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Zu den Bedrohungen westlicher Werte gehört auch jene Spielart des kulturellen Relativismus, die unter Berufung auf autochthone Traditionen und Konventionen die Universalität von Menschenrechten negiert. Beginnend mit einem Rückblick auf den europäischen Ursprung, auf Entwicklung, fortschreitende Ausdifferenzierung und rechtliche Verankerung der Menschenrechtsidee, spürt Menzies Campbell heiklen Fragen und Dilemmata nach, wie sie sich im Spannungsfeld zwischen Individuum und Kollektivität, aber auch zwischen einzelnen Wertvorgaben – etwa Freiheit und Sicherheit – unausweichlich ergeben.

(9) Human Rights Are Indivisible

Menzies Campbell

Human rights are indivisible. At the heart of this statement rests the concept of «cultural relativism», the long-standing dilemma of whether universal human rights can exist in a culturally diverse world. The shrinking of our planet, through globalization, only serves to exacerbate the problems faced by those who guard our rights. The increasing integration of financial markets, the emergence of new and shifting regional alliances, along with advances in telecommunications and transportation, have all contributed to unprecedented demographic shifts. In societies of different peoples and cultures there has been an urge among ethnic and religious communities to encourage a strong sense of identity. In adjusting to pluralism, such groups seek to promote old conventions and traditional values for their own protection.

This relativism could pose a potential threat to the effectiveness of international law and its institutions and a system of human rights that has been established over decades. Attempts by individual states and other groupings within states to put their own cultural norms and practices ahead of the consensus of international standards, could have serious consequences for human rights and the organizations that are their guardians. If cultural traditions alone were to govern a nation state›s compliance with international standards, then disregard, abuse and violation of human rights could be legitimised. On the other hand, governments and populations need to be sensitive to diverse cultural expression without this becoming a danger to society at large. The key, as ever, is to strike the right balance.

Certain human rights are held to be basic guarantees that belong to people simply because they have been born. These are commonly considered universal in that everyone should have them and enjoy them, independently of whether or not they be recognised and implemented by the legal or political system of any man›s country of residence.

The primary exponent of this position is the 17th Century philosopher John Locke. His argument, which builds on the thinking of Hugo Grotius and Thomas Hobbes, runs through his «Two Treatises of Government» (1688). He contends that individuals possess natural rights, independently of the political recognition granted them by the state. These natural rights stem from a natural law that originates from God, the ultimate authority. This law requires all to be free from threats to life and liberty, while also requiring what Locke argued as the fundamental, positive means for self-preservation: personal property. In his view, it was a government›s principal responsibility to protect the natural rights of its citizens. Locke›s work had an undeniable influence on the founding fathers› drafting of the constitution of the United States and their subsequent Bill of Rights; and on the French Declaration of the Rights of Man and the Citizen.

Immanuel Kant's founding on reasoning and the moral autonomy of the individual, provided a secular theoretical framework for rights. The American Declaration of Independence, which safeguards the «*inalienable rights to life, liberty and the pursuit of happiness*», represented an important step towards the secularisation of natural rights, which was ultimately achieved in the French Declaration.

For Thomas Paine, the advent of the Rights of Man heralded «*a new era to the human race*». He argued convincingly that rights belonged to men by virtue of their status as human beings and that the possession of rights implied duties, and respect for the rights of others. He demonstrated

the unique value of rights as a form of protection against coercive government, and made the case for their value not just to individuals, but for the overall public good.

Yet the concept of rights was far from universally endorsed. Edmund Burke regarded rights as purely metaphysical abstractions, whilst Jeremy Bentham, in his advocacy of utilitarianism, attacked rights as anarchical fallacies with the potential to destabilize society. Marxists contended that rights supported class-based inequalities.

After more than a century of being dormant, the eighteenth-century conception of rights saw an extraordinary re-emergence in the establishment of international institutions in the aftermath of World War II. Horror at the inhumanity inflicted by a sovereign government on its own citizens demanded a liberal response. The response – human rights – drew heavily on the concept of natural rights, but was expressly egalitarian. Human rights would apply to all, regardless of sex, race or status, and be an obligation on all governments. Sovereign power would no longer be unconstrained.

Human rights formed the bedrock upon which the United Nations and its founding Charter were built. The Charter itself states that human rights are «*for all without distinction*» and commits the UN and all its member states to action promoting «*universal respect for, and observance of, human rights and fundamental freedom*». The UN's General Assembly is a uniquely representative body, authorized to address and advance the protection and promotion of human rights. It thus serves as an indicator of the notional international consensus on human rights. (I say «notional» because the consensus that is contained in the Charter and to which all members of the UN are bound is in too many instances ignored or even flouted). This consensus was embodied in the language of the Universal Declaration of Human Rights, adopted by the UN's General Assembly on 10 December 1948. A direct response to the grossest atrocities of the war, its preamble proclaims the Declaration as a «*common standard of achievement for all people and all nations*».

The Universal Declaration was further supplemented by the European Convention for the Protection of Human Rights (1954) and the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (both of 1966). The aspirations contained within these documents have themselves been reinforced by innumerable other declarations and conventions, addressing issues including genocide, slavery, torture, racial and sexual discrimination, rights of the child, minorities and religious tolerance. Taken together, these declarations, conventions and covenants – approximately two hundred in total – constitute a contemporary human rights doctrine, embodying the belief in the existence of a universally valid moral order and in all human beings' possession of fundamental and equal moral status, enshrined in the concept of human rights.

The Vienna Declaration, adopted by consensus by 171 states at the World Conference on Human Rights (1993), holds that «*All human rights are universal, indivisible and interdependent and interrelated.*» This was a momentous step and reflected the profound political changes in the aftermath of the Soviet Union's demise. During the Cold War, commentators in the Soviet Union had questioned civil and political rights, while Western commentators, on the other hand, had tended to disparage economic and social rights.

There is arguably a theoretical difference in the two sets of rights, in that civil and political rights are concerned with the constraint of government; whereas economic and social rights require positive government action. But, as Henry Shue has shown, this is misleading: rights to free speech and assembly, for example, rely on fair and effective policing, which requires major government action. The same can be said for protection of the classical «civil and political» rights to life and security.

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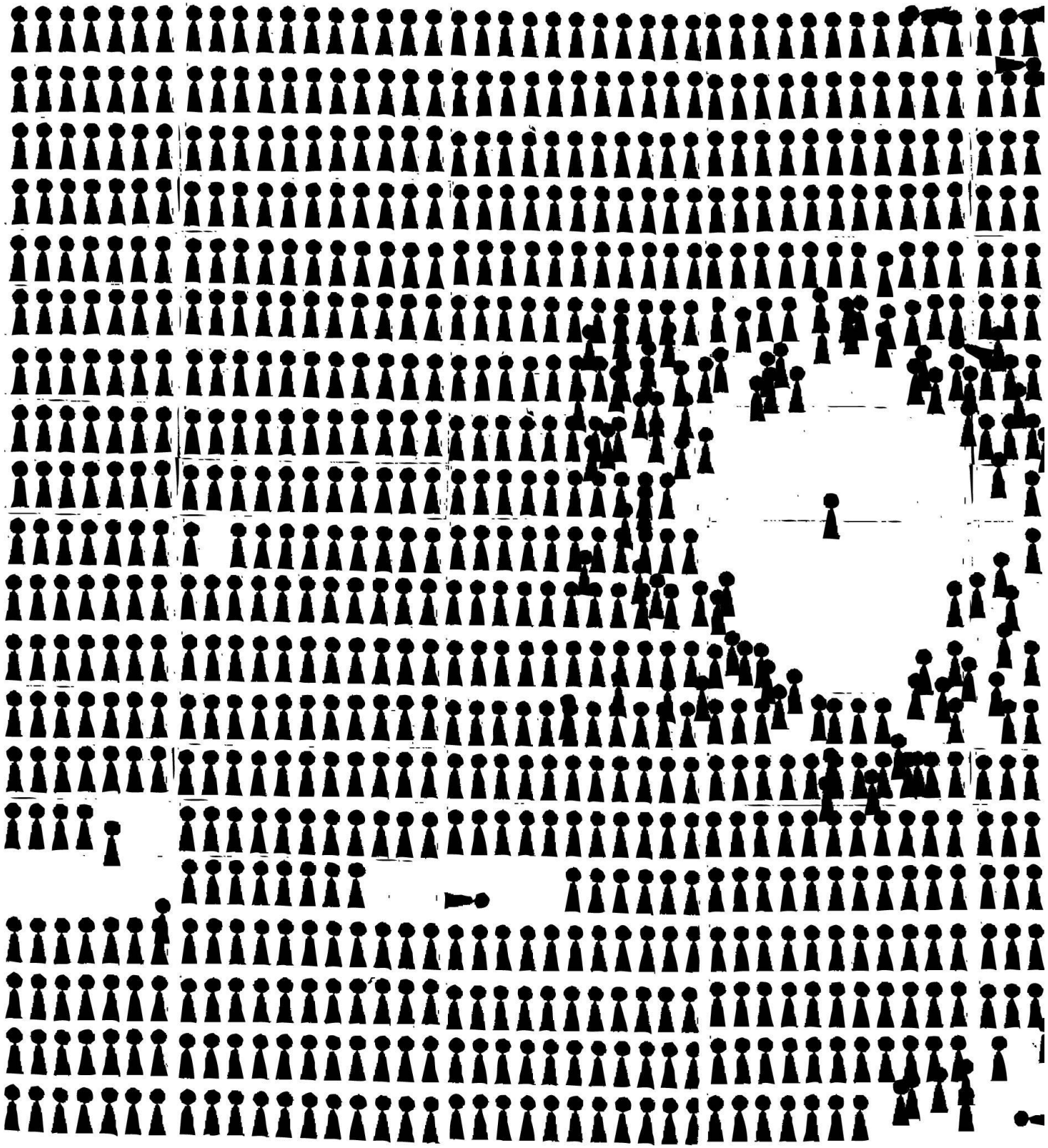
Some have argued that only civil and political rights are justiciable. Such rights evolved at an early stage in response to injustices committed by authoritarian governments; they were thereby enshrined in domestic legislation, from which a comprehensive jurisprudence has emerged. On the other hand, strategic decisions on the allocation of resources are a task for representative governments to decide, but as governments have increasingly committed themselves to the protection of economic and social rights, we have seen an emerging case-law in this area too.

As reflected in the Limburg Principles and Maastricht Guidelines on Economic, Social and Cultural Rights, there are minimum levels of



subsistence, which can form measurable standards. Courts in South Africa have formally recognised the rights to adequate housing and access to healthcare. The European Court of Human Rights has developed case law on the environment and workers rights; and The Committee on Economic, Social and Cultural Rights may soon be given the authority to consider individual complaints.

Moreover, rights are interdependent. Avoidable poverty amidst affluence is inherently a political issue; and civil or political rights are often violated to protect economic interests. Rights to civil freedoms cannot be properly exercised without the fulfilment of basic needs, such as the right to adequate housing. Similarly, fulfilment of the rights to adequate food and clothing are of little value without rights to security, or indeed to equality and non-discrimination. Moreover, all these rights are essential to protect human dignity. The right to work or education is as fundamental to human dignity as the right to freedom of expression or religion.

In fact, this approach draws on early natural rights thinking. Thomas Paine had argued over two hundred years ago that the concept of rights supported the existence of public welfare as financed by progressive taxation. Indeed, he anticipated the liberal-democratic belief that public guarantees of minimum welfare would sustain the rights of all. From this I assert that human rights must embrace the full scope of human activity concerned with human dignity.

Anation's level of civilization can be judged by what it does to its minorities.

The question of divisibility also arises, in a broader sense, in contemporary challenges to human rights. Just as the framework of contemporary human rights was erected in the aftermath of one of the most savage episodes of history, so it now confronts a new menace, that of global terrorism. In the words of the UN Secretary-General, Kofi Annan: «*Upholding human rights is not merely compatible with a successful counter-terrorism strategy. It is essential in it.*»

Acts of barbarism, such as those committed on 9/11 in New York and on 7 July this year in London, lead to a political approach to justice. National leaders say either explicitly or by implication that «*you are either with us or against us*». While it is an understandable reaction, the urge to demonise those who perpetrate terrorist atrocities must be resisted. Measures adopted to combat terrorism must not undermine the basic human rights of all citizens, including even those of suspected terrorists. No matter how heinous the allegation, the requirement for due process is paramount.

The need to avoid the perception or the reality of double standards is urgent. We are all familiar with the criticism of the current US administration for its treatment of detainees in Abu Ghraib, Guantánamo Bay and elsewhere. Countries that seek to promote respect for universal rights and civilised standards around the world cannot escape the contention that they should always practice what they preach. We should all do well to heed the words of Woodrow Wilson: «… *America will come into the full light of day when all shall know that she puts human rights above all other rights.*» In pursuit of those who seek to destroy us, governments must avoid riding roughshod over the rights of decent law-abiding citizens. Does it really make a difference if our liberties are taken from us by terrorists or by our own elected politicians?

Human rights are not just there for honest, law-abiding citizens. They are standards of basic humanity, a mark of civilised behaviour. A nation's level of civilization can be judged, not by the way it treats the majority of its citizens, but by what it does to its minorities, its criminals and its misfits. You cannot hope to defend and promote a democratic system by dismantling the very freedoms that made it a democracy in the first place.

Let me draw on current UK legislative proposals. Our Parliament is in the process of developing measures in the fight against terrorism. Such measures must get the balance right between protection and restriction of human rights. Placing entire populations under surveillance due to the actions of a few determined fanatics does not reflect that balance. Provisions in the UK governments Terrorism Bill 2005 contain too much that is sweeping and vague. If enacted in its present form, the Bill will threaten rights to freedom of expression and association with a consequential impact on the nature of our society. The Bill's provisions for prolonged detention of suspected terrorists would violate the right to liberty and freedom from arbitrary detention. Detention in police custody without charge or trial for up to three months could also violate the right to a fair trial, by undermining the presumption of

innocence and the right to silence. The people of Britain have the right to be protected by their Government from those that seek to harm them, but what price should they have to pay? Parts of this legislation, instead of strengthening security, will conversely alienate some sections of society, particularly those who identify themselves as Muslim.

It is self-evident that there is a need for balance. On the one hand, there are those undeniable basic rights, those natural rights that we are all born with and to which we are entitled. These universal human rights do not impose a cultural standard, but a common legal standard of minimum protection necessary for human dignity. As a legal standard adopted by the UN, universal human rights represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions. These are rights that are indivisible and must be safeguarded without compromise – not only when endangered by the action of states, but also when threatened by non-governmental agencies such as multinational corporations.

Cultural differences are in fact protected under international human rights law. It is no accident that there are only three articles in each of the International Covenants of 1966 (for Civil and Political Rights, and for Economic, Social and Cultural Rights) that are identical, and they relate to self-determination. Common article one of both Conventions holds that: «All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.» The rights of minorities are expressly protected. Article 27 of the Covenant on Civil and Political Rights provides that minorities shall not be denied the right «*to enjoy their own culture, to profess and practise their own religion or to use their own language.*»

The latter of the two Covenants referred to above provides that everyone has the right to culture, the right to cultural participation, the right to enjoy the arts, the right to his own language and the opportunity to develop his own identity.

Human rights do not prescribe any particular type of culture, but place legitimate limits on cultural practices; they do not prescribe, but circumscribe. Nevertheless, cultural rights are subject to certain limitations. Cultural rights cannot be invoked or interpreted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental freedoms. Claiming cultural relativism as an excuse for violating or denying human rights is, in itself, an abuse of the right to culture. Despite practice by various cultures throughout history, no culture can legitimately claim a right to practice slavery. The major problem lies in policing the lines between the preservation of individual cultures and the global human rights consensus. Human rights may be intrusive, and disruptive to traditional cultural values. However, if put to a choice, the presumption must be in favour of the universality of human rights. Nor is consent to violation of human rights by cultural norms a justification, whether given freely or obtained by intimidation, force or threat.

One prominent example is women's rights around the world. Millions of women, particularly in traditional societies, are deprived of equal rights in respect of social, reproductive or property rights. Human rights are founded on the principles of freedom and equality. Rights must not only be indivisible, but be afforded equally, without discrimination, to all people.

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I would leave you with the words of Immanuel Kant: «*Act only according to that maxim whereby you can at the same time will that it should become a universal law.*»

My conclusion of the indivisibility of human rights can hardly be unexpected. Someone reared in the intellectual tradition of Hume and Adam Smith, a legal practitioner in the Scottish civil law system and a legislator in the United Kingdom Parliament could hardly reach any other. Yet I have a further conclusion – all that is intellectually self-evident is not always universally accepted. We are likely to be be more concerned, both now and in the future, about the defence of human rights than their origin, but such defence will be easier to mount if we assert their indivisibility.

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