Article

The history of the origins of human rights in Greek philosophy, Roman law, and in the Hebrew Bible

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Abstract: The fact that man ascribes to himself an inviolable dignity and inalienable rights as human rights represents a high point in the process of gaining a subject consciousness of modern man that goes back to Greek antiquity. However, the political aspects of human rights as defensive rights against the state can not only to be traced back to the development of democracy in Athens and the reception of stoic philosophy in Rome, but also to a Hebrew antiquity in Jerusalem and the Judean resistance to Assyrian, Babylonian, and Persian supremacy powers, which is reflected in Torah and prophecy in the Hebrew Bible.

Keywords: human rights; democracy; natural law; divine law; Stoic philosophy; Plato; Aristotle; Cicero; Rousseau; Thomas Hobbes; Richard Hooker; Hebrew Bible; ius gentium; Corpus Iuris; Mesopotamian mythology

1. Foundations of human rights in ancient Greek philosophy

The fact that man ascribes to himself an inviolable dignity and inalienable rights as human rights represents a high point in the process of gaining a subject consciousness of modern man that goes back to Greek antiquity. However, the political aspects of human rights as defensive rights against the state can not only to be traced back to the development of democracy in Athens and the reception of stoic philosophy in Rome [1–7], but also to a Hebrew antiquity in Jerusalem and the Judean resistance to Assyrian, Babylonian, and Persian supremacy powers, which is reflected in Torah and prophecy in the Hebrew Bible [8–11]. The history of the comprehension of the self as a subject in form of the availability of knowledge, the capacity of the will, the conscience, and the idea that thinking is centered on an ego was only wrested from the pre-conceptual world reference of man in ancient philosophical and legal history through hard conceptual work in ancient philosophy. The prehistory of modern declarations of human rights can neither be described solely in terms of the history of ideas as the history of the progress of philosophical ethics nor only as part of the history of law since both the ideas of philosophy and law require a political public to become politically effective. The Christian reception history of the Bible plays an important role in this legal and political process.

As for the conceptual work, the history of ancient philosophy as a source for modern human rights and dignity, we can start with Heraclitus [2], to whom the origin of the idea of isonomy and natural law is attributed, since the statement that even Helios is subject to justice implies that the same law applies to all human beings and that all human beings are subject to the rule of dike. With the distinction between body and soul, which were not yet clearly delineated in Homer, Heraclitus has created a theoretical basis for later discourses on justice. A further milestone on the way to the comprehension of human rights was that the sophist Antiphon contrasted the polis [12]

and its man-made laws with the eternal laws of nature, so that truth is guaranteed by nature to all human beings [13].

In analogy to medicine, the laws of the poleis are supposed to provide relief for those who are injured in living together. Since nature, in contrast to the manipulable laws of men, cannot be changed, Antiphon concludes that men are naturally [14]. Sophists such as Thrasymachus, Kallikles and Kritias can draw exactly the opposite conclusion from the opposition of natural law and man-made laws and derive from nature a right of the strongest as a law of nature while the weak take advantage of the legislation against the strong, which provokes Plato's protest [15,16] in that for him the laws of the poleis are to be based on nous as part of the intelligible world and the logisticon of the soul as part of a corresponding anthropology. Sophists can be regarded as precursors of the idea of natural law, which became established in the Stoa, and thus as an early milestone on the way to the idea of human rights [17]. This philosophical-historical outline of the earliest prehistory of the idea of human rights must be supplemented by ancient Greek constitutional history [18] and the development in Athens towards a democratic constitution.

The emergence of Athenian democracy became a model for the participation of the poorer parts of the population in the process of political decision-making for other poleis in the Greek discourse of ideal-typical constitutions of oligarchy, tyrannis, and democracy. However, the "civil rights" of freedom and equality, as expressed particular in Pericles' "funeral oration" [19,20], were not yet to be regarded as individual legal claims and defensive rights against the state. The fundamental difference between the ancient and modern political order and the respective concepts of freedom and equality is that, according to the modern conception, people are born equal and only subsequently become unequal through socio-political institutions and orders, so Jean Jacques Rousseau [21,22], whereas according to the ancient understanding it is exactly the other way round. The ideas of human equality and freedom functioned initially only under the political conditions of the consent of the demos and are thus dependent on the political order of the polis for their validity. However, Plato's doctrine of ideas opened up a philosophical horizon to the question of man's natural rights, insofar as the laws are aligned with the idea of the good and show a path to the perfection of the soul through sharing in it, i.e., the laws should be in accordance with anthropological nature of man [23]. The further development of the idea of natural law by Aristotle corrects Plato in that positive law is not subordinated to the idea of the good as a corrective, but is present in law as its purpose (telos) of promoting better action in the service of the eudaimonia of the individual and the polis corresponding to the nature of man and thus is not unchangeable-eternal. Natural law and positive law are reconciled in Aristotle insofar as nature is defined as the purpose and goal of law [24,25].

With Epicurus, "natural law" has no being in itself. The political order is not "just" by nature, but rather because it is a political order that is not only just within a polis, but universal among all people. A political order is not "just" by nature in that it provides the best possible constitution for the communal community life together, but for the individual the greatest possible satisfaction, serenity, and freedom from pain. Since the individual hedone is to be the standard of natural law, every citizen must participate freely and equally in legislation as the conclusion of a contract, an idea

which we find again with T. Hobbes [13,26]. Following on from Aristotle's prohairesis, the Stoics recognize that every human being can lead a good life, provided he or she chooses the logos. Ethics rests on this decision, which gives rise to the problem for the Stoic philosopher of clarifying how determination by fate (heimarméne) and freedom of will are to be reconciled so that it depends on the human being whether he or she will be forced by fate or acts in accordance with what is necessary [27]. The Stoics detached the understanding of freedom from the political sphere and the constitution of the polis and locate it in the spiritual capacity of the individual human being [28]. In this way, freedom is not realized as a political freedom, but spiritualized to an inner freedom, so that for Epictetus even a slave, that he was, could be free. Stoically, this freedom constitutes man's image in the image of God and his filiation as a child of God constitutes his or her human dignity. This was an open door for the amalgamation of philosophical stoic ideas with biblical ideas of the divine creation of humankind.

In the Roman reception of the Stoa, Cicero develops a natural and human right (ius gentium/ius hominum) in the sense of an immutable, pre-positive right that forbids harming another human being for the sake of one's own advantage and in which the constitutions of all peoples share. In this context, Cicero also speaks for the first time of a dignitas humana [29]. As a divine right, the ius hominum was withdrawn from human access to positive law as an instance of criticism of the ius civile. With this ius naturale as commune ius animatum, the Stoics transferred the concept of nature, which for Aristotle was oriented towards the purpose of the political community, to that of humanity as the measuring shear and standard of law, which in the interpretation of natural law theorists became a key to the idea of an international law of nations as well. Thus, by universalizing the ius naturale while at the same time binding it to the individual human being as an ethical subject, the Stoa had taken an essential step on the way to the formulation of human rights, but at the same time had ignored the experience of the Greek poleis that citizens in the political process had to assure themselves of reasonable decisions to shape society politically [30].

2. Foundations of human rights in ancient Roman law

Next to the Hellenistic-Roman discourses of philosophy, the Roman legal history represents a second important source and impulse for the development of modern human rights discourses. With the universalization of the Roman Empire, the pacifying function of law as an instrument of foreign policy could also be universalized. Polybios in the 2nd century BCE already saw the reason for the failure of the Greek poleis in their lack of a universalization of their foreign politics comparable to Roman politics. But in Roman law, principles such as sine lege nulla poena, lex non obligat nisi promulgatur and audiatur et altera pars, which are still considered the hallmarks of a constitutional state today, were formulated and became effective in Roman legal history. The development of a multi-ethnic state required the development of an ius gentium as an ius commune omnium hominum, i.e., a law common to all peoples in the Roman empire, and as an ius inter nationes alongside the Roman ius civile [31]. Both meanings of ius gentium have in common that it could transcend the sphere of Roman law and bind non-Romans and foreign states.

For Ulpian, all people are originally equal and free [32]. In his opinion, war and

slavery contradict natural law, adopting the Stoic idea of the divine origin of this law. As such, it was unchangeable and superior to changeable civil law. However, Roman jurists were not yet in a position and able to derive fundamental right in the sense of modern human rights from Stoic ideas and to integrate them into existing law with the force of law. There is still no catalogue of general fundamental human rights in the Corpus Iuris. With the end of the Roman Empire, the universal ius gentium collapsed and the leges barbarum in a Roman perspective spoken prevailed. With this, the method of the Corpus Iuris of seeing abstract legal ideas behind the diversity of concrete legal propositions was lost. Conversely, Hellenistic-Roman antiquity was still far from the development of a modern consciousness of personal identity. For Cicero, the development of personality still required conformity to eternal, unchanging values, while it was only with Augustinus that radical reflection on one's own soul life opened in its development to the discovery of the self as an inner one in its historicity and thus the path to a modern subject consciousness as the basis of human rights [14,33]. The ancient principles of the natural freedom and equality of human beings have found their way into the modern human rights declarations through the three reception currents of Roman law since the 11th century, Aristotelian philosophy since the 12th century and the Stoa since the 16th century.

3. Foundations of human rights in the Hebrew Bible and its early modern Christian aftermath

Not only do these sources of modern human rights in Greek and Roman antiquity have an impact on modern discourses on human rights. There is a third source in the amalgamation of classical antiquity with the Christian reception of the Hebrew Bible and its Greek translation in the Septuagint. The classical philosophical and legal sources are responsible for the ideas of equality of human beings and freedom of the inner self. But a special trait in the history of human rights is their function as rights of defence against the state and its unlimited claim for subjugation and obedience [11,34]. The borderlines between the rights the individual and of the claims of the state have always been precarious. They have been a matter of debate, contested and difficult to define, in antiquity until our own days. People have always been asked to decide whether the state should be the universal organization and agent that secures a fulfilled life for the individual, or how many wishes, desires and plans of the individual must be sacrificed for the interests of a state. This dilemma is documented best in an inscription on a German war-memorial of the First World War in Hamburg: "Germany must live even if we have to die". For this standpoint exists no other foundation of reason and morality than the interest of the state itself. But how shall its power be limited, and abuse of its power be prevented? This was already an important topic for Judean intellectuals who had to react to the political supremacy of the Assyrian, Babylonian, and Persian empires. Deuteronomy gives an impression of the birth of the idea that we ought to obey God rather than men [35].

The Neo-Assyrian period of the eighth and seventh century BCE was the first decisive phase in the literary formation of the Hebrew Bible. The book of Deuteronomy as a counterprogram to the Assyrian state ideology enlightened the antagonism of divergent ideas of what a state should be. The Assyrian royal ideology

is illustrated by the coronation-hymn of the Assyrian king Assurbanipal, which is preserved on the tablet VAT 13831 in the "Voderasiatisches Museum" in Berlin [36]:

> "May Šamaš king of heaven and earth elevate you to shepherdship over the four regions (the whole word)!
>
> Who gave you the scepter, lighten your days and years!
>
> Spread your land wide at your feet!
>
> May Šeru' a extol your name to your god! Just as grain and silver, oil, the cattle of Šakkan and the salt of Bariku are good, so may Assurbanipal, king of Assyria, be agreeable to the gods of this land!
>
> May eloquence, understanding, truth (kettu) and justice (mēšaru) be given to him as a gift!
>
> May the people of Assur buy 30 kor of grain for one shekel of silver. May the people of Assur buy 3 seah of oil for one shekel of silver! May the people of Aššur buy 30 minas of wool for one shekel of silver! May the lesser speak and the greater listen!
>
> May the greater speak and the lesser listen!
>
> May concord (mitgurtu) and peace (salīmu) be established (lišakin) in Assyria!
>
> Assur is king indeed Assur is king!
>
> Assurbanipal is the representative of Assur, the creation of his hand!
>
> May the great gods make firm his reign, may they protect the life of Assurbanipal. king of Assyria!
>
> May they give him a straight scepter to extend the land and the peoples!
>
> May his reign be renewed, and may they consolidate his royal throne forever!
>
> May they bless him (by) day, month, and year, and guard his reign in his years. May there constantly be rain from heavens and flood from the (underground) source!
>
> Give our lord Assurbanipal long days, copious years, strong weapons, a long reign, years of abundance, a good name, fame, happiness and joy, auspicious oracles, and leadership over (all other) kings!"

This coronation-hymn allows no doubts about what legitimized the rulership of the Assyrian king: the idea that he was "representative" (ṣalmu) of the supreme deity, the divine king Aššur. The firm connection between Assurbanipal's and Aššur's reign is proclaimed by the words which formed the center of the Assyrian royal ideology:

> "Aššur is king indeed Aššur is king! Assurbanipal is the representative of Aššur, the creation of his hand".

The king's reign was not in any sense legitimised by a vote of the Assyrian people but by the acceptance of the deities. They confirm (šakānu) the king's rule (palû), which should extend over the whole world and over all nations:

> "May Šamaš, king of heaven and earth, elevate you to shepherdship over the four regions!"

The coronation-hymn VAT 13831 is followed by a tākultu-prayer of the king [37]. Five prominent deities of the Mesopotamian pantheon are asked to transfer their divine abilities to Assurbanipal. The god Ninurta should give his weapon, which alludes to the mythic dimension of kingship. In the so-called Anzu-myth, Ninurta defeated the god Anzu, who had disturbed the concord and order of the divine pantheon by stealing the tablet of destinies [38,39]. Assurbanipal should be a Ninurta redivivus and defeat

the chaos, i.e., those peoples and nations who refused to submit to the Assyrian king. The tākultu·prayer ended with the words:

"Place in his hands the weapon of war and battle, deliver the black- headed people (humankind) to him, that he may rule as their shepherd".

This Assyrian royal ideology that interpreted politics as acts of creation in the sense of defeating chaos, stimulated the politics of imperial expansion. It postulated war and chaos, not war and peace as antithetical. War was therefore a kind of creatio continua [40] Assyrian rule over the world was expected to be the only way for all nations to live in peace, concord, and social justice. The paradox of this ideology was that the vassal states' payment of tribute to the Assyrian state was an expression of their acknowledgement of a just world order.

Eloquence, understanding, truth and justice, talents which had been granted the king by the deities, should be the foundation of the welfare of the Assyrian people and of all nations. The rates for grain, oil and wool were expected to be extremely low and stable when the new king entered his reign. Very often such claims were only royal propaganda, but we know that the coronation of Assurbanipal coincided with a period of unusual economic prosperity. To promote social justice in Assyria, an Assyrian king could link his coronation with an act of social redemption and restitution, a so-called act of (an) durāru [41]. But in Assurbanipal's coronation hymn the king was not only expected to guarantee social justice, but also to stimulate freedom of discourse and communication within Assyrian society in an idealized way. These expectations would override any social and political hierarchy and stratification of wealth and poverty:

"May the lesser speak, and the greater listen! May the greater speak, and the lesser listen!

May concord and peace be established in Assyria!"

The reign of the Assyrian king was the prerequisite for this ideological description of an ideal society as a meta-hierarchical community of communication. The paradox of this idealized society was the fact that the rule of the king should be the foundation of a hierarchy-free society of equal communication which had the consequence that the king himself was excluded from this community, not only as participant but also as topic of a critical discourse. Any kind of criticism of the king and the crown prince was strictly forbidden, even within the royal family. The king personified all opportunities and possibilities for a successful life. Questioning the legitimacy of his rule was seen not only as unreasonable, but as a rebellion and personification of the mythical powers of chaos which had to be subdued and eliminated by any means, because they meant danger for Assyria and for all the world. The loyalty oath to the Assyrian king Asarhaddon and his crown prince Assubanipal stipulated that criticizing him or his crown prince was a capital delict, punishable by the death penalty:

"If you hear any evil, improper, ugly word which is not seemly nor good to Assurbanipal, the great crown prince designate, son of Esarhaddon, king of Assyria, your lord, either from the mouth of his enemy or from the mouth of his ally, or from the mouth of his brother or from the mouth of his uncles, his cousins, his family, members of his father's line, or from the mouth of your brothers, your sons, your daughters, or from the mouth of a prophet, an ecstatic, an inquirer of oracles, or from the mouth of any human being at all, you shall not conceal it but

come and report it to Assurbanipal, the great crown prince designate, son of Esarhaddon, king of Assyria" (EST § 10) [42].

Even close members of the royal family and prophets should be denounced to the palace, and if this oath were to be neglected, all its curses would descend upon the head of the traitor. If somebody was summoned for a rebellion against the king or crown prince, the perpetrator had to be delivered to the palace or killed right on the spot:

> "If anyone should speak to you of rebellion and insurrection, of killing, assassinating and eliminating Assurbanipal, the great crown prince designate, son of Esarhaddon, king of Assyria, your lord, concerning this loyalty oath with you, which he made you swear, or if you should hear it from the mouth of anyone, you shall seize the perpetrator of insurrection and bring him before Assurbanipal, the great crown prince designate. If you can seize them and put them to death, then you shall wipe out their name and their seed from the land. If, however, you are unable to seize them and put them to death, you shall inform Assurbanipal, the great crown prince designate, and assist him in seizing and putting to death the perpetrators of rebellion" (EST §12).

The idea that a human being could suffer at the hands of the state, was foreign to this kind of royal ideology. On the contrary, as the state and its organs were thought to be a prerequisite for a successful human life, the king, who embodied all these positive functions of the state, had to be protected, because if he became compromised, the powers of chaos would reign supreme. No discourse without social barriers was tolerated in respect of the king or crown prince designate. The claims of the king on the obedience of humanity were unlimited. All manner of insubordination had to be extirpated by force, no matter if it were done by Assyrians or by foreigners. The loyalty oath provided the legal basis for this kind of assurance of the king's and his successor's reign.

The Assyrian royal ideology was based on a corresponding view of humanity. Some years ago, a tablet from the "Vorderasiatisches Museum zu Berlin" (VAT 17019) in a Neo-Babylonian script was published which presented a new creation myth [43]. This tablet differentiated between the creation of humanity, the lullu-amelū, and the king the lullu maliku. As in the Atrahasis-myth, the lullu-men were created because the deities had refused to dig channels and rivers to complete the creation of the world. Hard labour was to be the aim of human life. After the creation of the lullu-man, the mother-goddess Belet-ili went on to create the king:

> "The god Ea began to speak directing his word to Belet-ili: Belet-ili, mistress of the great gods are you. You created the lullu-man. Create now the king, the 'superior deciding man' (maliku-amelu). With beauty veil his whole body, form the statue with harmony, make attractive his body. So Belet-ili created the king, the maliku-amelu. The great gods gave him the (power to) fight".

The subsequent section resembled the takultu-prayer which followed Assurbanipal's coronation hymn. The great deities gave their symbolically embodied abilities to the maliku-amelu: Anu and Enlil, the primeval supreme gods of the Mesopotamian pantheon, gave their crown and throne, i.e., the dominion of the world, Nergal his weapon, Ninurta his terrifying brightness and Belet-ili her beauty. In the context of this myth rebellion against the king meant rebellion against the intention of

divine creation and world order. A restriction of the king's title to the loyalty of the lullu-men was as unimaginable as it was unreasonable, so that any concept of human rights protecting the individual human being from the state and its organs was impossible.

In Deut 13,2-10* and Deut 28,20-44* the sections EST §10 extended by elements of EST §§ 12; 18; (29), 57 and EST §56 extended by elements of EST §§38A-42; 63–65 of Esarhaddon's loyalty oath were transformed into a loyalty oath to YHWH, which was the literary historical key section of Deuteronomy [44]:

"If there arises among you a prophet or a dreamer of dreams saying: Let us go after other gods, you shall not hearken unto the words of that prophet, or that dreamer of dreams. And that prophet or that dreamer of dreams shall be put to death because he has summoned for a rebellion against YHWH.

If your brother, the son of your mother, or your daughter, or the wife of your bosom, or your friend, which you love as you love yourself, entice you secretly saying: Let us go and serve other gods, you shall not follow him nor hearken unto him; neither shall your eye pity him, neither you shall spare, neither you shall conceal him: But you shall surely kill him".

Whoever violated these stipulations should be cursed according to Deut 28,20-44*. This loyalty oath to YHWH in Deuteronomy was written between 672 and 612 BCE., i.e., the year of Esarhaddon's loyalty oath and the destruction of the Neo-Assyrian empire, most probably during the reign of king Josiah [45]. This text intended to deprive the Assyrian king of his claim to the loyalty of the Judean king and people: absolute loyalty was due only to YHWH, the Judean God and not to any king or crown prince of the realm of the state of the Assyrian hegemonic empire. The obligations of loyalty to the Assyrian king as ṣalmu of the god Assur were interpreted as a violation of YHWH's claims. The Judean intellectual authors of Deut 13; 28* did not transfer the obligation of loyalty from the Assyrian to the Judean king but to YHWH, i.e., they did not only shift the Assyrian paradigm of legitimate rulership to a Judean king as they did it in Psalm 72 [46] but created an entirely new paradigm of absolute loyalty to YHWH, which restricted all kinds of political loyalty. The cultural-historical importance of this process cannot be overestimated. The Judean intellectuals who were responsible for the transformation of this Assyrian political theology into an anti-imperialistic set of theological ideas did not only negate the Assyrian version of royal ideology, the idea of a state with absolute power as the presupposition and condition for establishing justice in the world, but indirectly and implicitly also negated the Judean royal ideology as it was promulgated in some royal psalms. The loyalty, man owed to his God, was an absolute one, so that all kinds of other loyalties were limited by the obligation of man to obey his God. Judean intellectuals developed this idea in their critique of the Assyrian claims for hegemony. For the idea of man's freedom from any absolute claim of a political power it was a necessary step to think of an absolute loyalty of man to God.

Deut 13 is one of the most violent texts of the Hebrew Bible with a very problematic history of reception, but at the same time it is one of its most progressive texts, a fact which can only be appreciated if one considers that the Judean text was a transformation of an Assyrian loyalty oath both as its source and subversive counterstatement at the same time. It was typical for the authors of Deuteronomy to

use as sources texts which represented ideas they wanted to overcome, and use them rather literally, with only slight but decisive changes to convert the intention of the source text into its opposite. So, for example, the Deuteronomic centralization laws in Deut 12 changed the intention of the altar law of the Covenant Code and turned it upside down [44,47]. The paradox of Deut 13 as one of the most violent and at the same time most progressive texts of the Hebrew Bible cannot only be explained by the fact that, after all, overcoming a stance also means being dependent upon it, so that the violent character of the Assyrian source could explain the violence of the Judean text. The paradox is explained more fully by the fact that the uncompromising claim to loyalty in the Assyrian royal ideology could be overcome only by the same uncompromising demand of loyalty to YHWH. The later literary history of the book of Deuteronomy moderated this claim.

The idea of human rights as defensive rights against an unlimited overpower of the state in relation to its citizens has one of its origins in the Hebrew Bible. It begins in the Book of Deuteronomy, theologically justified as defensive rights against the imperial state of the Neo-Assyrian Empire in the 7th century B.C. and is continued into the New Testament, so in Acts 5:29 with Peter's declaration before the High Council that God is to be obeyed more than men, which limits any demand for obedience, even by the state [10,48,49]. With the biblical emancipation of religion from the state and the limitation of the grip of state power on its citizens, an important idea was born that was still foreign to other cultures in antiquity, which did not yet have a concept of limiting state power not even in the form of majority votes.

The early modern reception of the biblical idea of human rights as rights of defense against the state in Richard Hooker's theory of law and the state, the right of defense against the state leads to the limitation of rights of access of the state through the distinction between "common affairs", which are subject to the political votes of a majority, and decisions of conscience of the individual citizen, the "things necessary" in the sense of a "foundation of faith" or "general ground, whereupon we rest", which, receiving stoic ideas, cannot be subject to a political votes of a majority [50].

It was an important step in the development towards modern declarations of human rights that in the 16th and 17th centuries Dutch and English constitutional theory introduced this distinction to prevent a theocratic society of the Puritans on the one side and an absolutization of votes of a majority on the other. This interpretation of human rights as defensive right against any absolutism of the state [51–54] influenced the definition of human rights in the American constitution of 1776 and its First Amendment and the French revolution of 1789 [55,56] which were universalized by the UN in 1948 [57].

The original ideas of human rights in antiquity as defensive rights against any absolutism of the state intensively influenced the definitions of human rights in the American and French constitutions of the 18th century which were universalized by the UN in 1948.

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