is closely related to the emphasis on a European-style state as the main responsible body for human rights.

This close tie between human rights and the state is understandable, given the specific role of the sovereign state in European history. Its beginning is normally stipulated as being the Westphalian Peace of 1648, which put an end to 30 years of war on the territory of today's Germany. Given these historical circumstances and the insecurities suffered during times of war, the idea of assigning the resort to violence exclusively to the state seemed to provide a solution. And in fact the philosophers who are considered precursors of the idea of human rights plead in their texts much more for a strong and all-mighty state than that they do for the rights of individuals. During several centuries all territories in Europe were transformed into sovereign states, and this model was then spread by the colonial powers throughout the world. At the same time, European experience of war and absolute monarchies influenced ideas about so-called 'traditional' non-European political systems and blinded Europeans to the fact that there were restrictions on absolute power in these non-European political systems long before the European concept of the state became world-wide.

But the assumption of a governmental monopoly on the resort to violence does not necessarily correspond to the realities of 'weak' or postcolonial states (see Randeria, 2003: 153); also, in Europe, many crucial governmental functions have been taken over by transnational bodies of the EU and are not longer under exclusive national authority. When sovereignties and monopolies of power change, the close relation of the human rights concept to the state can prevent effective protection of human rights, and contributes to missing, or at least delaying, important moments for their realization. The HRC's working group in charge of elaborating the optional protocol of the ICESCR, for example, has the mandate to recognize states as culprits for the violation of economic and social rights (Commission on Economic, Social and Cultural Rights, 2004), but not financial institutions like the IMF or the World Bank, which may and often do exercise great influence on government budgeting. However, effective mechanisms for the protection of human rights have to be conceptualized against those social and political institutions which exercise sovereign power (over weapons, finances, etc.), independently from whether this sovereignty is expressed in the form of a government or not.

Eurocentrism and othering

The selective remembering of philosophical and juridical documents of Europe and the USA is based on Euro- and US-centrism. This self-perception is accompanied by another phenomenon: *othering*. Processes of *othering* are based on the perception of cultures as homogeneous, clearly

delimited and static, and non-Western people are perceived as 'trapped' by 'their culture'. Especially cultural relativists relate to these concepts when they perceive activists as agents of Western ideologies who are condemned to fail. This position neglects to recognize activists as persons whose commitment is based on their own experience and considerations, and who also succeed to different extents. Postcolonial authors emphasize that *othering* is of crucial importance for the construction of the dominant European self-image (Mudimbe, 1994; Said, 1978; Todorov, 1985 [1982], etc.).

As processes of *othering* always take place, activists from the global South also sometimes try to identify traits of European human rights concepts:

> I think the Western extreme emphasis on individualism in a sense consciously or unconsciously acts as a limitation to human rights. Sometimes I have wondered whether that is the reason why civil and political rights have tended to get more focus, more emphasis than economic, social and cultural rights. Because the other body of rights, economic, social and cultural rights, is more about society, is more about recognition of people as a community, whereas in my opinion civil and political rights tend to emphasize individual rights. (Samuel Zan Akolog, interview March 2005)

Analogically, values which relate to the community are described as positive for human rights:

> I would give the example of notion of solidarity. It is not without problems, particularly for women, but it does not mean that it should be destroyed. A Westerner may not be able to understand and appreciate it since it is no more the dominant aspect of their lives. The negatives may be more apparent for them. On the other hand for a non-Westerner he/she will be experiencing both the positive and negative sides of solidarity and he/she will approach it taking into account the complexities. (D.J. Ravindran, email July 2004)

Such perceptions of the importance of individualism in Western (human rights) traditions can be understood as informed by specific experiences, one of them being the fact that Western states present the history of the origin of the UDHR in different but highly individualized forms: the USA invokes the leading role of Eleanor Roosevelt, France centers on René Cassin (Waltz, 2001: 46), and Canada proudly presents John Humphrey as the alleged drafter of the UDHR (John Humphrey Centre for Peace and Human Rights, 2005). In 1968, the French lawyer René Cassin was awarded the Nobel Peace Prize, and did not put his authorship into perspective (Cassin, 1968). By doing this, the crucial contributions of Alvaro Alvarez, Peng Chen Chang, Charles Malik and other UN delegates are marginalized, the opus of a group is ascribed to a white man, and a prime example is given of the negative effects of extreme individualism.

While processes of *othering* Southern activists influences cooperation in subtle ways, *othering* by more powerful actors can have far-reaching effects for activists exposed to it. As an example, the Nigerian women's organization BAOBAB for Women's Human Rights, which supports women in

Sharia court cases in the north of the country, points out the negative effects of prevalent negative stereotypes:

> Dominant colonialist discourses and the mainstream international media have presented Islam (and Africa) as the barbaric and savage Other. Please do not buy into this. Accepting stereotypes that present Islam as incompatible with human rights not only perpetuates racism but also confirms the claims of right-wing politico-religious extremists in all of our contexts.. . . when protest letters represent negative stereotypes of Islam and Muslims, they inflame sentiments rather than encouraging reflection and strengthening local progressive movements. (BAOBAB for Women's Human Rights, 2003)

Similarly, Leti Volpp invites to reflect about such images, when she compares the public reaction towards voluntary marriages of minors and forced polygamous relations in the USA and asks: 'When do we call behavior "cultural"? And when do we not? Why do we distinguish behavior in this way?' (2000: 89). Whereas the marriage of minors of the mainstream society is analyzed in a differentiated way and perceived as a problem, the same phenomenon conducted by Mexican migrants is considered as evidence of their being backward and un-American. Equally, the media distinguish between a forced polygyny and incestuous marriage among Mormons and a similar constellation among Iraqi migrants. Here, 'culture' is evoked selectively for explaining the behavior of specific population groups (Volpp, 2001: 1187).

Othering furthermore obfuscates similar phenomena when they appear with cultural particularities. When put into context, interesting details are revealed: based on her search of hardly accessible and relevant US-American statistics, Narayan draws the conclusion that the number of women who are victims of murder by their partners or ex-partners in the USA in all likelihood corresponds proportionally to the number of dowry-related killings in India. The distorted perception of the phenomenon is a result of different tactics of the respective women's movements against violence against women, as well as processes of *othering* (Narayan, 1997: 81–117). Contrary to the frequent and frequently one-sided 'culturaliz-ation' of violence against women outside Europe and the USA, statistics of the Council of Europe (2002) show that domestic violence is the main reason for death and mutilation of women between the ages of 16 and 44 years in Europe, ranking before car accidents and cancer. Nevertheless, 'culture' is used as a reason to purposefully deny rights to migrant women. European security forces, for example, refuse to intervene in cases of domestic violence in non-white or Muslim families, arguing from a consideration of cultural difference (Ilkkaracan, 2000; Patel, 2000), and cultural ascriptions are used to deny asylum.[3] The idea of the alleged Western-ness of human rights and related processes of *othering* can lead, in combination with unequal power relations, to an explicit denial of human rights. In fact, only imbalances of power and a feeling of superciliousness make it possible to argue with success, on the one hand that all human

beings are born free and equal in dignity and rights and are endowed with reason and conscience, as stated in Article 1 of the UDHR, and, on the other hand, that only people of one specific cultural context have been able to find this out.

Farewell to the myth of origin – towards dialogue on equal footing

Western myths about the origin of human rights create several problems: their convictions regarding the alleged historical roots of human rights are not philosophically or historically coherent or supported by the much-cited texts. Furthermore, these myths hamper the work of human rights activists worldwide, since they promote a false picture about an alleged absence of traditions compatible with human rights in Africa, Asia and Latin America (Baxi, 2002: 25). As a result of these Western myths, non-Western people – and especially women – are declared to be victims of their culture, and activism for human and women's rights is considered to be a contradiction in non-Western cultures. As a further consequence, in specific political circumstances human rights activists are accused of being 'Westernized', and non-Western people are confronted with the perception that they have to distance themselves from their cultural context in order to be able to support human rights norms.

When, at the level of international cooperation and standard setting, Western activists do not recognize their discourses on human rights as limited, and when they misconceive the idea of human rights as a 'gift of the West to the rest', this inhibits a dialogue on equal footing between Westerners and non-Westerners about the worldwide deficits, successes and misapprehensions of the human rights system and activism. These include a weak elaboration of economic, social and cultural rights, as well as the lack of effective mechanisms of protection of human rights, and the exclusive recognition of the state as responsible for human rights. The highly overdue disclaimer to the persistent tendency to assume the Western authorship of human rights simply means to recognize that in the 'West', as well as everywhere else, there are historically and currently specific approaches to human rights, each of which has their problems, and their successes and deficits with regard to human rights, and that, in all contexts, those who dedicate their lives to human rights' activism constitute a minority. The rejection of the myth of origin of human rights; the critical reconsideration of the dynamics of *othering*, and the exclusive ascription of sovereignty to the state; as well as the recognition that individualism and community life are not necessarily mutually exclusive but complement each other create the preconditions for a conjoint and equitable search for solutions to worldwide pauperization, war and discrimination. This is of the utmost importance at a time when the creation of the WTO has led to a

new and enforceable 'right to unlimited free trade' long before govern-
ments allow their citizens to claim their economic and social rights, and
where the 'war against terror' has led to the decomposition of human rights
norms.

Notes

1   All later theories built on this division but do not recognize the political reasons
    for it – including Vasak's (1982) concept of the 'third generation' of human
    rights. Vasak stresses that the concept is not meant to be understood as
    chronologically succeeding rights. Some authors later prefer to use the term
    'dimensions'.
2   These states are: Antigua and Barbados, Bahamas, Bahrain, Bhutan, Brunei,
    Cuba, Malaysia, the Maldives Islands, the Marshall Islands, Micronesia,
    Myanmar, Oman, Palau, Papua New Guinea, Qatar, Samoa, Saudi Arabia,
    Singapore, St Kitt, St Lucia andnd Nevis, Tonga, Tuvalu, United Arabic
    Emirates and Vanuatu.
3   For example, in 1997, the Austrian Bundesasylamt Traiskirchen rejected the
    asylum application of a female Afghan teacher who was denied the right to work
    under the Taliban regime and was also not willing to adhere to the dress code
    of the regime:

    > The Taliban have decided to return to Muslim culture in the area under
    > their control, and therefore to withdraw from 'Western' patterns of
    > behavior. Naturally, such an intention cannot be successful without using
    > persecution and violence.. . . In the areas under the control of the Taliban
    > attention is paid to women behaving according to the norms of a
    > traditional Islamic society, dress accordingly and exercise strict discretion
    > in public life. When women stick to these rules, they are not exposed to
    > more dangers than women are exposed to in general in Afghanistan. The
    > behavior requested from women has to be measured only by the principle
    > of human dignity.. . . You can therefore be reasonably requested to meet
    > with the patterns of behavior expected from women. Furthermore, all
    > women in your home country are equally affected by these regimentations.
    > (Bundesasylamt Außenstelle Traiskirchen, 26 April 2000, 99 15.588-BAT;
    > author's translation)

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