

Translated excerpt

**Hans Joas**  
***Sind die Menschenrechte westlich?***

Kösel Verlag, München 2015  
ISBN 978-3-4663-7126-6

pp. 11-18

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***Are Human Rights Western?***

Translated by Rodney Livingstone



## Are Human Rights Western?

In the Eighteenth Century torture disappeared from the legal systems of all the states of Europe as a legitimate instrument of justice. In the following century, the Nineteenth, slavery was abolished in the USA as well as in all other societies in the Western hemisphere in which it had developed into an economic institution of central importance, ending finally in Brazil in 1888. To my mind, though undoubtedly not only to mine, these two processes belong among the most important chapters in the history of human rights. This remains true irrespective of whether the *concept* of human rights played a major role in the rhetoric of the age or not. The decades-long intellectual controversies and the social conflicts both these processes entailed make it immediately obvious that these juridical developments involved far more than mere changes of the legal framework. They amounted to fundamental cultural transformations for which a purely legalistic approach would have been too narrow. So as to give a name to these cultural transformations, I would like to speak of 'the sacralisation of the person'<sup>1</sup> My proposal is to treat human rights and the belief in universal human dignity underpinning them as the product of a specific process of sacralisation, that is, of a process in which every single human being is understood incrementally and in ways that increasingly motivate and sensitise people, to be sacred, an understanding that is then institutionalised in law. Furthermore, the concept of holiness or sacredness must not be thought of here as exclusively religious; on the contrary, it refers to holistic, emotionally intensive commitments to values of every kind, secular values included, commitments that are experienced as self-evidently justified.

This emphasis on the cultural nature of the history of human rights creates problems of its own and it is these I wish to focus on in this

essay. The undoubted achievements involved in assimilating human rights into culture and enshrining them in law can themselves be misused to buttress claims of cultural superiority - and this has problematic consequences. This can be seen *within* the nations of the West, where the most diverse religious and anti-religious traditions are invoked as the true source of such achievements. Such traditions have galvanized the debates about the significance of the Enlightenment and the French Revolution for the emergence of human rights, or the role of Protestant struggles for freedom of religion or of the late-scholasticism of Catholic Spain. But these problems take on a more acute form in debates with non-Western nations. The West accuses these nations not only of human rights abuses or of their failure to embed human rights adequately in their own national legal systems. But in addition, it is often quick to condemn them even for a cultural inability to comprehend in principle what 'we' (Westerners) understand by human rights. Translating this into my own language, it means that the sacralisation of the person can be used to bring about the collective self-sacralisation of particular nation states and inter-state alliances.<sup>2</sup> The task confronting historians of human rights, therefore, is how to produce a picture that includes the cultural roots of human rights but has not been warped by this threat of self-sacralisation.

For this reason it does not suffice simply to focus attention on the processes leading to the abolition of torture and slavery. What is needed in addition is a realistic account of the reasons why torture and slavery were held to be legitimate for such a long time but were in fact not abolished during that time. In concrete terms, this means that research is needed to establish why prior to abolition some of the supposedly freedom-loving nations of the North Atlantic world turned slavery into a veritable system of hitherto unprecedented efficiency. We should then go on to inquire into the further history of torture in the broader European sphere of influence, in the colonies in other words, even after it had been abolished in Europe itself. However, these and other tasks force us to

extend our horizons and go beyond the limits of the history of human rights in the narrower sense, i.e. beyond the period since the late Eighteenth Century. There is no doubt that legal institutions were preceded by religious and philosophical ethics that taught us to respect every human being, no matter who he or she might be. But how did these ethical codes regard slavery and torture? And in general, how should we conceive of the relationship between such ethical codes and the development of legal systems? Did such ethical codes exist exclusively in Western cultural and legal traditions and their sources? How 'Western' is the modern human rights regime whose classical expression is to be found in the 'Universal Declaration of Human Rights' of 1948? And how 'Western' is the ethical code that provides international law with its philosophical foundation? Without being able to supply exhaustive answers to these questions here, I should nonetheless like to make a number of pointed remarks regarding each of them.

There is much that is controversial in the historiography of human rights, beginning with the date when it became possible to speak of them with some justification. I myself have taken as my starting point the declarations of human rights of the late Eighteenth Century, proclaimed during the French Revolution and – chronologically earlier and inspirationally for the French – in the context of the American Revolution. In contrast to this, a number of younger German and American historians<sup>3</sup>, who have made decisive advances in research into the history of human rights during the second half of the Twentieth Century, think of human rights history proper as covering the period following 1948 and perhaps even as late as the 1970s, starting with the Helsinki Conference of 1975. Yet others – above all, philosophers and theologians - insist that this history began between 2000 and 2500 years ago and they object to my limiting it to the period since 1776 or 1789. They point to the Christian, or as they frequently call it, the Judaeo-Christian tradition, or even to Plato and classical Greek philosophy, for example, in their support

for the idea that the soul of every human being corresponds to the soul of the universe. Such scholars may express their strictures in a mild tone, fully accepting the fact that every narrative must begin somewhere but that any starting point must of course have its own prehistory. But their criticism may also assume a highly polemical form, as if my approach implicitly denied that the older tradition contained even an iota of moral universalism.

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<sup>1</sup> Hans Joas, *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte*. Berlin 2011 (Paperback edition, 2015). [English edition: *The Sacredness of the Person. A New Genealogy of Human Rights*, trans. Alex Skinner, Georgetown University Press, Washington DC, 2013]

<sup>2</sup> On the concept of 'sacralisation', see Hans Joas, 'Sakralisierung und Entsakralisierung. Politische Herrschaft und religiöse Interpretation', in Friedrich Wilhelm Graf/ Heinrich Meier (eds), *Politik und Religion. Zur Diagnose der Gegenwart*. Munich 2013, pp. 259-286, especially pp. 269ff.

<sup>3</sup> Samuel Moyn, *The Last Utopia. Human Rights in History*. Cambridge, Mass. 2010;

Stefan Ludwig Hoffmann (ed.), *Moralpolitik. Geschichte der Menschenrechte im 20. Jahrhundert*. Göttingen 2010;

Jan Eckel/Samuel Moyn (eds), *Moral für die Welt? Menschenrechtspolitik in den 1970er Jahren*. Göttingen 2012;

Jan Eckel, *Die Ambivalenz des Guten. Menschenrechte in der internationalen Politik seit den 1940ern*. Göttingen 2014.