Michel Troper · Annalisa Verza (Eds.)

Legal Philosophy: General Aspects

Concepts, Rights and Doctrines

Proceedings of the 19th World Congress
of the International Association
for Philosophy of Law and Social Philosophy (IVR)
New York, June 24–30,1999

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EDITED BY
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Contents

III. Authors in Focus

Preface

In the early summer of 1999, some five hundred philosophers, lawyers, judges, and other scholars from every part of the world convened at Pace University in New York City for the Nineteenth World Congress on the Philosophy of Law and Social Philosophy. It was an especially apt opportunity for scholars and practitioners to meet members of their professions who represented vastly differing legal, political, and social cultures and traditions.

The diversity did not end, however, with geography, politics, and legal traditions. It extended to the participants' philosophical and legal interests and specializations as well. Thus, plenary and concurrent sessions were devoted to such highly theoretical topics as the nature of law and legal reasoning to pressing ethical and political issues such as law and the environment, the rights of women, artificial intelligence and computer ethics, and the impact of scientific discovery and technological advances upon the law. Indeed, participants were trated to a most unusual lecture and performance entitled "Philosophy and Law in Opera" by Maestro Joseph Colaneri of the Metropolitan Opera. Thus, participants had an exceptional opportunity to communicate with one another and to exchange views on a variety of levels.

The sponsoring organization, the International Society for the Philosophy of Law and Social Philosophy (known by its German initials, IVR) has traditionally published the papers that are presented at its world congresses. Naturally those presented at the Nineteenth World Congress are being published as well under the official imprints of the IVR. Readers of this volume and the others in this series will be treated to an enormous diversity of writers and topics, of philosophical, legal, and scholarly traditions and points of view.

On behalf of the Publication Committee and the Executive Committee of the IVR, I want to thank the overall editors of these volumes, Professors Gerhard Sprenger and Werner Krawietz, and the editors of this volume in particular – Dr. Annette Brockmöller – for the months of hard work they have devoted in order to make this volume and the set as a whole an outstanding collection of original legal and philosophical scholarship.

Professor Dr. Burton M. Leiser, Chair
Organizing Committee, IVR-99
IVR Publications Committee
Pace University, New York

Introduction

By

Michel Troper and Annalisa Verza

The papers in this volume were presented at the World Congress on Legal and Social Philosophy held in New York in 1999. They deal with some of the most general, most important and most difficult questions of legal philosophy. It is therefore not surprising that many of these papers tackle with very ancient philosophical arguments and attempt either to use them in order to bring some clarity on contemporary issues or to use arguments from contemporary debates with the hope to renew ancient discussions. They can be conveniently divided into three categories. The first includes those papers that discuss the fundamental concepts, the second the papers that focus on the rights and in the third group are some articles dealing with important legal theories.

The first part of the volume concerns some fundamental concepts and distinctions in legal philosophy.

Some authors discuss the traditional problems of the nature of Law, of the concepts and theories that are presupposed by the Law and legal theories, its relation to justice and the sources of Law.

Thus **Michaela Strasser** notes that the various theories in social or legal philosophy, in the classical tradition as well as in the Enlightenment, presuppose different images of man. She shows the process from a unified view of man to a plurality of images after the Enlightenment and analyzes its consequences for the issue of the universalization of human rights. On one hand, they are not independent of the image produced by the thinkers of the Enlightenment and seem to rely on an "eternal human nature". But on the other hand, they cannot be culturally indifferent and they are confronted by a variety of images of man. Michaela Strasser argues that this tension forces us to look for a transcendental dimension, as acknowledged by authors such as Höffe and Bobbio.

But legal theories and the Law itself do not only presuppose an image of man. They also presuppose and operate and, furthermore, produce a concept of time. **Stephan Kirste**, thus, contrasts the dominant idea of an absolute time with the thesis that time is produced by social events and has to be understood from its dimensions of social present, future and past. Social time conflicts can happen and be solved if Law synchronizes different social times by reconstructing them according to its basic values. Stephan Kirste mentions some principles that, in their temporal implications, shape the legal time order, such as balance of powers, that equalizes the asymmetry towards the present by leaving the limiting of the future to the legislative decision and the control of past legal decisions to the courts or the democratic principle, the Rule of Law, private autonomy. Thus the temporal autonomy of Law is a form of internalization and reconstruction of time, that the author sees as a precondition for the establishment of temporal justice.

The relationship between norms and social practice has drawn the attention of several authors in different ways. **Vincent Luizzi** sees the essence of Law not in the legal norms themselves, but in the acts of citizens guided by a norm, just as the essence of language is an activity of people guided by linguistic norms and just as art according to Tolstoy or knowledge according to Dewey can be seen as phenomena involving the activity of people at various levels. He relates this view to that of several other authors, particularly the American legal realists, who conceived Law's essence as the activity of judges. But he stresses that this conception should be broadened in order to include

other types of activities, such as those of ordinary citizens guiding their activities by legal norms.

Similarly, the paper by **Antal Visegrády** focuses on the concept of the effectiveness of Law, defined as the relation between the actual result of a legal rule and the expected social goal the rule was meant to attain. Accordingly, the author distinguishes a "social" sense from a "legal" sense of effectiveness. Finally, he distinguishes three conditions for the effectiveness of law: optimal lawmaking, effectiveness of the application of Law, and the legal consciousness of groups and individuals. This last, in turn, depends on several factors, including knowledge of the Law, relations with the law-applying organs, existence of negative and positive sanctions, and cultural attitudes towards the Law.

Kenneth Campbell addresses the question of the nature of custom. John Austin's view was that custom becomes Law only when it is adopted by the courts, according to a tacit command by the sovereign. Before that transmutation, it is merely a rule of positive morality or, in other words, a source of Law. Kenneth Campbell argues that this view is correct. He defends Austin against the argument that it does not follow, as one might object, that the same could be said of statutes. There is a crucial difference between custom and statute. Judges themselves are expected to be aware of the existence of statutes or precedents and to be able to determine their meaning, whereas the existence and content of custom is always a matter of fact and depends on factual evidence. This is the reason why custom is a mere source of Law, while statute is Law.

Another classic issue is the relation between Law and moral or social values. It is well known that the two traditions of Legal Positivism and Natural Law have opposite views on this matter. The opposition exists both on various levels, epistemological, theoretical and practical level. Some authors argue that, because of contemporary developments, this opposition must be challenged on all levels, while at the same time it leads to new questions regarding the substantive content of a theory of justice.

Thus, for **Marijan Pavcnik**, the Fall of the Berlin Wall raises new questions. He argues that the opposition between Legal Positivism and Natural Law concerns legal observers and scholars, who can be positivists or Natural Law lawyers, whereas participants, e.g. judges, can only be productive if they adhere to a synthetic view, that would provide a theoretical basis for judging events and Law from the past. The judge must encompass life cases, formal legal sources and a firm system of values. According to Pavcnik, such a conception relates toLlegal Positivism because of the reference to legal sources, but lies nevertheless beyond Legal Positivism because it holds that an unlawful Law is not valid Law.

Similarly, **Noel Struchiner,** argues that a new paradigm is necessary because neither Natural Law nor Legal Positivism can deal with the complete spectrum of the meaning of justice. The author follows Wittgenstein's idea of language games and Hannah Pitkin's suggestions for approaching the concept of justice. The traditional paradigms cause a conceptual puzzlement, by assuming that justice is identifiable with morality or that it depends on the application of the rules of formal logic. The new methodological paradigm that is to be found ought to take into consideration the three dimensions of variations of justice: the meaning of the word, the facts of the world and the standards of what is considered just.

Like Marijan Pavcnik, but from a different perspective, **Luiz Fernando Coelho** takes the problem at a practical level. He presents a framework for a critical theory of Law, that is part of a political project. Its aim is to free the jurist from any kind of alienation and rebuild juridical knowledge, by means of an analysis of the myths that are the fundamental components of the western legal-political ideology. Luiz Fernando Coelho

lists twenty principles on which this ideology lies and which are dogmatically accepted by common sense. Their function is to ensure the belief in the neutrality and legitimacy of the State, on the rationality present in the production of legislative and judicial decisions, on the scientificity of legal knowledge. Against those principles, the critical theory of Law states the ideological subjectivity of the Law, the rhetorical nature of legal knowledge, the plurality of the sources of Law. On a normative level, he advocates the delivery of justice based on the analysis of real situations in the social and political environment.

Annalisa Verza concentrates on the two main strategies elaborated by liberal theory in response to the diversity – and even the clash – among "conceptions of the good" within a society: one strategy is based on the older concept of toleration; the other, on the requirement of state neutrality defended by the most recent liberal theories. Verza claims that the call for neutrality has not absorbed the older toleration strategy. Analyzing the different structures of toleration and neutrality reveals that these are designed to cover different classes of cases: the neutrality strategy works only with respect to "conceptions of the good" which are not too different from one another; all the other cases are consigned to the residual strategy of toleration.

The second part of the volume considers different aspects of the topic of rights. Some of the papers in this section also engage in an analysis of specific legal cases, thereby providing a concrete discussion of the problems at issue.

The paper by **Christina Bellon** discusses the well-known "will theory" of rights proposed by H.L.A. Hart and purports to show how this theory, because it links the concept of right to the concept of autonomy, cannot give a satisfactory explanation of what counts as "having a right" in cases, for example, when personal autonomy is impaired. Bellon claims that a more plausible account of rights should take into consideration a variety of other social functions, beyond the aim of protecting the right-holder's autonomy.

Rex Martin directs some criticism at Hohfeld's classification of rights. Hohfeld states that the correlative of a legal right is always a form of duty. Martin observes that some rights do not correlate with a duty. For example, free speech, in the American constitution, correlates with a legislative disability of Congress to pass a law limiting free speech. Martin claims that we can still accept the view that a right is such when it provides a significant normative guidance to someone's behavior, but this need not involve a duty. Martin also discusses Hohfeld's atomistic view of legal rights and his "unilateral" conception of liberties.

The conflicts between different reasons supported in different legal principles (rights or goals) is examined by **Leonor Moral Soriano**, who argues that in cases of conflict the view of coherence embraced by the judge is fundamental to determining the resolution. In particular, the very fact that, in cases of conflict, principles need to be weighed and balanced constitutes an important test for the rationality of the reasons involved in the particular situation. By contrast, the ideal of conflict resolution which appeals to a universal rule, and so establishes a fixed order of priority among reasons, disregards value pluralism and the importance of case-by-case evaluation. The article discusses the way the European Court of Justice has balanced reasons in four cases, taking into account criteria of "rule of reason," proportionality, and nondiscrimination.

Walter Ott discusses three possibilities which could have been invoked to justify the legal punishment of the DDR guards who shot on DDR citizens trying to cross the border to West Germany. The first possibility, affirmed by he Federal Constitutional Court,

appeals to G. Radbruch's Natural Law theory. The second possibility is given by a strict Statutory Positivism and consists in showing that the official orders were not themselves permissible and legal under the DDR Constitution. The third possibility would be to introduce a "frankly retrospective law," one justified only with reference to its goal.

Paul Warren discusses the sort of rights and duties that individuals have with respect to their talents and abilities. He distinguishes between three perspectives. The first is that of self-ownership. Each individual is owner of his talents and may use it as he would physical ownership. The second perspective is that of talent pooling, where the relationship that individuals have to their talents is similar to a trusteeship exercised on behalf of society for its benefit, rather than for personal enrichment. A third way of viewing individuals' rights and duties with respect to their talents and abilities is reciprocity. It is a hybrid of the first two and offers, according to Paul Warren, the most promising direction for socialist egalitarians to pursue.

The last part of the volume offers a critical reading of some aspects of the legal-philosophical doctrine of well-known authors, such as Thomas Hobbes, John Austin, and the contemporary scholar Ronald Dworkin.

This section opens with a paper by **Omar Astorga**, who proposes to interpret Hobbesian contractarianism as fundamentally determined by an imaginative basis, too. Imagination, Astorga claims, plays a relevant role in determining the possibility of contractarianism itself. Astorga examines three aspects of Hobbes's doctrine of Natural Law: first, the relation between Natural Law and Law of nature shows that the imaginative basis provides a link between anthropology and politics. Second, the imaginative content of Natural Law is used to justify the necessity of peace, justice, and the contract. Third, the Natural Laws that single out the citizen's virtues are also informed by Hobbes's anthropologic imagination.

Also the paper by **Robinson Grover** focuses on Hobbes's doctrine, and discusses Hobbes's depiction of a state of nature whose only logical and practical solution is the despotism of an absolute ruler. Grover argues that, because of modern technology, global economy, and communication development, we are today living in a new form of the Hobbesian state of nature, one truly decentralized, highly unstable, and much larger than Hobbes's seventeenth-century version. As possible consequences of this new state of nature, anarchy and absolute autocracy are both rejected. But, Grover argues, the three main alternative strategies elaborated by political theorists (natural rights, free market, and appeal to moral virtues) also seem unlikely to be effective.

William E. Conklin analyzes John Austin's theory as a structuralist theory and investigates the justificatory grounds which make legal rules binding, as distinct from the way religious, political, or moral values become binding on us. Conklin claims that the specific justification for the binding force of laws lies in their being ultimately linked to a sovereign interdependent structure of historically contingent institutions. In its turn, the sovereignty of this structure must lie on something external to it. The habit of obedience of "the People," conceived as an abstract body, ensures the closure of this comprehensive picture.

Finally, **Vera Karam de Chueiri**'s paper commentates the constructive model of interpretation worked out by Ronald Dworkin to cast light on the analogy between Law and literature. In exploring this analogy, the authoress focuses on the idea of the "chain of Law" as a conception of adjudication through narrative. Karam de Chueiri intends to base on Dworkin's legal theory a demonstration that legal reasoning is better understood as a work of constructive interpretation than as a descriptive undertaking modeled after the view of legal science traditionally espoused by Legal Positivism.

Michaela Strasser, Salzburg (Austria)

The Image of Man

> "I'm still believing that there is no deeper sense in our world. But I know that there is something that makes sense in it, and this is the human being, because he is the only being which calls for sense. This world possesses at least the truth of man."
> (Albert Camus, Letters to a German Friend)[1]

Abstract: The central point of my presentation is the question which "image of man" stands behind the various theories in social or legal philosophy. The premises which are set by the choice of a specific "image of man" have a decisive impact on the construction of legal, social or political theories of any kind. Every time or period claims to possess the right image of man which should be valid for all times. Nevertheless all these images of man were only historical ones and were valid for a special time only. The presentation will focus on the attempt to demonstrate the risks of reducing man to an one-dimensional "image".

Considering this plurality of historical "images of man" we therefore have to ask whether there is a universal image of man which could be accepted generally. How can it be substantiated? This question has not only a *historical dimension* but a high *actual relevance* as well.

The central point of my presentation is the question which "image of man" stands behind the various theories in social or legal philosophy. The premises which are set by the choice of a specific "image of man" have a decisive impact on the construction of legal, social or political theories of any kind. Every time or period claims to possess the right image of man which should be valid for all times. Nevertheless all these images of man were only historical ones and were valid for a special time only. Considering this plurality of historical "images of man" we therefore have to ask whether there is an universal image of man which could be accepted generally. How can it be substantiated? Can we find an answer to the question what the human being is? This question has not only a *historical dimension* but a high *actual relevance* as well.

Before starting we have to be aware of the following presumptions:

1. We cannot separate the actual dimension of the question what the human being is from its historical dimension. If we inquire after the "image of man" which could guide us in our search for solutions for actual legal or social problems, we have to recur to the history of ideas which offers us the "material".
2. As far as the actual discussion about the "image of man" is concerned two positions are dominating: On the one hand the search for a general "image of man" which can be based on something like a "minimal consensus". This is the essential position in the debate about the universalization of human rights. On the other hand we can state a loss of a holistic image of man by reducing it to only one aspect which is meant to be the essential and only one. The technological development – especially of information and communication technologies as well as of genetic technologies – is based on such an one-sided image of man.
3. Both developments are taking place on a global level. But with respect to their genesis they are connected to the categories and traditions of Western thinking. All of the reflections laid down in this article are therefore bound to this tradition of thinking. At the same time we have to be conscious of the necessity that our

1 Albert Camus, Briefe an einen deutschen Freund, in: *Fragen der Zeit*, 1960, 27 f.

search for solutions for the questions and problems under consideration should be extended into an intercultural dimension.

1. A Historical Review

There are two mainstreams or traditions dominating the philosophical debate about the question what the human being is. This is the case not only in the philosophical debate but also in the whole set of theories in legal, social or political philosophy. When we interpret the different kinds of theories we always have to ask which is the anthropological approach they are starting from.

The first tradition is based on the classical philosophy of the ancient world and was accepted through the Middle Ages till modern times. The second one starts with the Enlightenment. And there is still a third one which runs parallel to the others. It is the "philosophy of happiness". Empirically as well as normatively happiness was regarded to be an anthropological fundamental presumption and the supreme end of human action. We can find it in ancient times as so-called 'Eudämonie' or in the Epicurean hedonism, and also modern utilitarianism is a philosophy of happiness par excellence.

1.1. The Image of Man in Classical Tradition

Already in ancient times man became the measure of all things and the law was thought to be created by man. From now on law was bound to the "image of man" and it was bound to that "image of man" which was thought to be philosophically and generally valid.

If man should be the measure of all things the question what is appropriate to the nature of man is in the focus. As for ancient times one can say that "nature of man" included both sides: the physical side of man's nature in the meaning of his natural instincts and needs, including the emotional side too. And the rational side of man, i.e. his spiritual, intellectual and rational side of nature. Plato for example constructs his ideal state in analogy to the natural or inner forces of man: according to the vital sphere of sensuality, to volition and to reason. Aristotle's Polis or civil society in the meaning of a legal and moral community is based on the nature of man too, in a double sense. The Polis community is founded in the physical condition of man as well as in the "inner" nature of man. In his teleological view of man's nature human beings have to live in a political community in order to realize man's true nature. Man was thought to be an "*animal sociale*".

It is a so-called holistic view of man which takes into account the natural side of man as well as his rational side. But one has to say that from the beginning it was the rational side of man which was regarded as a higher value. All "images of man" are emphasizing the rational side of man and it is thought to be the criterion which distinguishes man from other beings. Thus the definition of reason is the crucial point. Should reason be understood in the Platonic meaning of this word as the insight in the ideas, the highest ideas or should reason be understood as a mere "instrumental reason"? In this sense reason is reduced to be only a means for purposes which are not set by reason itself. Reason in the meaning of "instrumental rationality" does not any more represent a total concept of reason in the sense of "logos" or "lumen naturale". Reason as a mere "instrumental rationality" can be handled only mechanically. This type of rationality is free from value thinking and has lost any tie to a

"transcendental dimension".[2] Thus we have to be aware of the fact that there are as many interpretations of reason as there are "thinkers of reason".

1.2. The Image of Man in the Enlightenment

One can say that the belief in human reason was born in the Enlightenment. In this period it is "the man who is on his own, who is responsible for himself, who is self-sufficient and autonomous, who gives its own law in thinking and acting, who is now domineeringly and permanently in the center of all discussions. What is making man a man is therefore the self-sufficient reason".[3]

The "*homo rationalis*", already laid down in Humanism and Renaissance, was now definitively "born". Like Prometheus he is the creator of the social and political order and of law. The "nature of man" is the standard for society and political order, which are constructed by means of reason and which are based on the free will of rationally deciding and acting individuals. The thinkers of a rational natural law want to discover the unwritten, objective and "eternal law of man" that is not bound to space or time, and they want to do so merely by means of the human ratio.[4]

How was the Man of Enlightenment seen, whose heirs we are still today, and how should he be seen by himself? I deliberately say "he should" – isn't it so that the "image of man" outlined by the Enlightenment has an elitarian character? Was it and is it possible for every person to come up to these demands to direct his acting and personal living reasonably and to develop permanently his own self? Isn't there a deep gap between the ideal man and the real men?

Dealing with the ideal image of man I refer to the "Grande Encyclopédie" and its article about "The man" ("L'Homme"). Man is characterized as following:

Man wasn't seen merely as a man, but as an individual and he was regarded as a selfish individual being very intelligent in his selfishness. He is free from traditional ties and he is therefore the man, who "makes himself". He is subject of legal ties only because he has committed himself to them motivated by selfishness. The end of man is – wordily – happiness. He is intelligent and active and he is able to become perfect as the expression of a progressive and optimistic view of development. Considering all these characteristics he is equal to all others and above all he is a rational being - which is the "credo" of Enlightenment.

Certainly it is difficult or even impossible to speak about the "image of man", which should be valid for a whole period. This is true for the Enlightenment too. But with respect to the enlightening theories of natural law one can state a general consensus that was not further queried. Natural law was based on the conviction that by means of reason we are able to deduce from the nature of man unchanging fundamental qualities of man and to give them normative power. Considering that we can interpret it as a "secularized version of religious concepts" which have settled down in iusnaturalism. But like each theory of law, even natural law is bound to the dominating ideas of a certain period. And what was thought to be the "true nature of man" proved to be only a summary of such ruling ideas. Nevertheless natural law has radically transformed political reality as well as the world of legal ideas by this conviction of "eternally

2 Hermann Glaser, *Industriekultur und Alltagsleben*, 1994, 247.
3 Jan Michael Bergmann, *Das Menschenbild der Europäischen Menschenrechtskonvention*, 1995, 82.
4 Jan Michael Bergmann, loc. cit, 84.

valid" legal standards. Hans Kantorowicz calls this phenomenon the "life-giving power of illusion".[5]

Later on this consensus crumbled away to give place to a pluralization of the "image of man".

2. The Relativity and Actuality of "Images of Man"

Starting with the various elements of the enlightened image of man I will try now to point out the process of pluralization of this once complete image of man. By comparing the various images of man which have come out of this process I also want to make clear their relative character because they are all bound to a special historical context. And I want to actualize the problems as a consequence of such a plurality of images of man.

Homo Individualis – the "placeless man"

Considering the emancipation of man from hitherto binding traditions and institutions we can speak about a first stage of intermittent *individualization*. The second stage of individualization in our times has surpassed the first one in dimension, range and intensity of its consequences for society and politics and consequently for law. Therefore our society is characterized as a "society of individuals".[6] This society of individuals bears in itself the dialectic tension between freedom and coercion to freedom.[7] One of the consequences of pluralization of value systems or ethics is the individual being free to choose his standards of value guiding his decisions and actions. Individual ethics thus has not anymore the character of ethical systems, it seems to be much more like a "patchwork ethics". But what is about all the "losers of modernization" lacking the chance to live their lives in such a free and individualistic manner? And what about all the people or individuals who cannot bear to live their lives without any leading authority, may it be an authority in a political-ideological sense or in a religious sense?

Let us look now to the "placeless man" representing a specific type of "postmodern" individualism. What does it mean to speak about man as "placeless man"? The human being who has first lost his ties to traditions in religion, philosophy and science and to traditional social and political institutions is now losing his ties to places and time. Nowadays I see the image of a *"placeless man" ("ortloser Mensch")*[8] who is losing his ties to places in an anthropological sense, that means places which are the quintessence of cultures localized in space and time. Travelers on the highways or per plane, millions of refugees in transit camps, the participants in virtual communities are representing "placeless men" in this sense.

Man's Self-made Existence

What we are is what *we have made of ourselves*. The human being who is making himself has not been invented by Enlightenment. But it makes great difference in which real and cognitive context such an interpretation of man is emerging.

5 Hans Kantoworicz, Die Epochen der Rechtswissenschaft (1914), in: Gustav Radbruch, *Vorschule der Rechtsphilosophie*, 3. ed, 1965, § 24, 72.

6 Norbert Elias, *Die Gesellschaft der Individuen*, 1987.

7 For Ulrich Beck this is the so called "risk of freedom". Cf. Ulrich Beck, Elisabeth Beck-Gernsheim, (ed.), *Riskante Freiheiten*, 1994.

8 Marc Augé, *Orte und Nicht-Orte. Vorüberlegungen zu einer Ethnologie der Einsamkeit*, 2. Aufl., 1994.

Even for Aristotle the character of a man is "never given by nature". But to interpret this correctly one has to regress to Aristotelian ethics and practical philosophy which is based on ethics. It is the telos, the final end, of man to practice his virtues by activating the reasonable parts of his soul. And he will never reach perfection as an individual but only in community with others. Also the Enlightenment says that man "is making himself", but now it is the individual for himself, emancipated from all primary bindings.

Another aspect of this "self-making man" has been developed by Epicureism of ancient times and by modern existentialism which are tied closely together. The Epicurean "democratic construction" of ethics of happiness is opposed to the high catalogues of ethical norms of Plato and Aristotle. And in his ethics of happiness Epicure states, "that the choice of values according to which man wants to live his life should be free for every individual in each time...The right to choose one's own way of life leading to his happiness according to his circumstances and gifts" has never to be denied to anyone.[9]

In the philosophy of existence man is determined to be a "draft of himself". This existentialist image of man has a kind of "melancholic" touch because this is the only way to cope with the absurdity of existence. The optimistic view of the Enlightenment gave way to the insight into the necessity to base life on itself after Nietzsche's statement that "God is dead".

The Voluntaristic Image of Man

The *voluntaristic* statement of reasons for law, society and power is expressed by the social contract theories which have not lost their fascination up to our days. The so called "theories of social contracting" have been developed by such famous political thinkers as Thomas Hobbes, John Locke, Jean Jacques Rousseau or even Immanuel Kant. According to the contract theories society itself is a product of the free will and rational decision of individuals in order to install political institutions protecting their lives, liberty and property.

In our days it is John Rawls who uses this theoretical construction in his theory of justice as fairness. And the debate between liberals and communitarians, represented by John Rawls and Michael Sandel, is focussed on the "theory of person". For the communitarian critique Michael Sandel the political liberalism of John Rawls depends on the theory of the "unencumbered self" as expression of the rational and autonomous human being.[10] Once again it is that "image of man" created by Western Enlightenment and that ends in a "punctual" or "atomistic" theory of person, as Charles Taylor, another communitarian critique of political liberalism points out.[11]

Man's Happiness

As was mentioned above the range of definitions of what *happiness* is is as wide as the various definitions of reason itself. It ranges from the Aristotelian "eudaimonía" to the Epicurean "hedoné" to the utilitarian greatest possible happiness of the greatest possible number, to the "pursuit of happiness" of the American Constitution and to the actual debate to arrange a "world database of happiness".[12] Once again it is the problem of a plurality of interpretations of one and the same concept.

9 Cf. Elfriede Walescza Tielsch, Epikurs Theorie vom privaten und sozialen Glück des Menschen. Herkunft, Systematik und ethischer Gehalt, in: Günther Bien, (ed.), *Die Frage nach dem Glück,* 1978, 59–76, 62 f.

10 Michael Sandel, *Liberalism and the Limits of Justice,* 1998.

11 Charles Taylor, Atomism, in: Alkis Kontos, (ed.), *Powers, Possessions and Freedoms*, 1979, 175–193.

12 http://www.eur.nl/fsw/research/happiness v. 1.12.1999.

Homo Educabile – Homo Perfectionis

Human beings can be shaped by education and they can be brought to perfection, this was not only the optimistic view of the Enlightenment. It was Erasmus of Rotterdam in the Early Modern Times who spoke about man as a "*homo educabile*" in the sense of Humanism. But despite of the optimistic view of Humanism and Enlightenment let us not be blind to the fact that it always depends on which kind of education is thought to be the best one. And it depends on which image of man is thought to be the perfect one: it may be an individualistic one or a collectivist or even a nationalistic one and so on.

There is still another danger. If by means of education it is only the rational side of man to be promoted – let us think of the information and knowledge society we are living in now – the uneducated and untamed natural side of man gets out of control. The increasing aggression and violence are warning us. And I think here of genetic and biotechnology, too. These sciences try to make the imperfect nature of man into a perfect one.

The crucial point is *the reduction of the image of man* to only one side which is thought to be the dominant or only one.

Homo Rationalis – Homo Oeconomicus

The "*homo oeconomicus*" is not only a condensate of the reduction of man to his rational forces but is a reduction of reason itself. The homo oeconomicus is a man who comes to his economic decisions by means of rational calculation and just to his own benefit. But economic rationality is reduced to a mere instrumental rationality or purposive rationality, combined with an individualistic decisive behavior calculating personal utility. The actual discussion on ethics in economics proves this image of man to be unsatisfactory. Ethical codes based above all on responsibility should be taken into consideration for economic decision making besides the guidelines set by mere economic rationality. "Moral identity" should become an integral part of the "corporate identity".

Homo Faber

Not only the economic rationality is an example for a reduction of reason itself. Human reason was also shortened to technological reason or the producing reason in the meaning of "techné". The homo sapiens gave way to the *homo faber.*

The artificial environment as a cumulative creation by technology has been extended to the coast of the natural environment which we are a part of. According to Hans Jonas in his "Ethics of Responsibility for a Technological Civilization" today we have to realize the "vulnerability of nature by the technical intervention of man".[13] The opposite side of this dictum is not less explosive, I mean the "vulnerability of man by the technical intervention in his nature". The impact of technology and the increasing superiority of only one side over all the other sides of human being leads to a shrinking – as Hans Jonas points out – of "the man's own idea and the being of man".[14]

If this one-sided development goes on it would lead to a mere caricature of man. Faced with the consequences of technological development it is not only a question of physical surviving of mankind but – following again Hans Jonas – a question of the "intactness of his inner nature". This question cannot deny its transcendental or

13 Hans Jonas, *Das Prinzip Verantwortung. Versuch einer Ethik für die technologische Zivilisation*, 1984, 26.

14 Hans Jonas, loc. cit. 31 f.

metaphysical character. Only from a "metaphysical point of view" one can ask "why at all human beings should be in the world: Why the absolute imperative should be hold true to secure the existence of mankind in the world".[15]

Homo Connectus
In information society which is dominated and directed by computer technology technological reason seems to be reduced once more to a "binary coded" reason. As a consequence of the so called "Chip-Revolution" reason itself is reduced to the "algorithimical", "binary coded" thinking, that represents only one side of our intellectual or rational capacity, I mean. The *homo connectus* as the ideal type of man in an information society is said to be worth only because of being connected and his ability to connect. Such an image of man stands for a mere caricature of man, if we are handling now with "a human being who lives on and eats informations", because in the sense of Bill Gates and many others one can say, that "modern man doesn't need knowledge any more, what he needs is information". Following the so called "Californian ideology" this homo connectus will be the future citizen of the virtual world. But the citizen of the cyberworld loses his social competence in real world because he "escapes" as one might say into the virtual world of fiction and imagination.

Homo Symbioticus
It was one of the most important results of modern natural sciences that nature itself was degraded to a mere object of scientific research. From the eighteenth century up to our times natural sciences had and have a model function even for human and social sciences. In the course of this process not only nature itself got the status of an object of scientific research but man himself, too. Man isn't longer only the subject of cognition but the object of scientific research especially with respect to the natural side of man.

This development came to a final point at the moment – in my opinion – considering on the one hand the bioscientifical and gentechnological fields of research. On the other hand it's due to the symbiosis of biotechnology, neurology and informatics that man seems to be no more than a pump or a faucet for creating artificial intelligence; at the best he holds the position of an "interface" between human intelligence and machine. The homo rationalis changes to a *homo symbioticus* at the interface between man and technology. The instrumentalization of technology by man changes to an instrumentalization of man by technology. The development obviously still goes on. The "*spiritual machine*" is under discussion which should lead to a next step in the evolution that is going beyond human being – this is the new vision presented by Ray Kurzweil for the 21st century.[16]

3. The Debate about the Universalization of Human Rights

What about the discussion on universalization of human rights in view of such a relativism if we consider the plurality and variety of "images of man"?

The human rights debate is determined by universalization with respect to the addressee and by specification in the realm of human rights. In the rational discourse

15 Hans Jonas, loc. cit. 8.
16 Ray Kurzweil, *Homo s@piens. Leben im 21. Jahrhundert – was bleibt vom Menschen?*, 1999, preface.