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### The human rights in the doctrine of the Catholic Church

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The human rights<sup>1</sup> are in the statute law the expression of the recognition of human dignity<sup>2</sup> and of the personification thereof. ROLAND MINNERATH has given hereto a clear illustration: „In the person is given the dignity as an irreducible fact and as a realizable curriculum”.<sup>3</sup>

#### I.

The human rights represent a value personified in the human being which is prepositive because it takes the lead over the state and its regulations.<sup>4</sup> This value cannot be created by the state or by law, it rather is to be recognized by positive law. The character of the human rights<sup>5</sup> is declarative. An existing value is recognized; this is taken up by the statute law of a state and in the text<sup>6</sup> is used the term „recognize”, as for instance „the freedom and the human dignity are recognized”.

The human rights determine the relations between the individual and the state. Under the ideological aspect the human rights are a substantial part of the occidental lawful way of thinking<sup>7</sup> and within them a secularization of Christian thinking<sup>8</sup> for which the Catholic Church has laid the base. By the doctrine of the human rights the Catholic Church tries to secure the position of the individual through the law within the state.

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<sup>1</sup> S. Felix Ermacora, Menschenrechte in der sich wandelnden Welt (human rights in the changing world), 1974.

<sup>2</sup> More details Paul Kirchhof, Menschenwürde und Freiheit (human dignity and freedom), in: Manual of Catholic social doctrine, edited by Anton Rauscher, 2008, S. 41 ssq.

<sup>3</sup> Roland Minnerath, Gegen den Verfall des Sozialen, Ethik in Zeiten der Globalisierung (Against the decline of the social, Ethics in time of globalization), 2007 S. 19.

<sup>4</sup> Ernst-Wolfgang Böckenförde, Staat Gesellschaft, Freiheit (State, Community, Freedom), 1976, S. 42 ssq. and S. 60 sq.

<sup>5</sup> S. Herbert Schambeck, Die Grundrechte im demokratischen Verfassungsstaat (the fundamental rights in the democratic constitutional State), in: honouring publication for Johannes Messner, 1976, S. 445 ssq.

<sup>6</sup> More details Gottfried Dietze, Über die Formulierung der Menschenrechte (On the formulation of human rights), 1956.

<sup>7</sup> S. Alfred Verdross, Abendländische Rechtsphilosophie (Occidental law philosophy), 2nd edition., 1963.

<sup>8</sup> Böckenförde, cited elsewhere.

For the Catholic Church law and state are not an original doctrinal substance. They are soulless and are not able to find happiness as it is the case with human beings. The law and the state can include important conditions for the pastoral missions of the Church, but they must not. Such a decision must be taken by the respective state by the legal system especially by virtue of its constitutional law. They also determine the legal protection of the human being and recognize in this way the individual and the social nature of the human being. In this view and in the doctrine of the Catholic Church thoughts on human rights also refer to the relation between the faith and the political system.<sup>9</sup>

This relation originates from the fact that the Catholic Church does not represent any political program but a doctrine based on the faith in Jesus Christ aiming at the prosperity of the being human who participates in the religious as well in the political life. For the religious human being and for the Catholic Church the state and its law system and above all the human rights therefore have a twofold importance: on the other hand, that the whole „political environment conditions” imprint the human being. It therefore has never been the task of the Catholic Church to develop an own doctrine of law and of the state, but rather to make reference, in its salutary doctrine, to the state and its system as far as this is necessary under pastoral aspects.<sup>10</sup> The central point of the salutary doctrine of the Catholic Church is the human being as God’s image giving reason to his freedom and dignity and this in different respects: in this context I refer especially to HESIOD<sup>11</sup>, HERAKLIT<sup>12</sup>, PROTAGORAS<sup>13</sup>, LYKROPHON<sup>14</sup>, ALKIDAMAS<sup>15</sup>, SOKRATES<sup>16</sup> and PLATO<sup>17</sup> and to the stoa<sup>18</sup>.

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<sup>9</sup> Ernst Wolfgang Böckenförde und Robert Spaemann, *Menschenrechte und Menschenwürde, Historische Voraussetzungen – säkulare Gestalt – christliches Verständnis* (human rights and human dignity, historical conditions-secular form-christian understanding), 1997; s.also *Gott verlassen Menschenwürde und Menschenbilder* (to leave God, human dignity and human pictures), 8th oecumenic summeracademy Kremsmünster 2006, edited by Severin Lederhilger, *Linzer philosophical theological contributions*, vol. 15, Frankfurt/Main 2007, specific Heribert Köck, *Religionen und Menschenrechte*, S. 126 ff. und Severin Lederhilger, *Aspekte einer Pastoral der Menschenrechte – ein katholisches Statement* (aspects of a pastoral of human rights-a catholic statement), p. 188 ssq.,

<sup>10</sup> More details Herbert Schambeck, *Kirche, Staat, Gesellschaft* (Church, State, Community), 1967, and the same, *Kirche, Staat und Demokratie* (Church, State, Democracy), 1992, Joseph Ratzinger, *Neue Versuche zur Ekklesiologie* (New endeavours to ecclesiology), 1987, spec.. p. 137 sq.; the same. *Grundorientierungen* (fundamental orientation), 1997, spec. p.219 ssq. and 231 ssq.

<sup>11</sup> S. z.B. Hesiod, *Werke und Tage* (Works and days), Verse 115.

<sup>12</sup> Such as Heraklit, Verse 115.

<sup>13</sup> Plato, *Protagoras*, 319 A.

<sup>14</sup> Verdross, cited elsewhere, p. 24.

<sup>15</sup> Aristoteles, *Rhetorics*, 1 1373 b.

<sup>16</sup> *Gorgias and Protagoras*.

<sup>17</sup> Plato, *Politeia*.

<sup>18</sup> Verdross, *Law Philosophy*, p. 46 ssq.

The special position of the human being within the regiment has its beginning already in the Holy Scriptures. The genesis three times mentions the human being as God's image. In genesis I, 26-27 one can read: „God spoke: Let us create the human being after our image, similar to us. He shall rule over the fishes in the seas and the birds in the fields and all worms creeping on the ground; and God created the human being after his image, after God's image he created the human being as man and woman.” The second passage is to be found in genesis 5, 3 where ADAM says, he created a son, „similar to his image”, and the third passage in genesis 9, 6 is worded: „Who pours out human blood, his blood shall be poured out by human beings! For God has created the human being after his blood”. Must also be mentioned psalm 8, 5-7: „What is the human being that You remember him or the son of the human being that You afflict him? A bit smaller than an angel you have placed him over the work of your hands. You lay everything to his feet”.

It would be wrong to assume that already in the Holy Scriptures and later on in the Patristic were to be found texts on fundamental rights; that was not the case: There are some statements on the particular position of the human being based on the catholic faith. For the first time THOMAS OF AQUIN<sup>19</sup> completely placed the human being in the earthly world in which he has to fulfil the tasks attributed to him by God. The human being perceives these tasks through the purposes determined by the will of the creator of the human being's internal and external nature. It was the decisive step of THOMAS that these purposes are also peculiar purposes of the human being by the realization of which he also finds his auto-realization. The dignitas humana be based on this peculiar purpose.

The development of the human rights has been strongly influenced, starting with the Holy Scriptures, by the human dignity<sup>20</sup>, by the Christian idea of common welfare<sup>21</sup>; and on the national and international level were thought over the rights of the human person and of the human community such as the state and the community of nations. EGON KAPELLARE has already stated in 2006: „The personal dignity and the common welfare are to the same extent anchored in the biblical faith and equipped with responsibility vis-à-vis God and the neighbour. There exists a spiritual trace, historically often forgotten and left, extending from the decalogue to the general declaration of human rights to the constitution of actually

<sup>19</sup> Thomas von Aquin, Summa c. gentes.

<sup>20</sup> S. Der Mensch als Bild Gottes (The human being as picture of God), edited by Leo Scheffczyk, 1969

<sup>21</sup> Johannes Messner, das Gemeinwohl, Idee, Wirklichkeit, Aufgaben, (the common welfare, idea, reality, tasks) 1968.

democratic states, and that even if in the preambles of the constitution no reference to God is made.<sup>22</sup> In this context it is important to refer to the Spanish moral theologian of the 15th and 16th century, especially to the School of Salamanca<sup>23</sup>, and to mention by name FRANCISCO DE VITTORIA and FRANCISCO SUAREZ. At that time a complete list of the human rights did not yet exist, but the inner substance of those fundamental rights has already been developed which later on marked the constitutional documents, rights such as: the right to exist, the invulnerability of the body, the right to marriage and family, to social and political freedom, where certain concessions by the state authorities in favour of the civil freedom had to be made, moreover certain forms of equality before the law and of legal protection, the right to private property and of alliance as well as the right to emigrate and the right to establish in whatever country of the earth.

It would be wrong to assume that all that what catholic professors of ethics have written in their discipline would also have been required always and by all means by the official representatives of the Church. In a working paper published 1976 by the Papal Committee *Justitia et Pax* on „The Church and the human rights” it was stated: „There were however periods in the history of the Church in which verbally and factually the human rights have not been promoted and defended with sufficient clearness and energy. Today the Church through its teaching function and its activities is an important factor in the area of human rights”<sup>24</sup>.

## II.

The path to the recognition of the human rights has been shown especially by the social doctrine of the Popes<sup>25</sup>, commencing with POPE LEO XIII. Their development had previously been different<sup>26</sup>, because in the course of history the Catholic Church has been for

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<sup>22</sup> Egon Kapellari, *Recht und Unrecht in philosophisch-theologischer Sicht* (right and wrong in philosophical and theological view), in: the same, *Seit im Gespräch wir sind... (since we are in dialogue) Neue Begegnungen* (new meetings), 2007, p. 335.

<sup>23</sup> S. Verdross, *Rechtsphilosophie* (Law philosophy), p. 92 ssq.; Heribert Franz Köck, *Der Beitrag der Schule von Salamanca zur Entwicklung der Lehre von den Grundrechten* (the contribution of the School of Salamanca to the development of the doctrine of the fundamental rights), 1987 and Herbert Schambeck, *la escuela de Salamanca y su significacion hoy*, *Auales de la Real Academia de Ciencias morales y politicas*, Ano XLII, no. 67, 1990, p. 85 ssq.

<sup>24</sup> *Die Kirche und die Menschenrechte* (The Church and the human rights), edited by the Papal Commission “*Iustitia et Pax*“, 1976, p. 8.

<sup>25</sup> Arthur Fridolin Utz/countess von Galen (Edit.), *Die katholische Sozialdoktrin in ihrer geschichtlichen Entfaltung* (The Catholic social doctrine in its historical deployment), 1976, as well as texts relating to the Catholic social doctrine. The social circulars of the Popes and other clerical documents with introductions by Oswald von Nell-Breuning SJ and Johannes Schasching SJ, 1992.

<sup>26</sup> Consider Josef Isensee, *Keine Freiheit für den Irrtum, Die Kritik der katholischen Kirche des 19. Jahrhunderts an den Menschenrechten als staatsphilosophisches Paradigma* (No freedom for the error. The critics by the

a long time under the influence of the monarchistic absolutistic form of state and has experienced requirements claimed later on by democratism and liberalism in a radicalized form. This last mentioned circumstance can be perceived most clearly in the context of the French revolution of 1789 whose claim for freedom, equality and fraternity was a secularization of the ancient Christian thinking which however in its jacobinized form was presented and updated in a way which the Catholic Church could not accept.<sup>27</sup> It is not permitted to ignore that the monarchy against which the revolutionary movements, commencing above all with France, were directed, was the form of state within which the Catholic Church since its creation had to arrange. At the beginning the Catholic Church itself has not experienced a more liberal not jacobinized form of democracy<sup>28</sup>, such as the United States<sup>29</sup>, resulting from the ancient Northern American colonies, with their co-existence of frame of Government for the state organization and bill of declaration of rights<sup>30</sup> for the fundamental rights in the constitution; this was experienced only later in a hitherto unknown form, due to the separation of Church and state. The political science of the catholic Church formed the monarchy nearly to a model of state wished by God, the more as the monarchy occasionally, for example in the late Roman Empire, had even adopted theocratic features. On the other hand, the aversion of catholic officeholders and in clerical doctrinal declarations against democratic and constitutional movements must be attributed to the clerical hostility of those groups who initially were the origin of the movements.

In this context it is important to mention the resolutions against the Catholic Church of the then national assembly, commencing with the revolution. In 1791 therefore also POPE PIE VI has condemned in his Breve „Quod aliquantum” the civil constitution of clergy and turned against freedom, equality and therefrom derived religious freedom of the individual; they are declared as being incompatible with the reason and the revelation. PIE VI even uses the term absurd doctrine of freedom (absurdissimum ejus libertatis commentum).<sup>31</sup>

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Catholic Church of the 19th century of the human rights as state-philosophical paradigm), periodical of the Savigny-Foundation for Law History, vol. 104 (1987). p. 296 ssq.

<sup>27</sup> S. Hans Maier, Kirche und Demokratie (Church and democracy), 1979 and the same, Die Kirche und die Menschenrechte (The Church and the human rights), IKZC Communio 1981, p. 501 ssq., and Isensee, p. 214 ssq.

<sup>28</sup> S. Hans Maier, Revolution der Kirche (Revolution of the Church), 1973.

<sup>29</sup> More details: Dokumente zur Geschichte der Vereinigten Staaten von Amerika (Documents concerning the history of the United States of America), edited by. Herbert Schambeck , Helmut Widder and Marcus Bergmann, 2nd edition, 2007

<sup>30</sup> S. Georg Jellinek, Allgemeine Staatslehre (General public science), 1959, p. 517 ssq.

<sup>31</sup> Utz/Galen, vol. III, p. 2665 sq., no. 13

After the re-establishment of the Bourbon Kingdom POPE PIE VII<sup>32</sup> in his apostolic letter „Post Tam Diaturnes” of 1814 to the bishop of Troyes Monsignore De Boulogne, turned against the general freedom of conscience and culture as well as against the freedom of press. In „Ecclesiam a Jesu Christo” of 1821 POPE PIE VII favoured the unity of „the throne and the altar” and thus of authority and obedience. In the Encyclicals „Mirari vos” of 1832 and „Singular nos” of 1834 POPE GREGOR XVI<sup>33</sup> discussed critically the notion of freedom and the democratic ideas of ROBERTO DE LAMENNAIS whom he condemned. This phase of critical discussion of tendencies of democratism and liberalism includes moreover the apostolic letter „Quanta cura” of POPE PIE IX<sup>34</sup> of 1864 with the appendix „Syllabus complectens nostrae aetatis errores” in which the most important errors of the epoch are listed.<sup>35</sup>

A change came up with POPE LEO XIII. He still critically discussed the liberal ideas of democracy but already takes distance from the hitherto accepted form of monarchy and acknowledges in his political doctrine, largely influenced by THOMAS OF AQUIN, the admissibility of a „healthy democracy”.<sup>36</sup> In his Encyclical „Immortale Dei” of 1885 POPE LEO XIII states with regard to the form of government: „The right of command as such is necessarily not tied to any form of government. It may have this form or the other, provided that it is able to create benefit and to promote efficiently the common welfare.”<sup>37</sup>

The same opinion has already been defended by POPE LEO XIII in his Encyclical on the executive power „Diuturnum illud” of 1881. In the Encyclical „Libertas praestantissimus” of 1888 POPE LEO XIII stresses clearly the admissibility of the democracy.

The reference to the conception of democracy and freedom of the Catholic Church is so important because it is connected with the attitude of the Catholic Church vis-à-vis the human rights to which the liberal and democratic fundamental rights contribute in a classical manner. The insight into the importance and the necessity of fundamental rights has become actual for

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<sup>32</sup> Utz/Galen, vol. I, p. 463 ssq., no. 57 ssq.

<sup>33</sup> Utz/Galen, vol. I, p. 137 ssq., no. 1 ssq.

<sup>34</sup> Utz/Galen, vol. I, p. 161 ssq., no. 26 ssq.

<sup>35</sup> Peter Tischleder, Die Staatslehre Leos XIII. (The public scientific philosophy of Leo XIII), 1927, p. 11. Zur Hermeneutik des Syllabus (on the hermeneutics of the syballus), s. Roland Minnerath, Le Syllabus de Pie IX, 2000, p. 71 ssq.

<sup>36</sup> Tischleder, cit. elsewhere, spec. p. 243 ssq.

<sup>37</sup> Emil Marmy (edit.), Mensch und Gemeinschaft in christlicher Schau (human being and community in Christian view), documents, 1945, N. 841.

the Catholic Church to the extent that political developments, provoked especially by ideologies unworthy of a human being such as communism and National Socialism, have permitted the coming up of authoritarian and totalitarian governmental systems. In such situations arise inhumanities and violations of freedom and human dignity also in democracies, independent of the governmental form of monarchy or republic. The democracy was no longer rejected by the Catholic Church as it was the case until the 19th century, but the Church critically discussed democracy, rejecting always the jacobinized form of democracy and stressing the responsibility of the democratic public will for freedom and human dignity and respecting the fundamental rights. Exactly due to these endangering and violations of the human dignity it was necessary for the Catholic Church to develop from the catholic point of view a doctrine of the fundamental rights, and this more broadly in discussions with politics, the law and the state, starting from the fundamental aspects to the detailed aspects. Retrospectively we can state that the human dignity as idea is older than the human rights, therefore as fundamental rights, as legal institution.

The popes have already defended the human rights, namely the right to life, to freedom, also of the natives, in an epoch when they still declined democracy and the rights of freedom, such as POPE EUGEN IV stated 1435 in his bull „Dudum Nostras” on the slave trade;<sup>38</sup> POPE PAUL III 1537 in his bull „Veritas ipsa” on the human dignity of heathens<sup>39</sup>; POPE URBAN VIII 1639 in his bull „Commissum nobis” with the instruction to forbid any person to sell the inhabitants of Western and Southern India, to slave them or to deprive them of their spouses, their children or their property<sup>40</sup>; POPE BENEDICT XIV 1741 in his bull „Immensa Pastorem” concerning the fraternity beyond all difference of race<sup>41</sup> and GREGOR XVI 1839 in his apostolic letter „In Supremo” against slavery in Africa and India and against the traffic of negros<sup>42</sup>.

JOSEF ISENSEE also has stressed: „Many commandments of humanity which today are sailing under the flag of human rights were already defended by the papacy in centuries in which the human rights as secular category did not yet exist. As example be mentioned the rejection of torture and slavery, the human dignity of all races, the recognition of different

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<sup>38</sup> Utz/Galen, vol. I, p. 398 ssq., no. 15 ssq.

<sup>39</sup> Utz/Galen, vol. I, 381, no. 1.

<sup>40</sup> Utz/Galen, cit. elsewhere, p. 382 ssq.

<sup>41</sup> Utz/Galen, cit. elsewhere, p. 389ssq., no. 6 ssq.

<sup>42</sup> Utz/Galen, cit. elsewhere, p. 406 ssq., no. 18 ssq.

cultures, the rejection of forced conversions. One human right, in its substance liberal, was required in the 19th century by the political catholicism and realized successfully in the 20th century: the parental right. A lump rejection of the human rights is therefore out of the question. Object of the critics is the liberal draft of freedom in its ideological dimension and in those rights of spiritual freedom which seem to be threatening the traditional system, the religion, the ethics and the state".<sup>43</sup>

The Catholic Church is prepared to recognize every state independent of the form of government, of the structure and of its political system, as long as the state serves the common welfare and guarantees freedom and human dignity. The Catholic Church rejects in fact every claim of omnipotence and totality in the areas of law, state and politics. They are incompatible with the freedom and the human dignity and with the tasks and the doctrine of the Catholic Church. This is also demonstrated by the principle of subsidiary established by POPE PIE XI in his Encyclical „Quadragesimo anno” (no. 79)<sup>44</sup> of 1931 and which represents the „principle of complementary assistance”<sup>45</sup>. It protects the smaller unity of the bigger and is the reason of graduated personal responsibilities which join each other in a reciprocally conditioned context and protect also the human being against the omnipotence of the state.

The Catholic Church was confronted with inhuman epochal circumstances especially during the Second World War. At the time the Catholic Church with priests and laymen had to make numerous sacrifices too.

At that time the Catholic Church gave its comprehensive proclamation on democracy in the radio address „Benignitas” of POPE PIE XII<sup>46</sup> at Christmas 1944 on the „true democracy”. Shaked violently by the cruelty of the war unchained by the national-socialist distatorship of the Deutsche Reich, POPE PIE XII was in favour of the democratic tendencies of people.

Like any other government form the democracy must also be equipped with efficient authority without which it cannot exist.

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<sup>43</sup> Isensee, Keine Freiheit für den Irrtum (no freedom for the error), p. 301 ssq.

<sup>44</sup> Marmy, cit. elsewhere, p. 443 ssq., spec. 478 sq.

<sup>45</sup> Johann Baptist Schuster, Die Soziallehre nach Leo XIII. und Pius XI. unter besonderer Berücksichtigung der Beziehungen zwischen Einzelmensch und Gemeinschaft (The social doctrine after Leo XIII. and Pius XI taking especially account of the relations between the individual and the community), 1935, p. 7

<sup>46</sup> S. nearer Herbert Schambeck, Der rechts- und staatsphilosophische Gehalt der Lehre Pius XII. (The law and public scientific philosophical substance of the doctrine of Pius XII, in: the same. (edit.), Pius XII. p. 447, and the same, Pius XII. and the way of the Church, in: the same. (edit.), Pius XII. – Friede durch Gerechtigkeit (Peace through justice), 1986, A. 192 ssq.



A question of survival and a question of the prosperity of the democracy is the spiritual and the moral quality of the deputies who take the supreme political decisions in a democratic state. POPE PIE XII was aware that only an elite of human beings of excellent intelligence and of strong character should act as representatives of the nation as a whole. If the legislator has reinless and unlimited power, the democratic governmental form which, according to POPE PIE XII, then no longer reposes on the unchangeable fundamental rights of natural law and the revealed truths, turns to an absolutistic system, despite the misleading appearance. POPE PIE XII urgently warns the Christians to use the voting right. This be an act of high moral responsibility the negligence of which signifies the endangering of democracy and a grave fatal sin of omission where religious matters play a role.

#### IV.

This recognition of the democracy by the Catholic Church was not realized homogeneously but in steps. Thus in his Encyclical „Mirari vos” of 1832 POPE GREGOR XVI has still condemned the rights of freedom and jointly the democracy<sup>47</sup>: POPE LEO XIII in his Encyclical „Libertas praestantissimum” of 1888 already stresses admissibility of the democracy ; POPE PIE X in his Encyclical „Vehementer vos” of 1805 warned the Christians<sup>48</sup> of the unilateral favouring of the democratic governmental form<sup>49</sup> and POPE PIE XI still mentioned in his Encyclical „Ubi arcano” of 1922 the dangers for democracies through quarrels within the parties<sup>50</sup>. In the contrary, POPE PIE XIII and POPE JOHN XXIII have accepted the democracy as an established system of political order and discuss in their doctrinal statements the democratic principles and their consequences for Christians.

During his relatively short pontificate of five years POPE JOHN XXIII has set accents which became efficient for the Catholic Church beyond his pontificate; these include besides of the convocation of the II. Vatican Council in 1962 his two Encyclicals, namely in 1961 „Mater et Magistra” and in 1963 „Pacem in terris”. Whilst POPE JOHN XXIII presents to the jubilee of „Rerum novarum” in „Mater et Magistra” the Catholic Church in its worldwide responsibility with regard to „the recent developments of the social life and its structuring in the light of the

<sup>47</sup> Marmy, cit. elsewhere, no. 1 ssq.

<sup>48</sup> Marmy, cit. elsewhere, no. 632 ssq

<sup>49</sup> Marmy, cit. elsewhere, no. 968 ssq.

<sup>50</sup> Marmy, cit. elsewhere, no. 1102

Christian doctrine”<sup>51</sup>, together with time-orientated social structural recommendations, he strives in *Pacem in terris*” for „the peace amongst all nations in truth, justness, love and freedom”<sup>52</sup>.

In „*Pacem in terris*” POPE JOHN XXIII has enlarged the papal doctrine on the state and on politics by a systematic description of the human rights. Therefore „*Pacem in terris*” is especially important, because in all other catholic doctrinal statements reference is made point by point to the fundamental rights, but no other documents contains such a comprehensive catalogue of human rights. The comprehensive description of the human rights is included in the first part of the circular „*Pacem in terris*” of POPE JOHN XXIII under the heading „The order amongst human beings”. This text includes the fundamental statement: „9. Every living together of human beings, if it shall be in order and fruitful, must be based on the principle that every human being is from its essence also a person. He has a nature which with reason and free will results from his nature. As they are generally valid and invulnerable they can in no way be alienated”<sup>53</sup>.

Besides of the personification of the human being the dignity of the human person according to the revealed truths is *expressis verbis* analysed and it is stressed if we do this „we must appreciate human dignity much more. For the human beings have been released by the blood of JESU CHRIST, we have become children and friends of GOD by the celestial grace and been appointed heirs of the eternal glory”<sup>54</sup>. The rights and obligations are seen in the same person as an „undissolvable relationship”; the rights include: „the right to life and to livelihood (11)”, „moral and cultural rights (12, 13)”, „the right to adore GOD (14)”, „the right to free choice of the civil statute (15, 16, 17)”; „rights in financial matters (18, 19, 20, 21, 22)”, „right to form communities (23, 24)”, „right to emigration and immigration (25)”, „rights of political contents (26, 27)”; as regards the last mentioned rights, „*Pacem in terris*” stresses that „the dignity of the human being is linked to the right to actively participate in the public life in order to contribute to the common welfare (25, 27)”. Besides of the rights is stressed the „undissolvable relation between rights and obligations in the same person (28)2; amongst others is required the conscience of responsibility and the living together in truth,

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<sup>51</sup> Texts concerning the Catholic social doctrine, p. 171

<sup>52</sup> Texts, cit. elsewhere, p. 241

<sup>53</sup> Texts, cit. elsewhere, p. 243

<sup>54</sup> Texts, cit. elsewhere, p. 2431

justness, love and freedom (35, 36).

If we consider these statements relating to the position of the individual, they are less worded under normative law, they rather are of socio-ethical importance, stressing in this way prepositive values and requiring rights which allow to explain the declarative character of texts on fundamental rights included in constitutional regulations.

Moreover „Pacem in terris” includes hints to the possibility of practicing these human rights. Thus POPE JOHN XXIII stresses with regard to the „participation of the citizens in the public life”:(73) That it is allowed to the human beings to participate actively in the public life is a prerogative of their dignity as person, even if they can only participate in the forms which conform with the situation of the state whose members they are”! He was aware that, (74) the participation in public life ... results in new very large and useful possibilities” and states more concretely with regard to „the signals of the time”: „(75) As regards the legal organization of the political communities we are confronted with the requirement that in clear and defined terms is prepared a summary of the fundamental rights proper to the human being which often is taken up in the constitution of a state. (76) Moreover it is claimed that the constitution of every state is laid down in a precise legal form. The text shall inform how the authorities of the state are appointed, by which the authorities are linked each other, which are their competences and finally in which manner they have to act (77). Finally it is claimed that with regard to the rights and obligations are determined the relations which shall be efficient between the citizens and the authorities of the state, that clearly be stressed the main task of the authorities which is to recognize the rights and the obligations of the citizens, to respect them, to harmonize them, to protect and to promote them.

With this Encyclical of peace „Pacem in terris” POPE JOHN XXIII has not only given the most comprehensible catalogue of the human rights, but for their being taken up in the constitution he has also shown the path for detailed regulations as this has not yet been the case in papal doctrinal statements. POPE JOHN XXIII knew that today the protection of the fundamental rights requires beyond the state also international recognition and he included in the „signals of the time” (no. 142) as „(143) an act of highest importance ..... the general declaration of human rights” of 1948 which has to be „regarded as step and as access to the legal and political order of all nations in the world, an order still to create” (no. 144). POPE JOHN XXIII himself had no more the opportunity to stress the importance of UNO by a visit

to the worldwide organization, but his successors POPE PAUL VI, POPE JOHN PAUL II<sup>55</sup> and POPE BENEDICT XVI<sup>56</sup> had the opportunity.

The Catholic Church knows that moral requirements alone do not suffice, but it is rather important to grant legal security by means of a precise positive law, because not all regulative references are prepositively stipulated. POPE PIE XII has already stated on 13th October 1955 in his address on „coexistence and living together of people in truth and in love” that it be not less instructive to see „how more and more one has perceived the necessity to lay down in international treaties and agreements that what according to the principle of the nature was not sure, and to complete that about which the nature has been silent”<sup>57</sup>. Thereby POPE PIE XII has stated in unique clearness, often too less determined in advance by a prepositive law based on natural law; in the opinion also of POPE PIE XII is opened here an area of political decision. In this context it should not be ignored that in this Encyclical „*Libertas praestantissimus*” of 1888 POPE LEO XIII stressed that not every prescription of positive law can be reduced to a clause of natural law<sup>58</sup>; it should be added that also there where no requirement of natural law yields to the positive law the legislator shall try to reach a human settlement by respecting the human rights and the common welfare.

## V.

It would be wrong to assume that for this purpose the Catholic Church has developed a proper constitutional doctrine: The political science and the doctrine of the human rights are is part of the social doctrine of the Catholic Church within which, since AMBROSIUS, the Church has developed besides of the of individual ethics social ethics, e.g. besides of the moral order of the privacy of the individual; an ethical order of the public life of the individual, of the state and of the community, which both are fateful for the individual at whom the truth of faith is aimed.

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<sup>55</sup> Consider Permanent Observer Mission of the Holy See to the United Nations, *Path to Peace. A Contribution*, Documents of the Holy See to the International Community, 1987; *The Visit of Holiness Pope John Paul II. To the United Nations*, 1996, and *Permanent Observer Mission of the Holy See to the United Nations, Serving the Human Family*, the Holy See at the Major United Nation Conferences, 1997.

<sup>56</sup> Papst Benedikt XVI., *Eine menschliche Welt für alle* (A human world for all human beings). The address to UNO, 2008.

<sup>57</sup> Pope Pius XII., *Der Weg zu Sicherheit und Frieden* (The way to safety and peace), Christmas message of 24.12.1955, in: *Aufbau und Entfaltung des gesellschaftlichen Lebens* (building up and deployment of the social life), *Soziale Summe* (social total) Pius XII., edited by Arthur Fridolin Utz und Joseph-Fulko Groner, 3rd vol., 1961, no. 6349.

<sup>58</sup> Utz/Galen, 1., p. 190 sq., RN 47.

The Catholic Church accentuates the priority of the human being and his human rights vis-à-vis the state. With reference to the social order these rights to which everyone is entitled and which are indefeasible include according to the Encyclical „Rerum novarum” of POPE LEO XIII the right of coalition.<sup>59</sup> POPE JOHN XXIII stressed in his Encyclical „Populorum Progressio” of 1967 (in which he denotes the „development, the new name for peace” (no. 76) the welfare of the state<sup>60</sup> which has been emphasized by POPE PIE XI in „Quadragesimo anno”<sup>61</sup>, by POPE PIE XII in many speeches, especially in the message at Whitsuntide of 1941<sup>62</sup>, POPE JOHN XXIII in „Mater et Magistra”<sup>63</sup>, POPE PAUL VI in his address at the International Organization of Labour 1969<sup>64</sup> and by POPE JOHN PAUL II in „Laborum exercens”. In this last mentioned social Encyclical of 1981<sup>65</sup> POPE JOHN II has described, under renewed accentuation of the personification of the human being, the labour as a means of deployment of the personality, has stressed the priority of work over capital and has placed the social rights in the context of the general human rights and thus continued to develop the catholic doctrine of human rights, such as POPE JOHN XXIII has especially deployed in „Pacem in terris”<sup>66</sup>. The social responsibility of the state, but also of the community of nations, is accentuated to a growing extent. The world messages which the successors of PETRI publish at the beginning of every year, the first in 1958 by POPE PAUL VI, contribute to the social responsibility.<sup>67</sup>

For the Church the state is not a self-end but has a function of assistance. This has been stressed by POPE JOHN PAUL II in „Centesimus annus”. The Church does no longer accept the state in a neutrality of ideas of order, but requires its power of forming social life.

This social structuring in the meaning of the social doctrine<sup>68</sup> of the Church aiming at social

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<sup>59</sup> Texts cit. elsewhere, p. 30 sq.

<sup>60</sup> Texts cit. elsewhere, p. 418

<sup>61</sup> Texts cit. elsewhere, p. 88 ssq.

<sup>62</sup> Texts cit. elsewhere, p. 123 ssq.

<sup>63</sup> Texts cit. elsewhere, p. 171 ssq.

<sup>64</sup> Texts cit. elsewhere, p 441 ssq.

<sup>65</sup> Texts cit elsewhere, p. 529 ssq.

<sup>66</sup> Tests cit elsewhere, p. 241 ssq.

<sup>67</sup> S. respectively Donato Squicciarini (editor), Die Weltfriedensbotschaften Papst Paul VI. (The world peace messages Pope Paul VI), 1979, Die Weltfriedensbotschaften Papst Johannes Paul II. (The world peace messages Pope John Paul II, 1992 and the world peace messages Pope John Paul II. 1993-2000, 2001 as well as Roland Minnerath, L'Eglise catholique et ses efforts pour la paix, in: J.P. Ribaut & J.F. Collange (editor), Recevoir et construire la paix. Les religions et la paix (Travaux de la Faculté de Theologie Protestante, 5), 1994, p. 49 ssq.

<sup>68</sup> Consider Alfred Klose, Die katholische Soziallehre (The Catholic social doctrine), 1979; Rudolf Weiler,

improving becomes extremely clear in „Centesimus annus” by POPE JOHN PAUL II. The realization of the structural recommendations relating to the social and economy system presupposes a defined governmental order. In this context is mentioned the separation of the powers of the state, namely legislation, administration and jurisdiction, their importance of reciprocal control for the protection of freedom of everybody, as well as the principle of the „constitutional state in law and are not arbitrariness of human beings is ruling (no. 44).”<sup>69</sup>

The state and the institutions of the state are also in „Centesimus annus” not a self-end but serve the human being. In the attitude vis-à-vis the human being and the human dignity reposes the reason for the judgment and thus the distinction of the states. POPE JOHN PAUL II regrets that human beings are only respected to the extent „that they serve as instrument for egoistic purposes”. „The root of the modern totalitarianism is the negation of the transcendent dignity of the human being who is a visible image of the invisible God” (no. 44)<sup>70</sup>. POPE JOHN PAUL II qualifies the human being as „a subject of rights which nobody can violate, neither the individual nor the groups, the class, the nation or the state” (no. 44)<sup>71</sup>. Thus POPE JOHN PAUL II takes as basis the absolutely valid human rights of the individual which the state and the legislation have to respect and whose negligence is inadmissible. JOHN PAUL II required the recognition and the protection of the position of the individual, of the family, of the civil community and of the religious community. He rejected every form of totalitarianism and requires the recognition of the independence of nongovernmental institutions.

Every form of uniformization of levelling and thus fanaticism and fundamentalism are clearly rejected. The Church rather requires the respect of freedom and of diversity, insofar as they are compatible with the human dignity. Thereto the democracy can offer the possibility when forming the will of the state.

The value-related character of the democracy is especially proved by the human rights. Certainly „Centesimus annus” does not include any taxative but only a demonstrative enumeration of the human rights, which discloses a definitive rating: ”Amongst the prime

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Einführungen in die katholische Soziallehre (Introduction tot he Catholic social doctrine), 1991 und Arthur Fridolin Utz, Zum Begriff „Katholische Soziallehre“ (On the notion „Catholic doctrine), in: Die katholische Soziallehre und die Wirtschaftsordnung (The Catholic social doctrine and the reglementation of economy), 1991, p. 6 ssq. and Handbuch der katholischen Soziallehre (Manual of the Catholic social doctrine)

<sup>69</sup> Texts, p. 742

<sup>70</sup> Texts, cit. elsewhere, p. 742

<sup>71</sup> Texts, cit. elsewhere, p. 742

rights are to be mentioned: the right to life which also includes the right to grow in the womb after conception, the right to live in a harmonious family and in a moral environment proper for the development and the deployment of the own personality; the right to bring to maturity the personal intelligence and the freedom in the search and the perception of truth; the right to participate in the work of exploring the goods of this earth and to gain thereout the subsistence for himself and his relatives; the right to found in freedom a family and to conceive and to educate children by using in responsibility the personal sexuality. The source and the synthesis of the rights is in a certain sense the religious freedom, understood as the right to live in the truth of the personal faith and in harmony with the transcendent dignity of the own person (no. 47)".

The fundamental right to life has been a special and permanent concern of POPE JOHN PAUL II during his pontificate. He stresses this human right 1995 in his Encyclical "Evangelium vitae" and 1999 in his message to the world day of peace. "The mystery of true peace reposes in the respect of the human rights" was the motto of this world day of peace and here the right of life was the central point. POPE JOHN PAUL II stressed: "This alone is the fundamental right to life. Human life is sacred and intangible from its first moment of conception until its natural end ...".

In this view of POPE JOHN PAUL II it is the task of the catholic social doctrine to not only secure freedom to the individual but to make him clear the responsibility for the use of freedom, as well as all possibilities opened by the sciences as for instance by medicine in the context of the right to life, and to bring about the social and financial conditions necessary for the use of such possibilities in the sense of deploying the personality.

All claims directed to the state in "Centesimus annus", also those by reason of social justness and of the common welfare, are submitted to the principle of subsidiarity. In "Centesimus annus" POPE JOHN PAUL II refers especially to the importance of all forms in the intermediary sector between the individual and the state. Responding to the principle of subsidiarity POPE JOHN PAUL II is in favour of specific social nets. Through the principles of common welfare and subsidiarity he wishes to avoid that, on the one hand, the state, similar to the libertine state of night-watchman, ignores its social responsibility and, on the other hand, that is created a state of maintenance with an inflated apparatus of power: In this way he forwards in "Centesimus annus" to the democrats of today with their instruments of a

constitutional state a recommendation of forming social life which allows to complete the law by legal and social ethics. Here the human rights have the function to show the path for mediation!

## VI.

This function of mediation of the human rights, if they are recognized, can be demonstrated in the being together of human beings as well as in the community, in the state and in the community of nations: Here Europe, as an example, has a specific responsibility. “In Europe the notion of human rights has been formulated for the first time” was stressed by POPE BENEDICT XVI on 7<sup>th</sup> September 2007 in Vienna, during his visit in Austria and he made clear “The fundamental right, the basic condition of all other rights, is the right to life itself. This is valid for the life from its first moment of conception until its natural end. Therefore abortion cannot be a human right, abortion is the contrary thereof.”<sup>72</sup> (...).

By this statement POPE BENEDICT XVI wished to be well understood, and he therefore said that he did not talk about a special clerical interest, he rather would be “the advocate of a deep human concern and the speaker of those not yet born who have no vote”<sup>73</sup>. He “did not shut the eyes over the conflicts and problems of many women” and be aware “that the creditability of this address depends also upon the assistance which the Church gives to the women concerned”.<sup>74</sup>

In many communities of the Catholic Church much is done in this area, so that generated life can also be born if women are in a border situation; as one of many examples can be mentioned the congregation “Missionaries of Charity” founded by MOTHER TERESA in Calcutta and which is operating on a worldwide level.

The name of MOTHER TERESA has precisely become the personification of Christian charity, also with regard to the protection of the unborn life. Thus also MOTHER TERESA stated on 22<sup>nd</sup> December 1979 in her address at the occasion of the bestowal of the award Nobel of peace in Oslo: “We fight against abortion by adoption. We have saved thousands of

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<sup>72</sup> Pope Benedict XVI, in Austria, Apostolic journey to the 850 centenary of Mariazell, Die österreichischen Bischöfe (The Austrian Bishops) 8, 2007, p. 37 sq.

<sup>73</sup> Pope Benedict XVI, cit. elsewhere

<sup>74</sup> Pope Benedikt XVI, cit. elsewhere; s. also Reinhard Marx, Lebensschutz als Einsatz für die Menschenwürde (Life protection as input for the human dignity), Familia et Vita, no. 1/2009, p. 36 ssq.



lives, have sent information to all clinics, hospitals, police offices: please do not kill a child, we take the child ... And we have many requests from families who are childless, that is the blessing of God on us”.<sup>75</sup>

Similar to this practiced charity communities of the Church have taken care of the sufferings at the end of the life; here again MOTHER TERESA with her congregation has shown the path:<sup>76</sup> All this is a practice in the intention of the former archbishop of Vienna, FRANCIS CARDINAL KÖNIG, who claimed: “The human being shall not die by the hand of a human being but at his hand”.<sup>77</sup> Wholly in the sense of this attitude also POPE BENEDICT XVI has stated 2007 in Vienna: “The right answer to the suffering at the end of the life is love is accompanying in death – especially with the assistance of the palliative medicine – and not with active help to death. In order to realize a human accompanying to death it however would be necessary to reform the structures in all areas of the medical and social systems and the systems of palliative care. Required are however also concrete steps in the psychological and pastoral accompanying of gravely sick and dying persons, of relatives, medicines and of nurses. Here the hospice initiative is especially efficient”.<sup>78</sup>

Certainly such helps for life in particular and the respect of the human rights in general will unfortunately not be possible in all dimensions and in all parts of the world; necessary is a conscience of the responsibility for human acting as well as of the correspondent cultural legal, social and financial conditions and the protection thereof. The community of nations can contribute to this development useful and aim-orientated elements; educational work is required. The Catholic Church makes efforts in this area, also across the borders of the nations and of the continents. This was very clearly described in the address of POPE BENEDICT XVI at UNO on 18<sup>th</sup> April 2008 in New York at the occasion of the 60<sup>th</sup> anniversary of the general declaration of human rights. He qualified this document as “the result of a conformity of different religious and cultural traditions which all had the same wish to place the human person in the centre of the institution, of the laws and of the practices of the communities and to consider them as being important for the world of culture, religion

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<sup>75</sup> Mutter Teresa, *Durch Liebe zum Frieden* (Through love to peace), in: *Apostolat und Familie* (apostolate and family), honoring publication for Opilio Cardinal Rossi, edited. by Herbert Schambeck, 1980, S. XVI.

<sup>76</sup> S. Mother Teresa, cit, elsewhere, p. XVI sq.

<sup>77</sup> Cardinal Franz König, letter dated 14th January 2004 to the presidency and the committee 4 (fundamental rights) of the Austrian Convention

<sup>78</sup> Pope Benedict XVI, cit. elsewhere, p 38

and science”.<sup>79</sup> He described the rights of the human being who “for the world and for the history remains the central point of the program of creation of God”<sup>80</sup> and simultaneously he recognizes the factor of prepositivity. POPE BENEDICT XVI namely stresses: “These rights are based on the natural law which is written in the heart of the human being and which is present in the cultures and civilizations”.<sup>81</sup> Whoever removes these human rights from this context would “follow a relativistic conception” which is rejected by POPE BENEDICT XVI.

POPE BENEDICT XVI has recognized this danger of relativism already prior to his election as successor of PETRI and already in his sermon in the Holy Mass “Pro eligendo Romano Pontifice” at the basilica St. Peter on 18<sup>th</sup> April 2005 he stressed: “How many conceptions of faith have come to our knowledge in the last two decades, how many ideological streams, how many kinds of thinking ... The small boat of thinking of many Christians is often oscillating by these waves, the boat has been thrown from one extreme to the other: From Marxism to liberalism unto libertinism, from collectivism to radical individualism, from atheism to vague religious mysticism, from agnosticism to syncretism, and so on. Every day a new sect is born ...

To have a clear faith according to the credo of the Church is often stamped as fundamentalism, whilst relativism, the leaving drive by a gust of wind of any doctrine from here to there seems to be today the unique attitude. A dictatorship of relativism is born which recognizes nothing as definitive and respects as last measure only the own ego and its wishes.

But we have an other measure, the Son of God, the true human being. He is the measure of true humanism. “Grown-up” is not a faith which follows the waves of fashion and of last innovations; grown-up and mature is the faith deeply anchored in the friendship with Christ. This friendship makes us open for all things which are good and gives us a criterion for distinguishing true and wrong, fraud and truth. This faith must be allowed to mature.”<sup>82</sup>

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<sup>79</sup> Pope Benedict XVI, *Eine menschliche Welt für alle* (a human world for all human beings), p. 21

<sup>80</sup> Pope Benedict XVI, cit. elsewhere

<sup>81</sup> Pope Benedikt XVI., cit. elsewhere; talk into account too the same.; Probleme und Perspektiven des Naturrechts (Problems and perspectives of the natural right), *L'Osservatore Romano*, hebdomodal edited in German, no. 8, 23<sup>th</sup>. February 2007, p. 9. s. thereon Herbert Schambeck, *Naturrecht in Zeitverantwortung* (natural right in responsibility of the epoch), in: *Mensch und Naturrecht in Evolution* (the human being and the natural right in evolution), 2008, p. 15 ssq.

<sup>82</sup> Cardinal Dean Joseph Ratzinger, Holy Mass „Pro eligendo Romano Pontifice“, *L'Osservatore Romano*, special edition 2005, p. 20; thereon Herbert Schambeck, *Die Möglichkeiten der Demokratie und die Diktatur des Relativismus – ein Beitrag zur Zeitverantwortung in der Lehre Papst Benedikt XVI.* (the possibilities of the democracy and the dictatorship of relativism)-a contribution to the responsibility of the epoch in the doctrine of

The concern of POPE BENEDICT XVI is the recognition of the human rights and based on these rights, with in the centre freedom of religion and faith, a human order in the national and international frame of life. In this view also has stressed at UNO: “It is incomprehensible that believers must oppress a part of themselves – their faith in order to be active citizens. It never should be necessary to deny God in order to enjoy the personal rights. The rights tied to the religions need more protection if they are considered as being contrary to a secular ideology or to majority positions of exclusive nature. The full guarantee of the religious freedom cannot be restricted to the free exercise of the cultus, but must consider correctly the public dimension of the religion, thus the possibility of the believers to play their role in building up the social order”.<sup>83</sup>

With these statements at UNO POPE BENEDICT XVI has accentuated the importance of the human rights not only individually for the individual being but also socially for the community, the state and the community of nations. With its doctrine of the human rights the Catholic Church contributes beyond the group of believers to the worldwide responsibility, a contribution of which all human beings can benefit, entirely in the spirit of the pastoral constitution of the II. Vatican Council to be Church in the world of today; may this be possible with joy and with hope.

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Benedict XVI, L'Osservatore Romano, hebdomodal edition dated 12th May 2006, no. 19, p. 10 sq. and 19th May 2006, no. 20, p. 9 sq.

<sup>83</sup> Pope Benedikt XVI., Eine menschliche Welt für alle (a human world for all human beings), p. 33; s. thereto the same, Die Würde des Menschen darf niemals von Gewalt erniedrigt werden (It is never allowed to humiliate the human dignity by violence), L'Osservatore Romano, hebdomodal edition in German, no. 6, 6th February 2009, p. 3