

Politeja

No. 2(71), 2021, pp.95-114

<https://doi.org/10.12797/Politeja.18.2021.71.05>

License: CC BY-NC-ND 4.0

**Bartosz WOJCIECHOWSKI** 

University of Lodz

bwojciechowski@wpia.uni.lodz.pl

## HUMAN RIGHTS AS AN ELEMENT OF MUTUAL RECOGNITION AND EQUALITY OF OPPORTUNITY<sup>1</sup>

**ABSTRACT** The fact of multiculturalism or pluralism plays a significant role in forming the law as well as in the functioning of various state institutions, hence human rights take a lead in the protection of the rights of minorities or discriminated groups. Considering these problems in my article, I formulate the thesis that arguments for the justification of human rights should be sought in the principle of mutual recognition, which is an expression of a cross-cultural consensus, an individualistic conception of a person, and equal opportunities as universal premises for these rights. Such assumptions expressed in human rights – whether justified or even framed in an innovative way – are the main force shaping a cosmopolitan civil society.

**Keywords:** human rights, multiculturalism, pluralism, mutual recognition, equality of opportunity, human dignity

---

<sup>1</sup> This article was published in: M. Zirk-Sadowski, B. Wojciechowski, K.M. Cern (eds.), *Towards Recognition of Minority Groups. Legal and Communication Strategies*, Farnham 2014, pp. 63-76.

In this article, I will try to indicate what contemporary democratic societies should be guided by to prevent dominant groups from violating fundamental human rights. It may seem rather trivial to note that in every society in the 21<sup>st</sup> century there are various forms of social life. Pluralism or multiculturalism plays an important role in shaping the law and the functioning of various state institutions, and therefore human rights are of particular importance in protecting minorities or the discriminated groups. I propose that support for the justification of human rights must be sought in the principle of mutual recognition, which is the expression of cross-cultural consensus. This entails an individualistic conception of the person and the privileging of equality of opportunity as a universal rationale for these rights. Such assumptions, expressed in human rights, justified or even captured in an innovative way, constitute the major force that shapes a cosmopolitan civil society.<sup>2</sup>

Representatives of different disciplines of the social sciences, politicians and, ultimately, ordinary citizens behave as if they knew what human rights meant, and what their scope and justification was. Is it really the case that we know everything about human rights? Some understand human rights as the so-called transpositive rights whose validity is derived from extrapositive legal sources. Hence, when clarifying the nature of human rights, they are determined as inalienable and inviolable, and therefore as constituting the natural attribute of a being. For others, ultimately, these rights are valid only because they are rooted in the constitution. From this point of view, these rights are a part of positive rather than transpositive law. It is noteworthy that there is a difference between the two central attributes of the concept of human rights; namely, “being universally valid” and “being inalienable.” Second, what should be indicated is the difference between the human species, “being an individual,” and the quality of being human: “being an individuality.” This second distinction refers to the logical difference between “being an individual” and “individuality” as an example of the method of political philosophy, that is, methodological individualism, as represented, among others, by Hobbes, Locke, and Rawls.

1. The prevalence of human rights, their protection and institutionalization all over the world, have allowed the formulation of the thesis of *human rights speech*,<sup>3</sup> which has a cosmopolitan character. The essence of this speech would come down to the necessity of respecting moral rights; namely, *the right to have rights*, which would result

---

<sup>2</sup> More on the cosmopolitan vision of law and social order, see e.g.: G.W. Brown, “Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law”, in G.W. Brown, D. Held (eds.), *The Cosmopolitanism Reader*, Cambridge 2010, pp. 248-266; J. Habermas, “The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society”, in B. Wojciechowski, M. Zirk-Sadowski, M. Golecki (eds.), *Between Complexity of Law and Lack of Order. Philosophy of Law in the Era of Globalization*, Toruń-Beijing 2009, pp. 13-30; T. Pogge, “Menschenrechte als moralische Ansprüche an globale Institutionen”, in S. Gosepath, G. Lohmann (eds.), *Philosophie der Menschenrechte*, Frankfurt am Main 1998, pp. 378-400.

<sup>3</sup> M. Ignatieff, *Human Rights as Politics and Idolatry*, Princeton 2001, pp. 5ff.

from adopting the principle of *be a person and respect others as persons*.<sup>4</sup> Such an assumption should be combined with the reciprocal recognition of one another as equals. The principle of reciprocity is one of the basic elements of intersubjective communication because law is based on the reciprocity between dialogue and understanding.

Characteristically, the above assumption implies that the guiding principle of human rights is not freedom, but equality. This means, based on these principles, that human freedom cannot be defined in isolation from the principle of equality. The right of freedom can thus be adequately determined only in such a way that it is the right that prescribes obedience exclusively to rules that could be established in concert with all others. When analyzing this issue in terms of semantics, it cannot be described without reference to the legislative power equally enjoyed by all. The basic premises of human rights are therefore inherently connected with the right to live in the state under the rule of law and the right to a democratic system of power.<sup>5</sup> We could note, after Arendt, that the question here is about *the right to membership of a political community*, which is the manifestation of the said *right to have rights*.

The contemporary discourse on human rights may be characterized by a considerable lack of uniformity in its justification and content. The most commonly encountered objection these days is that human rights are typically Western values as opposed to so-called Asian values. In other words, according to this view, the moral validity of human rights depends on the ethics, applicable in a given society, which challenges the universality of these rights.<sup>6</sup> This statement is not true insofar as the idea of human rights is not dependent on a specific conception of a human being, as the above would suggest. On the contrary, worldview conceptions of a human being are external to law on the basis of the Western legal tradition, or they are even treated as a competitive development of the primary idea of a human being that cannot be easily reconciled. Sadurski also refutes this paradox, claiming that the idea of human rights, which provides the evidence of the universality of certain values, cannot alone claim a right to universality. He indicates that there is no contradiction *between the aspiration to the substantive universality of a certain idea and its local character, which is culturally and historically particular*.<sup>7</sup> Consequently, the particularism of the origins of human rights cannot constitute a serious argument that would negate their universality.

<sup>4</sup> G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, Leipzig 1921, p. 49; H. Arendt, *Elemente und Ursprünge totaler Herrschaft*, Frankfurt am Main 1955, p. 614. Contemporarily on the role of Hegelian principle in the justification of human rights, see: S. Benhabib, "Ein anderer Universalismus. Einheit und Vielfalt der Menschenrechte", *Deutsche Zeitschrift für Philosophie*, no. 55 (2007), pp. 503ff.

<sup>5</sup> Cf. R. Alexy, "Die Institutionalisierung der Menschenrechte im demokratischen Verfassungsstaat", in S. Gosepath, G. Lohmann (eds.), *Philosophie der Menschenrechte...*, pp. 254ff; K. Günther, "Liberale und diskurstheoretische Deutungen der Menschenrechte", in W. Brugger, U. Neumann, S. Kirste (eds.), *Rechtsphilosophie im 21. Jahrhundert*, Frankfurt am Main 2008, pp. 338-359.

<sup>6</sup> A. Sen, *The Idea of Justice*, London 2009, pp. 355ff.

<sup>7</sup> W. Sadurski, "Nietolerancja, paternalizm i uniwersalizm" ["Intolerance, Paternalism and Universalism"], in J. Stelmach (ed.), *Studia z filozofii prawa [Studies in the Philosophy of Law]*, vol. 2 (2003), p. 165.

Whoever would nevertheless wish to maintain that human rights constitute an expression of Western hegemony falls into a peculiar paradox because these rights do protect a man irrespective of the prevailing political, economic, and social system. The manifestations of their influence on social awareness have always been the many emancipation movements that have originated from Western countries and been directed against authority or social inequalities. Some notable examples include the abolitionist movements of the late 18<sup>th</sup> and early 19<sup>th</sup> century, the modernist movements of feminism, and contemporary movements that fight for the rights of indigenous peoples. The fact that the recognition of human rights had to be struggled for is indeed treated as a common element in all cultures, particularly in Germany, Iraq, Vietnam or Niger. They are not the primordial element of any particular cultural or religious tradition, but they arise in the course of a public political debate.<sup>8</sup> In this context, Nussbaum recognizes human rights as the essence of a political rather than moral cross-cultural consensus.<sup>9</sup>

What undoubtedly remains problematic is a clear consensus between a philosophically derived set of human rights and the specific legislation. Here the question arises as to how democratically derived interpretations and variants of contextualizing these rights may actually be realized. At the same time, Nussbaum presents an unconvincing procedure based on philosophical deduction because it connects too narrowly the legal concepts with the philosophical anthropology of human activity. Notwithstanding this shortcoming, Benhabib rightly criticizes that what is missing is the distinction between rights as *moral principles* and rights as *legal claims*, as well as between *the principle of rights* and *a list of rights*.<sup>10</sup>

From the positive-legal perspective, the universality of human rights is evidenced by their expression in the international instruments that have been finally ratified by almost all countries. Thus, we may speak of a cultural legislative consensus, which consists of the universal recognition of the most important human rights.<sup>11</sup> Alexy notes in this context that human and civil rights are the result of the historical development of humankind, a far-reaching consensus on fundamental rights.<sup>12</sup>

<sup>8</sup> H. Bielefeldt, *Menschenrechte in der Einwanderungsgesellschaft. Plädoyer für einen aufgeklärten Multikulturalismus*, Bielefeld 2007, pp. 28ff.

<sup>9</sup> M. Nussbaum, "Capabilities and Human Rights", *Fordham Law Review*, vol. 6, no. 273 (1997-1998), pp. 273-300.

<sup>10</sup> S. Benhabib, "Ein anderer Universalismus...", p. 503.

<sup>11</sup> T. Risse, "Menschenrechte als Grundlage der Weltgemeinschaft? Die Diskrepanz zwischen Normanerkennung und Normeinhaltung", in N. Janz, T. Risse (eds.), *Menschenrechte – Globale Dimensionen eines universellen Anspruchs*, Baden-Baden 2007, p. 19.

<sup>12</sup> R. Alexy, *Begriff und Geltung des Rechts*, Freiburg–München 1992, pp. 94ff. A similar standpoint has also been expressed by O. Höffe, *Vernunft und Diskurs. Bausteine zu einem interkulturellen Rechtsdiskurs*, Frankfurt am Main 1998, pp. 55ff. A critical view, however, has been presented by Armin Engländer (A. Engländer, *Diskurs als Rechtsquelle? Zur Kritik der Diskurstheorie des Rechts*, Tübingen 2002, pp. 94-95). First, he notes that what can be observed, even in Western societies, are strong fundamentalist movements, particularistic and highly discriminatory in morality, law, religion, and politics, which constitutes an empirical counter-argument against the thesis of the historical consensus in

The second objection, most frequently pursued vis-à-vis the universality of human rights, is based on the belief that they are an expression of the Western culture of individualism. This objection seems to be derived from Kant. Gray stated in like terms that *being an autonomous entity does not (...) stand for being a timeless essence of humanity*.<sup>13</sup> In his view, autonomous individuals constitute artefacts whose existence was made possible by the power of the modern state. The argument from the individualism of human rights appears to be ineffective, especially in the face of the reformulation of contemporary thinking about human rights as a result of a dialogue between communitarians and liberals. It is undoubtedly possible to create a conception of liberal, individual fundamental rights that are in fact nothing else but the rights of the individual (i.e. his or her individual rights). They find their positivist-legal expression in the normative protection of the civil attributes of the individual as a unique legal entity. The uniqueness of granting such rights consists in the fact that they are of use for an individual, according to the personal meaning of their own names (age, mental health etc.). As a result, every citizen is in the same way granted fundamental rights as *a personal legal property*, yet not as an equal among equals, but as a unique and incomparable person.<sup>14</sup>

The equality of the holder's individual rights vis-à-vis law, as guaranteed here, relates equally to the granting of such rights, limiting their application, and their deprivation. To avoid possible misunderstandings, we have to distinguish between the individual, who is characterized by its existence and the uniqueness manifested in the meaning of its own name, the ability to use the identity document (i.e. in its descriptive terms), and the prescriptive approach to a person as a personal individuality of "the highest quality."

It should also be remembered that Western liberal countries also strive to articulate and protect individual rights, and emphasize the responsibilities of each individual towards the community and society. One can enumerate the rights that are apparently merely individual, such as freedom of expression and freedom of religion, because they largely concern the communities (political parties, religious communities) and thus refer to a collective identity.<sup>15</sup>

Sen distinguishes two more objections raised against human rights, which he refers to as the legitimacy and the coherence critique of human rights.<sup>16</sup> The first is based on the assumption that the meaning attributed to human rights undermines the status of the legal system because it refers to the prelegal norms, without indicating the sources

---

relation to human rights. He also indicates that no normative implications can be derived from the historical development. This argument, however, is irrelevant insofar as the issue here is not the normative justification of the universality of human rights by demonstrating their universality and the fact of the historical consent as to their recognition. It is rather to present a certain trend that will empirically justify such a universality. In turn, particularistic and fundamentalist tendencies should be treated as an exception to what is commonly recognized, worthy of criticism and disapproval.

<sup>13</sup> J. Gray, *Two Faces of Liberalism*, Cambridge 2000, p. 115.

<sup>14</sup> W. Becker, "Über das 'Paradox der Menschenrechte' und wie es sich vermeiden ließe", in E. Hilgendorf (ed.), *Wissenschaft, Religion und Recht. Hans Albert zum 85. Geburtstag*, Berlin 2006.

<sup>15</sup> Cf. J. Raz, *The Morality of Freedom*, Oxford 1986, pp. 251-253.

<sup>16</sup> A. Sen, *Development as Freedom*, New York 1999, pp. 227ff.

of their validity and their enforcement methods. The objection of a lack of legitimacy on the part of human rights seems to be erroneous today, given the prevalence of the references to the concept of human dignity as the source of those rights. Thus, to be justified, they do not need to be expressed in a “positivized” form, supported by the authority of the state, but they can be derived from the general principles and requirements of morality. The latter is particularly the case because the interrelation between the law and the state ceased to be based on a state-dependent paradigm.

The coherence critique, in turn, emphasizes the merely verbal nature of these rights because they indicate the right that everyone is entitled to, yet they fail to specify who is required to exercise this right, provided it has been articulated. Kant has been treated as the foundation of contemporary doubts about rights because in his times people did not even dream of social rights (such as the right to food and social security).<sup>17</sup> It was never clarified who was to provide the said food and security. Therefore, the inconsistencies between the powers on the side of one entity, and the obligation on the side of another specific entity, were pointed out. This objection seems to be at least anachronistic, not to say completely ineffective. What seems to be most essential in human rights is their potentiality, the possibility of articulating one’s needs. They create opportunities followed by the structural and institutional transformations of society. Human rights include prerogatives enjoyed by all, and although sometimes there is no particular person that should implement them, the particular demands arising from these entitlements can be directed to the entities and bodies which, because of their social functions or roles, allow their fulfilment or at least help in granting them. Most of these rights are undoubtedly addressed to the state or the international community, as in the case of famines in Africa. Consequently, these entities are required to assist in securing them.

2. Doubts as to the understanding of human rights also arise during the discussion on which authority is legitimized to ensure their compliance by sanctions. We almost naturally appeal to the liberal-libertarian model, under which every constitutional right can be presented as derived from *individual free will*, which can in turn be contrasted with the demand to ensure every individual’s participation *on an equal footing* in the shaping of the universal will. On the one hand, there is the idea of secular legislation: the creation of society as a union of free people, while on the other hand, there is a reference to a *divine* legislation – superior to the human one – in the belief that the individual’s right to equal codetermination cannot be attributed merely to human free will.

When adopting the personal interpretation of fundamental rights, the drama of *the dilemma of human rights* is eliminated, at least to a certain extent.<sup>18</sup> At the same time, it is possible to abstract from the entire religious metaphysics. This would also better

<sup>17</sup> I. Kant, *Metafizyka moralności* [*The Metaphysics of Morals*], transl. by E. Nowak, Warszawa 2005, p. 254.

<sup>18</sup> According to this “dilemma,” the validity of a human rights claim should only be based on positive law as a part of national legislation. However, the lost divine authority of such a law, at the same time assumed to be ‘a supra-positive’ law, can be guaranteed neither by theologians nor by philosophers. For more on this, see: W. Becker, “Über das ‘Paradox der Menschenrechte’...”

correspond to the intention of philosophical Enlightenment, which by referring to the fundamental criteria of scientific methodology is directed against the introduction of religious and mythological assumptions in the creation of the theory. In this way, our basic rights to freedom would actually have a consistently secular character, based on individual-personalised image of a man, which provides the foundation for the Western-Christian tradition.

The need to respect such rights would result from the adoption of the said principle of *be a person and respect others as persons*. Nevertheless, it only involves the ban on infringing individual rights because the law based on it is to determine only the limits of free will. The universality of human rights lies in the thesis on human dignity,<sup>19</sup> because when considering the question of generally perceived human equality, treated as a substantive cornerstone of modernity (the world of “culture”), we assume that the only appropriate approach is to recognize the “I” – every human being as a person *in general*, of whom *all* are identical in terms of their equality and freedom.

Dignity is the essence of a human being. It is inextricably linked with every human being irrespective of who he or she is, or how and where he or she lives. Dignity is thus rooted in the entelechy of perfect humanity. Human dignity constitutes the ontological quality and the constitutive feature of selfhood. Therefore, this semantically open dignity is called *the sanctity of the human being* and it constitutes a value that is recognized and confirmed rather than established by the positive law. Human dignity is innate, and is thus an intrinsic, fundamental, and universal value. Its source is *humanity as such*.<sup>20</sup> The innate character of dignity means its inalienability. It follows that every person is vested with it, regardless of individual characteristics (i.e. without regard to race, religion, nationality, height, weight, aptitude or origin, etc.). Therefore, it has a non-degradable and inalienable character, because if someone is a man, he is a man to the same extent as any other man. The latter assumption can lead to an inference – not widely accepted in the modern world – that human dignity is independent of not only of social, ethnic, or gender affiliation but also of the moral qualities or physical ability.<sup>21</sup>

The universal and egalitarian concept of dignity assumes that all people deserve to be treated with respect. In other words, the concept of dignity has taken the form of the demands to recognize the equal status of entire cultures and to eliminate gender, ethnicity, and racial inequalities. This is based on the fundamental belief that as human beings, we are persons and in this respect, we are all equal, even if different in all other respects.<sup>22</sup> Dignity is thus a criterion for establishing whether a given law is fair,

<sup>19</sup> Habermas presents this issue somewhat differently. Cf. J. Habermas, “Das Konzept der Menschenwürde und die realistische Utopie der Menschenrechte”, *Deutsche Zeitschrift für Philosophie*, no. 58 (2010), pp. 343-357.

<sup>20</sup> I. Kant, *Metafizyka moralności...*, p. 50. It is worth noting that human dignity is understood in a similar vein in the Qur'an in Surah 17.70.

<sup>21</sup> C. Delsol, *Esej o człowieku późnej nowoczesności [An Essay on Late Modernity Man]*, transl. by M. Kowalska, Kraków 2003, p. 187.

<sup>22</sup> Cf. J. Finnis, “The Priority of Persons”, in J. Horder (ed.), *Oxford Essays in Jurisprudence: Forth Series*, Oxford 2001, p. 1.

because fair law protects dignity, and a violation of such a law is inconsistent with inherent dignity. It is therefore accurate to say that no one should be regarded as morally inferior based on such physical or racial characteristics which are entirely independent of him or her.

All jurisprudential traditions, despite their fundamental differences, consider the idea of a person treated as a rational and free being, and thus endowed with the specific dignity that distinguishes him or her from the world of things, as a basis of the legal order. The meaning is perfectly captured by Boethius' adage *persona est rationalis naturae individua substantia*. Personal human dignity lies in a person's ability to perform rational, free, and moral action. These standpoints differ, however, when it comes to identifying the quintessential element of human dignity; namely, whether it is a rational nature (Thomas Aquinas and neo-Thomism), freedom (Kant and liberalism), or rather a moral life that has its source in the community (Hegel and communitarianism).

They also differ substantially in terms of how the law should serve a human being to enable him the most complete development of his personality, and thus protect his dignity. Accordingly, it can be stated, with some generalization, that it is clear for a liberal that the law respects human dignity only when it provides the maximum sphere of individual autonomy (freedom to decide) which is compatible with the sphere of the autonomy of other people.<sup>23</sup> In turn, for a Thomist (also neo-Thomist) the freedom to shape one's own life is just one of the fundamental interests of a man as a rational being. Consequently, in certain situations he will allow for the possibility of restricting freedom in the name of the individual's interest, which for a liberal constitutes a manifestation of paternalism, thus violating human dignity. On the other hand, what is most crucial for communitarians is the protection of the interests of the community within which a man can obtain positive freedom and full dignity by living according to the ethical standards of the community. For a liberal, this position is a manifestation of legal moralism.

Obviously, it is not conclusive that Kant's *law of reason*, referred to, among others, by Hart and Hoerster,<sup>24</sup> constitutes the foundation of human rights. Becker aptly notes that in a supracultural understanding, *reason* can be considered a widespread human ability to draw logical conclusions.<sup>25</sup> In other words, the ability to reason assumes that every man has it to the same extent, yet it constitutes neither universal *practical reason* in Kant's sense, nor the source of universal legislative authority.

It follows from the above considerations that the idea of a human being and his or her dignity are the indispensable elements of the internal structure of the law. In this perspective, human dignity provides the constructive basis for the entire constitutional order; it constitutes the source, the foundation, and the principle of this order. In other words, it is the basic norm (*Grundnorm*) of this order in the logical, ontological, and

<sup>23</sup> It should be kept in mind that even liberals argue about whether in order to provide autonomy it is sufficient to ensure freedom from direct coercion or whether one should also ensure equality of opportunity, or even of material resources.

<sup>24</sup> H.L.A. Hart, "Are There Any Natural Rights?", in J. Waldron (ed.), *Theories of Rights*, Oxford 1984; N. Hoerster, *Abtreibung im säkularen Staat*, Frankfurt am Main 1995.

<sup>25</sup> W. Becker, "Über das 'Paradox der Menschenrechte'..."



hermeneutic sense. It enables the understanding of basic institutions, such as legal subjectivity or legal liability, as well as the internal values of law, including legal security or justice. A more detailed analysis of the idea of human personality is allowed by such conceptions of a man and society that are external to law. Consequently, it is generally recognized that the fundamental value that provides the basis of human rights is in fact human dignity. The latter reinforces the idea of treating all people as free and equal, which is sufficient to formulate the elementary, universal human rights based on those very values.

3. The desire to be recognized is thus a basic element of human life that starts with the identification and recognition of oneself and ends with a peculiar dialectics which expresses the interrelations between the need for a constant struggle for recognition and its institutionalization. A fear of the refusal to be recognized sometimes amounts to a fear of death, and therefore the intention to obtain recognition or to protect against its loss become the driving force behind the life of every person in society, the main motive for their actions at every level of their existence.

Generally speaking, the theory at issue focuses primarily on granting equal and mutual recognition in human relations to different entities originating from diverse cultures and social groups, belonging to national, racial or ethnic minorities, professing a different religion and placed lower in the social hierarchy due to their material status. For the relations of mutual recognition to be fair and equal, they should allow for the recognition of every entity within the interpersonal relations as an equal and free interlocutor, as well as prevent humiliation and discrimination, while leading to redistribution in the field of economic relations. The preceding moment, which is at the same time part of recognition, is in fact self-esteem, manifested in the consolidation of one's authentic identity.<sup>26</sup> The construction of one's identity takes place by discovering the difference between oneself and Another. The issue here is the taking into account of the negativity of Another and the internalization of Another during the self-determination process. In other words, the source of identity lies in Another; namely, in the internalized difference from Another and the difference of Another.<sup>27</sup> The sum of the differences, that is, the combination of what differentiates Me from Another and of what differentiates Another from Me, is considered self-knowledge. It can be said that mutual recognition involves a combination of self-reflection and a focus on Another that conditions the relation to oneself and to intersubjectivity.

The recognition referred to here is characterized by reciprocity, yet not in terms of mutual reciprocity as a participant in a merely binary relationship.<sup>28</sup> Reciprocity is

<sup>26</sup> C. Taylor, "The Politics of Recognition", in A. Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*, Princeton 1994, pp. 28-44; also: P. Ricœur, *Drugi rozpoznania* [*The Course of Recognition*], Kraków 2004, pp. 57-144.

<sup>27</sup> W. Kalaga, "Obowiązek Innego. Trzeci" ["The Duty of Another. The Third"], in idem (ed.), *Dylematy wielokulturowości* [*Dilemmas of Multiculturalism*], Kraków 2004, p. 50.

<sup>28</sup> Zygmunt Bauman touched on such reciprocity when considering the difference between the contract and morality. As noted by this eminent sociologist, this difference lies in the fact that fulfilling the

revealed in all its power primarily in the relationship of I-Another, as referred to by Lévinas. The reciprocity of my commitment becomes my commitment when I become Another for the Second and the Third. In other words, if I care about another person (the Second), I also require such care and concern for the Second from other entities (from the Third), as well as for Another (I) from Another (the Second, the Third) if it is to be complete and all-encompassing.<sup>29</sup> What therefore intertwines here are the moral precepts of the commitments of I towards Another, as well as the commitments of Another towards Another (including Me). In other words, we move from self-identification into a dialectical relationship, captured on the existential level, which leads precisely to reciprocity (or mutuality). Mutual recognition thus stands for a certain intellectual simultaneity, intersubjective intercourse, or becoming together.<sup>30</sup> Ricoeur writes that the dialectic of recognition leads to *some things* in general, then it goes through *someone* and *selfhood* to arrive at the figure of identity achieved in the reciprocity (Greek *allēlōn*, i.e. *one another*).<sup>31</sup> At the same time, the principle of reciprocity has the character of a universally valid norm, regardless of cultural differences.

Reciprocity plays a crucial role in a well-ordered society understood as a system of social cooperation, but when reciprocity is considered a universal principle, it functions in all societies, even in these *poorly ordered* ones. It finds its full institutional expression in a well-ordered society because citizens are treated there as reasonable only if they perceive each other as free and equal.<sup>32</sup> The criterion of reciprocity also means that the conditions of ordering the society are regarded as reasonable by all who can accept them as free and equal citizens, rather than as dominated and manipulated people who are placed lower in the social hierarchy.

Legal recognition means the protection of the individual's sphere of freedom and legally guaranteed participation in the public process of creating free will, which after all is not possible without ensuring a certain social standard of living. Being granted individual rights means that the entity may raise socially acceptable claims and thus carry out a legitimized social activity, being convinced that all the other members of the society must treat him or her with respect. Therefore, rights serve the purpose of developing self-respect by providing the individual with a symbolic means of expression that permits one's social activities and leads to a widespread (also moral) recognition of the individual as an irrefragable and talented in his unique way person.<sup>33</sup>

---

obligation that arises from a contract depends on fulfilling the commitments by the partner, while in the case of morality, he precludes this type of conditional reciprocity. See: Z. Bauman, *Etyka nowoczesna [Postmodern Ethics]*, Warszawa 1996, pp. 76-82.

<sup>29</sup> E. Lévinas, *Inaczej niż być lub ponad istotą [Otherwise than Being or Beyond Essence]*, transl. by P. Mrówczyński, Warszawa 2000, p. 192.

<sup>30</sup> P. Ricoeur, *Drugi rozpoznania...*, pp. 146ff.

<sup>31</sup> *Ibid.*, p. 255.

<sup>32</sup> J. Rawls, *Liberalizm polityczny [Political Liberalism]*, Warszawa 1998, pp. 48ff.; idem, *Prawo ludów [The Law of Peoples]*, Warszawa 2001, p. 194.

<sup>33</sup> A. Honneth, *Kampf um Anerkennung. Zur moralischen Grammatik sozialer Konflikte*, Frankfurt am Main 1994, p. 194.

The obligation of mutual respect reinforces our position as irreproachable individuals, but it also assumes the unity and specificity of the human species. Disrespect violates the very essence of humanity. It violates the concept of human dignity, thus creating tragedies known to us in the form of slavery, rape, ethnocide, and so forth. Disrespect entails dividing people into the categories of more or less human (i.e. worthy or unworthy of living). In this context, respect for human rights stands for respecting certain requirements that are indispensable for respecting an individual's being.<sup>34</sup> Being respected means, after all, that what we think, do, or plan to do matters to other people and that we are relatively important. Accordingly, the fact that we live "is of importance to others" and we deserve the care of others. In this sense, the commandment "love thy neighbor as thyself" would encourage the desire in others to perceive, recognize, and confirm that they themselves represent something special, irreplaceable, and permanent. In other words, *loving our neighbors as ourselves would therefore stand for the mutual recognition of one's own uniqueness – mutual respect for the differences between us.*<sup>35</sup> Moreover, morality, which can lay claim to fulfilling the idea of a good man as the partner in the cooperation in interpersonal relations, is the universal morality of equal respect. In other words, a true and correct moral attitude consists of recognizing others (strangers) as subjects of equal rights, which further means that the duties incumbent on us in regard to others correspond to the rights of the latter.<sup>36</sup> The task of modern law is to protect the relations of intersubjective recognition by sanctions, leading to the least possible violation of the integrity of a single legal entity.

The violation of mutual recognition, and thus our obligations towards another, damages their identity. This commitment must nevertheless be mutual. That is, as already noted, the responsibility for and towards another must assume the full and equal responsibility on the part of another. It is unacceptable to release them from the obligation to respect the rights of others because of their weaker position (i.e. alienation). Depriving them of the right to be responsible disqualifies their moral decisions and makes them an inadequate participant in social interactions, and thereby introduces inequality in relation to mutual recognition. Behind such inequality of commitments and a lack of balance in the sphere of obligations, there is a danger of an authoritative and patronizing granting of privileges arising from the conviction of the superiority of one's own knowledge and morality, which results in the disrespect and humiliation of another.

Each entity is a member of the community which allows them to live authentic lives in solidarity with others. Rousseau noted that within the state structure the dependence on others does not mean a simple dependence on the hierarchy of political power, or other dependencies that condition the survival or the possibility of attaining some

<sup>34</sup> C. Delsol, *Esejo o człowieku...*, p. 36.

<sup>35</sup> Z. Bauman, *Szansa etyki w zglobalizowanym świecie [The Chances of Ethics in Globalized World]*, Kraków 2007, p. 12.

<sup>36</sup> E. Tugendhat, *Vorlesungen über Ethik*, Frankfurt am Main 2001, ch. 5.

goal. It stands above all for the desire to obtain respect.<sup>37</sup> The concept of recognition contains, therefore, the moment of approval or even social and psychosocial affirmation. It follows that we endorse (affirm) our participation in the creation of the world (the universalistic moment) in such a form as we would like to see it (individualistic moment). It is therefore crucial what we do and who we are, or rather, who we can be and what we could do. Let us keep in mind that an equal legal status does not yet mean that we are seen and noticed and therefore respected by others. The cacophony emanating from at least formally equal legal entities might drown out some voices, which becomes a source of anxiety and a sense of injustice. Therefore, emancipation seeks to protect individuality in society, which indicates that the aim of the public sphere is to bring out and nurture the private sphere.

As can therefore be seen, Honneth's theory of recognition constitutes a combination of the conception of human mental development and the conception of social participation and the change that a human being undergoes. The starting point is therefore to determine one's own identity as an intersubjective process of justifying the claim of mutual recognition of the participants in social interactions. Fukuyama, referring to Plato, points out that *thymos*, as a *proud side of the human personality*, requires others to recognize our worth and dignity.<sup>38</sup> A failure to win recognition at the level of any of the above three spheres, assuming the form of disregard or contempt, evokes a sense of shame or anger, and this in turn leads to the social struggle for recognition. What is particularly keenly felt is the humiliation caused by a refusal to grant civil rights, the frustration resulting from the inability to participate in the shaping of public will, and finally a sense of exclusion due to poverty and consequently a lack of access to basic material goods. In summary, a denial or a loss of recognition is every time expressed in a different form and in a different affective modality.

In other words, different patterns of recognition represent the respective intersubjective conditions that we need to bring out if we want to describe the structures of the desired life, whereas the anticipated state is already contained in the community of values. The latter is guaranteed by the interrelation between recognition and solidarity, under which the social valuation takes place.

What is behind these shared values is the universal human rights justified by human dignity, which ensure the peaceful coexistence of different ways of life. We therefore deal here with the law that guarantees a universally acceptable community of such values, which seem indispensable at the stage of statehood (solidarity). Naturally, there arises the question – indicated in the first section – of whether this common horizon of values in the intercultural context is always given or assumed. This causes the complexity of intercultural dialogue that seeks to recognize the diversity of every individual in the particularity of their value. Therefore, one must adopt a certain intransgressible

<sup>37</sup> J.J. Rousseau, "Rozprawa o nierówności" ["Discourse on Inequality"], in idem, *Trzy rozprawy z filozofii społecznej* [Three Discourses on Social Philosophy], Kraków 1956.

<sup>38</sup> F. Fukuyama, *Our Posthuman Future. Consequences of the Biotechnology Revolution*, New York 2003, p. 149.

canon of values which are captured in the form of universal and inalienable human rights. It should be noted that the question of intercultural dialogue already presupposes a certain minimum of common values, despite cultural diversity,<sup>39</sup> such as the ethos of freedom and equality. What seems indispensable is a minimal *ethical consensus*.<sup>40</sup> Without it, there can be no meaningful intercultural dialogue that could lead to discursive consent. On the other hand, the heterogeneity of respective values makes recognition true and complete. The point here is precisely to recognize another despite their different lifestyle, beliefs, and values. In other words, the recognition of another also involves transcending and expanding one's horizon of values, as in the example of the opening of Christian societies to Islamic values. It is worth noting that this process is determined by national origin, gender, religion, race, or ethnicity, and is clearly highlighted in societies based on the idea of human dignity, in which the recognition (in reference to the cooperative nature of this community) purely depends on the individual's activity. In this sense, the struggle for recognition is expressed in the ubiquitous language of identity, as described by Charles Taylor.<sup>41</sup>

4. What is crucial from the perspective of a cross-cultural dialogue is the recognition of not only the values professed by another but also the particular situation in which they live. The difficulties in reaching a consensus and an understanding therefore require a *fusion of horizons*, as referred to by Gadamer,<sup>42</sup> Such a state can be achieved by adopting the roles of a *speaker* and a *listener*. Changing the dialogic perspective means the engagement in a symmetry, which is the foundation of every speech act. The starting point here is the conception of a generalized other which allows us to treat each individual as a rational being and the recipient of the same rights and obligations as us. A *generalized other* is an *important* other (i.e. the reference point of our activities). The reciprocity of perspectives allows us to develop a common horizon of intersubjectively shared fundamental values. The point of departure here is to grant all the participants an equal and inherent dignity, and thus to recognize their equal rights. Such an abstract and formal conception does not always guarantee fairness in dealing with specific others because it involves the risk of an improper unification of differences and diversities between respective actors.<sup>43</sup> This risk has been pointed out in communitarian critiques of liberalism and in feminist critiques of normative ethics, whose leading representative in modern times is the American philosopher Seyla Benhabib.

<sup>39</sup> M. Becka, *Anerkennung im Kontext interkultureller Philosophie*, Frankfurt am Main–London 2005, p. 154.

<sup>40</sup> This rule is thus akin to the Kantian imperative, according to which "I should act only according to that maxim whereby I can, at the same time, want that it should become a universal law." I. Kant, *Grundlegung zur Metaphysik der Sitten*, Leipzig 1797.

<sup>41</sup> C. Taylor, "The Politics of Recognition...".

<sup>42</sup> H.-G. Gadamer, *Wahrheit und Methode. Grundzüge einer philosophischen Hermeneutik*, Tübingen 1960.

<sup>43</sup> M. Becka, *Anerkennung im Kontext...*, p. 155.

Benhabib proposes to supplement the ethical theories with the conception of a *Concrete Other*, which will allow the introduction of fair activities to a greater extent than when merely applying the concept of a *generalized other*. The aim is to treat every rational being as an individual with a specific history, identity, and affective-emotional structure. The author of *Another Cosmopolitanism* notes that this perspective will enable us to better understand the needs of the other, their motives, goals or wishes.<sup>44</sup> Benhabib criticizes in this context the abstract nature of Rawls' *veil of ignorance*, considering that fair behavior towards the other can only be complied with if we have knowledge about their needs and wishes, their own story. Such knowledge comes primarily from the dialogue.<sup>45</sup> Höffe aptly notes that the crucial aspect of the intercultural discourse on human rights is to know the history, culture, language, and values of the different communities that participate in this argumentative process. What can be anticipated, therefore, is the anthropological (and to some extent, communitarian) goal whereby each person is embedded and rooted in a specific culture or a "mixture" of cultures and, accordingly, conditioned by it.<sup>46</sup>

This is precisely where the normative quality of Honneth's conception lies because an on-going analysis of the interrelations of recognition anticipates a hypothetical state of the formal conception of the good life, that is, ethics (*Sittlichkeit*). Ethics expresses not only the ethos of a particular living world but also manifests as a community based of intersubjective conditions.

Additionally, the egalitarianism of human rights assumes that in granting the rights based on human rights and in their differentiation at the statutory level, there can be no application of separate criteria, either at the natural (biological) or at the social (artificial) levels. At the same time, it should be kept in mind that such ways of living or treating others which are contrary to human rights are not afforded moral legitimacy or the right to equal opportunities in life even when they constitute an integral part of cultural practice or the element of a religious belief system that people identify with. The principle of neutrality is a manifestation of the egalitarianism of human rights, and the latter entitle everyone to live in a community governed by democratic rules. Neutrality has an ethical dimension and, as such, does not allow the attitude of indifference towards cultural forms that violate human rights.<sup>47</sup> In other words, the idea of tolerance (neutrality principle), resulting from human rights, stands for the respecting of the rights of others. Accordingly, it is not a question of any tolerance, but rather the tolerance directly related to the rights and freedoms vested in others. Walzer notes that we do not deal here with an unlimited tolerance because it is impossible to imagine that all imaginable forms of diversity would be

<sup>44</sup> S. Benhabib, *Selbst im Kontext*, Frankfurt am Main 1995, p. 176.

<sup>45</sup> *Ibid.*, p. 180.

<sup>46</sup> O. Höffe, *Vernunft und Recht. Bausteine zu einem interkulturellen Rechtsdiskurs*, Frankfurt am Main 1996, pp. 60ff.

<sup>47</sup> W. Kersting, *Recht, Gerechtigkeit und demokratische Tugend. Abhandlungen zur praktischen Philosophie der Gegenwart*, Frankfurt am Main 1997, p. 463.

acceptable.<sup>48</sup> To argue to the contrary would be to violate the principles of humanitarian tolerance. In other words, the limit of tolerance should be the tolerance for intolerance. That is, we accept and consider acceptable rules of conduct for others that do not cause them harm. Such an understanding of tolerance and human rights leads to the creation of a culturally, ideologically, and religiously pluralistic society. It should be borne in mind that it is in fact the heteronomy of values that characterizes the essence of such a society, and it is, in turn, consolidated by ideological differences. Therefore, I advocate tolerance without paternalistic overtones, which, according to Habermas, whom I fully endorse, is possible by embedding it in the context of a democratic society.<sup>49</sup>

5. Such rights form the basis of an inclusive community of a constructivist nature. Legal compulsion is treated here as a procedural rationality and an adequate communication device to enable the legislator to rationally develop political will and apply the law.<sup>50</sup> This community includes various organic communities, yet without allowing for the lack of moral sense. At the same time, a normative model of such a community is based on the conception of the individual as a socialized bearer of different social roles internalized by the socialization process which are reproduced in on-going interactions. In this sense, an internalized, and thus well-formed, social personality reinforces autonomous symbols, normative patterns, and so forth, which subsequently leads to their externalization. Naturally, a constructivist community does not express any common morality; however, at its core is the belief that one must accept a certain minimum of rules that protect human life, property, and compliance with obligations.<sup>51</sup>

A constructivist community is of an inclusive character in the sense that its boundaries and membership are the subject of an agreement reached by negotiated consent. Such a constructivist community allows the preservation of what is most valuable in the idea of the community and what is good in the ideas of individuality, autonomy, diversity, and uniqueness. Constructivism accepts the fact of pluralism and the rationality of the thesis of the incommensurability of values and lifestyles. The idea of constructivism treats the argument from pluralism as a starting point for reflective and critical thinking about the foundations of society from the perspective of particularism, as well as communitarianism and multiculturalism.<sup>52</sup> Constructivism allows at the same time

<sup>48</sup> M. Walzer, *On Toleration*, Cambridge 1997.

<sup>49</sup> Cf. Habermas's statement cited in G. Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, London 2003, pp. 45ff. In particular, it is worth quoting the following passage: "Inside the democratic community, whose citizens reciprocally grant each other equal rights, there is no room for the authority to be allowed to *unilaterally* determine the boundaries of what is to be tolerated. In light of the equal civil rights and mutual respect for each other no one has the privilege of establishing the limits of tolerance in terms of personal preferences and recognized values."

<sup>50</sup> J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge 1998, p. 453.

<sup>51</sup> H.L.A. Hart, *Law, Liberty and Morality*, London 1964, p. 70.

<sup>52</sup> P. Roberts, *Political Constructivism*, London–New York 2007, pp. 4, 10ff.

the extraction of the elements that provide the foundations for the objective validity of certain principles and values. Resorting to the idea of communicative community allows the conception of duty as an external compulsion, according to which a moral demand needs an external social support and reinforcement (morality is therefore seen as a socio-economic and heteronomous product external to a given person<sup>53</sup>), to be combined with Kant's conception of moral duty as *self-compulsion and self-commitment*. Accordingly, the key to respecting diversity and protecting the rights of ethnic, cultural, religious, and sexual minorities is not the ethical neutrality of the legal system but the protection of every legal community and democratic process of exercising human rights and fundamental rights.<sup>54</sup> It is also important to recognize that discourse is conditioned by interpersonal solidarity, which Habermas defines as *the other side of justice*. This involves treating the other not only as an equal but also a unique entity.<sup>55</sup>

The institutional tool here is a discursively understood law based on the consensus of all cooperating citizens and driven by Habermas's *constitutional patriotism* (*Verfassungspatriotismus*) which expresses the solidarity of the citizens.<sup>56</sup> The constitution must undoubtedly ensure the equal coexistence of different ethnic groups and their cultural forms of life. It must bear in mind the structures of communication that take into account the fact that the identity of every individual is interwoven with collective identities, and that it can only be embedded in a specific cultural network. Although *constitutional patriotism* supports the validity of liberal democracy, it must promote diversity by providing the most tolerant and flexible political system. *Constitutional patriotism* is thus treated as some common minimum that unifies organic groups and communities guided by different lifestyles, while protecting the rights of discriminated groups. In other words, discourse theory assumes that its aim (i.e. consensus) is reached by ensuring a proper democratic procedure and a communicative network of political public spheres. In this context, Habermas states that the content of such a consensus are indeed human rights, which are discursively woven into the code of law that institutionalizes them in the form of positive law. In turn, the system of rights and the democratic rule of law are rooted in a reasonable practice that led to the approval of the said legal

<sup>53</sup> H. Krämer, *Integrative Ethik*, Frankfurt am Main 1995, pp. 42ff.

<sup>54</sup> J. Habermas, *Kampf um Anerkennung im demokratischen Rechtsstaat*, Frankfurt am Main 1996, p. 255.

<sup>55</sup> Idem, "Justice and Solidarity: On the Discussion Concerning Stage 6", in T.E. Wren (ed.), *The Moral Domain: Essays in the Ongoing Discussion between Philosophy and the Social Sciences*, Cambridge 1990, pp. 224-251.

<sup>56</sup> Neil MacCormick has expressed a similar view: *We need not overstress the requirements of culture or common ethnicity or language as essentially constitutive of a demos in the sense required for the concept of democratic government. I should like to suggest the possibility of our conceiving such a thing as a 'civic' demos, that is, one identified by the relationship of individuals to common institutions of civic rather than an ethnic or ethnic-cultural kind. People can have a civic identity constituted perhaps by what Habermas has dubbed 'constitutional patriotism,' Verfassungspatriotismus. This is a common loyalty to a common constitutional order, regardless of differences of language, ethnic background, and the rest. People are sometimes willing to sink differences of culture, of language, of heritage, of history for the sake of their common participation in a lawfully constituted polity of commonwealth.* N. MacCormick, *Questioning Sovereignty*, Oxford 2001, p. 144.



community in the first act of self-constitution.<sup>57</sup> We may indicate, after Neil MacCormick, that the legal order stems from *the background morality* of those whose principia are embodied in the political institutions. In turn, the very *background morality* is the morality of the political community, whose rights are already recognized on the basis of the interpretation of the law.

In my opinion, such *loci communes* are human rights that find normative expression in the constitution. Human rights are thus the political embodiment of the ideal of moral community. It is crucial to determine certain norms of conduct because an increasingly diversified society is typically characterized by mutual interdependencies. On the one hand, this entails a growing risk of conflict, and on the other hand, the need for closer cooperation. It is indeed law, and in particular, human rights, that allows the resolution of these conflicts and ensures the coordination of individuals in different social spheres and social subsystems. The law guarantees a state of relative balance that provides the possibility of the survival and development of society as a whole.

Modern society should by law formulate and shape the normative institutions and the principles governing the common life in such a way that they can ensure a fair pluralism of religions, worldviews, and social forms of life. It is important to emphasize in this context that the law (particularly human rights) should be formed within public discourse and human rights should be formed through intercultural dialogue. Consequently, the basic building block of human rights, from the “Western” perspective and from the perspective of any “other” culture, should be the right to speak, based on undistorted speech acts performed within the entire world community and allowing for a continuous determination of the meanings associated with the Other.<sup>58</sup>

This leads us to the conclusion that the discursive-theoretical justification of human rights can be distinguished from other justifications because it is understood as a dialogic practice that has nothing to do with the metaphysics of natural law theory or with personal property.<sup>59</sup> Universal human rights indeed constitute a common foundation that integrates multinational, multicultural, and multireligious societies with many different histories.

## BIBLIOGRAPHY

Alexy R., *Begriff und Geltung des Rechts*, Freiburg–München 1992.

Alexy R., “Die Institutionalisierung der Menschenrechte im demokratischen Verfassungsstaat”, in S. Gosepath, G. Lohmann (eds.), *Philosophie der Menschenrechte*, Frankfurt am Main 1998.

Arendt H., *Elemente und Ursprünge totaler Herrschaft*, Frankfurt am Main 1955.

<sup>57</sup> J. Habermas, “Zur Legitimation durch Menschenrechte”, in H. Brunkhorst, P. Niesen (eds.), *Das Recht der Republik*, Frankfurt am Main 1999, pp. 386–403.

<sup>58</sup> Cf. J.-F. Lyotard, “The Other’s Rights”, in S. Shute, S. Hurley (eds.), *On Human Rights*, New York 1993.

<sup>59</sup> S. Benhabib, “Ein anderer Universalismus...”, p. 509.

- Bauman Z., *Etyka ponowoczesna [Postmodern Ethics]*, Warszawa 1996.
- Bauman Z., *Szanse etyki w zglobalizowanym świecie [The Chances of Ethics in Globalized World]*, Kraków 2007.
- Becka M., *Anerkennung im Kontext interkultureller Philosophie*, Frankfurt am Main–London 2005.
- Becker W., “Über das ‘Paradox der Menschenrechte’ und wie es sich vermeiden ließe”, in E. Hilgendorf (ed.), *Wissenschaft, Religion und Recht. Hans Albert zum 85. Geburtstag*, Berlin 2006.
- Benhabib S., “Ein anderer Universalismus. Einheit und Vielfalt der Menschenrechte”, *Deutsche Zeitschrift für Philosophie*, no. 55 (2007), <https://doi.org/10.1524/dzph.2007.55.4.501>.
- Benhabib S., *Selbst im Kontext*, Frankfurt am Main 1995.
- Bielefeldt H., *Menschenrechte in der Einwanderungsgesellschaft. Plädoyer für einen aufgeklärten Multikulturalismus*, Bielefeld 2007, <https://doi.org/10.14361/9783839407202>.
- Borradori G., *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, London 2003, <https://doi.org/10.7208/chicago/9780226066653.001.0001>.
- Brown G.W., “Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law”, in G.W. Brown, D. Held (eds.), *The Cosmopolitanism Reader*, Cambridge 2010, <https://doi.org/10.1111/j.1748-121X.2008.00094.x>.
- Delsol C., *Esej o człowieku późnej nowoczesności [An Essay on Late Modernity Man]*, transl. by M. Kowalska, Kraków 2003.
- Engländer A., *Diskurs als Rechtsquelle? Zur Kritik der Diskurstheorie des Rechts*, Tübingen 2002.
- Finnis J., “The Priority of Persons”, in J. Horder (ed.), *Oxford Essays in Jurisprudence: Forth Series*, Oxford 2001.
- Fukuyama F., *Our Posthuman Future. Consequences of the Biotechnology Revolution*, New York 2003.
- Gadamer H.-G., *Wahrheit und Methode. Grundzüge einer philosophischen Hermeneutik*, Tübingen 1960.
- Gray J., *Two Faces of Liberalism*, Cambridge 2000.
- Günther K., “Liberale und diskurstheoretische Deutungen der Menschenrechte”, in W. Brugger, U. Neumann, S. Kirste (eds.), *Rechtsphilosophie im 21. Jahrhundert*, Frankfurt am Main 2008.
- Habermas J., *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge 1998.
- Habermas J., “Das Konzept der Menschenwürde und die realistische Utopie der Menschenrechte”, *Deutsche Zeitschrift für Philosophie*, no. 58 (2010).
- Habermas J., “Justice and Solidarity: On the Discussion Concerning Stage 6”, in T.E. Wren (ed.), *The Moral Domain: Essays in the Ongoing Discussion between Philosophy and the Social Sciences*, Cambridge 1990.
- Habermas J., *Kampf um Anerkennung im demokratischen Rechtsstaat*, Frankfurt am Main 1996.
- Habermas J., “The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society”, in B. Wojciechowski, M. Zirk-Sadowski, M. Golecki (eds.), *Between Complexity of Law and Lack of Order. Philosophy of Law in the Era of Globalization*, Toruń–Beijing 2009, <https://doi.org/10.1111/j.1467-8675.2008.00510.x>.

- Habermas J., "Zur Legitimation durch Menschenrechte", in H. Brunkhorst, P. Niesen (eds.), *Das Recht der Republik*, Frankfurt am Main 1999, <https://doi.org/10.1515/9783050073651-018>.
- Hart H.L.A., "Are There Any Natural Rights?", in J. Waldron (ed.), *Theories of Rights*, Oxford 1984.
- Hart H.L.A., *Law, Liberty and Morality*, London 1964.
- Hegel G.W.F., *Grundlinien der Philosophie des Rechts*, Leipzig 1921.
- Höffe O., *Vernunft und Diskurs. Bausteine zu einem interkulturellen Rechtsdiskurs*, Frankfurt am Main 1998.
- Hoerster N., *Abtreibung im säkularen Staat*, Frankfurt am Main 1995, <https://doi.org/10.2307/2182586>.
- Höffe O., *Vernunft und Recht. Bausteine zu einem interkulturellen Rechtsdiskurs*, Frankfurt am Main 1996.
- Honneth A., *Kampf um Anerkennung. Zur moralischen Grammatik sozialer Konflikte*, Frankfurt am Main 1994.
- Ignatieff M., *Human Rights as Politics and Idolatry*, Princeton 2001, <https://doi.org/10.1515/9781400842841>.
- Kalaga W., "Obowiązek Innego. Trzeci" ["The Duty of Another. The Third"], in W. Kalaga (ed.), *Dylematy wielokulturowości [Dilemmas of Multiculturalism]*, Kraków 2004.
- Kant I., *Grundlegung zur Metaphysik der Sitten*, Leipzig 1797.
- Kant I., *Metafizyka moralności [The Metaphysics of Morals]*, transl. by E. Nowak, Warszawa 2005.
- Kersting W., *Recht, Gerechtigkeit und demokratische Tugend. Abhandlungen zur praktischen Philosophie der Gegenwart*, Frankfurt am Main 1997.
- Krämer H., *Integrative Ethik*, Frankfurt am Main 1995.
- Lévinas E., *Inaczej niż być lub ponad istotą [Otherwise than Being or Beyond Essence]*, transl. by P. Mrówczyński, Warszawa 2000.
- Liotard J.-F., "The Other's Rights", in S. Shute, S. Hurley (eds.), *On Human Rights*, New York 1993.
- MacCormick N., *Questioning Sovereignty*, Oxford 2001.
- Nussbaum M., "Capabilities and Human Rights", *Fordham Law Review*, vol. 6, no. 273 (1997-1998).
- Pogge T., "Menschenrechte als moralische Ansprüche an globale Institutionen", in S. Gosepath, G. Lohmann (eds.), *Philosophie der Menschenrechte*, Frankfurt am Main 1998.
- Rawls J., *Liberalizm polityczny [Political Liberalism]*, Warszawa 1998.
- Rawls J., *Prawo ludów [The Law of Peoples]*, Warszawa 2001.
- Raz J., *The Morality of Freedom*, Oxford 1986.
- Ricœur P., *Drogi rozpoznania [The Course of Recognition]*, Kraków 2004.
- Risse T., "Menschenrechte als Grundlage der Weltvergemeinschaftung? Die Diskrepanz zwischen Normanerkennung und Normeinhaltung", in N. Janz, T. Risse (eds.), *Menschenrechte – Globale Dimensionen eines universellen Anspruchs*, Baden-Baden 2007, <https://doi.org/10.5771/9783845200385-17>.
- Roberts P., *Political Constructivism*, London–New York 2007, <https://doi.org/10.4324/9780203461921>.

- Rousseau J.J., “Rozprawa o nierówności” [“Discourse on Inequality”], in J.J. Rousseau, *Trzy rozprawy z filozofii społecznej* [Three Discourses on Social Philosophy], Kraków 1956.
- Sadurski W., “Nietolerancja, paternalizm i uniwersalizm” [“Intolerance, Paternalism and Universalism”], in J. Stelmach (ed.), *Studia z filozofii prawa* [Studies in the Philosophy of Law], vol. 2 (2003).
- Sen A., *Development as Freedom*, New York 1999.
- Sen A., *The Idea of Justice*, London 2009, <https://doi.org/10.2307/j.ctvjnr7n>.
- Taylor C., “The Politics of Recognition”, in A. Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*, Princeton 1994, <https://doi.org/10.1515/9781400821402-004>.
- Tugendhat E., *Vorlesungen über Ethik*, Frankfurt am Main 2001.
- Walzer M., *On Toleration*, Cambridge 1997.
- Zirk-Sadowski M., Wojciechowski B., Cern K.M. (eds.), *Towards Recognition of Minority Groups. Legal and Communication Strategies*, Farnham 2014.

---

**Bartosz WOJCIECHOWSKI** is an Associate Professor at the University of Lodz, the Director of the Center for Theory and Philosophy of Human Rights, the member of an Editorial Board of the journals: *International Journal for the Semiotics of Law*, Springer Publishing, *The Intellectum. A Journal of Generating Understanding* (Greece), *Przegląd Sejmowy* (the journal of the Sejm of the Republic of Poland), *Folia Iuridica Universitatis Lodziensis*. An international expert in the EU-funded project “Pravo-Justice” (European Justice for Ukraine). He is a judge in the Supreme Administrative Court (head of the Faculty of European Law). He has published and co-edited several books and articles on legal interpretation, judicial discretion, interculturality, and morality of law.