Western Anthropology:

Democracy and Dehumanization

2nd slightly revised edition, 2010

A booklet by

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Dedicated to Elfi Heuberger-Kukulka

VI. Epilogue: Anthropology and Ethics.. **79**

Second Edition

This is a slightly revised second edition; I have been able to publish it quickly thanks to the Open Access publishing made available by the FU Berlin.

In particular, I have benefited from a long conversation with Professor of Law and Philosophy James Nickel (MiamiU). In response to this talk, I have added discussions of syncretism, Searle's philosophy of speech acts and Tomasello's anthropology of communication.

I also profited from hearing a speech by Professor David Abraham (MiamiU) as Bosch Public Policy Fellow at "The American Academy in Berlin", Mai 2010. The speech was about "Immigration and Social Solidarity," and it indicated to me both again the growing importance of the aspect of "we", as in "We, the people…", and the fertility of comparing Western cultures. But of course, social solidarity is only the public kind of solidarity; private charity is another. In times of peace solidarity is only the third ranking part of the Western Trinity of "Liberty, Equity and Solidarity". But in light of social psychology human beings are social animals, too. Within a person, culture and nature cannot work without each other.

Visiting FU Berlin Department of Law in Mai 2010, Professor Darien Shanske (Hastings College of Law, UC), did not mind reading and discussing critically some of the newly written pieces.

Related to this booklet, since the first edition I have published a small trilogy of books, sadly in German. They are called "Civil-Religion", and published by Open Access, FU Berlin, too. The English version of the titles might outline both their substance, and the background of the booklet.

- Civil-Religion I - Basics: Western Preamble-Humanism, and universal Trinity of Nature, Soul, and Mind, 2nd edition, 2010.

- Civil-Religion II - Elements: Reconciliation and Mediation, Punishment and Confession, Justice, and Humanity, 2nd edition, 2010.

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- Civil-Religion III – Superstructure: Democratic Humanism, realistic Dehumanization, synthetical Pragmatism of a "Middle-World", 2nd edition, 2010.

Author's Note

The booklet draws from my German book on Civilization (translated *Civilization. State und Man, Violence and Law, Culture and Nature*, 2009, pp. 473, Open Access, Free University of Berlin), from lectures on sentencing and Philosophy of Criminal Law, given as a member of the Law Faculty of the Free University of Berlin, and especially from a concept prepared for a research visit to the Hastings College of Law, San Francisco in 2009, in light of a new agreement on exchange of students and scholars between both faculties.

Thanks to *Boris Karasch* for correcting my rusty English, and thanks to my little team, Dr. iur. *Henning Loeck*, Dr. iur. *Daniel Schubert*, *Diana Champarova*, and last not least to *Natalie Korth-Ndiaye*.

Axel Montenbruck, Berlin, February 2010

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Abstract

The special kind of freedom of homo sapiens includes both abiding by a – normative – ethics of Humanity and a contrasting ethics using the – empirical – ability to dehumanize others. We humans are able to switch rather easily between both. The grammar of our Western languages indicates that, and Western political philosophy defines the dignity of man by a similar formula.

Regarding punishment and crime, our psyche works with techniques of neutralizing brutal acts. Even we "good ones" suppress acting inhumanely towards others by the method of neutralizing or better by collectivizing ourselves. We democrats submit blindly to the Rule of Law and the mightiness of our own Justice. Easily justifying lifelong incarceration without accepting a bit of personal responsibility for our own decisions is a kind of a collective ritual of de-individuation sovereign democrats should be aware of.

In order to define humanity as well as its negation, inhumanity, the simple Democratic Trinity of "Freedom, Equity and Solidarity" we should turn to. Freedom means, for instance, private rights, self-defense, personality, and egoism/duty to yourself. Equity includes fairness, contracts, and cruel retaliation/duty to peers. Solidarity comprises security, taxes, prevention, humanity, charity, and: inhumane collectivism/duty to society.

With a set of four theses I shall try reducing complexity:

I. Jurisprudence and Political Science: There might be "Three Democratic Steps of Punishment."

A. Democracy in light of punishment might be defined by freedom, fairness, humanity.

B. A crime in such a democracy means "gaining freedom," by acting "unfairly," and "inhumanely."

C. A democratic punishment implies correcting the wrong by "taking freedom," while reacting "fairly" and "humanely."

II. Linguistics and Culture: The Grammar of Western languages indicates we are prepared for both Democracy in a We-group and for its

Negation. Therefore Freedom might be defined as "status communicativus," too.

III. Psychology and Ethics: Milgram et al. prove that the majority of us cannot avoid "obedience and submission". Therefore we have to develop both strong collective ethics and, at least for leaders, a "Personal Democratic Identity".

VI. Finally, Philosophical Anthropology: The favored "Rule of Weighing Political Acts Democratically" means harmonizing in each important individual case "freedom, equity and solidarity".

I. Prologue: Ethics and Anthropology[1]

1 In March 2009, visiting Alcatraz prison and hearing something about the contemporary Californian kind of sentencing, I am now looking for a supranational Western "common sense" to explain punishment and crime.

2 I do not ask, why there should be or must be "punishment at all" or what "crime" means. The reality is, probably every society knows a story like Cain and Abel. Therefore let us take both statements for granted: An unjustified killing is a severe crime, and there would be a strong reaction to "right the wrong[2], in any case. Without a professional and civilized "social reaction" justice would be left in private hands. Typically strong, private "protection groups" would grow up and exercise their kind of war lord justice.

3 But if one insists – for instance with *Boonin*[3] – on addressing the question morally, why punishment at all, and furthermore adds that if punishment is to be executed, all kind of reasons would probably influence the meaning of punishment, both would probably be valid. And I must answer to both:

4 In light of anthropology, justice seems to be at least a human need. There is a strong psychological inclination toward retaliation, fairness and compensation. Furthermore, there seems to exist a second inclina-

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[1]   See for instance: van der Burg, Wibren, Essentially Ambigious Concepts and the Fuller-Hart-Dworkin Debate, Archives for Philosophy of Law and Social Philosophy (2009), p. 312 ("Science, religion, law, morality – they all would simply not exist without humans and human actions.").

[2]   Dershowitz, Alan M., Rights from Wrongs – A Secular Theory of the Origins of Rights (2004), pp. 8. Hoffmann-Holland, Klaus, Ethics and Human Rights in a Globalized World. An interdisciplinary Approach, in: Hoffmann-Holland, Ethics and Human Rights in a Globalized World (2009), p. 1 ("rights come from wrongs").

[3]   In light of philosophy: Boonin, David, The Problem of Punishment (2008), p. 1: "This is the thesis that there is no solution to the problem of punishment and that it is morally impermissible for the state to punish people for breaking the law"…."we should abolish our practice of punishing people…". But he recognizes that punishment is a "ubiquitous practice". Strict moral questions lead to moral answers. In Western societies morality is important, but at least, the social and the psychological phenomenon are significant, too.

tion towards prevention, regarding real fear, and a third one for symbolic acts of restoration to cope with death, violations of collective rules and with frustrations. All the three strands of thought are well known. Altogether they illustrate punishment. But the core of Western punishment seems to be the first element, a "civilized reaction".

This "need" is – morally – called the Golden Rule. "Do unto others as 5 you would have them do unto you." It is both, the dynamic process reciprocity and the ideal of equity. The Romans say "do ut des" (I give that you give). It is "tit for tat" that represents *Rappaport*'s strategy for coping with *Axelrod's Prisoner's Dilemma*. Giving credit first and then blindly react only is probably even a part of the biological theory of "evolution by cooperation".[4]

The strong feeling for fairness probably derives from "empathy".[5] 6 That means putting your "individual self" in place of the other, an individual also.[6] On the social side, the need "to right a wrong" must be

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[4] Boyd, Robert, Mistakes Allow Evolutionary Stability in the Repeated Prisoner's Dilemma Game, Journal of Theoretical Biology, 136 (1989), pp. 47-56. As a rule of cooperation by subhuman primates (apes): Ridley, Matt, The Origins of Virtue: Human Instincts and the Evolution of Cooperation (1996), pp. 51 ("The Prisoner's Dilemma"); Vogel, Gretchen, News Focus: The Evolution of the Golden Rule, Science, 303 (2004), pp. 1128. In light of law philosophy: Montenbruck, Axel, Vergeltung, in: Strafrechtsphilosophie. Vergeltung, Strafzeit, Sündenbock, Menschenrechtsstrafe (1995-2009) (2009), Rdnr. 100.

[5] In light of liberal arts: Lampert, Khen, Traditions of Compassion: from Religious duty to Social Activism (2005), pp. 157. In light of empirical science: Decety, Jean / Jackson, Philip L., The functional architecture of human empathy, Behavioural and Cognitive Neuroscience Reviews, 3 (2004), pp. 71-100. In light of socio-economy: Frank, Robert H., Passions with Reasons. The Strategy Role of the Emotion (1988), Chap. III, pp. 43: Theory of Moral Sentiments, pp. 54 ("The impulse to seek revenge is likewise counter productive unless others have some way of anticipating that one has it. The person in whom this sentiment resides to deter potential predators…"). Insofar both communications and an impression of trust are important. But to be remembered is that even on the genetic level there exits a kind of genetic communication between species, which live together in special biotopes over hundred thousands of years (and a lot of generations).

[6] In light of political philosophy, see: Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285 ff., 302, "We trans-

grounded on the feeling of harmed identity. It is part of asking for respect for a mainly ethical "We-group", too.[7] Nations call for solidarity in the sense of "patriotism".[8] Violating the identity of a group means violating the identity of every single member who defines himself or herself as a part of the whole, too.

7 In light of philosophy *Nussbaum* describes the sense of revenge:

"The primitive sense of the just remarkably constant from several ancient cultures to modern institutions...starts from the notion that a human life...is a vulnerable thing, a thing that can be invaded, wounded, violated by another's act in many ways. For this penetration, the only remedy that seems appropriate is a counter invasion, equally deliberate, equally grave. And to right the balance truly, the retribution must be exactly, strictly proportional to the original encroachment. It differs from the original act only in the sequence of time and in the fact that it is response rather than original act – a fact frequently obscured if there is a long sequence of acts and counteracts".

8 The call for "angry revenge" is a well known impulsive human reaction. Cultivating this impulse is a part of the collective feeling of "sympathy" that derives from personal empathy. Sympathy leads to the need for healing of all the harmed ones. Therefore sympathy with victims of crimes and maybe more with their relatives must evolve to a kind of ritual satisfaction of all the harmed feelings. Hence a public

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fer to the other our sense of being a subject … we also transfer to our self the others different grasp of the situation as evident by his or her physical or verbal behavior" and "the space of freedom that their alterity affords us"… "The moral authority of such rules is that of the space of judicial order that embodies our alterity and freedom". That means that personal individuality is an old logical born of personal freedom, too.

[7] Eriksen, Thomas H., Ethnic Identity, National Identity and Intergroup Conflict: The Significance of Personal Experiences, in: Ashmore / Jussim / Wilder (Eds.), Social Identity, Intergroup Conflict, and Conflict Reduction (2001), pp. 42-70.

[8] Pettit, Philip, Republicanism. A Theory of freedom and Government (1997), p. 257 ("civility involves identification as well as internationalization", and: "patriotism as identifying in a good part with the society… considered as a whole"). Abraham, David, Constitutional Patriotism, Citizenship, and Belonging, 6 ICon: International Journal of Constitutional Law 137 (2008), pp. 137.

process ending in "retaliation" (an Eye for an Eye) is grounded in sympathy and in the need of healing, too.[9]

But, in light of anthropology the strong impulse to react without rationalizing about the costs could be an advantage. It could be that there is a "good reason" even for the strong human emotion of "angry revenge", or better, a good reason for the peacekeeping threat of its existence.[10] At least, in a mechanical kind of thinking, it is the countervailing power to a power that yields a kind of equalization. Even in physics bodies are trying to maintain their existence by resisting. Each body that is hit or even destroyed by another body, more or less harms that other hitting body. So, fair retaliation probably stems from a universal kind of blind reaction. It is not the existence of that feeling but its moral quality and civilizing revenge that is to be considered.

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[9] "The abiding of the Code is the talio, the term for sympathetic punishment in which the part of the body that committed the crime is mutilated or amputated. If a man put out the eye of another man, his eye shall be put out. If a man knock out the teeth of his equal, his teeth shall be knocked out. If he breaks another man's bone, his bone shall be broken." Lyons, Lewis, The history of punishment. Judicial penalties from ancient times to present day (2003), p. 8, p. 23. In addition it should be noted with Lewis (p. 25): "The earliest complete legal code in our possession is the Babylonian Code of Hammurabi, famous for its reliance on sympathetic punishment 'an eye for an eye'. The Code of Hammurabi was a blueprint for later legal codes, the Biblical laws of the Hebrews and the Islamic Laws of Sharia, the laws of ancient Greece and Rome, and the legal codes of Europe".

[10] In light of socio-economy: Frank, Robert H., Passions with Reasons. The Strategy Role of the Emotion (1988), Chap. III, pp. 43: Theory of Moral Sentiments, pp. 54 ("The impulse to seek revenge is likewise counterproductive unless others have some way of anticipating that one has it. The person in whom this sentiment resides has to deter potential predators"). Insofar both communications and an impression of trust are important. But to be remembered is that even on the genetic level there exits a kind of genetic communication between species, which live together in habitats, over a lot of generations. See as well: Weiler, Hans N., On Love and Altruismen, Rationality and Society 3 (1991), pp. 197. In German: Zur politischen Idee der "Vernunft der Gefühle" und der Bedeutung des Nationalstolzes, see: Bolle, Friedel, Emotionen und Vernunft – keine Gegensätze. Antrittsvorlesung an der Europa-Universität Viadrina Frankfurt (Oder) am 14. Juni 1994, in: Weiler, Hans N. (Hrsg.), Europa-Universität Viadrina Frankfurt (Oder) Universitätsschriften, Band 7: Antrittsvorlesungen I (Sommersemester 1994) (1995), 155 ff.

10 Probably within every peer group, the humane impulse for revenge seems being the germ for the existence of two ethical and reasonable twins. One is called the "avenge" as justice in the form of "iustitia commutativa" or as a kind of "equity".[11] The other twin chooses the utilitarian approach, which is its prevention.

11 Anyhow, if revenge is unavoidable, and if compensation is needed, then it is better done in a "civilized form". In Western civilization and Western politics, a synonym for civilization would be the term Democracy. That should be simple political topic for a Western society.

12 However, a multidisciplinary approach combining four topics to a philosophical kind of "Anthropology of Punishment" is intended: Firstly, *Democracy*, an issue of both, Jurisprudence and Political Science, secondly, *Culture*, especially human communication in light of linguistic, thirdly, *Psychology* as a part of Criminology, and finally, *Punishment* as a genuine element of Criminal Law .

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[11] See again: Nussbaum, Martha, Equity and Mercy, Sexy and Social Justice (1999), pp. 157-58. See for instance as well, Shanske, Darien, Revitalizing Aristotle's Doctrine of Equity, Journal of Law, Culture and the Humanities, Vol. 4 (2008), p. 352, ("… what Heidegger offers is a nuanced argument as to why Aristotle's manifest absorption in the concrete details of his face-to-face society is not a limitation to his doctrine, but a strength. We, no less than Aristotle, are enmeshed in logos, in a background ordering not at the command of our will, but we have a greater difficulty seeing this. Thus, where equity for Aristotle above all required expert engagement with logos, equity bids us first to acknowledge that the logos is.").

II. Part 1: Democracy

A. The Basic Ideals

Therefore, the leading questions are: "What means a brutal criminal 13 act in light of democracy"? And, how do we democrats punish the perpetrator in a both, "fair and humane" manner?

Expanding on this notion, "fair and humane" means abiding by the 14 "Bill of Rights", and "Human Rights" and "democracy" is meant in the "supranational" Western sense. Highlighting let us at first stick to "Western democracy" and to its great ideal of Freedom. Afterwards we should care for looking at three different kinds of counterpoints. They are the empirical aspect of the socio-psychological "groupish-ness", a raw model for Eastern cultures, ruled by Solidarity, and the political systems of "peers", dominated by equity. Finally we might need parts of all of them. We might even incorporate and at least weigh these aspects.

B. Freedom According to Hobbes

The starting point for democracy is called "freedom". But what does it 15 mean to be – absolutely – free? According to *Hobbes* and others this is the "status naturalis". He describes a kind of warlike case of competi-tion of armed equals[12] which coerces the free persons to draw up a social contract installing a kingdom with their neighbors.[13]

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[12] Hobbes, Thomas, Hobbes' Leviathan, reprinted from the Edition of 1651 (1962), pp. 94 ("Nature hath made man so equal in their faculties of body and mind… And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies and the result being that men endeavor to destroy or subdue one another."). See also: Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisa-tion und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285 ff., 288 ("Hobbes traces the origin of violence among men to their natural Equality.").

[13] Hobbes, Thomas, De cive (lat. 1668, engl. 1651), Praefatio, sec. 14, Liber-tas, chap. 1. sec. 12 ("bellum omnium contra omnes" or "homo hominem lupus"). Pettit, Philip H., Can Contract Theory Ground Morality?, in:

"Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that Condition which is called Warre; and such warre, as is of every man, against every man. [...] In such a condition there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society, and which is worst of all, continual fear, and danger of violent death; And the life of Man, solitary, poore, nasty, brutish, and short."

16 Simplified and a little bit altered, it is the freedom of the free warriors, but it is the freedom of the free pioneer farmers and of the free traders, too.

17 A "free person" is able to use violence or deception against others. Therefore he or she could be a "freedom fighter", but he could also be a "despotic chief" or a "brutal criminal". But all other free persons can deliberately do the same to him or to her.

18 Without law, such a free person cannot be unlawful. Without a group, this free actor can't act "antisocial" or even "asocial".

19 In light of freedom a criminal person regresses by and with his act into a kind of a "status naturalis". And, the calling for a "war on crimes" or on drugs or terrorism but meant as "war on criminal etc. persons" takes up at least this kind of metaphor of fighting. A fair trial means an "equity of arms".[14]

Dreier, James (Ed.), Contemporary Debates in Moral Theory (2006), pp. 77-96.

[14] Or see "fair trial" – for instance in Art. 6 European Convention on Human Rights – defined by the military vocabulary "equality of arms" used by EGMR EuGRZ 1986, 127 (Bönisch/A), Strafverteidiger (1993), 283, 284 (Lamy/B); Entscheidung vom 18.9.2006, Az. 26315/03, Rdnr. 35 (Dogmoch/D), Urteil vom 12.0.2007 Az: 74613/01, Rdnr. 82 (Jorgic/C), too.

And what is for *Hobbes* therefore a "state"? It is a mighty body of power, the Leviathan.[15] Today the state is still a strong institutional player.   20

C. Civilization According to Locke and Mill

Let us pick up the simple word of (Western) "civilization". At its core, it is meant in the restrictive sense of the word. It derives from *civis*, the Roman citizen.   21

Democracy according to *Hobbes* and others means from the developing the pure "status naturalis" into the "status civilis". While *Hobbes* argued mostly with fear, *Locke*[16] emphasizes the advantage of the economical idea of cooperation of persons. Created by a social contract, a civil society is built on the important idea of private "persons".   22

"In this personal Identity is founded all the Right and Justice of Reward or Punishment, Happiness and Misery being that for which every one is concerned for himself no mattering what becomes of any Substance, not joined to, or affected with that consciousness."

This kind of "personal identity" should be scrutinized for a person who harmed "Right and Justice". At least, he or she acts "freely" in the sense of a status naturalis, but in the status civilis "wrong and unfair".   23

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[15] Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285 ff., 290: "in absence of state power for example in isolated areas one passes on a journey a natural condition of war continues to persist".

Zartmann, I. Williams, Introduction: Posing the problem of state collaps, in: Zartmann, I. Williams (Ed.), Collapsed States and Restoration of legitimate Authority (1995), pp. 1 ("…situation, where the structure, authority (legitimate power), law and order have fallen apart."… "when the state collapses and power (but not always legitimacy) fall down to local groups or are up for grabs". Similar: Rotberg, Robert I., Failed States, Collapsed States, Weak States: Causes and Indicators, in: Rotberg, Robert I. (Ed.), State Failure and State Weakness in a Time of Terror (2003), pp. 1.

[16] Locke, John, Chapter XXVII "On Identity and Diversity" (1690), in: Nidditch, Peter H. (Ed.), An Essay Concerning Human Understanding (1975).

24 *Mill* wrote in light of *utilitarianism* about a civilized community of sovereign individuals:

"That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because only part of the conduct of anyone, for which he is amenable to the society, is that which concerns others. In the part which merely concerns himself his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.[17]

25 Simply being a "sovereign person" is to be kept in mind.

D. Including Rousseau: State and Solidarity

26 "Solidarity" seems to be, at least in the American and the British national versions of Western culture, not part of democratic "state" itself. The state is defined in the sense of international law and as a powerful acting person.[18] Solidarity is more an element of morality[19] and state free Christian charity[20]. It is a duty of the civil society, espe-

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[17] Mill, John Stuart, On Liberty (1859), Rapaport, Elizabeth (Ed.), 9. ed. (1988), p. 9.

[18] See Art. 1 of the Convention of Montevideo (16. 12. 1933): "The state as a person of international law possesses the following qualifications: a) a permanent population; b) a defined territory; c) a government and d) capacity to enter into relations with other States."

[19] See for the trinity of "Giving, Forgiving and Toleration": Heyd, David, Supererogatory Giving: Can Derrida's Circle be Broken, in: Byrd, B. Sharon / Joerden Jan C. (Hrsg.), Philosophia Practica Universalis, Festschrift für Joachim Hruschka zum 70. Geburtstag (2006), 149 ff.

[20] First Amendment: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, ..." ("establishment clause" or "free exercise clause"), see: Swomley, John, Religious Liberty and the Secular State (1987), pp. 48, and: Levy, Leonard, The Establishment Clause (1994), pp. 105.

cially a call for each wealthy and educated private person. But in Democracy, the civil society rules the political system.[21]

Maybe for the American-British political culture[22] it is more a system of checks and balances that leads in the end to a synthesis of both, civil society of private persons and union of states and peoples. The administrative core state is based on *"Hobbes"* and *"Locke"*, but the powerful and open minded US-American society seems to include at least parts of *"Rousseau"*, as well.[23] He, whose name stands for the European continental "we model" of a "general will" has written on sovereignty:[24]

"As nature gives each man absolute power over all his members, the social compact gives the body politic absolute power over all its members also; and it is this power which, under the direction of the general will, bears, as I have said, the name of Sovereignty.

But, besides the public person, we have to consider the private persons composing it, whose life and liberty are naturally independent of it. We are bound then to distinguish clearly between the respective

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[21]   Kang, John M., Manliness and the Constitution, Harvard Journal of Law & Public Policy, Vol. 32 (1) (2009), pp. 261 – 332, p. 294 (…"civility can be an indispensable social adhesive for a community. As hinted by its etymological presence in "civilization" and "civil society," civility is at base an ethic of cooperation…").

[22]   Halberstam, Daniel, Of Power and Responsibility: The Political Morality of Federal Systems, Virginia Law Review, Vol. 90 (2004), p. 731 (Form the abstract: "… this Article compares the dominant U.S. 'entitlements' approach, which looks only to political self-interest, with the dominant 'fidelity' approach in the European Union and in Germany, which demands that institutional actors temper political self-interest by considering the well-being of the system as a whole."). Of course, both approaches are part of every kind of political system. Insofar (pre-)dominant is the crucial word.

[23]   Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285, 288, 289, he criticizes Hobbes approach, 288: "Family, friends and tribal loyalties are all left out of account". Indeed, without a state human live is "solitary, poor, nasty, brutish and short", Hobbes, Thomas, Leviathan, Reprinted form Edition of 1651 (1962), p. 131.

[24]   Rousseau, Jean Jacques, The Social Contract or Principles of Political Right (1762), Book II, Chap. 4.

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rights of the citizens and the Sovereign, and between the duties the former have to fulfill as subjects, and the natural rights they should enjoy as men."

28 But of course, his main intentions are expressed in these words:

"Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."[25]

29 Therefore Western democracy is meant in the wider and supranational sense of a "democratic civilization" including both state and society.[26] It is a kind of a "We-Group". The Preamble of the Constitution for the United States as well as a lot of other Preambles of Western constitutions and of transnational conventions chose to use a Prologue to define proudly themselves and their main ethics, like "We the People…"[27]

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

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[25] Rousseau, Jean Jacques, The Social Contract or Principles of Political Right (1762), Book I, Chap. 6.

[26] In law it is the problem of accepting transnational values as a part of the national constitution. But "civil society" ought to seek the third approach by claiming the supranational approach as their national one, or develop it "analog" from their own national spiritual heritage (Hobbes, Locke, etc.). Ferrarese, Maria Rosaria, When National Actors Become Transnational: Transjudicial Dialogue between Democracy and Constitutionalism," Global Jurist, Vol. 9 (2009), Iss. 1 (Frontiers), Article 2. Available at: http://www.bepress.com/gj/vol9/iss1/art2.

[27] See for example in connection with both immigration and citizenship: Abraham, David, Immigration and Social Solidarity in Contemporary Societies, The American Academy in Berlin, Social Science, May 6, 2010, p. 1. ("We are all multiculturalists now, goes the adage. But who exactly belongs to the national, cultural, and political unity of the 'we', – who are 'we' the people? And, moreover, what kinds of rights and obligations are entailed by being a member of this 'we'?").

E. Western Democracies

What are the common elements of Western democracies of today?   30

The personal "status civilis", defined by *Locke* with "Right and Justice", has developed into "Human Rights", mainly with the addition of "solidarity (fraternity)", the "others" according to *Mill*. But, this secular value of solidarity derives from the Christian duty of Charity. For a short supranational answer let us take the modernized credo of the French Revolution: "Freedom (Liberty), Equity (Equality), and Solidarity (Fraternity)".   31

Although "Fraternity" is the original word and it shows best the family model, maybe "Solidarity" is used more in Europe. This change of words indicates for instance that women in the 20th Century were granted the full Human Rights, including the right to vote. But solidarity is part of the communitarian approach, too.[28] Another synonym for it is "community"[29]. But knowing this background, let us use the common Western Trinity of "Freedom, Equity, and Solidarity".   32

In detail, we can simply look into the yet to be enacted "Preamble" "Charter of Fundamental Rights" of the European Union, which gathers the European mainstream of ideas on democracy. It shows by the   33

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[28] In light of communitarism, see: Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285 ff., 287 ("The communitarian response … relies on the creation of social solidarity. It holds that the ultimate bulwark against factionalisms rending the consolation is a certain social cohesion or consensus one that translates into a sense of respect of the law and with this into a respect for the constitution itself."). Mensch, James, Political Violence. The Conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie Europas (2008), 285, 288, 289, he criticizes Hobbes approach: "Family, friends and tribal loyalties are all left out of account". Indeed, without a state, or better without a "reliable group" human live is "solitary, poor, nasty, brutish and short", as Hobbes says in Hobbes's Leviathan, Reprinted from the edition of 1651 (1962), p. 131.

[29] In light of republicanism: Pettit, Philip, Republicanism. A Theory of Freedom and Government (1997), p. 110 ("Liberty, Equality and Community").

way a new kind of "Social Contract". The free "European People" agreed on it each fostering their own special kind of Western democracy.

"The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equity and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice."

34 "Freedom, Equity and Solidarity" are complemented by the more German Idea of "Human Dignity" ("Menschenwürde", Art. 1, 1, of the German Constitution). Added are the two principles, democracy and the Rule of Law. Furthermore there is the trinity of "Freedom, Security and Justice". It expresses rather the point of organizing a Western society. All these "values" and "principles"[30] derive from the common European "spiritual and moral heritage",[31] for example from the books of *Hobbes*, *Locke* and *Rousseau*.

35 Of course, each *nation* maintains its own special combination of these elements influenced by its geographical neighbors, by landscape, by environment and by traditions etc. The nations of the European continent have mostly voted for an integrated system, based more on "Equity and Solidarity", and less on "Liberty". And again, the societies of Great Britain and the US, by the way both being kind of islands, tend to separate state and civil society[32]. Their political civilization is

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[30] See: Dworkin, Ronald, Taking Rights Seriously (1979), pp. 14.

[31] Amplifying Western preambles are related to constitutional question, see: Preuß, Ulrich, Disconnecting Constitutions from Statehood: Is Global Constitutionalism a Viable Concept?, in: Dobner, Petra / Loughlin, Martin (Eds.), The Twilight of Constitutionalism? (2010), pp. 23. The Preamble-approach might offer a pragmatic answer, because constitutions, written or not, are part and core of the national identity, and of sovereignty of acting states, too.

[32] See: Harvard Journal of Law & Public Policy, Vol. 32 (2) (2009), on the topic: "Is America Different From Other Major Democracies?"**,** Barnett, Randy E., The Separation of People and State, Harvard Journal of Law & Public Policy, Vol. 32 (2009), pp. 451, 453 ("The separation of People and

grounded more on personal "Equity and Liberty" in the sense of Locke. *Sheldon* for instance notes that pair of ideals as a strong tradition of the US.[33] Hence a separated strong "civil society" could add both the impulse of "angry revenge" and "friendly empathy". It could offer private help by private organizations, both secular and religious. As windfall profit the society of the free and equal persons could keep this kind of political influence and the budget, which is needed for social projects apart form the state, too.

And of course, each "free, equal and solidary" *democrat* acts within this simple framework, influenced by his national culture and maybe by the common Western civilization as well. Each voter easily could combine and weigh all three parts of the Western democracy in his political personality.   36

In so far "Democracy" is Western ideal that is based on the secular trinity of "Freedom, Equity and Solidarity". Under this political roof all Western countries could best be assembled.   37

State is preserved by the Constitution because no one can claim to speak for the People: neither the President (unlike various dictatorships) nor the Congress (unlike the parliamentary systems that dominate throughout the rest of the world). This separation, like the separation of Church and State…)". On the other hand the single states of the US are able to act in public trials in the name of their people and more, by elected and mandated persons. It is a kind of direct democracy using the service of a political structure of power and roles. Comparative: Kuzmics, Helmut / Axtmann, Roland, Authority, State and National Character. The Civilizing Process in Austria and England, 1700-1900 (2007), p. 59.

State means a liberal core state, defined for instance by Elias, Norbert, The Civilizing Process (Translation from German by Edmund Jephcott) (2000), pp. 344 (as "monopoly of taxation, together with the monopoly of violence".). Maybe there is an "American Exceptionalism", at least in light of Continental European approach. The separation is built on bipolar "check and balances" thinking, and is not seeking a holistic consensus of State and democratic society. But we have to keep in mind that every national culture has the need to be special one. Insofar every a culture is "home grown", too. Opportunities and geography are important, as well. The US is in my opinion like Great Britain a kind of a natural protected island and a global trader, too.

[33]   Sheldon, Garrett Ward, Constituting the Constitution: Understanding the American Constitution. Through the British Cultural Constitution, Harvard Journal of Law & Public Policy, Vol. 31 (2008), pp. 1129, 1133 (regarding Tocqueville), and see for the puritan churches etc. as the core of "private charity": p. 1135.

F. My Background: Western Anthropology

1. Philosophical Anthropology and Western Civilization

38 My own background has evolved from a broad approach, and perhaps it is a special one. I would label it "Western Anthropology," by which I mean a merger of Philosophical Anthropology and Western Civilization.

39 To begin with, Western Anthropology tries weighing all the main ideals and cultures, values and principles, rights and duties and all kinds of natural sciences. Complexity of a lot of subsystems rules even the superstructure of the post-modern world. But, every anthropos (man) has – more or less deliberately – to bundle these large and important points of view. As he might define himself, they are the elements of his dignity, of his personality, of his identity, and they are the motivation of in his speech, of his decisions, of his acts etc. States are kinds of sovereign subjects and powerful agents, as well. Even Western states with written Western democratic constitutions have to weigh and to implement their collective identity, especially their civil rights, their political structure, their Rule of Law, etc.[34] Typically the "oracle" of a constitutional high court is needed to adjust the actual balance of the national identity.[35]

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[34]   All states need trying to contain centrifugal forces, and a lot of states are fragmented, see: Preuß, Ulrich, Constitutionalism in Fragmented Societies: The Integrative Function of Liberal Constitutionalism and its Challenges, in: Nergelius, Joakim (Ed.), Constitutionalism - New Challenges. European Law from a Nordic Perspective (2008), pp. 93.

[35]   Regarding the aspect of implementation, for instance of UN-Human Rights, James Nickel offers a theory to cope practically with the idealism inherent to the UN-Charter: Nickel, James, Rethinking Indivisibility: Towards A Theory of Supporting Relations between Human Rights, Human Rights Quarterly, Vol. 30 (2008), pp. 984-1001 (from the abstract: "A central thesis is that the strength of supporting relations between rights varies with quality of implementation. Rights with low quality implementation provide little support to other rights. This is why early UN formulations of indivisibility said that it occurs when the rights in question are fully realized."). Perhaps the same approach described – or will describe – the necessary weighing of constitutional rights inside Western democracies because each right fosters national priorities, meaning each is marked by different qualities of implementation.

On the higher (meta-) level, therefore we tend to find an order. Trinities are the simplest forms to bundle complexity, and they are done best in a dynamic mode and by dialectic steps. In Western societies we have to start with the early modern Dualism[36] of mental and physical things.   40

Regarding the mental side, there is the normative "World of – mental – Subjects", for instance in the sense of the "I"-Subjectivism of Descartes[37] (cogito ergo sum, I think – and doubt –, therefore I am). Critically revised, the "I"- Subjectivism serves as a mere assumption. Politically it is backed up by a consensus about the Free Will[38] doctrine. Both, Subjectivism and Free Will doctrine which are strongly related Western axioms call for ascetic morality and individual responsibility. All these ideals serve as the basis of Liberty[39] and of Human Rights[40]. They open the path to personal autonomy[41] and an inter-personal De-   41

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36 Stanford Encyclopedia of Philosophy, Dualism (2007) (Howard Robinson), Of course, even "dualism" is a meta-label for several kinds of dualism.

37 See the overview: Stanford Encyclopedia of Philosophy, Descartes' Epistemology (2005) (Lex Newman).

38 Stanford Encyclopedia of Philosophy, Free Will (2005) (Timothy O' Connor), and: Hume on Free Will (2007) (Paul Russell).

39 Stanford Encyclopedia of Philosophy, Liberalism (2007) (Gerald Gaus and Shane D. Courtland).

40 Stanford Encyclopedia of Philosophy, Human Rights (2006) (James W. Nickel). Nickel, James W., Rethinking Indivisibility: Towards a Theory of Supporting Relations Between Human Rights, 30 Human Rights Quarterly (2008), pp. 984; Nickel, James W., Is Today's International Human Rights System a Global Governance Regime?, 6 J. ETHICS (2003), pp. 353. Ishay, Micheline R., The History of Human-Rights – From Ancient Times to the Globalization Era (2008), p. 11. Hoffmann-Holland, Klaus, Ethics and Human Rights in a Globalized World. An interdisciplinary Approach, in: Hoffmann-Holland, Ethics and Human Rights in a Globalized World (2009), p. 3 ("We can distinguish between three generations of human rights: First generation liberal rights (e.g. freedom of speech, religion, freedom from torture), second generation social or collective rights (e.g. rights to work, equal payment, a standard of living, right to education, social security, food), and third generation solidarity and development human rights (e.g. right to development, right to peace, right to healthy environment). These generations all refer to particular philosophical, political and sociological backgrounds.").

41 Stanford Encyclopedia of Philosophy, Autonomy in Moral and Political Philosophy (2009) (John Christman).

mocracy[42]. From my standpoint this might be a whole Western octagonal network of four pairs: The Descartes "I"-Subjectivism and the Free will, Responsibility and Morality, Liberty and Human rights, and Autonomy and Democracy.

42 And there is the empirical "World of Objects", these "physical things" are in the focus of all the classic natural sciences. Insofar, as we, the species "homo sapiens" are a part of evolution and our body consists of chemical and physical elements, etc.

43 A rational "synthesis" of both worlds is nearly impossible, that is part of the logic of Dualism. Therefore a synthesis is either a rather formal and artificial one, or we develop a kind of a third world. As such a post-modern synthetic "third world" serves the "nature-based" approach of a cosmos of interacting cell-like sub-systems. The dynamic social theory of systems includes the whole "cultural social world", too, and even each of their interacting human agents. And it might be that the "soul" or the "psyche" of psychology is a similar third and bridging entity. It tries balancing at least between the impulses sent from the body and the claims from the common sense of man. It forms and reforms permanently his personal identity.

44 Followers of syncretism appreciate the main aspects of all the three worlds, that one of normative Subjects, the other one of empirical Objects and of a holistic emergent cosmos, for instance of dynamic learning systems. Syncretists try hard to avoid building up a hierarchy between these three approaches. Therefore this Syncretism is a kind of an educated Pragmatism. But in the end, syncretism tends to the holistic "syn" (or "con") part of its root etymology, emphasizing the relativism and interdependency that, for instance, characterizes the dynamic model of half-autonomic systems.

45 The ambivalent meaning of "Civilization" stems from such a syncretism. On one hand Civilization derive from the Roman "civis". This normative approach to civilization leads to Western Democracies. On the other hand in Ethnology every political culture is a human civilisation. The main social groups develop and foster their own traditions, rites, symbols and even special languages. Human Groups range from

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42 Stanford Encyclopedia of Philosophy, Democracy (2006) (Tom Christiano).

small nomadic families to tribes, to nations and to the ideal of a mankind organized by the United Nations. Every larger population contains a whole network of subgroups and subcultures.

Western Civilization might profit from a syncretic kind of order. Insofar it contains three pairs of elements: 1) from the perspective of subjectivism: "State and Man"; 2) from an objective perspective: "Power and Right"; 3) from a synthetic perspective: "Culture and Nature"[43]. Last not least, I might add special aspect. One might say, from the cultural point of view perhaps, that the Ideals of Western democracy are forming a kind of an "Ersatz-Religion", based on Western Philosophy of State and Law.

Altogether, this approach could be baptized as a pragmatic and cross-disciplinary "Western Anthropology".

Some aspects are to be amplified:

2. Reality of Groupishness and the Fiction of Freedom

At first an old anthropological aspect might be amplified. The famous "status naturalis" of the free and wild human beings is, of course, a fictional idea. Nobody lives without a kind of socialization or without a civilization in a wider sense.[44] We are "social and political animals" (zoon politikon) as well, which includes in light of democracy "Equity and Solidarity" and an existing "state". Let us pick up the word of "Groupishness"[45]. In each and every form is groupishness (family, friends, tribes, nations or feeling as part of a whole in the sense of

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[43]   Montenbruck, Axel, Zivilisation – Staat und Mensch, Gewalt und Recht, Kultur und Natur (2009).

[44]   Montenbruck, Axel, Zivilisation. Staat und Mensch, Gewalt und Recht, Kultur und Natur (2009), Rdnr. 844 ff.

[45]   Lipgar, Robert M., Beyond Bion's Experiences in Groups: group relations research and learning, in: Bion, W.R. / Bion Talamo, Parthenope / Borgogno, Franco / Merciai, Silvio A. (Eds.), Bion's Legacy of Groups (1998), pp. 25, 27 (human being as a "group animal"). Miller, Eric, A Note of the Protomental System and "Groupishness": Bion's Basic Assumptions Revisited, Human Relations, Vol. 51 (1998), pp. 1495 ("unconscious basic assumption of behaviour of groups").

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animism, of a book religion or of global[46] humanity etc.) a psycho-
logical feature of homo sapiens.[47] And disturbance of groupishness is
a form of socio-pathological insanity.[48]

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[46] Hoffmann-Holland, Klaus, Ethics and Human Rights in a Globalized
World. An interdisciplinary Approach, in: Hoffmann-Holland, Ethics and
Human Rights in a Globalized World (2009), p. 4 ("Globalization can be
defined as 'the growing interpenetration of states, markets, communica-
tions, and ideas across borders'. The impact of globalization is not re-
stricted to a single system or discipline. It can be seen in (informations-)
technology as well as in the social, cultural, economic, and political sys-
tem, and it affects the way we talk (and think)."); Brysk, Alison, Introduc-
tion – Transnational Threats and Opportunities, in: Brysk, Alison (Ed.),
Globalization and Human Rights (2002), p. 1; Gopinath, Chinnam, Global-
ization – A Multidimensional System (2008), p. 36; Clark, Robert P.,
Global Awareness – Thinking Systematically about the World (2002).
Nickel, James W., Is Today's International Human Rights System a Global
Governance Regime?, 6 J. ETHICS (2003), pp. 353.

[47] See for the background, too: Markowitsch, Hans J. / Röttgen-Rössler,
Brigit, (Eds.). Emotions as Bio-cultural Processes, An Interdisciplinary
Approach (2009), from the abstract of this anthology: Emotions have
emerged as a topic of interest across the disciplines, yet studies and find-
ings on emotions tend to fall into two camps: body versus brain, nature
versus nurture. Emotions as Bio-cultural Processes offers a unique collabo-
ration across the biological/social divide – from psychology and neurosci-
ence to cultural anthropology and sociology – as 15 noted researchers de-
velop a common language, theoretical basis, and methodology for examin-
ing this most socio-cognitive aspect of our lives. Starting with our evolu-
tionary past and continuing into our modern world of social classes and
norms, these multidisciplinary perspectives reveal the complex interplay of
biological, social, cultural, and personal factors at work in emotions, with
particular emphasis on the nuances involved in pride and shame. A sam-
pling of the topics: (1) The roles of the brain in emotional processing. (2)
Emotional development milestones in childhood. (3) Social feeling rules
and the experience of loss. (4) Emotions as commodities? The manage-
ment of feelings and the self-help industry. (5) Honor and dishonor: socie-
tal and gender manifestations of pride and shame. (6) Emotion regulation
and youth culture. (7) Pride and shame in the classroom (emphasis
added). See especially in light of ethnology: Röttgen-Rössler, Birgit,
Gravestones for Butterflies. Social feeling Rules and Individual Experi-
ences of Loss, In: Emotions (2009), pp. 164 (form the abstract: about
"emotional adjustment to change life circumstances" and a "process of in-
teracting meaning making". Based the aspects that the "cultures formulate
"feeling rules" or "emotional imperatives" as well as …. "display rules",
illustrated by a "movement of parents that had suffered pregnancy loss or
stillbirth and wanted to create a place for grief…".

But in my opinion, this kind of secular fiction creating Freedom at first and adding groupishness afterwards is a genuine part of the logic of our secular democracy. Only freedom based on "nature" enabled the early modern European Humanism and their emerging science to substitute an existing social system that includes "monocracy" in form of a medieval religion.[49] The "status naturalis" leads us still to universal "natural" Human Rights and allows the separation of state and religion. 48

The "status naturalis" is a philosophical kind of anthropology. It is based on the ability to act. Acting freely includes at least some biological goods (in ethical terms: values). This "freedom" is grounded on "life and health"; to add are "identity and individuality" and even "intelligence and utilitarian ethics". Obviously even "life" ranks second to this ability of being an actor. And only naturally free persons are able to "constitute" a democracy of free people, free from absolute monarchs and free from an absolute church. 49

Pressed or lured into a democratic "We-group" the fictive free born persons change into the "status civilis". But still, they are only bound absolutely by Natural Law, or maybe even only by that kind of Natural Law they are consenting to as reasonable, which is called "common sense".[50] And democrats keep parts of their old absolute freedom 50

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48   In light of psychoanalysis: Adam, John / Scanlon, Christopher, Disturbances of "groupishness"? Structural violence, refusal and the therapeutic community response to severe personality disorder, International Forum of Psychoanalysis Vol. 18 (2009), pp. 23 ("considering both the merits of the democratic therapeutic community model as a response to severe personality disorders and the danger, inherent in the model… is an unconscious identification with Diogenes in his barrel "). Of course there is the possibility of psychic insanity of "holing oneself up", too, Adam / Scanlon in their abstract is usually "related to an experience of being violently excluded".

49   The historical bridge is the "Rationalized Christianity", Taylor, Charles, Sources of the Self. The Making of the Modern Identity, seventh printing (1994), Chap. 14.1, regarding Locke.

50   A "social unity" needs for their "socials arrangements" a "consensus of reasonable comprehensive doctrines", Rawls, John, Political Liberalism (1993), p. 136, p. 41. For the importance of stability: Klosko, George, Rawl's Argument from political stability, Columbia Law Review 94 (1994), pp. 1882, 1885. See also: Barry, Brian, John Rawls and the search for stability, Ethics 105 (1995), pp. 880 and: Vaughan, Geoffrey, The Decline in the liberal tradition: The case of John Rawls, in: Peters, Martin /

to themselves, especially the right of property and the pursuit of happiness, both mean to be simply free of domination.[51]

51 On the other hand, each law – reasonable or not – includes enforcement.[52] Even the peaceful status civilis cannot exist without power and a kind of domination. At it best it is a fairly shared and professionally organized democratic system of co-domination.

3. Freedom and Responsibility, Western Groupishness and Collective Guilt

52 "Responsibility" to peers and "moral guilt" for harmful actions are parts of being "a free master of ones own free acts". These, and the simple self inflicted risk called "liability", are well known ethical functions of Freedom.[53]

Schröder, Peter (Hrsg.), Souveränitätskonzeptionen. Beiträge zur Analyse politischer Ordnungsvorstellungen im 17. bis zum 20. Jahrhundert (2000), 157 ff.

[51] In light of republicanism: Pettit, Philip, Republicanism. A Theory of Freedom and Government (1997), pp. 51: "Liberty is Non-domination", obviously freedom is defined mainly by autocracy, or see: p. 263: "republican civility…is… associated with… vigilance" regarding authorities, but "trust" is possible between persons.

[52] See: Benjamin, Walter, Critique of violence, in: Benjamin Walter, Selected writings, Vol. 1, 1913-1926 (Bullock, M. / Jennings, M.W., Eds.) (2004), pp. 243 ("all violence as a means is either law-making or law-preserving"). Similar: Mensch, James, Political Violence. The conflation of Sovereignty and Freedom, in: Hagedorn, Ludger / Staudigl, Michael (Hrsg.), Über Zivilisation und Differenz, Beiträge zu einer politischen Phänomenologie (2008), 285 ff., 290 ("the violence that preserves the law is present in the use to enforce the law"). Ferner: Benjamin, Walter, Critique of Violence, in: Benjamin Walter, Selected writings, Vol. 1, 1913-1926 (Bullock, M. / Jennings, M.W., Eds.) (2004), p. 248 ("law-making is power making, assumption of power, and to that extent an immediate manifestation of violence").

[53] Waller, Bruce N., Freedom, Moral Responsibility and Ethics, in: Consider Ethics: Theory, Readings and Contemporary Issues (2005), pp. 215-233; Hart, H.L.A., Punishment and Responsibility. Essays in the Philosophy of Law, Second Edition (2008) pp. 3 (principle of distribution); Krawietz, Werner, Risiko, Recht und normative Verantwortungsattribution in rechtsethischer Perspektive, in: Gerhardt, Volker / Krawietz, Werner (Hrsg.), Recht und Natur. Beiträge zu Ehren von Friedrich Kaulbach; Schriften zur

Psychology underlines similar human traits. As *Bennett* emphasizes, 53
there is the strong impulse to apologize and to restore in a ritual way,
but it is mainly related to harmed peers (friendship, collegiality or citizenship), and especially in cases of mere recklessness.[54] In light of
policy a sovereign Western state is a democratic "We-group" and acts
free and responsibly, too. Being a democratic co-ruling participant of
this "We-group" – instead of being a mere submissive member – a
Western person can feel even a common "collective guilt"[55] and the
collective duty to condemn crimes.[56]

In light of social psychology *McGarty* and *Blinc* wrote[57]   54

There are… two preconditions for collective guilt… people cannot feel
collective guilt unless they (a) recognize that they belong to a group
… and (b) they see that group as responsible for some humanitarian
violation". They would like to add two points: *"(c) a continuing status*

Rechtstheorie, Heft 153 (1992), 147 ff., 166; Kant, Immanuel, Grundlegung zur Metaphysik der Sitten, Königlich Preußische Akademie der Wissenschaften (Hrsg.), Band IV (1903/11), 334, Einl. IV, 329.

[54] Bennett, Christopher, The Apology Ritual. A Philosophical Theory of Punishment (2008), p. 47: "Responsibility, reactive attitudes and the right to be punished"; or p. 175: "The apology rituals and its rivals".

[55] Branscombe, Nyla. R. / Sengoski, Ben / Kappen, Diane M., The measurement of collective Guilt. What it is and what it is not, in: Branscombe, Nyla R. / Doosje, Bertjar (Eds.), Collective Guilt in International Perspectives (2004), pp. 16. See p. 16 , combining all three: "pride, shame, and guilt" and explaining … "guilt stems from perceiving the self as responsible for an event that violates internalized moral standards or expectations"), p. 17 … "guilt by association can be experienced when the ingroup is perceived as responsible for an unjustified violation of accepted moral standards". "Ingroup" is a synonym for a personal important "We-group". And it should be kept in mind that "justified violations" are obviously accepted violations.

[56] Bennett, Christopher, The Apology Ritual. A Philosophical Theory of Punishment (2008), pp. 101: "The cycle of blame and apology", pp. 152: "Institutional blame and apology". To issue authorative condemnation of crimes, see Feinberg, Joel, The Expressive Function of Punishment, in: Feinberg, Joel (Ed.), Doing and Deserving (1970), pp. 95.

[57] McGarty, Craig / Blinc, Ana-Maria, Refining the Meaning of the "Collective", in Collective Guilt, Harm, Guilt and Apology in Australia, in: Branscombe, Nyla R. / Doosje Bertjar (Eds.), Collective Guilt in International Perspectives (2004), pp. 112-113. But that means on the other hand, if a humanitarian violation is justified by a (dominating) group there is no feeling of (collective) guilt.

advantage for dominant groups" and *"(d) there is a conflict within the dominant group".*

55 Taking that structure for granted that means that, vice versa, the morality of a democratic person is – partly – an internalized or accepted "group morality". It derives from the special "common sense" of this group. The Western grid of ethics and the national model of "personal morality" are learned most by both, by education of a closer "We-group" and by social experience interacting with peers. Pressed in one word: by communication. The special ethnical or national ethics evolve of a common Western heritage and of a permanent Western exchange of thoughts. These kinds of culture draw from a "human precondition" toward fairness and compassion. Probably the basics of ethics are founded on the evolutionary principle of cooperation and the rule of reciprocity, too.

4. "Family" and "Duties", Ideal of Eastern Civilizations

56 In light of history, the Western kind of a "civilized Freedom" is a child of cultural change. It is an offspring of the European renaissance of antic "humane rationalism" combined with a progressive linear thinking, not a cyclic kind of living. Civilized Western culture includes a whole sophisticated philosophical trinity. Meant are at least: a mainly personal Subjectivism of liberal arts, an empirical objectivism of technology and a more social approach of a synthesizing postmodernism. But philosophy begins with and comes back to "cogito ergo sum" (I think, or I doubt therefore I am), an idea no scientist can be free himself of.

57 A lot of Eastern cultures are mostly grounded on another fiction, which is the old medieval idea of being a mere member of a clan or a family.[58] The holistic "We-person" is idealized in the same kind as the Western "I-person". The ghosts of ancestors, a world of uncountable spirits and demons mixed with a meta-natural synthesis of yin and

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[58]   See: MacCromack, Geoffrey, The Legalist School and its Influence upon Traditional Chinese Law, Archives for Philosophy of Law and Social Philosophy (2006), p. 59 ("officials' duties", and regarding the Legalist School "that official should be accountable under the law for the correct performance of their duties").

yang[59] that means a kind of high sophisticated balancing, is presumably still ruling the "cultural cosmos" of China and lot of other greater empires in East Asia.[60] From the Western point of view these We-cultures are meant to absorb Egoism, Individuality and Rationality. But these kinds of animistic spiritualism are part of Western spiritual heritage[61] as well.

"Honor" of the family and "shame" in cases of "disobedience" are combined with the human identity of being a mere submissive member.[62] Sacrificing scapegoats does not only calm down collective emo- 58

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59 See: Madl, Pierre, Abrahamic vs. Asian Values: The We(a)stern Society, in: Giordano, Christian / Patry, Jean-Luc (Hrsg.), Theorie und Praxis – Brüche und Brücken (2006), 103 ff., 115 (Yin and Yang: "an explicit dualism, that expresses one implicit unit, such as good and bad, hot and cold, happiness and sadness, health and sickness, truth and falsity or life and death"). The Mankind lives between heaven (Yang) and earth (Yin). Madl, Abrahamic, Pierre, Abrahamic v., Asian Values: The We(a)stern Society, in: Giordano, Christian / Patry, Jean-Luc (Hrsg.), Theorie und Praxis – Brüche und Brücken (2006), 103 ff., 123: "a holistic understanding by introducing Trans-disciplinarity"…See for the "non-egoism" of Buddhism: Madl, Pierre, Abrahamic vs, Asian Values: The We(a)stern Society, in: Giordano, Christian / Patry, Jean-Luc (Hrsg.), Theorie und Praxis – Brüche und Brücken (2006), 103 ff., 114: "Nirwana" is in Buddhism a kind of a whole living system of nature: the "'indeed being' arises from 'not being', just as sound is distinguished from silence and light from darkness". From my rational Western point of view, instead of favoring the at least more dialogical Bipolarity of yin and yang, the cultures of Buddhism set the next formal step to a kind of biological Binarity of both, a natural "to be and not to be" but they always chose the synthesis.

60 Regarding India see Bhargava, Rajee, "Political Secularism: Why It Is Needed and What Can Be Learnt from Its Indian Version", in: Brahm Levey, Geoffrey / Modood, Tariq, (Eds.), Secularism, Religion and Multicultural Citizenship (2009), pp. 82-109, ("…a strict political secularisms is alien to Indian culture and civilization").

61 For instance as Platonism: Gerson, Lloyd P., What is Platonism?, JHP 43 (2005), pp. 253. Platon, Phaidon, in: Eigler, Gunther (Hrsg.), Platon. Werke in acht Bänden. Griechisch und Deutsch, Band 3, Sonderausgabe (1990), 1 ff., 65a–67b, 82b–84b; Platon, Politeia, in: Eigler, Gunther (Hrsg.), Platon. Werke in acht Bänden. Griechisch und Deutsch, Band 4, Sonderausgabe (1990), 521c–535a.

62 The concepts of shame, guilt, and embarrassment are not fully standardized: Tangney, Miller, Flicker, Barlow, Are shame, guilt, and embarrassment distinct emotions?, Journal of Personal and Social Psychology, 70 (1996), p. 1256. Fossum, Merle A. / Mason, Marilyn J., Facing Shame: Families in Recovery, W.W. Norton (1986), p. 5, ("While

tions, they are also reasonable, because the group is responsible to higher spirits. The group sacrifices a precious asset, maybe a goat, a slave or even a child.[63] Crucial and the bridge to Individualism is the offering of the "only son". The patriarch Abraham offered his son, as did the God of the New Testament.

59 Another idea is the duty of solidarity, but not only with humans but with every living being. Time for these rural cultures is a cyclic one.[64] They live more in a circle of generations. A collective holistic feeling, nature-based Animism and the holiness of ancestors are the great religious elements of that kind of civilizations.[65] Even great imperial systems are still built on families (dynasties).

60 Simplified in light of politics, Western civilization of human "individualism" is based mainly more on "secular cities". For the US it was at the beginning Boston against London. "Collectivism" in the wider sense of being a part of a natural animated world is grounded in a "religious, rural way of life". They are normally built on a religion that claims solidarity with the whole universe and delivers rituals to sup-

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guilt is a painful feeling of regret and responsibility for one's actions, shame is a painful feeling about oneself as a person."). A person in that sense describes a kind of social role. In German: Seilder, Günter H., Scham und Schuld. Zum alteritätstheoretischen Verständnis selbstreflexiver Affekte, Zeitschrift für psychosomatische Medizin und Psychoanalyse 43 (1997), 119 ff.; Marks, Stephan, Zur Funktion von Scham und Schamabwehr im Nationalsozialismus, in: Schönbächler, Georg (Hrsg.), Die Scham in Philosophie, Kulturanthropologie und Psychoanalyse, Zürich: Collegium Helveticum Heft 2 (2006), 51-56.

[63] For "scapegoat" see: Montenbruck, Axel, Sündenbock, in: Strafrechtsphilosophie. Vergeltung, Strafzeit, Sündenbock, Menschenrechtsstrafe (1995-2009) (2009), Rdnr. 300 ff.

[64] Eliade, Mircea, The Sacred and the Profane: The Nature of Religion, Trask, Willard R. (Trans.), New York: Harper Torchbooks (1961), p. 73; Montenbruck, Axel, Strafzeit, in: Strafrechtsphilosophie. Vergeltung, Strafzeit, Sündenbock, Menschenrechtsstrafe (1995-2009) (2009), Rdnr. 200.

[65] See: Western "Abrahamic tradition" opposing to "Asian values": Madl, Pierre, Abrahamic vs. Asian values: the We(a)stern Society, in: Giordano, Christian / Patry, Jean-Luc (Hrsg.), Theorie und Praxis – Brüche und Brücken (2006), 103 ff., 108 ff. ("male-types god-figure"), as well as "Hierarchy of Oppression": (1) God – (2) Man – (3) Women – (4) Animals and Plants – (5) Nature – (6) Mother Earth, and see p. 123: "a holistic understanding by introducing Trans-disciplinarity".

port the feeling of collectivism and to suppress the outbreak of individuality.

Therefore, instead of original "individual rights" these rural cultures develop a system of "collective duties".[66] They are a pressing commitment for the elder brothers, the chiefs and the kings. It is their holy task to protect and to nourish children, younger brothers or to support the members, who depend on a lord or on the king. But duties provide a derivative kind of rights of the members. And vice versa, individual rights entail, for instance, duties to other persons. In reality, each civilization meant in the wide sense of political culture has to cope with both, the interest of the young and free individuals and the group, governed by the generation of elders/parents.[67]   61

Believing in one personal almighty God seems to be the bridge to the modern meaning of personality. It is combined with the "imago dei" model that men are animated by the holy spirit of God. But on the other hand, even the profane abiding by the sprit of humanity means relying on a last and ultimate reason and that constitutes a kind of a civil religion.[68] And of course, in reality at least every great contemporary mainstream culture of secularism provides a lot of all other kinds   62

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[66]   In light of formal jurisprudence on Right and Duty: Jaffey, Peter A., Hohfeld's Power-Liability/Right-Duty Distinction in the Law of Restitution. Canadian Journal of Law and Jurisprudence, Vol. 17 (2) (2004), pp. 295-313.

[67]   Their decision could be internalized by the next generation, see as an example for the anthropological "generation" approach: Andenaes, Johannes, General Prevention Revisited: Research and Policy Implications, The Journal of Criminal Law & Criminology 66 (1975), pp. 338-365, p. 338 (341): "The consideration of moral effects calls for a long-term perspective. The legislation of one generation may become the morality of the next (…) If a substantial part of the impact of the law is believed to lie in its power to support and reinforce social norms, one would not expect rapid changes in crime rates as a result of less than drastic changes in law or law enforcement".

[68]   Bell, Daniel, Return of the sacred? The Argument of the future of Religion, in: Bell, Daniel (Ed.), The Winding passage Essay and Sociological Journeys 1960 – 1980 (1980), pp. 324, p. 347 ("Religion is … a constitutive aspect of human experience, of human culture"); Müller, Alois, Religion, Kultur und Ethik unter Säkularisierungsbedingungen, in: Kohler, Georg / Kleger, Heinz (Hrsg.), Diskurs und Dezision, Politische Vernunft in der wissenschaftlich-technischen Zivilisation. Hermann Lübbe in der Diskussion (1990), 285 ff., 293 ff.

of open or secret subcultures thereby counterbalancing all the other kinds of danger of a strict secular fundamentalism. But in the end there is a cultural decision to be made, either favoring more the individualism of cities or sticking to the old system of collectivism ideally organizing best rural countries.

63 As to the religious aspect, there is a secular "cognitive science of religion" which is represented for instance by social-anthropologist Harvey Whitehouse. He offers an impressive analysis of probably universal elements of religion. Granted that they are a genuine part of the human, they ought to be features of the secular "ersatz-religion" of the Western democracies, too, which are expressed in their semi-religious Preambles.[69]

64 Among other elements he mentions "Deference, Moral obligation, Punishment and reward". "Punishment and reward" are both part of the tit for tat principle of equity. Deference is a strategy of social hierarchies. Moral obligations are part of the personal dignity of men.

65 Another core religious aspect is "afterlife". Regarding this element, the Western civil society generated a secular counterpart developing a cultural tradition of both oral narrative stories and songs about famous ancestors and especially written semi-holy books of and about great philosophers, history books about leaders etc.

66 "Beings with special powers, Signs and portents, Creationism, Spirit possession", they in Western Democracies are reflected by elected Presidents, by Lawmakers etc., and of course by every other kind civil idol, too. In Western democracies each person participates in this pool of "natural" gifts which are the background for his personal Human Rights.

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[69]   Harvey Whitehouse, Cognition and Religious Evolution, Ethnology and Anthropology, Vol. 3. No. 3 (2008), pp. 35, p. 36 ("Figure 1 lists a number of traits that might be associated with the category 'religion'. These traits are probably found, in some shape or form, in all human societies or at least are very widespread and historically recurrent. The CSR" – cognitive science of religion – "has attempted to account for this recurrence in terms of the shaping and constraining: effects of universal cognitive mechanisms." His list contains: "Afterlife, Beings with special powers, Signs and portents, Creationism, Spirit possession, Rituals, Ritual exegesis, Deference, Moral obligation, Punishment and reward, Revelation, … Cross-culturally recurrent religious repertoire.").

"Rituals, Ritual exegesis, The Sacred", they are a part of the juridical system. Rites dominate of each courtroom session, and lawyers are educated in exegesis. Both the role of a judge, as in "contempt of court", and the reasonability of a jury, as in "reasonable doubts", reflects their special kind of secular holiness. 67

Western Preambles (and constitutions) should be seen as a kind of political Ersatz-religions. Preambles generate collectivizing aspects, like the collective "believing and trusting", or the "abiding and submitting". They are associated with phrases like "it's law" and are symbolized by the spiritual power of "Rule of Law". 68

These preambles and phrases are elements of both semi-religious Western ethics and Democratic "leadership". We might add phrases like "it's common sense" or "it's science". But of course, on the other hand, these are more open, at least in an ideal "discourse", in which each reasonable and therefore "free" person could take part. 69

5. "Peers and Asceticism", the Limitation of raw Models

There should be a third kind of culture, too. In that simple strand of thoughts it is ruled mainly by Equity. Smaller groups of "peers" draw from altruism and respect, suppressing egoism as well as compassion. Domination of Equity often evolves into a holy or a secular Order of Equals. Asceticism, proud worshiping and self-sacrificing are core features of Equity. Societies dominated by aristocratic warriors, by a network of cloisters (including Buddhism), or by both elements as the Knights Templar are well-known examples. In a wider sense every caste systems is founded not only on a holy hierarchy, but by relying on a lot of groups of peers, too. Peer groups in Western law enforcement and recruits in war times are lead by these ethics, as well. Common Rituals, special uniforms and secret signs are the brand mark for peers. 70

Apparently, there are not a lot of other ethical alternatives to economic individualism, emotional collectivism and dutiful Equity. But each real political culture that is dominated by one of these main three ideologies (Freedom, Equity or Solidarity) has to cope, at least, with both of the others. The Western civilization, although dominated by Freedom, needs and knows the advantages of being "corrected" by the pair of "Equity" and "Solidarity". 71

72 Each ruling ideal has to "internalize" both the other kind of thinking and has to "tolerate" their subcultures, at least de facto. This kind of handling is based on the two old conditions to dominate other systems peacefully: embracing strong competitors and ruling by the motto of "divide et impera". Furthermore, each society has to cope as well with two – negative – elements, the influences of foreign cultures and some brand new aspects.[70] Most of the novelties are delivered by natural sciences. And, of course, that – open-ended – trinity model of civilization is a simple one. But, remember the pragmatic logic of *Ockham´s* Razor.

73 Therefore, democracy too has to weigh – and to harmonize as far as possible – a political trinity,

(1) individualism as freedom,

(2) mutuality as equity and

(3) collectivism as solidarity. All three kinds of arguments are important.

But the responsible decision must be made form the position or role of a democratic person. That means taking culturally for granted, that human beings are able to argue and to decide "free".

74 Again; this is a very simple supranational model of Western democracy. Each real Western nation balances and re-balances a special kind of combination of this democratic trinity every day. Furthermore, each one of the "united states" within the main and federal culture of the US might be proud of its own kind of the US-Democracy.

6. Western Diagram: Freedom, Equity and Solidarity

75 The secular Credo of democracy, Freedom, Equity and Solidarity, and some elements of its outcome could perhaps be compressed into this diagram. And, we only need ideals at all because reality shows us that

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[70]   Montenbruck, Axel, Zivilisation. Staat und Mensch, Gewalt und Recht, Kultur und Natur (2009), Rdnr. 1097.

for every "ought" there is a special case of violation to be thought with. The serious ones are crimes.

Freedom means in:	Equity means in:	Solidarity means in:
Politics, Human Rights: Private Rights/ Private chances	*Politics, Humans Rights:* Fairness/ justice/ rule of law	*Politics, Human Rights:* Security/ sharing of Power/ petitions
Criminal Law: Justified self-defense/ private arrest	*Criminal Law:* Reciprocity/ retaliation/ restoration of law	*Criminal Law:* Prevention as protection of members, of collective and of all constitutional values
Civil Law: Sovereign personality	*Civil Law:* Contracts and duties/ property and liability	*Public Law:* Elections/ taxes/ policing
Civil Economy: A free market	*Civil Economy:* A fair market	*Civil Economy:* A controlled market
Civil Power: Ability to act, to work, to move	*Civil Power:* Creating networks and communities	*Civil Power:* Charity/ lobbying/ integrated public-private Partnership
Jurisprudence/ common sense: Decision between:	*Jurisprudence/ common sense:* Decision between:	*Jurisprudence/ common sense:* Decision between:

Autonomy and Egoism	"Golden rule" and cruel Retaliation	Altruism/ Humanism and inhumane Collectivism
Morality: Personal duty to yourself	*Morality:* Personal duty to peers	*Morality:* Personal duty to society

76 These are at least typical examples. Regarding Western democracy, they are an important part of my position, too.

G. First Thesis: Three Democratic Steps to Punishment

77 Regarding punishment and crime, we might try the following three steps:

Step 1: *What is democracy?* The answer is given, although democracy is based on "Freedom", it is a special national combination of: "Freedom, Equity and Solidarity".

Step 2: *In Light of Democracy what are criminal acts of a criminal person?*

His actions are "free", but "unfair and inhumane". The criminal person

(1) is gaining freedom by taking freedom,

(2) is building up a hierarchy (domination) instead of accepting fair Equity

(3) is not showing solidarity, sympathy or empathy

Step 3: *In what way is this response democratic?* The main point is, because even a brutal perpetrator still has his national "constitutional rights" and his "fundamental human rights".

In detail, 78

(1) We, i. e. the *democratic society*, take away his "physical freedom" and we dominate him, maybe for 20 years.

(2) But that's "fair", because it is not more than reciprocity; it is only an "eye for an eye".

(3) And it is less than that, it is "humane". There is the permanent offer of "reconciliation" to the prodigal son.

About the special case of *death penalty,* I personally would add: Inside of an existent democracy, the "state" cannot logically have the right to eliminate one of its "royal rulers". Even its co-rulers can't do it within the limits a democracy. But of course, they can do it by regressing into a "status naturalis". 79

And, avoiding the dilemma of the "maybe fair, but inhumane" death penalty, altogether by taking away "freedom" but offering "fairness and solidarity" is a democratic kind of punishment. 80

III. Part 2: Culture

A. Communication and Culture

81 Let us look at the common cultural background of Democratic states regarding criminal acts and punishment. To begin with, I would like to offer a six-pointed statement, seemingly being self-evident.

82 (1) The core of each humane society is "communication". Or as *Basil Bernstein*[71] says*: "The semantic function of a language is the social culture".*

In a more sophisticated vein *Roy Rappoport* writes: *"The terms "communicate" and "community are obviously cognates. "Communicate" is derived from Latin communicare "to make common".* And he adds: *"A human community is an association of persons standing upon a common ground."* And furthermore: *"Those who hold ultimate sacred Postulates in common constitute communities as fundamental in nature as those defined by descent from common ancestors, for they accept common foundations for their testimony, their pledges, their institutions and much of their general understanding of the world."*[72]

That is the more hidden social root of the famous "common sense"; the other of course, is the enlightenment and arguing with reason.

83 (2) Communicating creates a kind of "common sense". In light of anthropology and the theory of systems and the words of *Maturana / Valera*[73], there is a kind of self organized *"consensual domain of behaviour"*. A group needs an analogy to sub-human herd or swarm or at least a "common behaviour".[74] By learning to communicate in our

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[71] Bernstein, Basil, Class, Codes and Control, Vol. I, Theoretical Studies towards a Sociology of Language (1971), p. 54.

[72] Rappaport, Roy A., Ritual and Religion in the making of Humanity (1999), p. 326.

[73] Maturana, Humberto R. / Valera, Francisco, Autopoesis and Cognition – The Realization of the Living (1980), p. 50 ("creation of consensual domain of behaviour").

[74] Extremely grounded on consensus for instance: MacIntyre, Alasdair, After Virtue (Second corrected Edition with Prescript) (1985), pp. 69: morality

special languages, we humans become socialized, as well. But obviously, we are not strictly bound to our group and its "common behaviour". Insofar the special human language is built on abstractions and symbols.[75]

(3) Communication implies the basics of democracy and vice versa, because communication means "dialog" or an open "discourse" and requires a "forum". The alternative is a "decision" without open communication in a forum. That means secrecy, domination of an elite, and animosity.

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(4) At the very least, each society is not only based upon communication, it "is" communication.[76] But it "is" collective coercion, too. In reality, in every social system there are both "discourses" and "decisions", because you cannot only discuss. After a while, a decision must be made. And normally, even the decision of a plenum is prepared by a smaller group of leaders. On the other hand, even a cabinet or a board cannot work without a kind of open discourse.

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(5) When communicating, we use and think in our own "common language". We are living in a cage, a kind of "national" home and in a wider kind of Western cultural system. To understand other systems, we have to learn their art of communication. But, normally we would not be able to become a real "native speaker".[77]

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is a fiction, constructed by a community and by communication. But "tit for tat" indicates that at least reciprocity is a social biological strategy.

[75] In light of anthropology: Rappaport, Roy A., Ritual and Religion in the making of Humanity (1999), p. 7: "Not only is language is the human way of life" but "the appearance of the symbol" and p. 8: "With the symbol an entirely new form of information (in the widest sense of the word) appeared in the world". He continues: "the language is central to human mode of adaption"… "but there is a great inversion"…. if the metaphor of inversion (surely an oversimplification) is at all apt, then it is appropriate to propose that the proposition favored in human social systems are about such conceptions as God, Freedom, Fatherland, and The Good."

[76] Luhmann, Niklas, Politische Theorie im Wohlfahrtsstaat (1981), 19 f.; Simmel, Georg, Soziologie. Untersuchungen über die Formen der Vergesellschaftung, in: Rammstedt, Otthein (Hrsg.), Gesamtausgabe, Band 11 (1992), 32 f.

[77] In sense of "systemic function of grammar": Halliday, Michael A. K., Introduction to Functional Grammar, 2. ed. (1994), p. 15. Ullman, M. /

87 (6) Structurally, we have to cope with the same problem of cultural differences when a meta-discipline as Philosophical Anthropology invites Jurisprudence, Political Science, Linguistics, Psychology and Criminal Law to an interdisciplinary[78] conference about Punishment and Crime. Me, I am originally a "learned native speaker" in the world of norms ("ought"), which Law is an old part of. Exactly I got my degrees concerning the small unit of national German Law, especially of crime and legal punishment, which is of course imbedded in German and Western jurisprudence. Arguing with empirical aspects, which I have to borrow by famous colleagues, means switching into another kind of world, that of mere facts. The only solace is that, vice versa, the same risk of misunderstanding exists.

88 But in democracy every ruler, and that means every democrat, has the right to ask his own Universities to give answers that are balanced between the faculties. And then we are back again at scrutinizing the human level of a pragmatic Philosophy, of languages and symbols.

89 A simple answer might be this one. At least in Western languages we have a common system of simple grammatical rules. One of them covers kinds of personalities and groups: I, You, He/She /It, We, You, they. These basic grammatical elements might serve as a mirror for our political abilities.

90 Weighing this six-pointed division of grammatical subjects, it is based more on a kind of Anthropology of communication in the sense of Michael *Tomasello*[79] than on a Philosophy of Language. But, for in-

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Corkin, S. / Coppola, M. / Hickok, G./ Growdon / J. H., Koroshetz, W. J. / Pinker, S., A neural dissociation within language: Evidence that the mental dictionary is part of declarative memory, and that grammatical rules are processed by the procedural system, Journal of Cognitive Neuroscience 9 (1997), pp. 289-299, or: Pinker, Steven, So How Does the Mind Work? Mind and Language, 20 (2005), pp. 1-24. Eco, Uberto, Das offene Kunstwerk (1962), p. 66 (The language is the cultur: "…die Sprache ist wirklich die eigentliche Grundlage der Kultur. Im Verhältnis zur Sprache sind alle anderen Systeme von Symbolen akzessorisch oder abgeleitet".).

[78] With well known but sometimes angrily suppressed problems of understanding and respecting each other, Gluckman, Max, Closed Systems and Open Minds. The limits of nativity in Social Anthropology (1964), p. 17.

[79] See for the evolutionary origins of human communication and their fundamental structure: Tomasello, Michael, Origins of human Communication (2008), see: 7.3 (Language of shared Intentionality).

stance John *Searle's* sophisticated theory of speech acts[80], which are the based on strong or weak "rules" and his kind of social constructivism[81], might serve for the philosophical part as a theoretical roof for these points too, at least for his followers.

By all means, Bio-Psychology might add some points. For example, there might be an important difference between a discourse and the real motivations[82] for a hard decision. Or perhaps blind solidarity is much more important than democratic Western societies are inclined to believe to believe about themselves.

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At first we must look at Democracy and try connecting the common Grammar of Western languages with the ideals, again trinity, of Democracy. It might be that the Grammar is a reflection and a mirror of the human ability to live in kinds of democracies. The question whether there is or there was a universal human grammar is not to be answered.

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[80] "How to do things with words" is a key phrase associated with his approach, Searle, John, Speech Acts: An Essay in the Philosophy of Language (1969), pp. 57-719; Searle, John R. / Vanderveken, Daniel, Studies in the Theory of Speech Acts (1985), p. 5 ("A theory of illocutionary logic of the sort we are describing is essentially a theory of illocutionary commitment as determined by illocutionary force. The single most important question it must answer is this: Given that a speaker in a certain context of utterance performs a successful illocutionary act of a certain form, what other illocutions does the performance of that act commit him to?". See too: Stanford Encyclopedia of Philosophy, Speech Acts (2007) (M. Green), 2.3. See too: Lepore, Ernest / van Gulick, Robert (Eds.), John Searle and his Critics (1991).

[81] Searle, John R.: The Mystery of Consciousness (1997), p. 112 ("where consciousness is concerned, the appearance is the reality."). Tomasello, Michael, Origins of human communication (2008), pp. 246 (for "requesting"), pp. 270, (for "informing"), pp. 282 ("sharing and narrative"), pp. 295 (for a system of "Conventionalizing of Linguistic Construction"). But, "Personalities or Names" are, at least, not a main part of this grammatical approach.

[82] This might be part of what Searle calls the "Background". Searle, John R., The Rediscovery of the Mind (1992), ch. 8 (Background is a set of abilities, capacities, tendencies, and dispositions that humans have and that are not themselves intentional states.).

B. Persons in Grammar of Western Languages

93 Therefore, let us look at Western languages. The common grammar of our languages indicates a great lot:

94 Obviously, grammar serves us at least with three groups of personalities. And in my opinion on one hand they are "democratic" ones:

"I"-person	"You"-person (meaning an ideal "me- and-you dia-log"), both partners are "peer-persons"	"We"-person (dominating "I persons", and "peer-persons")
"free"	"fair"	"solidary"
"mine" right / chance / ownership	"yours" right / chance / ownership	"ours" right / chance / ownership

95 Let me add; in light of anthropology ethics evolve of a genetic human pre-program of at least three kinds. Packed in a utilitarian model basic ethics draw from:

(1) the – biology dominated – "emergency rights" of individual surviving (I or Me),

(2) the – economical – price for "cooperation", that is called fairness (You and I as partners or peers) and

(3) the – emotional – price for the advantage of groups, including the "social contract of peers and of generations" solidarity (We).

On the other hand, there are alternatives: We are able to separate and classify persons into an alien person, into a "He-person/his" or into a "She-person/hers" or into a "They-group/theirs". 96

And more, driven by interests and emotions we are able switch abruptly between "in-group" and "out-group".[83] That kind of freedom is to be kept in mind. 97

Perhaps, even more important, each personal pronoun (I, You, He or She and They) could be used in a Western language as both "active" and "passive". The person could be a "decision maker" or be a "victim". And the passive form implies "domination" and "hierarchies". We are able to switch between "passive" and "active", too. 98

Furthermore, our grammar even includes a kind of "absolute power". Our Western Indo-European languages provide a neutral "third person" ("it") and a possessive form ("its"). That means, we active persons are able to neutralize our whole "environment" into "objects", or according to *Locke*: "substance". After that, we are "free" to use or to destroy "them and their goods", as though we were a tyrannical "owner". Less obvious, but in a similar context, is the changing of a person into grammatical objects: "me", "us" and "them". It makes becoming the person a grammatical subject. 99

And still more: Using the "it" form we can turn with "it" not only wild animals into "objects". For instance, and far away of political systems accepting slavery to a marksman of special forces, a human being is simply a "target". In economics and politic we speak incorrectly of "human resources". A prisoner in Alcatraz was merely a "number" etc. We developed and kept the grammar for it. 100

At least, let us have a look at the context of "grammar, decisions and the law". In our Western languages we have both 101

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[83]   In light of social psychology, see: Branscombe, Nyla R. / Sengoski, Ben / Kappen, Diane M., The Measurement of Collective Guilt. What it is and what it is not, in: Branscombe, Nyla R. / Doosje, Bertjar (Eds.), Collective Guilt in International Perspectives (2004), pp. 16: ("Emotions can be ephemeral. How events are appraised and the subjective experience that generate can rapidly shift with changes in the social context.").

(1) "past-tense" meant for memories. But they serve to solve "present" problems, for example "to try cases".

(2) We have "future tense". They are made for expectations developing plans in the "present" for the future, for example "to make laws".

(3) But, in reality we use both in light of the "present situation" – to decide and to act now.

102   Apparently, the complexity of the human ability to communicate is impressive and it dominates us.[84] With a lot of symbols structured by a grammar we argue and exchange feelings. We communicate with other real persons, with other dead persons or even fictional ones or simply within ourselves. Therefore language represents the grid of each culture, and it indicates a lot about our human ability acting peacefully or in warlike manner with each other.

103   Of course, even switching actively between groups, we know about the latent alternatives. By the way, at least in that kind we humans are "free" – far off the philosophical doubts and the dilemma of proving "free will".

104   In current socio-psychology a lot of authors describe this kind of phenomenon much more sophisticated. They probed identity groups as "in-groups", and the separation from "out-groups". These in-groups are relatively manifested, and are built for instance on simple racial thinking.[85] In light of anthropology obviously racial attributes are a

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[84]   Gould, Stephen, Jay, Full House: The spread of Excellence from Plato to Darwin (1996), p. 148 ("the most complex creature"); Wright Robert, Non-Zero, The logic of Human Destiny (2000), p. 267. At least collectively, homo sapiens are able to understand and use some of the basic rules of nature. That means they have "learned" and "internalized" these fundamental parts of the cosmos.

[85]   Powell, Adam A., Inequality as Ingroup or Outgroup. Disadvantage: The impact of groups focus on collective guilt and interracial attitudes, Personality and Social Psychology Bulletin, Vol. 31 (4) (2005), pp. 508-521; Saguy, T. / Dovidio, J.F / Pratto, F., Beyond Contact: Intergroup Contact in the context of power relations, Personality and Social Psychology Bulletin, Vol. 34 (2008), pp. 432-445; Harth, N.S. / Kessler, T. / Leach, C.W., Advantage Group's Emotional Reactions to Intergroup Inequality: The Dynamics of Pride, Guilt and Sympathy, Personality and Social Psychology Bulletin, Vol. 34 (1) (2008), pp. 115-129; Lowery, B.S ./ Knowles, E.D. /

form of mask used for both, separating others and collectivizing one self. Actors in antique theatre plays were wearing that kind of mask. Even our Western word "person" (from Latin: *per sonare*) originated from that metaphor of roles.

We live therefore not only with the humane ability of group-building 105 and switching between them but, of course, with the existence of permanent in-groups and neighborly out-groups, as well. It is the well-known social role-playing, such as being a member of a family, a partner in a peer group, a citizen of a community, or a believer and a member of a religious group etc. Add to this the private personal network of each individual. Altogether these roles form our social and to a large extent our private personality. Behind masks, roles, persons and memberships etc. there are the very same kinds of human beings, as Anthropology indicates and Western Democracy is built on. But without that changeable second skin, we would be without communication, cooperation and help, lonesome, vulnerable and "naked".

On one hand our Ego is partly formed by the "others" (peers) and our 106 existing in-groups (family-model). But on the other hand each communicating individual is it acting and keeping the peers and the families alive.

At least in extreme cases of survival there are often decisions to be 107 made. We have to choose clearly a particular role. We have decide – or not – in favor of ourselves (for me), or for a member of our peer group (for both, you and me), or for our family (including the national state or even mankind). And we must act upon our decision. Before this crucial act, or certainly afterward, we can better understand our "self" as mirrored by our actions.

To put it simply, the reduction of the complex language in form of a 108 grammar shows us the grid of our human possibilities and the kinds of our ethics.

Unzueta, M.M.; Framing inequity safely: Whites Motivated Perceptions of Racial Privileg, Personality and Social Psychology Bulletin, Vol. 33 (9) (2007), pp. 1237-1250.

C. Grammar and Western Philosophy

109 Those basic linguistic forms ought to be filled by a matching substance. For Western Philosophy especially the "it" allows separation between "Subject and Object", known as well as the dualism of the normative "ought" and the empirical "being". *Hume* is famous for stating the impossibility of the conclusion from "be world" to the "ought world".[86] The enlightenment, science and the special human rights are based upon this sharp separation.

110 Not treating others like "mere objects" is one of the virtues for *Kant* assigns to being a moral person.[87] *Hegel* gave the metaphor of not treating men as though you were beating a dog with a stick pointing out the old difference between acting like an animal or behaving like an honorable man, because of the human ability to act freely (to have a free choice).[88] And, treating men as "mere objects" these are the words contemporary German Constitutional Court uses to define a violation of "dignity of men" (Art. 1, 1 "Menschenwürde"), which equals an amendment.[89] For the US Supreme Court dignity of men is

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[86] Hume, David, A Treatise of Human Nature (1740), III, § 2: "Moral Distinctions not derived from Reason". Hume, David, Treatise on Human Nature, I §§ 4, 6, ("I never catch myself at any time without a perception and never can observe anything but the perception"). In German: Brandt, Reinhard, "Personal Identity" bei Locke, in: Byrd, B Sharon / Joerden, Jan C. (Eds.), Philosophia Practica Universalis, Festschrift für Joachim Hruschka zum 70. Geburtstag (2006), p. 45. Frankena, William K., Der naturalistische Fehlschluß, in: Grewendorf, Günther / Meggle, Georg (Eds.), Seminar: Sprache und Ethik (1974), 83 ff.

[87] Kant, Immanuel, Die Metaphysik der Sitten. Erster Teil, Metyphysische Anfangsgründe der Rechtslehre (1797), Kants gesammelte Werke (Akademieausgabe ab 1902), Band VI, 453.

[88] Hegel, Georg Wilhelm Friedrich, Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse (1821), in: Hoffmeister, Johannes (Hrsg.) (1999), § 99 Zusatz.

[89] BVerfGE 115, 118, 152 (BVerfGE 39, 1, 42; 72, 105, 115; 109, 279, 311) – translated by autor: "Each human being owns as person this dignity regardless of his personal abilities, his physical or mental status, his acts or his social role". BVerfGE 87, 209, 228; 96, 375, 399: "But Human Rights especially freedom deriving from dignity, are limitable to a certain amount and controlled by law and judges" (translated by author). For human dignity in light of punishment: Albrecht, Peter-Alexis, Menschenwürde als staatskritische Absolutheitsregel, in: Kritische Vierteljahresschrift für Ge-

at least the "basic concept underlying the Eight Amendments".[90] Of course, the theological root of dignity of men is the animistic idea of having a "soul" or "spirit". For the European humanists for instance, the Prussian *Pufendorf* combines both "reason, soul" with "dignity" as features of a human being.[91]

But please note, the much more ancient animistic religions and the contemporary Eastern Buddhism do not really need an "it". For their holistic thinking and feeling, there exists no Dualism of two worlds. There is only "one world". Every phenomenon has a "soul" that must be respected. The secular reduction of the two worlds to simple world of phenomenon is a holistic thinking, too. The plural Western philosophy knows about this holistic thinking and feeling, too.[92] The philosopher *Husserl,* for instance, developed it, consequently based on psychology[93], which in early times and in oral societies was fostered by shamans, as well. Even the contemporary socio-biological approach, the theory of living subsystems organizing and educating themselves, provides a similar kind of approach. Ultimately, the world of creative subsystems is part of a one cosmic system of self creation (autopoiesis).[94]

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setzgebung und Rechtswissenschaft (KritV), Laudatio für Burkhard Hirsch (2006), 295 ff., 297.

[90] "The basic concept underlying the Eight Amendment is nothing less than the dignity of man.", Trop v. Dulles, 356 U. S. 86, 78 S. Ct. 590, 2 L. Ed. 2 d 630 (1958).

[91] Pufendorf, Samuel, De jure naturae et gentium (1672), Böhling, Frank (Hrsg.), Band 4.1 (Buch I bis IV) und Band 4.2 (Buch V bis VIII) (1998), II, Kap. 1, § 5; Wesel, Uwe, Geschichte des Rechts. Von den Frühformen bis zur Gegenwart, 3. Aufl. (2006), 373.

[92] See for "social holism" Pettit, Philip, Defining and Defending Social Holism, in: Pettit, Philip (Ed.), Rules, Reasons and Norms, Selected Essays (2002), p. 117, p. 120 (roots to the "invention of language to the establishment of society", in the sense of Rousseau and to the "ideas of the community" in the sense of the "Volksgeist" of Hegel).

[93] Husserl, Edmund, Psychologie vom empirischen Standpunkte (1874), 124 (intentional inexistence of psychic phenomens: "In der Vorstellung ist etwas vorgestellt, in dem Urteile ist etwas anerkannt oder verworfen, in der Liebe geliebt, in dem Hasse gehasst, in dem Begehren begehrt usw. Diese intentionale Inexistenz ist den psychischen Phänomenen ausschließlich eigentümlich. Kein physisches Phänomen zeigt etwas Ähnliches.").

[94] Maturana, Humberto R. / Valera, Francisco, Autopoesis and Cognition – The Realization of the Living (1980), p. 148; Luhmann, Niklas, Rechtsso-

112   This background leads to a kind of collectivism. The rule of law would not be dominated by individual rights, but by individual duties. The secular western civil law would be transformed to a kind of religious public law. But we have to keep in mind, even the Western rule of law is a kind of Holy Ideal for us, we are submitting us to under blindly. And, each form of a universal or global thinking, including the human rights, tends to a holistic thinking and feeling. It is build upon a "We-group".

113   Altogether, our language indicates that we humans are able to switch between these approaches. In reality, we mix them up. But mostly, there is one leading Idea. In the Western cultures, it is individualism, not collectivism. In law it is the Rule of rights, not the Rule of duties. Therefore we have to right a wrong, not to re-implement collective duties.

D. Second Thesis: Freedom as "status communicativus"

114   In my opinion, *the real freedom men have is the freedom to switch between existing groups*, *developing new groups and a creating even a personal network.* This freedom is the non-fictional "status communicativus".

115   It settled on the middle. The real "status communicativus" combines of the "status naturalis" and the "status civilis". At least, if the "status civilis" means being member of a special state, the Leviathan. Even it consists of complex "organs" and "cells" which are operating in a Western democratic state openly in and as network system.[95] But the

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ziologie, 3. Aufl. (Doppelband) (1987), 354 ("selbstreferentiellen (allein auf sich selbst bezogenen und sich dadurch rückkoppelnd verändernden und wachsenden) Systeme"). For his socio-biological approach the structures of human communication are similar to the interaction in and between: molecules, cells, nerves and impulses.

[95]   Castell, Manuel, Materials, for an Exploratory Theory of the Network Society, British Journal of Sociologie 51 (2000), p. 14 ("The state in the information age is a network state, a state made out of a complex web of power-sharing, and negotiated decision-making between international, multinational, national, regional, local and non-governmental political institutions".). In my opinion, each old clan, each kingdom and each state is in light of politics operating with permanent changing "networks" of individuals, who are socialized by a system of social roles.

state never was a real body. It is and was simply a metaphor. Men are able to leave their old clans and their modern state to build up similar new collective units. The history of the United States demonstrates this human capability.

Therefore, men do not switch merely communicating by using their language, i. e. spiritually. He or she can chose changing their peer groups "emotionally" and of course "bodily" by walking away and joining other neighbors. But, everywhere and with everybody we are capable of creating a new "community by "communicating". 116

However, any existent community is a kind of social or collective human "being" developing its own identity and trying to limit the freedom of their member by a special culture. As always, there is a kind of check and balance. Changing groups of an adult individual person is limited. He or she is a member of an ethical and ethnical "We-group". Socialization is binding us. It is a spiritual one and an emotional one. 117

In short, language and rites, family and friends are a strong part of our own identity. We have to re-harmonize our personal identity with each changing of groups. Partly, we are used to accepting special social and private roles and rites. We are voters, drivers, tenants or we are best friends, brothers or sisters. But in extreme cases, we have to change our identity itself. The death and loss of a "partner" indicates this kind dilemma. Therefore, coping with death is a spiritual and an emotional problem for each person and for each human society. 118

And, if the death is deliberately caused, there is a person we could react to. We could say, he acts unjustly and exhibits a warlike "status naturalis". Therefore, he has "excommunicated" himself from the "status civilis" That would be the argument of *Locke*[96]. But that is not 119

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[96]   Locke, John, The Second Treatise of Government (1690), in: Two Treatises of Government, Laslett, Peter (1988)**,** §§ 19, p. 181, p. 183. Ashcraft, Richard, Locke's State of Nature: Historical Fact or Moral Fiction?, American Political Science Review 62 (1968), pp. 902, 904. In German: Hüning, Dieter, Naturzustand, natürliche Strafgewalt und Staat bei John Locke, in: Peters, Martin / Schröder, Peter (Hrsg.), Souveränitätskonzeptionen. Beiträge zur Analyse politischer Ordnungsvorstellungen im 17. bis zum 20. Jahrhundert (2001), 107.

part of reality. Typically, even a murderer wants to remain a part of the society. But, the "We-group"[97] could excommunicate him.

120 The "We-group" could develop another kind of reaction abiding by their national constitution and the humans rights. Colonial deportations are no longer feasible, since the criminal could retaliate by joining a group of peers or creating a new one. *Locke* mentions and fears these kind subgroups. They were not all Robin Hoods. Incarceration is the typical contemporary reaction. This method is similar to the medieval way of excluding peer members of nobility from political activity by forcing them into cloisters and castles. The chance of regaining freedom is part of this system, and satisfies their noble families and their network of friends. Today nobility of a ruling political class is evolved into both, into dignity of every human being and into democracy.

121 At least every adult is such a communicating being, and therefore a political human animal. To add is, insofar he or she can "move" and "exclude" him/her-self, and her or she is free in reality. The thread to go is a strong bargain chip. But even incarcerated slaves were able to communicate and to cooperate within their subcultures. Their rebellions and riots were real threats, too. This real political power of their groups was to be balanced by wide spread subcultures of guardians, administrators, even by churches etc.

122 Insofar the – formal – "status communicativus" is a mighty element of Freedom. Simplified, it means that every speaker (i. e. person) is permanently changing between equal partners and solidary We-groups. And more, on the next level the language evolves from the speaker and it creates a great "metahuman" culture that combines a lot of generations and foreign influences. In form of semi-manifest symbols the ideas behind the words seem – partly – to be freed from their wise authors. Every educated or socialized adult communicator gets typically a broad kind of spiritual heritage to work with. Critically internalized at least by young persons, this intellectual property helps creating in each speaker a kind of "personal sovereignty".

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[97] "Group thinking" in general, for example: Schafer, Mark / Crichlow, Scott, Antecedents of groupthink: a quantitative study, The Journal of Conflict Resolution, Vol. 40 (3) (1996), pp. 415-435.

Being able to cope personally with cultural wisdom or knowledge, the 123
more the better is – substantially – a mighty element of Freedom. And
every human communicator has an intellect. Shared wisdom is what
still keeps us saying "homo sapiens".

But in (Western) languages and even in Democracy, absolute Freedom 124
means the loneliness and the "status naturalis". For democracy we
have to add, in order to civilize mere Freedom, the two elements of
Equity (of Peers) and Solidarity (of caring We-groups).

E. A Conclusion by Anthropology

In summary, the cultural background indicates a lot. At first it might 125
show mainly the social or the collective part respectively. But "Free-
dom" is part of the idea of a "person" that has the ability to communi-
cate, to decide and to act. In short, it is the model of a reasonable hu-
man being that develops and fosters with his peers a "common sense"
and that feels be cared by a kind of family.

In light of anthropology, if there is communication to maintain coop- 126
eration between living beings at all – or between whole collective sub-
systems, etc. –, there is at last a kind of individuality. And if there is
communication on the level of (at least Western) Human languages
they include the cultural core of freedom, the "persons". But it is not
only one "person"; languages offer a lot of persons – roles and rites –
and human beings are able to switch between them.

Anthropology might underline that "peers" are meant in the sense of a 127
genetic group of brothers and sisters (Fraternity). And we-groups and
their memberships are built on the model of family. Regarding Free-
dom, parents have connections to two families or within a tribe to
their own parents or mentors etc. Their children have another kind of
family, created by two parental family branches etc.

The plurality of peer-persons and of We-groups indicates in each soci- 128
ety, in small tribes as well as in large nations, the existence and, by the
way, in democracies the real amount of personal political freedom of
"free association". In light of culture it is based on the human ability
of a "status communicativus".

IV. Part 3: Psychology

A. Introduction

129 No doubt, the rational mainstream of the Western democratic cultures emphasizes the intellectual form of humanism over the emotional side of humanity. And the results of biology seem to be a strange world, at least far from enlightenment and human common sense. But obviously, to act inhumane is a human ability, too, and every acting person should try to cope with both worlds.

130 In reality, the focus has to be widened. To be regarded is a kind of dark side of humane beings. We all are at least bound by two strong conditions, which are the biological basics, and by a sophisticated psychological structure that combines and balances basic survival and emotional needs with acts and ethics. Nevertheless, we are able to overrule the biological part. A rational sacrifice of life or even risking our lives is possible, but not typical.

131 Psyche plays a dominant role in our day to day life. It leads us by motivation. Yet as counterpart to the humane enlightenment by "reason", the human "soul" seems to gravitate towards the darkness. We are motivated by at least half blind emotions. In reality, intelligence works together with emotion,[98] maybe less so in science, but at least in so far as decisions making process.

132 A grid of four hypotheses might be contemplated more closely:

Firstly, both, Criminality of a person and punishment by the society could be strongly influenced by avoiding empathy and by dehumanizing the perpetrator. Secondly, a collective ethic of Humanism could not only balance and but might serve to exactly meant to balance this

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[98] Piaget, Jean, Intelligence and affectivity. Their relationship during child development, in: Brown, T. A. / Kaegi, C. F. (Eds.), Annual reviews monograph. University of California (1981), p. 15; Ciompi, Luciano, Zur Integration von Fühlen und Denken im Licht der "Affektlogik". Die Psyche als ein Teil eines autopoietischen Systems, in: Kisker, Karl Peter / Müller, C. / Strömgren, E. (Hrsg.), Psychiatrie der Gegenwart, Band I (1986), 373 ff.

humane feature. Thirdly, the ethical ability of a fair balance and solidarity should therefore be a part of Freedom of choice.

Fourthly and supposed it is all working out this way, even the person who punishes because it is law or because it is demanded by justice, but does not ponder "Freedom, Equity and Solidarity" might partly be acting by dehumanization, too.

B. Techniques of Neutralization, Matza/Sykes

In light of democracy, what about solidarity in the kind of sympathy 133 (or empathy)?

As our grammar indicates, human beings are able to alienate and to 134 neutralize each other:

(1) alienated: criminals are "foes" or "out-laws" esp. in terms of freedom or in the "status naturalis".

(2) neutralized: criminals are "in-humane persons". That means they are no longer human beings. Therefore, we don't have to show solidarity or fairness. They are merely "objects", and we are the "subjects".

In psychology, there are "techniques of neutralization". These "tech- 135 niques of neutralization" are originally taken from the theory of delinquency by *Sykes/Matza*, avoiding the social approach of subcultures. These techniques of neutralization are usable before and after the act.[99] They point out the psychological techniques of justifying harmful actions by personal responsibility. Others, the society, the fate,

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[99] Sykes, Gresham M. / Matza, David, Techniques of Neutralisation: A theory of delinquency, American Sociological Review (1957), pp. 664. See the supplement by: Thurmann, Quints C., Deviance and the neutralization of moral commitment – An emperical analysis, in: Deviant Behavior (1984), pp. 291, p. 292. Discussed by: Maruna, Shadd / Copes, Heith, What have we learned in five decades of neutralization?, in: Crime and Justice (2005), pp. 221; Fritsche, Immo, Predicting deviant behavior by neutralization: Myths and findings, in: Deviant Behaviour (2005), p. 486; Winkel, Frans, W., Criminal Behavior and the Pre-Victimization Process, in: Advances in Psychology and Law (1997), p. 65; Ball, Richard A. / Lilly, Robert, J., Juvenile delinquency in urban Country, in: Criminology (1971), p. 69.

emergency, and – most of all – the victim provokes and therefore is responsible for the act etc.[100] In short: a denial of responsibility (I couldn't help myself), a denial of injury (nobody got hurt), a denial of a victim (they had it coming), a condemnation of the accusers (what right do they have to criticize me?), an appeal to higher loyalties (I did it for someone else).

136   And of course, every "We-groups", that consists of human beings, clans, tribes, gangs, communities or states, act in the same way.

137   In the end, neutralizing means separating the act form the actor. Therefore the actor, an individual or an organization, neutralizes himself or itself. Regarding individual persons *Matza* states that people use neutralization "to drift in and out" of conventional behavior, taking a temporary break from moral restraints. This approach matches the model of freedom switching from and between the "We-groups".

138   And today there is no reason not to combine this approach with the theory of subculture, as well. Special "We-group" thinking could, for instance be fostered by abiding by the old rules of autocratic warlords. For closed gang-like core groups of offenders are proved by *Topalli*.[101] A newly published study shows the "interplay of personal and social identities".[102]

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[100]   See: Snyder, Charles R. / Higgins, Raymond L. / Stucky, Rita J., Excuses, Masquerades in Search of Grace (1983), p. 129. As a technique to better circumvent punishment (Itoi, Ritsu / Ohbuchi, Ken-Ichi / Fukuno, Mitsuseru, A cross-cultural study of preference of accounts: Relationship closeness, harm severity, and motives of account-making, Journal of Applied Social Psychology (1996), pp. 913, p. 915). As a human ability to avoid conflicts by negating them: Cody, Michael L. / McLaughlin, Margaret L., Interpersonal Accounting, in: Handbook of language and social psychology (1990), p. 227; Schönbach, Peter, Account Episodes: The management or escalation of conflict (1990), p. 23.

[101]   Topalli, Volkan, The Seductive Nature of Autotelic Crime: How Neutralization Theory Serves as a Boundary Condition for Understanding Hardcore Street Offending, Sociological Inquiry (2006), Vol. 76, Iss 4, pp. 475.

[102]   Swann Jr. / William B. / Gómez, Ángel / Seyle, D. Conor / Morales, J. Francisco / Huici, Carmen, Identity fusion: The interplay of personal and social identities in extreme group behavior. Journal of Personality and Social Psychology, Vol. 96 (5) (2009), pp. 995-1011 (part of the abstract: "When people become fused with a group, their personal and social identities become functionally equivalent. Two hypotheses follow from this

In the background, it indicates the choice that every individual has 139
more or less to make between these both kinds of identities. In my
democratic trinity system, there is an old – mediating – third position,
too. Every individual can choose the dialogical orientation, as well.
There exists the inter-subjective role of the "empathic friend" offered
by the model of "You and Me". But it is important to note the exis-
tence of these strong social identities.

C. Experiments of Milgram and Zimbardo

For the similar ability to submit to higher loyalties or within a hierar- 140
chy and to use torture[103], let me refer to the famous Experiment of
Milgram.[104] About two thirds of the participants (!) were able to re-
peatedly torture others, by "obedience to authority". Pressed by a sci-
entist as mentors, although having scruples, three third of normal peo-
ples could be motivated to administer electric shocks stubbornly. As

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proposition. First, activating either personal or social identities of fused
persons should increase their willingness to endorse extreme behaviors on
behalf of the group….. In particular, fused persons were more willing to
fight or die for the group than nonfused persons, especially when their per-
sonal or social identities had been activated.") Second, because personal as
well as social identities support group-related behaviors of fused persons,
the 2 forms of identity may combine synergistically, fostering exception-
ally high levels of extreme behavior.").

[103] Luban, David J., The War on Terrorism and the End of Human Rights, in:
Shipka, Thomas (Ed.), Philosophy – Paradox and Discovery, 5th ed.
(2004), p. 393; Luban, David J., Torture and the Professions, Criminal Jus-
tice Ethics 26 (2007), p. 59. Hoffmann-Holland, Klaus, Ethics and Human
Rights in a Globalized World. An interdisciplinary Approach, in: Hoff-
mann-Holland, Klaus, Ethics and Human Rights in a Globalized World
(2009), p. 6.

[104] Milgram, Stanley, Obedience to Authority: An Experimental View (1974);
Blass, Thomas (Ed.), Obedience to authority: current perspectives on the
Milgram paradigm (2000), p. 968. Burger, Jerry M., Replicating Milgram:
Would People Still Obey Today?, American Psychologist 64 (2009), p. 1 –
11. ("We found obedience rates in 2006 only slightly lower than what
Milgram found 45 years earlier").

In German Criminology see: Eisenberg, Ulrich, Kriminologie, 6. Aufl.
(2005), § 57 Rdnr. 95, § 24 Rdnr. 1.

Kelman wrote, torture is a "*crime of obedience*".[105] We might add a crime by both the authorities[106] and the administrators.

141 But why don't we know and talk about it? It is so cruel, that we neutralize this ability ourselves. We democrats chose the same system. We think that other brutal persons and other criminal "We-groups" might neutralize men in that kind. During times of war, we ourselves may be coerced to justifiably act in this cruel way.[107] But we "good ones" have to have – at least in times of peace – another image of ourselves. But what about a collective punishment which is defined by reciprocity and prevention means inflicting something painful?[108]

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[105] The torture as a "crime of obedience", Kelman, Herbert C., The policy context of torture: A social.-pyschological analysis, International Review of the Red Cross (2005), p. 127; see as well Monahan, Susanne C. / Quinn, Beth A., Beyond "bad apples" and "weak leaders". Toward a neo-institutional explanation of organized deviance, in: Theoretical Criminology (2006), pp. 361; as well Meyer, John W. / Rowan, Brian, Institutionalized organizations: formal structure as myth and ceremony, American Journal of Sociology (1977), p. 340. See also: Tittle, Charles, Control Balance. Toward a General Theory of Deviance (1995), p. 135: "The central premise of the theory contends that the amount of control to which an individual is subject, relative to the amount of control he or she can exercise, determines the probability of dieviance occouring als well as the type of deviance likely to occur". He offers a theory of balance between being controlled and controlling others. To add is of a third element that accepts the "free will", that of moral "self-control". Rethought in German Criminology by Müller, Ernst-Hennig, Staatsführungen als Tätergemeinschaften am Beispiel der Gefangenenmisshandlungen und Folter in Guantanamo und Abu Ghraib, in: Festschrift für Eisenberg zum 70. Geburtstag (2009), 88 ff.

[106] Crimes of authorities lead to the category of state crimes or political crimes, Kauzlarich, David, Political crimes of the State, in: Wright, Richard A. / Miller, J. Mitchell (Eds.), Encyclopedia of Criminology, Vol. 2 (2005), pp. 1230.

[107] A famous utilitarian argument is the "ticking bomb". But the implied "actual danger for others" is not the normal backgrund of torture. It is a "latent" one. See: Luban, David, Liberalism, Torture and the ticking bomb, Virginia law Review, Vol. 91 (2005), pp. 1425 as well as McCready, Douglas, When is torture right?, in: Studies in Christian Ethics (2007), pp. 383.

[108] The "Othering" is a form of a neutalization by the state: see Jamieson, Ruth / Mc Evoy, Kieran, State crime by proxy and juridical othering, British Journal of Criminology (2005), pp. 540, as well as "disconnecting structure from action" Monahan, Susanne C. / Quinn, Beth A., Theoretical

In fact, therefore for the "society", but not for a free person, maybe it 142 is even better to deny, than to accept and think about using this capability in crucial situation. And because it is so human, subprimate beings don't torture each other. Every ritual that is officially accepted to be executed in extreme cases tends to be abused for gaining or maintaining political power. A taboo works best if it is untouchable.

But in Western culture that is based on rationalism and on science we 143 cannot deny the apparently very normal human ability to "build up" a "brutal domination" by inflicting "pain" and by "torturing persons" any longer.

For a kind of wild punishment by unprofessional guardians, and even 144 among a former "We-group" of students, we have to look at the outcome of *Zimbardo*'s impressive Stanford Prison Experiment. De facto he predicted the situation in the ad hoc prison of Abu Ghraib is famous for.[109]

And even the leaders of these experiments both, *Milgram* and *Zim-* 145 *bardo,* apparently subscribe to their ideals of science. Crucial scientific results, which both achieved, were their "greater goods". To the God of science even they thought to have to be obedient to. But being themselves professional clinical psychologists, they acted unethically – from today point of view. They put the psychic wellbeing of their participants at risk. *Zimbardo* himself fairly pointed that out later on. He continued his experiment although noticing breakdowns of some of the students among the group of the humiliated prisoners.

There was lack of professional supervision, a neutral view from out- 146 side. Simplified, even both famous scientists played a little being gods

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Criminology (2006), p. 365, as well as Kelman, Herbert C.**,** The social Context of Torture: Policy Process and Authority Structure: in: Crelinsten / Schmid (Eds.), The politics of pain (1995), pp. 31. Torture of special ethnical or religious (out-) groups, see: Kelman, Herbert C., The social Context of Torture: Policy Process and Authority Structure: in: Crelinsten, Ronald D. / Schmid**,** Alex P. (Eds.), The politics of pain (1995), p. 133.

[109] Zimbardo, Philip G., The Lucifer effect: Understanding how good people turn evil (2007), see: Chap. 15, Putting the System on Trail: Command Complicity. In German criminology Müller, Ernst-Hennig, Staatsführungen als Tätergemeinschaften am Beispiel der Gefangenenmisshandlungen und Folter in Guantanamo und Abu Ghraib, in: Festschrift für Eisenberg zum 70. Geburtstag (2009), 90.

by risking the emotional sanity of their participants in the name of "science". Therefore their experiments indicate too, that even supposed "leaders" can do terrible things in the name of trustfully higher ideas.

D. Neutralizing in Wartimes

147 The forth approach is contemplating the reality of a war, including ordered war crimes like My Lai.[110]

148 There is a chain of command set up, so that a mere private seems not to carry any responsibility. Each soldier has to abide by the moral rules of his combating group. He wears a uniform, which hides his unique personality. He is even disguising himself. He has to take the risk of sacrificing himself for the honor of his group and of his country. As a member of a unit within a whole army, he is no longer an "individual". Therefore, killings in war are the extreme form of "de-individualization" that man is capable of.[111] An army in a battle is the strongest form of human conformity, and it is ruled by both the principle of collectivism[112] and blind obedience.[113]

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[110] Heinz, Wolfgang S., The Military, Torture and Human Rights: Experiences from Argentina, Brazil, Chile and Uruguay, in: Crelinsten, R. D. / Schmidt, A. P. (Eds.), The Politics of Pain, Tortures and their masters (1995), pp. 65. Kelman, Herbert C. / Hamilton, V. Lee, Crimes of Obedience. Toward a Social Psychology of Authority and Responsibility (1989), pp. 167 (…questioning civil society about ordering of cruel war crimes as happened My Lai).

[110] For military training, see in German: Jäger, Herbert, Makrokriminalität. Studien zur Kriminologie kollektiver Gewalt (1989), 199; in connection with: Bandura, Albert, Aggression. A social learning analysis (1973), p. 239; Shatan, Chaim F., Militarisierte Trauer und Rachezeremoniell, in: Passett Peter / Modena, Emilio (Hrsg.), Krieg und Frieden aus psychoanalytischer Sicht (1983), 220 ff.

[111] See: Stacy, Helen, Human Rights for the 21st Century: Sovereignty, Civil Society, Culture (2009), Chapter 1 pp. 5 (a shortlist of both the amount of international conventions and of atrocities – the ideals and the reality of international Human Rights).

[112] Minow, Martha, Living Up to Rules: Holding Soldiers Responsible for Abusive Conduct and the Dilemma of the Superior Orders Defence, McGill Law Review, Vol. 52 No. 1 (2007), (from the abstract: "… Proposed strategies real prospects for preventing atrocities by soldiers depend

Similarly, soldiers could, in combat, act best by neutralizing the en- 149
emy, too. The enemy becomes an "object" or an aggressive subhuman
"animal".

E. From Neutralization to Dehumanization

Back to peace and in light of the human rights such a form of "de- 150
individualization" could be called "de-humanization". But wait, we
probably cannot avoid acting like this. Therefore, we have to realize,
first and afterwards must cope with this cruel human capability of
"humiliating" other persons, even, by torturing them or kill them, at
least in wartimes. In light of the *Milgram* Experiment only the "one
third" of us is some apparently strong enough to deny conformity.

Amplified, each kind of "neutralization" could be considered as a way 151
of avoiding personal responsibility. But, responsibility is the other
side of the medal called freedom, and it is the condition for democ-
racy.

In short – and in light of "democracy and of language" – the approach 152
of neutralization probably allows some statements. As it is mostly the
case in liberal arts it is a kind of transfer from empirical science to the
word of culture. Therefore these statements are built as well on the
expectation, that they are somehow reasonable by themselves.

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on changing the organizational design and resources surrounding the sol-
dier and specifying new obligations for those in command.").

[113] And how should Western law systems cope pragmatically with desertion,
etc.?, see: Aviram, Hadar, Discourse of Disobedience: Law, Political Phi-
losophy, and Trials of Conscientious Objectors, UC Berkeley Public Law
Research Paper No. 728743 (2005), (Regarding Israel: "… while the court
seeks to eventually preserve the ethos of military service and to discourage
ideological dissent, it also strives to maintain legitimacy for its decisions
under heavy media coverage, civilian scrutiny and political unrest. There-
fore, it allows the objectors to bring up extra-legal, political, biographical
and philosophical issues, and awards them exceeding procedural flexibil-
ity. The eventual verdicts, however, reflect the doctrinal-legal tendency to
reduce complex personalities and situations into monolithic, mutually-
exclusive categories, to facilitate a workable classification of the offenders
for normative purposes."). Accepting "extra legal" aspects indicates a kind
of pre-law mediation between a Western law system based on personal
freedom and a kind of warlike situation asking for personal sacrifices to
the "We-group".

153   The first special aspect is:

The perpetrator acts by "dehumanizing his victim", and by "dehumanizing himself", too. The victim is a target, and he is simply a tool of his free ego. Please remember *Locke's* statement "*…no mattering what becomes of any substance…*"

154   For a democrat, "to be human" means: not only to act freely, but also to act fairly and compassionately. Democrats have to weigh their whole secular trinity: "liberty, justice and solidarity". But the criminal apparently does not do this. He acts in light of the credo of democracy only "freely" (by making use of his "liberty"). He did not ascribe to the ideals of democracy. He regresses into a kind of "status naturalis". He violates the human rights. At least, therefore he dehumanizes the personality of his victim. Even the society has a kind of collective personality which could be harmed.

155   The second special aspect is

We, the good ones "dehumanize" ourselves as well:

- visibly, by wearing uniforms (soldiers, police) and robes (judges),

- by submitting ourselves to "holy hierarchies" with absolute powers: the elected "commander in chief", the "legal system", the "common sense of justice", etc.,

- by celebrating a "holy ritual" in court,

- by handing the whole responsibility "back to the criminal",

- by the argument that he knew the price he would have to pay,

- by regarding a person as a mere suspect,

so we can "prosecute" and "pursue" him like hunters a prey, etc.

156   Therefore we mighty democrats need not to take part in the personal burden of punishing a peer. We are innocents and we "wash our hands of it".

Although even the "fair and reasonable" decisions to punish murder- 157
ers, remain our "decisions" because in a democracy, we are the law-
makers. We regard ourselves as "autonomous persons".

And in the end, we neutralize this personal capability itself, too. We 158
are not responsible individuals any longer, we are "de-individualized".
A "We-group" thinking and feeling rules us. We argue with "common
sense". Our punishment is reasonable, it is fair, and it is following
preventions. We are subject to higher reasons.

We do not want to know about the range of our freedom. But, we all 159
know there are a lot of cases, that are undiscovered or which we put
into a register but can't try. Justice and Equity are high ideals[114], not
facts. Prosecuting in reality is a kind of selective justice. And using
taxpayers' money to enforce the rule of law is a political act. Maybe
we are not that interested in scrutinizing every doubtful death inside
hospitals, prisons and inside army camps or deaths involving illegals
or the homeless. Maybe, only a third or even a fifth of the cases of
murder or manslaughter are discovered and filed. Finally, we could
decide to give the criminal a second chance after a while. We don't
because of the mass of criminality. But that phenomenon is not part of
the guilt of the single criminal person. His contribution is very small.
As *Bloch* says, if it is a fault of society, society should be incapaci-
tated, at least insofar.[115] By the way, it should be added that society
tends to punish itself already by scarifying an asset, even a marginal-
ized member, them they got.

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[114] For Egalitaranism see Parfit, Derek, Equality and Priority, in: Mason, An-
drew (Ed.), Ideals of Equality (1998), pp. 1. Critically to "the presumtion
in favor of equality": Michel, Heiner, Kein Vorrang für Gleichheit, Ar-
chives for Philosophy of Law and Social Philosophy (2009), p. 385. My
position is that in Western democracies there is at least a trinity of three
values, but in a modest ranking: "Freedom, Equity and Solidarity".

[115] Bloch, Ernst, Naturrecht und Menschenwürde, 2. Aufl. (1990), 296; Her-
zog, Felix, Prävention des Unrechts oder Manifestation des Rechts. Bau-
steine zur Überwindung des heteronom-präventiven Denkens der Strafthe-
orie der Moderne (1987), 30 ff.

160 We are neutralizing that whole fact, too. In light of sociology *Popitz* coined that fact as "the veil of not knowing" ("Schleier der Unwissenheit").[116]

161 That means, actually, we are "all" able to at least circumvent our personal part of responsibility and therefore to "dehumanize" ourselves as well as others.

162 And we do it with much fewer scruples, if it is collectively done in the name of higher "justice" and amplified as a kind of catharsis.[117]

163 And vice versa, the same kind of "belief" rules closed subcultures of offenders. As *Topalli* discovered, members of closed groups even enjoy their criminal acts. They glorify themselves for being an elite "outgroup".

F. Conformity and Collective Ethics

164 But the third aspect is: This approach of submitting blindly is necessary because it provides the needed conformity of a "We-group thinking".[118] It is "the need to belong"[119] that forms homely societies. And, on the other hand, there is the "feeling of empathy". It is so strong that we need these kinds of techniques of neutralization. Therefore there must be a balance between responsibility and loyalty. The background is the old dualism of "individual" and "society".

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[116] Popitz, Heinrich, Über die Präventivwirkung des Nichtwissens. Dunkelziffer, Norm und Strafe (1968); Rawls, John, Justice as Fairness: A Restatement (2001), p. 97 ("veil of ignorance").

[117] In light of Psychology: Murray, J. / Feshbach, S., Let´s not throw the baby out with the bathwater: The catharsis hypothesis revisited, Journal of Personality and Social Psychology, Vol. 46 (1978), pp. 462. In German: Schneider, Klaus / Schmalt, Hans-Dieter, Motivation, 3. Aufl. (2000), 220.

[118] Baron, Robert S., So Right It is Wrong: Groupthink and the Ubiquitous Nature of Polarized Group Decision Making, in: Zanna, Mark P. (Ed.), Advances in experimental social psychology, Vol. 37 (2005), pp. 219-253.

[119] Baumeister, Roy F. / Leary, Mark R., The need to belong: Desire for interpersonal attachments as a fundamental human motivation, Psychological Bulletin, Vol. 117 (1995), pp. 497-529.

The fourth hypothesis and the simple answer are, to balance both: we have to choose "ethics" or "rules of behavior". 165

If we as individuals cannot avoid being such "social person" submitting to common ideals as for instance, to "common sense", the two important questions are: 166

Which kind of "collective ethics" do we subscribe to?

What are the "special ethics" that our leaders subscribe to?

There are at least two kinds of help for democrats. Firstly, they can choose the "Me as You" thinking as a bridge from the free "Me" role to a blindly loyal "We"-model. Secondly, the individual could try changing the gravity of their society insofar to a more democratic one that his mainstream culture switches from abiding by a "shame system" (more) to accepting a self conscious "collective guilt" system.[120] But if a violation of a human being is commonly or by the dominating group accepted and justified there seems to kind of "collective guilt"[121]. Even a Holocaust seems to be only a question of a social consensus. Neutralization takes the responsibility even for torture. But, in a democratic society there ought to be the "collective guilt", too, that derives at least from of being the "collective lord" of the decision over executing the accepted rules or grant "grace" in this special case. 167

G. Third thesis: "Personal Democratic Identity"

First, therefore, we need "collective ethics in the sense of democracy", but second, and that is my third thesis, *we have to transfer the "credo of democracy" into our "free self"*, as well: 168

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[120] For the democratic aspect of "collective guilt" see: Branscombe Nyla R. / Wohl, Michael J. A.; Branscombe, Nyla R., Remembering historical victimization: Collective guilt for current ingroup transgressions, Journal of Personality and Social Psychology, Vol 94 (6) (2008), pp. 988-1006.

[121] For the democratic aspect of "collective guilt" see: Branscombe Nyla R. / Wohl, Michael J. A., Branscombe, Nyla R., Remembering historical victimization: Collective guilt for current ingroup transgressions, Journal of Personality and Social Psychology, Vol 94 (6) (2008), pp. 988-1006.

- I am proud to be "free" in my decision, as an adult.[122]

- I am proud to be "fair", because the other is like me.

- I am proud to be "solidary" with every human being, because humanity is the highest ideal on Earth.

And, being proud is an aspect of our "personal identity".

So we can fight using the tool of a "moral culture" and try limiting our personal and collective capability to dehumanize.

169 And each culture featuring collectivism could act "vice versa" by developing a responsibility of the "We-group" and its leaders and a collective morality of this "We-group". Instead of, for instance individual "guilt" that kind of society is built on collective "shame". This feature is part of a strong collective identity. But of course, acting from experience based on one's education cannot be neglected. We all believe in education by the right role models. The fact of violence and the manner of its social acceptance is important. At least, an experiment shows that persons feeling acute pain tend to inflict pain as punishment, even though they know this punishment would not do any good, but only harm others.[123] And inflicting some kind of pain is part of the Western understanding of punishment, too.[124] It is the consequence of the principle of reciprocity.

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[122] In light psychology as moral evolution of a human being: Marsh, Ian / Melville, Gaynor / Morgan, Keith / Norville, Garrett / Walkington, Zoe, Theories of crime (2006), p.77.

[123] Berkowitz, Leonhard, On the formation and regulation of anger and aggression. A cognitiv-neoassociationistic analysis, American Psychologist 45 (1990), pp. 494; Berkowitz, Leonhard / Monteith, M. / Kruglanski, A. / Blair, C., The Influence of Physical Discomfort on Experienced Anger and Anger-related Ideas, Judgements and Memories (1990); Schneider, Klaus / Schmalt, Hans-Dieter, Motivation, 3. Aufl. (2000), 205.

[124] Kleinig, John, The Hardness of Hard Treatment, in: Ashworth, Andrew / Wasik, Martin (Eds.), The Fundamentals of Sentencing Theory, Clarendon Press, Oxford (1998), pp. 273, 275; Jung, Heike, Was ist Strafe? (2002), 16; Jakobs, Günther, Staatliche Strafe. Bedeutung und Zweck (2004), 26 ff.

Of course, we humans are switching between both, being an individual and being a member of a group. We switch by using grammar with words or by simple acting in favor of or against a member of our national group or even by immigrating into another national culture. But, our Western democracy is a decision for the rule of individualism. Therefore both, the more empirical "personal identity" and the ethic of "autonomy" dominate the Western societies.

That we do know. But the problem is that we apparently cannot help 170 neutralizing the kind of personal responsibility. If democracy means "Liberty, Equity and Solidarity" and is built upon "Freedom", we cannot hide behind "Equity" or justice or argue simply with "Solidarity" as a "must" because of that feeling called empathy. We have to be aware of all three parts of the trinity, and most of all of freedom. It is a call for freedom, rationalism or for personal transparency to fight personal corruption.

Accepting individual responsibility for the incarceration of another 171 human being is hard to bear. But the price we receive is high as well. It is Pride, lordship and dignity of being a "democratic actor". Our ethics and social rituals should internalize this common burden.[125]

Therefore, hopefully for this part on the mostly dark side of humane 172 behavior, the four hypotheses could be illustrated by some reasons (rationales), at least.

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[125] The approach for internalization could be done by law, similar as vice versa for crimes, see: Gibbs, Jack P., Crime, Punishment, Deterrence (1975), p. 517: "(…) one could argue that the internalization of norms operates to check criminality independently of legal reactions. But this argument assumes that legal reactions do not generate or reinforce social condemnation. If they do, then internalization of norms may be furthered by punitive reactions". Andenaes, Johannes, General Prevention Revisited: Research and Policy Implications, The Journal of Criminal Law & Criminology 66 (1975), p. 36: "Punishment is a means of expressing social disapproval. In this way the criminal law and its enforcement supplement and enhance the moral influence acquired through education and other non-legal processes".

V. Part 4: Punishment

A. Three Kinds of Ethics and Cruelties of Punishment

173 For a closer focus on the issue of punishment, let us start out by considering jurisprudence.

174 In theory, each "We-society", small or large, has to decide between – at least three – leading ideals of punishment. It could develop a national kind of a system of solidarity (fraternity) or a system of fairness or of freedom.

175 (1) System of "solidarity" culture. It is a "we-punishment" (in-group). This society would prefer on one hand a model of social help. It looks out to minimize pain out of an internal sympathy. On the other hand, there would be a tendency to hierarchy by favoring draconic[126] deterrence. The techniques are addressing the community with symbolic acts, sacrificing human beings exemplarily or even innocent pawns as scapegoats. The goal is to maintain the society by pressure, including repression.

Societies idealizing solidarity tend to held tribunals like public plays on stage, too. Publicity in every kind is part of social Communication;

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[126] Lyons, Lewis, The History of Punishment. Judicial Penalties from Ancient Times to Present Day (2003), p. 56: "The usual justification for strict penal regimes is deterrence, although the evidence shows, more often that not stricter penalties do not reduce crime. In ancient Athens, Draco imposed the death penalty for virtually every crime. Rather than deterring crime, Draco's harsh legal code provoked civil unrest and eventually had to be repeated. The true motives for imposing stricter penal regimes are political; executions may or may not deter potential criminals, but they do demonstrate that the government is 'tough on crime'. … One penalty was assigned to almost all transgressions, namely death, so that even those convicted of idleness were put to death, and those who stole salad or fruit received the same punishment as those who committed sacrilege or murder. Therefore Demades, in later times, made a hit when he said that Draco's laws were written not with ink, but blood. And Draco himself, they say, being asked why he made death penalty for most offences, replied that in his opinion the lesser ones deserved it, and for the greater ones no heavier penalty could be found".

it is an expression of membership and of democratic participation as well.

The Western ideal of universal humanity uses the same approach by interpreting mankind as the global clan or a holy meta-group. By the way, this ideal works only by excluding nature as the mere environment from humans. And this group-thinking stems obviously from the three Book religions, believing in one God with a personal relationship to all humans.

(2) System of "Fairness". It is a "They-punishment" (out of group, but 176 neighbors). A nation built mainly on fairness would be led by the ideal of business like strict reciprocity. But there is a strong tendency to justify pain. Retaliation means in history, less abstract and in medieval forms of case law systems inflicting the same kind of pain to the criminal offender, "an eye for an eye." Combined with deterrence it justifies dismembering thieves etc. too. But on the bright side it is the old ideal of a kind of natural order of a "holy spirit", including the principle of harmony as in the cultural approach of "yin and yang".

(3) System of "Freedom". Regarding punishment it is an "it- 177 punishment" ("neutralizing criminals into objects"). This culture prefers incapacitating criminals because they are wild and dangerous. What it means is a combination of both, a brutal, tyrannical "human zoo" being satisfied is inflicting pain and a reasonable scientific one, especially one being satisfied by a utilitarian "behavioral treatment".

This system is ruled only by freedom, and at least based on the old "status naturalis", if not openly returning to it. The positive way means favoring the creative pursuit of individual happiness and giving the other freely what is "his" (suum cuique). The dark Machiavellian side bans metaphysical ethics or the emotions of sympathy. It is similar to a hunter system remembering that hunting of game was a privilege for knights and kings.

But in my opinion, these three are, if not the only secular ones, then at least the three existing great mainstream systems ruling punishment.

And more, vice versa, these three approaches define crime as well. The criminal person harms either "Solidarity" or he inflicts mainly "Fairness" or he violates most of all "Freedom".

They are based on either "collectivism" or "cooperation" and in "individualism". Pure collectivism would mean a fundamentalism of society. Mere blind mutuality is the core of the socio-biological mechanics of systems. The ideal of strict individualism dominates the fight of the survival fittest, egoistic gene.

How best to combine these three approaches "humanely", is a question best answered in light of a multidisciplinary philosophical anthropology. But both is important, the ambivalent fundamental roots and the democratic art of combination.

B. Realistic Democratic Punishment

178 Of course, all bipolar approaches include – secretly or open – a kind of synthesis.

179 Each of the three systems bears not only a good side and a dark side. At the sideline of the two poles of good ideals and their evil abuse, or maybe even in a broad middle zone between both poles, there grows a third political and cultural world. It is ruled by the pragmatism of a "common sense of balance". Balancing almost blindly different sub-culture and forming them into a mainstream culture is a strong form of peacekeeping[127] and this "mediation" has to be done as well (or at least). This thinking is backed up mainly by a kind of semi-religious civil consensus as a great value of its own. It is the synthesis of a cultivated, balancing social system.

180 In light of acceptance, the three pairs of reason for punishment are

- social help and deterrence based on Solidarity,

- ritual fairness and retribution grounded on Equity,

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[127] For a global world: Sandholtz, Wayne, Humanitarian Intervention – Global Enforcement of Human Rights?, in: Brysk, Alison (Ed.), Globalization and Human Rights (2002), p. 201.;Hoffmann-Holland, Klaus, Ethics and Human Rights in a Globalized World. An interdisciplinary Approach, in: Hoffmann-Holland, Klaus, Ethics and Human Rights in a Globalized World (2009), p. 1 (International Humanitarian law is closely linked to human rights law).

- scientific utilitarianism and free will two kinds of Freedom,

Western Jurisprudence combines these approaches in at least two ways. Conservative persons argue with "deterrence and retribution". The progressive ones prefer "prevention" by social help, before and after the criminal act and "fairness" by providing help for the victims. The balance of both perspectives is to be called a nationally cultivated culture of punishment.   181

"Deterrence and retribution" are well known rational arguments for a "democratic" punishment[128], culminating in the United States by being used for rectifying or fighting the death penalty.[129] Their emotional   182

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[128]   As a form of rational choice: McKenzie Richard B. / Tullock, Gordon, The New World of Economics – Explorations into Human Experience (1975), p. 152: "The deterrence theory of punishment is, after all simply a special version of the general economic principle that raising the price of something will reduce the amount purchades".

[129]   Zimring, Franklin E. / Hawkins, Gordon, Deterrence. The Legal Threat in Crime Control (1973), p. 14: "In the capital punishment debate the issue is not that of absolute deterrence – whether the death penalty is a deterrent. It is that of marginal deterrence – whether it is a more effective deterrent than the alternative sanction of long imprisonment". Ehrlich, Isaac, The Deterrent Effect of Capital Punishment: A Question of Life and Death, American Economic Review (1975), pp. 379, 397: "What has been questioned by these scholars is the existence of a differential deterrent effect of the death penalty over and above its most common particular alternative, life imprisonment".

Andeneas, Johannes, General Prevention Revisited: Research and Policy Implications, The Journal of Criminal Law & Criminology 66 (1975), p. 59: "It is unfortunate that discussions of general prevention have concentrated on the effect of capital punishment for murder (…) Even in an emotional crime like murder, with all its pathological elements, it would be untenable to claim that the magnitude of the punishment has no effect whatsoever. If punishment of three or four years imprisonment became the standard sentence for murder (…) this kind of crime would probably increase. In the long run such a reduction in penalty might also reduce the inhibitions against committing murder in situations where murder seems a tempting escape from a situation of emotional conflict". Kleck, Gary, Capital Punishment, Gun Ownership and Homicide, American Journal of Sociology, Vol. 84 (1978/79), p. 907: "Therefore it is not possible to state definitively that the death penalty never has exerted any deterrent effect in the United States, or that it never could (…) Contrary to the recent finding of Logan (1975) even homicide, impulsive though it usually is, seems to be deterrable by legal sanctions, even though it is not specifically by the rarely imposed death penalty".

basis could be described with the duality of "sympathy and satisfaction".

183 At any rate, it seems that, Western civilizations combine all of the three cited pairs of reasons.

C. Parallelism of three Approaches

184 My own position is that the realistic democratic punishment is carried out by a special combination of all three approaches.

185 At first, all three are running mostly "parallel". The reason is they exist in three different worlds, the world of societies, of ethics and of free actors, and they approach three different parts of a human being, "body, spirit and soul".[130]

186 In light of this humane trinity of "body, spirit and soul" there are the following approaches.

(1) "Physical approach". Punishment is done freely (brutal, tyrannical, as well as scientific and utilitarian punishment). It is the incarceration.

(2) "Ethical approach". Punishment is done fairly (for peers), too. This is the oral accusation and oral condemnation combined with the expectation to accept individual guilt. Even plea bargaining or deals are part of that communicative side of prosecution and trial. Added to this, are the registration and the whole social labeling an aspect of imprisonment.

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[130] In light of sociology: Fritze, Lothar, Herrschaft und Konsens – Über Stabilitätsbedingungen von Weltanschauungsdiktaturen, in: Heydemann, Günther / Jesse, Eckhard (Hrsg.), Diktaturvergleich als Herausforderung. Theorie und Praxis (1998), 96 ff.

Popper / Eccles claiming there are three worlds in an "I"- person (1) the physical world, (2) world of Psyche (3) and Metaphysical one, Popper, Karl Raimund / Eccles, John Carew, The Self and its Brain (1977), pp. 61. Similar: Stephan, Burkhard, Biosozialstrukturen und Menschwerdung, in: Eichler, Bernd H. (Bearb.) / Löther, Rolf (Hrsg.), Tiersozietäten und Menschengesellschaften: philosophische und evolutionsbiologische Aspekte der Soziogenese (1988), 97 ff., 112 ff.

(3) "Empathetic approach". Punishment is executed solidary (help for members). In so far as it includes the ideals of rehabilitation, probation, parole or personal amnesty.

All three approaches are needed. But when punishment involves prison, the physical approach dominates the reality of the conviction, at least for the prisoner who is forced to undergo imprisonment. 187

That differs from (the understanding of punishment in light of the law) in light of law, because all law is based on a normative and not an empirical approach. Therefore the active and the passive side are to be regarded. Law deals actively with consequences of existing facts or of expectations. Its main goal is "to right the wrong" and to protect freedom. Therefore it is much more grounded on symbolic communication than on tolerating hard facts passively. We democrats are seduced by the law into another world, forgetting the pain of facts. 188

Of course, there is the bridge for both, the convicted individual and the cultural world of right and duties. It is the constitution with its pragmatic and political background. But only for the good ones – the law, the lawyers and for the whole civil society – the main preference is given by framework of constitutions of Western nations. Nevertheless, let us take this point of view. The national constitutions are founded on the Western culture of humanism. And maybe there is a layer of a collective supranational transatlantic or Western "We-group feeling" too, which is still nourished by our common spiritual and moral heritage and by a transnational dialog. 189

Even the global fundamental human rights are grounded on the Western Humanism and on the "universal We-group" feeling that all humans are reasonable persons. Some Eastern cultures could say that this is a mere reduction from the wider animistic thinking that there is a holy spirit in every "being" on earth. A Western "We-group" includes, by the way, a nearly constant Western communication. And universal human rights need for their cultural existence an enduring global communication, to build up a cultural "We-group". 190

That means "inside" of a special country or within the Western community or "inside" the range of the universal human rights there are no "out-laws" and no mere "human objects". 191

192 But let us remember, every "actor" is able to quit every kind of "We-group".

D. The State as an Actor

193 And the powerful state is an actor, too. But it has got a national kind of a collective personality which is similar to the identity of a human being. The Leviathan is civilized by democracy. Although a Western democracy always includes the state and the civil society, both could act autonomously, too. Separating state and society is an approach more common to the US-American thinking.

194 But in the end, empathy is "one of the three" leading ideals of a civilized social system that is based on the "in group" thinking or the "we model" tends to focus on justice. And, Western law tends to lead the focus on justice. It offers very high ideals for the democratic law and each of its executions to hide behind and to neutralize personal responsibility of every member of a democratic society.

195 This is not a call for another system, but for personal transparency. And the democrat who is therefore serious about looking for justice should ask for the common sense of justice.[131] Jurisprudence will lead him, for instance, to *Aristotle* and *Thomas Aquinas*, who both created the basics for the liberal natural rights of *Locke*, *Hobbes* etc. Both authors have never reduced justice to pure reciprocity and mere Equity. Justice is more than mere reciprocity. Although "iustitia commutative" describes the well known core of justice, it needs additions. *Aristotle* added "iustitia distributive" depending on rights. Romans brought in the social role of a person "suum cuique". *Rawls* for instance transfers *Kant's* categorical moral principle of Generalizing into political Jurisprudence by generalizing chances for everyone and providing political stability as well.[132] But let us go back to *Thomas Aquinas*. He influences the later natural right by combining Christian theology, scien-

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[131]   See: Hart, Herbert Lionel Adolphus, The Concept of Law (1961), pp. 181 (for an ethical core in law). And see for "legal Realism": Duxburg, Neil, Patterns of American Jurisprudence (1995), pp. 32.

[132]   Rawls, John, Political Liberalism (1993), pp. 136, 41; Klosko, George, Rawls's Argument from Political Stability, Columbia Law Review 94 (1994), pp. 1882, 1885; Barry, Brian, John Rawls and the Search for Stability, Ethics 105 (1995), pp. 880.

tific scholastic thinking and natural law. He adds the legal form of justice, thus providing an early kind of generalization, and the call for charity.[133]

E. Consequences for Types of Punishment

What are the exact consequences for a democratic punishment in light of human rights? 196

The main point is that sanctions are limited. They are only "prison or a fine". But note that only a free person can be punished by imprisonment. That kind of freedom is granted by human rights. Life and all the values of humanity rank second to that kind of freedom. 197

Therefore, we do not any longer need public "whipping, branding, dismembering". We do not even force prisoners to perform hard slave labor, as miners, sailors or soldiers. And most of the time, we do not revert to the death penalty. In Europe, death penalty is forbidden by the European Convention on Human Rights (*6th Amendment*). In a culture that is based on acting freely, we define punishment and crime mainly by taking away freedom. 198

Another aspect of humanity is based all three, on "Freedom, Equity and Solidarity". Every prisoner has to have the judge controlled chance to regain his full "civil status". Even a murderer is a human being. After maybe 20 years of incarceration there should be a freedom on parole, given he is no of a danger than anyone else. The manner of incarceration should be humane, as well. The German Federal Constitutional Court has ruled in that sense more than once.[134] To expand of this, the reason might be that we don't want to be like the 199

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[133]   Thomas Aquinas, Summa theologica, in: Katholischer Akademikerverband (Hrsg.), Recht und Gerechtigkeit (1953), book II 2. 57. 1., book II 2. 58. 6.; Aristoteles, Nikomachische Ethik, Dirlmeier, Franz (Übrs.) (1999), 1.130 b/1131 a. Or: "fiat iustitia pereat mundus". Explained I more detail and assimilated to solidarity as a part of the system of Human Rights: Montenbruck, Axel, Menschenrechtsstrafe, in: Strafrechtsphilosophie. Vergeltung, Strafzeit, Sündenbock, Menschenrechtsstrafe (1995-2009) (2009), Rdnr. 400 ff.

[134]   As part of Dignity of Men: BVerfGE 109, 133 ff., 134; BVerfGE 45, 187 ff., 227; BVerfGE 87, 209 ff., 228; BVerfGE 96, 375 ff., 398; BVerfGE 102, 370 ff., 389.

criminal and totally dehumanize others and ourselves. And we want to live in a "civilized country", respected by our "peer-nations".

200 The words of the Eighth Amendment are:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted".

201 A similar sentence is part of the European Convention on Humans Rights (Art. 3). But the juridical dilemma is, who defines the understanding of "cruel", and how do we interpret the term "unusual". Regarding the German Federal Criminal Law and concerning a life sentence for murder[135] the Judges of the German Federal Constitutional Court use a similar clause. It couldn't be their task to define by themselves the correct ruling principle of punishment.[136] Penalties which are accepted by common sense or national consensus are apparently not "cruel". Therefore each democratic and "matured society" has to evolve its own "standards of decency"[137] including punishment.

202 This process ought to be undertaken openly and on a political level. A first step should be accepting that punishment is at least combined with, if not meant to inflict "harm". In a democracy the executed verdict "harmed" the criminal a sovereign person who has harmed "others", and every democrat is a real lord over lawmakers, judges and administrators. The next step could be recognizing that a long term incarceration without the permanent offer of help is felt as "cruel",

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[135] For US-polls regarding lifelong incarceration without parole instead of death penalty, see: Death Penalty Information Center, Facts About the Death Penalty (May 1. 2008), p. 4. Hoffmann-Holland, Klaus, Neither Retribution nor Deterrence – Kriminologische Aspekte der Entscheidung des U.S. Supreme Court in Roper v. Simmons, in: Müller, Henning Ernst / Sander, Günther M. / Valkova, Helena (Hrsg.), Festschrift zum 70. Geburtstag von Ulrich Eisenberg (2009), 69, 79 ff.

[136] BVerfGE 45, 187 ff., 253 ff.

[137] "Evolving standards of decency that mark the progress of a maturing society", Trop v. Dulles, 336 U S. 86, 100-101, 78 S. Ct 590, 2 L Ed. 2 d 630 (1958); Roper v. Simmons, 543 U S. 551, 561, 563 (2005). See: Hoffmann-Holland, Klaus, Neither Retribution nor Deterrence – Kriminologische Aspekte der Entscheidung des U.S. Supreme Court in Roper v. Simmons, in: Müller, Henning Ernst / Sander, Günther M. / Valkova, Helena (Hrsg.), Festschrift zum 70. Geburtstag von Ulrich Eisenberg (2009), 69 ff., 70 f.

and that it is even meant by the punishers as retaliation. They have to answer the old questions about who they are. Underlying this model is the ancient concept of fighting an aggressor (from within) as in a civil war, but without accepting the danger of mutuality, i.e. where large subcultures of young and aggressive outlaws may grow within the society. Even if that is openly accepted, the next Machiavellistic question is, maybe the punishers themselves are secretly interested in fighting wars on crime that need and foster themselves as sophisticated organized and well-equipped army of fighters and guardians. Medieval political systems are built on that kind of protection. Obviously, the secret love for free warriors and public fear of warlord systems create the real background for the cultural fiction of a "status naturalis" that leads to a social contract of the free persons, which the Preambles of a lot of written Western constitutions are reflecting.

Therefore the simple political question is: are the punishers interested 203 in a balanced Western Democracy that includes Humanity in form of Solidarity, or are they not?

F. "Rule of Weighing Freedom, Equity and Solidarity"

But even then, we have to accept also, that we personally and our 204 "We-group" are free to switch into the wild "status naturalis", we are able to act "freely and fairly" and to exclude solidarity while still "believing" in what we are doing.

These are the "free", the "fair" and the "humane" consequences for 205 punishment in Western democratic societies. Weighting all parts of this political trinity means acting as a democrat. Nevertheless, it should be noted, that the basic aspect of Western democracy is freedom.

But maybe on a more basic level, the political level of great parties, 206 there also has to be a balance between a liberal and a conservative position. In the field of social psychology a study[138] shows two kinds of moral foundation, both a liberal and a conservative one, and it gives a good overview over five other sets of ethical approaches as well.

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[138]   Graham, J. / Haidt, J. / Nosek, B, Liberals and conservatives rely on different sets of moral foundations, Journal of Personality and Social Psychology, Vol. 96 (5) (2009), pp. 1029-1046.

207 A "liberal person" prefers the endorsement and use of the first two positions. The liberal two sets are ones: (1) "Harm/care" and (2) "Fairness/reciprocity".

A "conservative person" uses – equally – all five, and therefore the other three sets of moral intuitions as well. These are the sets (3) "In-group/loyalty", (4) "Authority/respect", and (5) "Purity/sanctity"

In my opinion, if the last three sets altogether dominated the first two, that kind of "conservative person" would prefer the collectivism of in-group and the law and order structure of their ruling elite. As to the balance of both approaches for instances in two parties, the liberal and the conservative, even from that point of view, there are both kind of person needed, those who prefer to decide and act themselves the "free" ones, and those who abide by the system ("We-group think-ing") or try to harmonize the individual and the group, which needs at least secretly a higher ideal, like a secular common sense build on rea-son, or an ethical religion.

208 On the other hand, blindly submitting even under the highest secular ideals ought to be punishable in itself as a crime against the ideal of democracy, because decisions reached in this way are acts of dehu-manization. Freedom is only limited by freedom. That means that this fictive model of a sovereign person includes the ability of the free ac-tor abiding by personal morality or act with self restrain.

209 Again, not to at least grant "grace" – in every special case – is a free decision and indicates the real range of pragmatic freedom we democ-rats have. Our argument that we have to keep up deterrence – for oth-ers – shows the quantum of the convict as a mere example and his change from a subject and a peer to a tool (object), which we use to fight mass criminality. Both points, this negation and this rationaliza-tion, are in short the "humus"[139] for our "collective responsibility" maybe even our "collective guilt" as an in-group of free democrats.

210 Anyhow, punishing a "ruling member" as a genuine part of our own "collective social body" hurts and harms the social body. It is and

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[139]   To both roots of the word Humanity, which derive (1) from the – creative and natural – "humus", and (2) from the – semi-religious and normative – "humanitas", see: Rappaport, Roy A., Ritual and Religion in the making of Humanity (1999), p. 406.

must be – consciously and intended – a kind of self punishment, too. That means we are sacrificing a part of our democratic identity as well and on the same altar of "freedom, equity and solidarity". We take the freedom of a co-ruling democrat.

Inside of a civilized Western society there are three positions: 211

(1) to be the democrat,

(2) to act as a partner of the local peers of democrats and

(3) to feel proud of and support the decisions of the national "We-group" of democrats.

Modernizing and amplifying an old dilemma, we human democrats react – partly – "free" to a "free", but inhumane act, although measured but – partly – reciprocally in the same way. Of course our intentions are better – or so at least our own common sense of equity meant as restoration tells us. But we act and we have to take our part of the responsibility for every democratic act. Therefore "we free persons" might weigh before, or weigh at least afterwards and correct the unfair and inhumane actions.

That is or should be "common sense". Combined with a democratic 212 determination correcting the rare cases of abuse of power we cannot avoid this double rule should dominate a democratic society.

Such a kind of mainstream within a national culture is or would be a 213 "We-group" of civilized, i.e. weighing "Me-persons". These free men are not only acting freely, but have built up a sophisticated super ego characterized by consciousness and compassion, and by internalizing the ideas of equity (as fairness) and solidarity (as compassion), as well.

But each democrat should be aware that each political act includes the 214 choice between morality and neutralization or between granting humanity and dehumanizing human beings. Neutralization in a Western Democracy means Dehumanization. Punishment and crimes are both strong examples for – at least partly – dehumanizing a human being.

G. A Fourth and Final Three-pointed Thesis

My final thesis consists of three points:

215 (1) The "Rule of Weighing political acts democratically" means harmonizing for each important individual case "Freedom, Equity and Solidarity". That is the Western basis.

216 (2) Regarding punishment in Western societies we have to be aware that painful punishment by imprisonment is – partly – a political "free" act, which each democrat is responsible for. We have to feel this load on our shoulders. Each justified imprisonment of a fellow human being – of our state or a foreign country – is not only an act of fair "reciprocity" as a form of "equity" and not an act of prevention regarding others or the society as a whole, which both is a kind of caring "solidarity". It is a free act, too.

217 (3) Highly amplified, "one third" of the inflicted pain is the burden we democrats should to be aware of. That is the raw amount of our part of responsibility. In that train of thought, our solace could be, but must not lead to full neutralization, two thirds are not.

VI. Epilogue: Anthropology and Ethics

Anthropology tells us that other "primates", and even chimpanzees,   218
lack mainly the social skills of their humane cousins. The early ability
of human beings to communicate with one another in a language,
which always includes a kind of grammar, develops the human brain.
Comparing the intelligence of children of humans with that of chim-
panzees, this is the main difference:

*"… regular participation in cooperative and communication with on-
togeny leads children to construct uniquely powerful forms of per-
spectival cognitive representation".*[140]

Therefore the human kind of language makes the difference. Commu-   219
nication itself is the basis not only for cooperation and burden sharing.
But a lot of social mammals use this principle of "tit for tat". Lan-
guage allows the human individual to live in a wider system of a lot of
different groups. My metaphor is: Humans even separate their main
groups similar to different species that exist together in the same "bio-
tope".[141] At least today, humans live in their greater national territories
much more unified, like a lot of subcultures of different species. In-
stead of in their "genes" they differ from one another in an analogue
way by ethical and ethnical "memes".[142] Mankind has partly crossed
the stricter limitations of genes regarding the pre-program of all the
other complex mammals or vertebrates etc. Much more speculative
and in light of philosophical anthropology I would add: by going back
to the roots and by picking up that kind of older "social freedom
through communicating", that is still known in the most simple forms

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[140]   In testing and comparing the intelligence of offspring of humans and apes
the intelligence of both groups differs only partly, especially in the social
skills of young humans: Moll, Henrike, / Tomasello, Michael, Cooperation
and human cognition: the Vygoskian intelligence hypothesis, The royal
Society (2007), pp. 362.

[141]   Montenbruck, Axel, Zivilisation. Staat und Mensch, Gewalt und Recht,
Kultur und Natur (2009), Rdnr. 1020.

[142]   Dawkins, Richard, The Selfish Gene (1978), pp. 191; Lumsden, Charles J.
/ Wilson, Edward O., The Promethean Fire (1983), pp. 120, 126, 139.
Lumsden, Charles J. / Wilson, Edward O., Genes, Mind and Culture
(1981), pp. 305. Caporael, Linnda R. / Brewer, Marilynn B., Reving Evo-
lutionary Psychology: Biology Meets Society, Journal of Social Issues,
Vol. 47 (3) (1991), pp. 187-195, 189.

of bacteria, mushrooms and in systems of virus stems. Their pool of genes is part of ours as well, if we accept the model, of a rather strict evolution of the blue print of genes of all living beings since the beginning of live on.[143]

220 Apes at least, as well as all the other mammals, are much more connected within their own groups than humans. Even chimpanzees, who might know something about brutal aggression, do not know about bloody revenge or about the human form of a group punishment. They try to resolve an in-group conflict in the very present moment. Apparently their "genes" tell them still to avoid brutality inside of their group. But chimps start using brutality in territorial fights against their neighbors. They hunt and beat members of rival groups and even former group members to death, but mostly when a single foreign individual was met by a larger group of aggressive males.[144] Their standard living group comprises of up to 10 members. Greater communities, like herds or human tribes[145] are unknown, at least to them.

221 And apes and many other animals use symbolic and ritual actions of threat as well and groups of socials mammals recognize other members individually, too. But, only human beings are able to live in such a complicated and open system of different "We-groups" and only

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[143]   In light of Biology about the thirteen steps of Evolution, written in our human genetic code, and on the theory of strict "blue prints" from the first beginning of life on, see: Duncker, Hans-Rainer, Probleme der wissenschaftlichen Darstellung der komplexen Organisation von lebenden Systemen, in: Maier, Wolfgang/Zoglauer, Thomas (Hrsg.), Technomorphe Organismuskonzepte (1994), 299, 302. In light of anthropology: For the simple thesis of getting freedom from the genetic pre-program of a very complex mammal species by going back to the programs of much less complicated beings ("back to the roots"), see: Montenbruck, Axel, Zivilisation. Staat und Mensch, Gewalt und Recht, Kultur und Natur (2009), Rdnr. 731 ff. We are gaining freedom by acting partly similar to the creating nature itself, by using "natural sciences" and by knowing the "basic laws of nature", Montenbruck, Axel, Zivilisation. Staat und Mensch, Gewalt und Recht, Kultur und Natur (2009), Rdnr. 259, 512, 1035.

[144]   See: Wangham, Richard / Dale Peterson, Demonic Males – Apes and the Origin of Human Violence (1996), Chap. 1 (Lost Paradise): aggressive small male groups (of 3-6 individuals) use deadly force against former members and members of other small groups, mainly when the victims at the moment of aggression are single).

[145]   Ridley, Matt, The Origins of Virtue: Human Instincts and the Evolution of Cooperation (1996), pp. 140 ("The tribal primates").

they evolved the genetic skill and freedom to switch between them. By the way, "Freedom" of a social individual is to define as the ability switching between groups and roles. But even their members are still bound to conformity within a "main group", too. Insofar human beings counterbalance their genetic individual freedom by "solidarity". Therefore, the humans have to structure their groups and especially their kind of conformity by themselves. They develop and foster their own civilization in terms of their own ethical and ethnical rituals and laws. And underlying this culture may be universal feelings toward "reciprocity" and "grace". I would add, there also exists a universal feeling towards "Freedom, Equity and Solidarity", and this feeling exists in even the smallest group of "peers". The models are "brothers and sisters" or "cousins", and these metaphors are often used especially to describe personal and "freely" chosen friendship.

Therefore, "revenge" or "punishment" – long after the act – and, of course, every kind of "public tribunal", are unique features of homo sapiens. In this wider biological sense even angry revenge is simply "humane", too. Hence, the humane reaction to an offence can be both a "natural" one, "wild, unfair and inhumane" (status naturalis) or a "civilized" (status civilis) one or of course something in between. At least after the rush of their first emotions men are able to think and argue about the best decision that is to be made. They call in an assembly. Each more formal process takes time for informal preparations inside of networks, needs an open local forum, and involves holy eternal rituals. A process includes third persons acting in three social roles, as learned "mediators", as powerful "executors" and as "empathic helpers". 222

Therefore good Democrats try balancing in each of their severe personal decisions "Freedom, Equity and Solidarity" or they choose relinquishing democracy at least in this case. 223