Hans Jörg Sandkühler

Pluralism, Cultures of Knowledge, Transculturality, and Fundamental Rights

> *„The World is in many ways."*
> *Nelson Goodman*

> *„Relativism requires the constitutional state."*
> *Gustav Radbruch*

1. Pluralism: Approaching the Problem

If Being itself offered a guarantee of correct knowledge, the plurality of cultures of cognition and knowledge – with competing claims to truth – would be impossible to understand. If humanity's social Being itself offered a guarantee of a single type of correct moral action, the divergent and even incommensurable views about moral correctness within any given society, let alone between societies, would be impossible to understand. Neither guarantee exists.

Herein lies the problem: How is a system of freedom possible under conditions of plural cultures of knowledge and action, as well as the real pluralism[1] of epistemological and moral points of view? I will try to establish how and why legel cultures[2] and cultures of knowledge form a unity. First, I investigate a concept of culture that can be meaningfully applied to the issue at hand. In a second step, I sketch several principles of an epistemology that is compatible with the legal culture of both universal and individualized fundamental rights. The third part of my reflections is dedicated to the problem of what „Right" and „Law" could mean under conditions of pluralism. I propose eight theses to these points.

The connection between culture and right is hardly an abstract matter; in seeking to define it, we're placing a concrete, contemporary problem on the agenda. I refer here to the *Declaration of Cultural Diversity*, adopted at the 31st General Conference of UNESCO on 2 November 2001 in Paris. According to UNESCO General Director Koichiro Matsuura, this document should „from now be considered one of the basic texts

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[1] Cf. Sandkühler 1996b, 1999, 2002.
[2] Cf. Mohr 1997.

of a new ethics."³ This Declaration „stands for the duty to realize human rights and basic freedoms in their full complexity"; it „affirms that culture should be seen as the totality of unmistakable spiritual, material, intellectual and emotional qualities, which characterize a society or social group." It also affirms that culture „includes forms of life, forms of communal living, value systems, traditions and beliefs, in addition to art and literature." It „affirms that respect for the multitude of cultures, tolerance, dialogue and collaboration in a climate of mutual trust and understanding are among the best guarantees of international peace and security", and it „strives towards a comprehensive solidarity for the recognition of cultural diversity, in the consciousness of the unity of humanity, and in the development of intercultural exchanges." Article 2 („From cultural diversity to cultural pluralism") reads: „In our increasingly diverse societies, it is essential to ensure harmonious interaction among people with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Inseparable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life." Article 4 („Human rights as guarantees of cultural diversity") stresses: „The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope."⁴

The *Universal Declaration* certainly deserves every support; yet it contains non-explicit premises. The open question remains: „About *what* and about *whom* are we speaking, when we speak of 'culture'?"

2. The Problematic Concept of 'Culture' and the Idea of 'Transculturality'

The idea of culture is today so inflationary that its very use seems problematic: „national culture", „eating culture", „drinking culture", etc. The problem appears even more difficult when one takes into account the ongoing processes of dissolution, fragmentation and reconstruction of

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3   Cited in the Declaration 2001, 153 (*Allgemeine Erklärung 2001*, 153).
4   Ibid., 156, cf. www.unesco.de

cultural identities observable throughout the world. At the same time, essentialized views of culture play a central role in conflicts of power politics; political agents act in the name of a „historical mission" and the supposed right to the globalization of one culture; they use the means of ideological exclusion and economic or military destruction of other cultures. A significant example of this is the breach of International Law the Iraq War constituted.

What's really taking place, however, is this: the borders between previously (apparently or really) stable cultures are evaporating, leading to new, unstable ways of life composed of elements drawn from different cultures. Here and in the following I am primarily talking about experiences with and consequences of European and North-American cultures. There are at least five grounds for this change: (1) colonialism and decolonisation; (2) wars, famine, displacement and expulsion; (3) increasing migration of labourers, market liberalisation and the integration of previously regional markets into world trade; (4) debordering forms of information and communication; (5) new structures and forms of transnational organizations dealing with economics, politics and law.[5]

This process leads to the end of the illusion that regional borders and cultural identity are congruent. Instead, differences of purposes and goals, needs and interests, gender, faith, qualifications and abilities all comprise increasingly new demarcations. The end of the illusion of and pressure towards a de-individualizing homogeneity leads to a productive *crisis of the self* in the recognition of the otherness of the Other, to the recognition of equality and of the particular rights of subcultures. The staged uniformity of a national culture is today just as unbelievable as the imagined unity of a world culture. It goes without saying, however, that such nascent uncertainties and lack of orientation also lead to what we today experience as esoteric trends towards identity-politics and premodern cultural fundamentalism[6].

Less obvious is that the complaint about this loss of orientation is a symptom of the loss of the epistemic culture of European modernity. This culture came into being as the absolute certainties of religion and metaphysics were shattered, competing alternatives under the heading of „Pluralism" were recognized as progress toward freedom, and law took the place of violence as the determinant of a just order. „This culture is reflexive, for it rests on the legitimacy of principal differences in the per-

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5　I refer here to the agenda of the University of Bremen's research focal point program 'Dynamics and Complexity of Cultures'.

6　Cf. Meyer 2002.

petuation of inherited interpretations of social order, private lifestyles and personal beliefs, when the unified answers to these life questions no longer obviously hold true."[7] In other words: In the epistemic culture of European modernity, pluralism did not name a *lack* of orientation, but rather served as its grounding.

The concept of *transculturality* no longer assumes that cultures are homogenous unities with stable borders. Borders are no longer *given*, be it through nation, ethnicity, religion or tradition, or homogenous subject-identities etc. Rather, they emerge and change through the dynamics and complexity of flexibly coexisting networks between persons. To this degree, cultures are *agendas*, within which one thinks and according to which one wants to act in solidarity with others, because more than one person is convinced of its worth for the shaping of life.

How shoulddo we then speak of culture? Here is the first thesis I would like to propose:

'Culture' is a relational concept; it implies the difference and the multitude of cultures, that is to say, the variety of relationships between different traditions, lifestyles, symbolic forms, attitudes, value preferences and norms. The less distance there is in the globalized world, the greater the nearness of differences.

„The concept of culture," as Max Weber puts it, „is a value-concept […]. From the human standpoint, 'culture' is a meaningfully imbued finite part of the meaningless infinity of world affairs."[8] But what does „the human standpoint" mean? Does 'the human' as such exist? Is this not simply a philosophical universal without any empirical correlate? I thus introduce a second thesis:

Two subjects of culture are sensibly conceivable. With this, I do not mean the nations or continents enthroned by cultural ontologies, such as „German culture" or „Asian culture". (a) The concrete empirical subjects of cultures are, rather, individuals as persons. (b) Individuals must be thought of as persons in the perspective of humanity, which itself is the abstract, non-empirical, but necessary transcendental subject of culture.

Cultures factually develop and change in the force field between the empirical and transcendental subject. Cultures are based on beliefs, habits, value preferences, norms and types of decisions at various levels. Four of these levels should be emphasized, as they are especially significant: (1) Religious beliefs, metaphysical interpretations and expectation of salvation: the integration of individuals into communities of belief be-

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7   Ibid., 27.
8   Weber 1989, 78, 83.

longs to this level. (2) Cultures of knowledge, which depend upon foundational epistemological beliefs and follow from their models of reality. The integration of individuals in epistemic paradigms, for example realism or anti-realism, belongs to this level. (3) Ways of life in the quotidian culture (the morality of everyday affairs, habits, rituals, social manners, etc.): the integration of individuals in socio-cultural milieus belongs to this level. (4) Fundamental social and political values: the integration of individuals in social routines and systems of norms, especially legal relations, belong to this level.[9]

The question I pursue is: What are the epistemic conditions necessary for the success of *transculturality*, that is, the recognition of the diversity of cultures as well as the coexistence of apparently incommensurable cultures at both the macro-level of society and the micro-level of individuals. I will not explicitly address transculturality proper; rather, my intention is to sketch a conception of culture by way of an epistemological perspective through which transcultural understanding and action is possible. My premises in this endeavor are the following: (a) Pluralism is a fact of the modern world; there is no rationally sustainable way around it. (b) This factual pluralism, perceived primarily as the expression of a plurality of ethical, social and political attitudes, is based on a dimension of freedom which realizes itself epistemically and which must be investigated epistemologically. (c) This freedom expresses itself in a diversity of *cultures of knowledge* such as, for example, art, philosophy and science which are equally legitimate. None of these cultures may claim superiority over others through recourse to hierarchical forms of rationality. (d) Cultures of knowledge are moulded by beliefs that compete with one another. This competition engenders the problem of relativism. (e) Pluralism and relativism present philosophy with the task of formulating anew their claims to rationality. If philosophy is to take account of the plurality of thought and ways of life, it must evolve into an epistemic democracy. It must do this as a critique of any hegemonic claims of individual cultures of knowledge.

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9   In points (1), (3) and (4), I follow Meyer 2002, 117-119.

2. Pluralism

1.1 Pluralism as perspectivism

My perspective on the problem of pluralism is that of epistemology.[10] By 'pluralism' I understand a particular epistemic *Habitus* (habit): from the perspective of this *Habitus*, it is more rational to assume a heterogeneity and diversity of the real than to assume the monistic homogeneity and uniformity of a world ruled by *one* substance. The pluralistic *Habitus* involves a recognition of the diversity of symbolic worlds and human modes of thought, of understandings of the world and the self, of myths and gods, of languages and arts, of philosophies and sciences: in short, a recognition of the diversity of *cultures.* There is a diversity of justifications for 'true beliefs' and epistemic preferences. The essential characteristics of pluralism are: „1. A plurality of self-contained, diverse worldviews. 2. An incommensurability of such worldviews in the sense that there are no unconditional rational or empirical criteria by which they may be completely compared in terms of the degree of their reasonability or efficaciousness. Comparisons of particular aspects are possible, but a determinate evaluation of these aspects allows only practical, not theoretical, justification. 3. Connections between experience, thought, language and modes of life. 4. The reliance of individual thinking and experience on traditional and socially practiced ways of thinking and experience. 5. The reliance of worldviews on biological, psychological, historical and social conditions."[11]

Pluralism is the attitude, „that intellectual judgments and concepts are subject to an historico-cultural diversity or relativity comparable to that of legal practice, moral intuitions and social institutions." This attitude arose, according to Stephen Toulmin, at the beginning of the 20th century: „Today we recognise that the number systems, color-naming, cosmogonies and technologies of different societies rest on basic principles as fundamentally different as those of various moral attitudes and social systems."[12]

Epistemological pluralism is a *perspectivism.* It stems from the historical relativity of world-images, of religions, of artistic forms and of scientific knowledges; they all have the function of *perspectives* on reality. For example, A.N. Whitehead saw this when he wrote in *Science and Modern World:* the human interests which lead to cosmologies and are also influ-

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[10]   Cf. the thorough discussion of the same in Sandkühler 2002.
[11]   v. Kutschera 1982, 523.
[12]   Toulmin 1978, 65; cf. Toulmin 1985.

enced by them, are science, aesthetics, ethics and religion. Each of these thematic areas in every time period contains a particular *Weltan-schauung.*

3.2 Pluralism and Rationality

The pluralism of this and other 'world-views' has become as indispensable in the modern era as the idea of the autonomy of subjectivity. It leads, after the experiences of the dictatorship of ideas, interests and sovereigns, to a renaissance of what I will here call epistemic polytheism and polycentrism. One consequence of this is that the pluralism of which I here speak is also confronted with the conflict of *pluralisms*:

Pluralism is taken up by everyman as 'to each his own'; often, however, equally legitimate claims of third parties are not recognized; individuals and collectives are not indifferent to alternative worldviews, value-preferences and life plans; therefore *that* pluralism that is thought of as a rational *Habitus*, tends towards the exclusion of the worldviews, value-preferences and life plans held by others.

Factual pluralism is perceived as relativism, and this means it is perceived as the loss of a universally amenable public rationality. One such contemporary assessment is as follows: „In total, as a consequence of pluralisation, the landscape of rationalities transforms successively from a supposedly well-ordered state into considerable disorderedness. The pluralisation of the first step – the dissolution of one rationality into a diversity of types of rationality – already raises as such numerous problems regarding the relations between these types. The second step of pluralisation – the internal pluralisation as a consequence of the appearance of divergent paradigms – makes the world of rationality in its entirety hyper-complex and 'disorderly'."[13] Thus a reasonable ordering of the relationship between plurality and rationality arises as a problem to be solved: „Reason must neither deny plurality nor give itself to the latter unfounded. Rather, reason must be in a position to intervene within plurality."[14]

These interventions must not be grounded in the name of *one* truth and they should not be carried out by violent means. Kant already formulated what it means to intervene under conditions of pluralism: „If one compares one's views with those of another, and decides the truth from

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[13] Welsch 1996, 47.
[14] Ibid., 433.

the relation of agreement with another reason, that is logical pluralism."[15] In Kant we find two further, from now on guiding reflections: He calls an 'egoist' such a person who „needs another eye in order to be able to see his object from the perspective of another person",[16] so as to enable a *sensus communis.* Consequently, in differentiation from logical, aesthetic and moral egoism, the ethical and political dimensions of the concept is emphasized: „Egoism can only be countered with pluralism, that is the manner of thinking: to not conceive of oneself as the entire world within the self, but rather to consider oneself and to behave as a mere citizen of the world."[17]

Since this paper is not concerned with the history of philosophy as such, a historical leap may be allowed, in order to show towards which model of the world and of intervention these thoughts are directed: For William James, in his *A pluralistic universe,* compromise and mediation are inseparable from pluralist philosophy. The pluralistic world approximates more a federal republic than an empire.

3.3 Epistemic Pluralism and the Problem of Representation

Epistemological pluralism is as much a fact as it is – as a norm – the result of cultural development after Kant. It comes into being in no way solely on the foundation of philosophy, but also on the foundation of religion and of the arts. I concentrate on epistemology because the process of pluralisation is especially clear in it. The problem that we should now move to the centre of attention has the name '*representation*'.

Until the 19th century (with exceptions), 'representation' appears to be widely unchallenged as a concept for indicating the state and function of the performances of consciousness and of action – of perception, thought, experience and cognition, practices of art and technology. Nonetheless, since around 1850 this concept has become a problem in philosophy, the sciences and the arts. The process of the concept's problematisation has been interpreted as a *crisis of representation*, and with the emergence and establishment of alternatives to 'representation', a *paradigm shift* followed on its heels. But what is the crisis of representation?

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[15]   Kant, AA Vol. 24, 428.
[16]   Kant, AA Vol. 15, 395.
[17]   Kant AT Vol. VII, 128 ff.

The problematisation of the concept 'representation' is driven by the ever more strongly preferred assumption that under 'representation', no structure-preserving copy of reality can be understood. The idea of representation as a copy of reality is based on a realist metaphysics of substance, on a metaphysical-realist epistemology and on a correspondence theory of truth. This metaphysics evokes the crisis of representation and leads, in the sciences (initially and above all in the natural sciences like physiology and physics) and arts (above all in neo-impressionistic painting) as well as in philosophy (above all in Kant-oriented philosophers), to the development of alternative paradigms. Philosophers like Ernst Cassirer have succinctly formulated this paradigm shift: „We cannot seek the genuine 'immediate' in external things, but must seek it within ourselves."[18]

Now the concept and the theory of representation must either be reformulated in differentiation from the image-concept or given up and replaced by a new paradigm, such as 'constitution' or 'construction'. This has consequences: claims to truth are decided in many areas and to the degree that 'representation' is confronted with *perspectivism*, *pluralism* and *relativism*. Cultures of knowledge change on these grounds, as do technical and other cultures of action. Simultaneously, historicity and cultural contextuality take priority as directions of inquiry.

3.4 Representation and Belief

The transformation of intellectual culture and mentality after the end of metaphysical systems and the transition to pluralism are accompanied by a heightened attention to the role of *beliefs* in knowledge and action. This paradigm shift, in which the individuality and subjectivity of cognition is rehabilitated, increasingly shapes the cultures of knowledge and different ways of world-making; it determines the styles of thought in contemporary society, as well as the bounds of self-evidence in the common sense which offers a ground to stand on in an ever more uncertain world. It also offers a basis for new beliefs that ground the coherence of world-explanations. The fact that beliefs play a major role is not new; rather, what is new is thematisation of beliefs and their meaning.

If one reads philosophical and particular scientific texts with this perspective, one is struck by the frequency of expressions for propositional attitudes of 'belief'. I will name just two examples, in which one would not

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[18]   Cassirer, ECW 13, 26.

find reference to beliefs. Albert Einstein writes in *What is the Theory of Relativity?*: „It is impossible to ignore the *belief* that both field-types [the gravitational field and the electromagnetic field] must correspond to a unified structure of space." And the logical empiricist Moritz Schlick, interested in a „unified, true, satisfying *Weltanschauung*", lets the „belief" guide him, „that… all being whatsoever, insofar as it is of one and the same sort, is as far as cognition can be made accessible through quantitative concepts. In this sense we declare our faith in a *Monism.*" As I said before, however, these are only examples.

In this context, Wittgenstein's late notebooks *On Certainty* are particularly revealing. There he speaks of a „*natural law of 'holding something to be true'*, writing: „The difference between the concept of 'knowing' and the concept of 'being certain' isn't of any great importance at all, except where 'I know' is meant to mean: 'I *can't* be wrong.' […] 'I know…' seems to describe a state of affairs which that guarantees what is known, guarantees it as a fact. One always forgets the expression 'I thought I knew'."[19]

To summarize the problem and the thesis with a contemporary formulation: „Knowledge entails belief, so that I cannot know that such and such is the case unless I believe that such and such is the case."[20]
The problem is well known. If today it is practically only thematised in epistemic logic and linguistic analysis, this is a *status quo ante*. Already in the 1930s, Gaston Bachelard, the founder of *Epistémologie* in France, asserted that scientific thinking is fundamentally characterised by a plurality of '*epistemological profiles'* between which one may choose. The phenomena produced by the sciences depend on the chosen profiles. In *La Philosophie du Non* (1940), Bachelard shows this with the example of the concept of 'mass', understood by the natural sciences in a plurality of available perspectives – naïve-realistic, positivist-empiricist, rationalist – from which the scientist chooses *his* distinctive profile. „Horizontal pluralism," discussed in relation to Lavoisierian chemistry, „which differentiates itself considerably from a realist pluralism that conceives of substances as unities", is the consequence of this possibility of choice.

This pluralism arises „in reality from the inclusion of truth conditions in its definition"; as soon as the conditions of truth reside no longer in things, „the definitions are more functional than realistic. From this results the fundamental relativity of substance."[21]

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[19]   Wittgenstein 1989, 120 s.
[20]   Luper-Foy 1993, 234.
[21]   Bachelard 1980 [1940], 85 s.

4. Pluralism and Relativism

All individuals live in their own worlds with individual meanings, which might be mediated through social collectives. They relate to the one common world – or not – through the idea of humanity. This is the guiding insight of European modernity since Kant. This insight now widely determines *common sense*, which automatically recognizes pluralism and validates the right to individual beliefs. True – we live in a world that we do not only create in thought. But we understand *how* we live in this world differently than in epochs in which thought appeared bound to present a copy of a 'ready made world'. Even our everyday intuitions accept that the one common world is formed to multiple *worlds*. As a result of this shaping, the meanings of the so-called external world and of things are woven into the metamorphosis of cultures. It was only understood historically late that the *real* of „reality" cannot be comprehended in the sense of *natural* – as opposed to *cultural*. However, it *was* understood. Above all, 'language', 'perspectivity' and 'interpretation'[22] are signatures of the design through which reality gains its sense and meaning, and becomes the various individually experienced and lived worlds. If we want to understand what culture means, one of our most urgent tasks is to explain what it means that we speak languages, can take and change perspectives, create images and give interpretations.

I formulate my third thesis following the basic principle of Ernst Cassirer's anthropological and epistemological work (I consider him one of the 20th century's most significant philosophers). It opposes the *spectator theory* of knowledge:

In knowledge and action, a person cannot „remain by the designs that the world of perception confronts him with as more or less complete. Rather, he must give himself over to the construction of a realm of symbols in complete freedom through pure self-activity. He constructively designs the schemata on which and towards which he orients the totality of his world.[23]

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[22] Cf. Sandkühler (ed.) 2002b.

[23] Cassirer 1994a, 333. Cassirer shares with others, e.g. William James, the principle: „what say about truth depends on the perspective, from which we view it. We cannot influence the fact that reality exists, but *what* it is rests on a choice, and we make that choice. Both the perceptible realm of reality and the realm of relations are mute: they tell us absolutely nothing about themselves. We must speak for them." (James 2001, 155).

If one inquires about the characteristics of human culture, one answer stands out: typical is the development of symbolic forms and symbolic systems, which enable humans to represent and reflect upon that which they do with their own formative power. When one understands what free epistemic activity objectifies, one also understands oneself as a cultural being. This self-understanding implies the recognition of the Other's otherness, that is to say, the pluralism of cultures; it is simultaneously the precondition for my acceptance of responsibility for my world-designs, i.e. for my action in the cosmopolis of culture.

Cassirer's positive attitude towards epistemic pluralism goes therefore hand in hand with the search for *unity*.[24] In his search he touches upon both theoretical *and* practical philosophy. He sees the *unity of world creation* grounded in the process of human culture: „if nothing else, it is „the same" person, who we meet time and time again in the thousand revelations and thousand masks of the development of culture. We become aware of this identity without observing, weighing or measuring ourselves, and we come to see it just as little from psychological inductions. It can reveal itself in no other way than through action. A culture is accessible to us only insofar as we actively enter into it."[25] In a practical sense, Cassirer aims at the unifying and 'universalistic' role of human rights in his „The Idea of a Republican Constitution": „the individual as such (*every individual*), humanity in toto (*all mankind*), comprises the actual subject of inalienable fundamental rights. And with that, as far as these rights are concerned, not only all class-based, but also all national barriers are exploded and shown to be powerless and inconsequential".[26]

In this perspective cultures of knowledge and legal cultures, conceived of as symbolic systems, form a unity. The epistemic revolution in which the pluralistic idea of various legitimate versions of the world developed since Kant does not only precede the historical revolution of the idea of human and fundamental rights[27]. Both are also revolutions against subjection to the given.

What the revolution of culture of knowledge comprises is my fourth thesis:

Cognitive processes and statements about reality essentially depend upon whichever understanding of the relationship between knowledge

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24   On the problem of the multitude of symbolic worlds and the unity of reason, cf. Schwemmer 1995.

25   Cassirer 1942, 76.

26   Cassirer 1995 [1928], 13-15.

27   Cf. Alexy 1996, 1999.

and reality is preferred. These understandings are themselves parts of universal frameworks, that is of visions and pictures of the world. The external world – things in themselves and their qualities – offer no guarantee for the correctness of knowledge; all knowledge comes into its own under determinate cultural and epistemic conditions. Such conditions are, for example, schemata of perception and experience, descriptive schemata and contexts of symbolic forms, and also instrumental means of knowledge and cultural forms of action and behavior. Truths are therefore only conditioned, contextual and indexical; every truth is provided with the index of the scheme on the basis of which it is pronounced. Knowledge is not independent from intentional propositional attitudes, from beliefs, opinions and wishes; the objectivity of propositions is bound up with the subjectivity of the propositional attitude. Since knowledges have the status of constructions and are contextual and perspectival, they are relative[28]; they cannot be protected a priori from skeptical attacks – their truth competes with the truths of others.

In this culture of knowledge reality does not exist as a finished world. Instead, phenomenal reality exists as the constant task of epistemic and practical design. But this culture of knowledge carries a risk within it: it lies in the relativisation of previously stable standards of knowledge and action.

The diversity of mutually exclusive conceptions and attitudes leads to the impression that much is possible in thought and action. *Relativism* is an everyday experience of individuals in their epistemic and practical relationship to the particular world they identify as their own. Relativism? The word doesn't sound nice. It means – and here I cite a formulation by Silja Freudenberger – „cognitive or moral values, opinions, criteria for judgments or scientific theories can raise no unconditioned claims to validity, but are always to be understood *relatively* (i.e. only by reference to a third party). This third party could include other individuals, communities of belief or cultures, the world-images or conceptual frameworks to which the former have access, but also empirical contexts."[29]

This is exactly the point at which epistemic pluralism meets practical consequences. The more self-evident epistemically grounded relativism is, the more fluid the borders of practical normatively are. If a belief is

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[28] This relativity is in fact the experience that individuals have with their *first*-person perspective; a universalized cultural relativism does not follow from this perspective, at least not necessarily. On a relativist epistemology cf. Lauener 2002.

[29] Freudenberger 1999.

justified as *my* belief, if the world is *my* world, if the truth is *my* truth, it is but a short step to the assumption that right is *my* right. Here at least, an intervention in the name or rationality, of which I spoke earlier, is necessary on practical grounds. To be sure, what objectivity and rationality we have, we have – in Hilary Putnam's words – as „objectivity and rationality humanly speaking".[30] The '*humanly speaking*'-principle provides nonetheless no reason for „moral relativism" or „moral skepticism": „belief in a pluralistic ideal is not the same thing as belief that every ideal of human flourishing is as good as every other."[31]

4.1 Pluralism, relativism, and law

If the diagnosis is correct that humans in their worlds are not free to decide the one truth of the one world, then moral knowledge of a pluralism of perspectives and cultures arises. Consciously or unconsciously, behavioural norms derive pluralistically from world-visions in which conceptions of the good, the just and goal-oriented action diverge. Under the condition that individual freedom is negated without the guarantee of freedom for all, pluralism necessarily leads to the question of a corresponding social order. Above all, this means questions of justice, right and the state.

   Two aspects are complementarily linked to one another: (a) the pluralism of freedoms and (b) a social order that regulates freedom. In this context, one can begin with at least four assumptions: (1) there incommensurable values with regard to the realization of a 'good life'; (2) the realization of one value may exclude the realization of others; (3) there are no universally acceptable authoritative standards for conflict resolution; (4) there must be rational ways of resolving conflicts, and these ways do exist.[32]

4.2 Relativism becomes relativized by the law

One way that can be seen as particularly rational is the law, with the crucial prerequisite that the law is correct, i.e. fair. Relativism becomes relativized by correct law. Epistemic relativism, being in principle only limited

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[30]   Putnam 1990, 55.

[31]   Ibid., 148.

[32]   Kekes 1994, 44.

by the assumption of the reality of the world out there, permits *de facto* that moral-political pluralism relativizes itself. This demonstrates not least the universal, transcultural need for basic rights and human rights, which are as a rule also taken up universally within societies. Fundamental claims to rights are, of course, interpreted relative to regional cultural standards; in their universality, however, they comprise an essential element of moral beliefs within pluralistic societies and between societies. In other words: The relations between individuals can be regulated such that disagreement is compatible with the equal claims of freedom and rights of all. Compatibility is here established not least through legal command and imputation, i.e. through norms and sanctions.

Pluralism and relativism are therefore not deficiencies that must be remedied, but the conditions under which a humane order of freedom must be made possible – and can be made possible.

In the pluralised cultures of thought and action, absolutes have vanished; individuals and groups see themselves equally justified to develop freely. The *one* universally binding and universally recognized ethics as the principle of moral action in society does not exist. No one possesses the *one* truth about the world, and there are no representatives informed somehow „by Being itself" of a single, overriding truth. It would therefore be wrong to expect the spontaneous development of a universal culture of right amenable to individual interests – the condition in which „constitutional determinations, laws and individual case decisions which are held to be correct" are automatically harmonized with „universal principles and objectives".[33] The relativism bound with freedom and pluralism[34] can not be absolute – it can only be relative: relativity of interests and achieving interests in relation to right. Because a harmony of all interests cannot be assumed, right requires a state, indeed not just any state, but one which submits itself to just law.

My fifth thesis:

Pluralism, like relativism, must be acculturated to an order of freedom through some other than ethical means. The most important means of relativising relativism is law, as far as it is enacted by a constitutional state. In the words of Gustav Radbruch, „relativism requires the constitutional state."[35]

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[33]   Mohr 1997, 136.

[34]   On pluralism, relativism and right cf. Sandkühler 2002a. On the question, whether there exists a reason for the „fear of relativism", cf. Wolf 2000.

[35]   Radbruch 1990, 19.

If there were an ontic guarantee of right behavior of humans and no differences and divergences, we wouldn't need norms and sanctions in order to actualize the equality of rights and freedoms; there would also be no need for tolerance and solidarity. Right, solidarity and tolerance have the same ground – the unintended inequality that should be overcome, and that freely intended inequality that should be protected. With regard to the unintended inequality, right has a coercive function; with regard to the willed inequality, it has an enabling function. In the interest of equality and justice, law and the state must therefore be bound to the respect for difference. How are we to understand this?

4.3 Pluralism, formal principles of law, and fundamental rights

My answer comprises the sixth thesis:

Fundamental rights are the expression of the successful mediation of the empirical and transcendental subjects of a culture, as well as the integration of individuality and universality. Right is universal because is serves the freedom of all individuals. It has its function as an open universalism. Closed universalisms – like those found in religions – tend towards coercion, open universalisms permit the freedom of alterity. Closed universalism is dictatorial and demands the exclusion of the heterogeneous, of the foreign.[36] Open universalism is republican and demands the inclusion of difference. As a consequence of pluralism und accepted difference modern democracy requires formal principles of justice, equality and the universality of law which are neutral with respect to all interpretations of the world.

Under conditions of actual pluralism it is neither within a culture nor interculturally sensible to want to derive basic rights from *one* principle (e.g. natural right), which alone can be claimed to be 'correct' and could generate a universal consensus. On the contrary, fundamental rights must be shaped and effective under conditions of dissent. The principles of human dignity, justice, equality and freedom, which *hypothetically* precede the state and which the state implemented nonetheless remain indispensable. To be sure, they are interpreted and implemented differently in different cultures, but they are not disputed in principle. Only under this limiting condition can the demand count as legitimate: „International human rights law must make states legally responsible for the implementa-

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36   Cf. Sandkühler/Mall (ed.) 1996; Därmann 2002.

tion of the value-ideals of its own civilization, but not those which are foreign to it.“[37]

What does what has been said so far yield regarding the question of rights which are culture-specific? I agree with Hong-Bin Lim's well-grounded view:

„The strategy of positing an alternative foundation for human rights, which intends to preserve the homogenous intactness of the local culture despite the West's massive penetration, appears doubtful to me. The reason for this lies not only in the options of globalised capitalism. The question arises, whether the realization of human rights requires an alternative foundation for those rights themselves which essentially hangs onto the cultural particularity of tradition. The guarantee of human rights is – like the principle of democracy – an imperative condition of every just state entity, that is to say, the respectable idea of a communitarian alternative is to be overcome in a broad justice-oriented theory of human rights and of the rational state. Possible differences in institutional implementation of human rights or their background beliefs could however not be made valid as grounds for the cultural-relativistic interpretation of human rights.“[38]

Cultural relativism and ethno-pluralism do not provide a ground for the solution of the problem resulting from the tension between the universality of human rights, the particularity of cultures and the individuality of people's goals in life. The decisive question for law and jurisprudence today is whether despite the lack of universally recognized norms of moral behavior (i.e. of a value-consensus), measures can be formulated which legitimize right, law and state power from a *basic norm* that cannot be relativistically undermined and is not at someone's disposal under conditions of pluralism. In the view of an epistemological pluralism, neither the idea of law – justice – nor the positive law can be ontologically understood as a 'given' objectivity through nature, reason or history. From this follows my seventh thesis:

The basic norm cannot be arrived at through a definite material value-ethical foundation – in such a case, it would not be prone to consensus – but through the framework of a formal legal conception. If pluralism, relativism and the right to dissent also dominate the answers to the investiga-

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37 Sinha 1995, 185, 214; cf. Abou 1984.

38 Lim 2001, 142. On the relativist criticisms of the universal nature of human rights, cf. Reuter 1999. On cultural relativism and human rights, cf. Hoffmann 1991, 1994, 1995.

tion of the correct law, it is pragmatic to ask which foundations of law and legitimations of the state allow chances for widest possible recognition.

The first of all fundamental rights is the right to the protection of human dignity.[39] All other fundamental rights are derived from this one. And from this first fundamental right, it follows that all fundamental rights – such as those in the German constitution, for example – are exempt from changes made by majority decisions. The principles of the social state and legal state follow from this tenet. The principle of the social state concretizes the first condition of the protection of human dignity, that is the security of individual and social life. The second condition for the protection of human dignity is the legal equality of persons; the third, the protection of human identity and integrity, the fourth condition is the limiting of state violence; the fifth is the respect for the bodily integrity of humans.[40]

Precisely these minimum standards of human existence are of a universal sort. Pluralism and relativism may not put them into question. If there is no ontological or natural-right based foundation whose universal acceptance can be expected, then only the pragmatic solution that I propose as my eighth thesis remains:

The legitimation of states and the tracing of laws to correct right are not possible without securing the basis for fundamental rights in human rights. The single conceivable material basis of the basic norm „constitution" and the positivised fundamental rights within it consists in the totality of positive human rights, as they are above all codified in the human rights accord of 1966, in the International accord on economic, social and cultural rights and in the International accord on civil and political rights.

5. Transculturality and pluralistic philosophy

The legal positivism, tamed by the *idea of law* – of justice – for which I plead here, is, in the face of pluralism, the answer to the question of how much universalism is possible and necessary. The answer is: On an *agreed* upon universal basis, particular and cultural-specific implementations are possible and necessary. This answer corresponds to the pluralist constitution of philosophy in a mature modernity.

The one culture does not exist. In practice, we can speak of cultures in the plural: religions, philosophies, and ethical and political models all

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[39]   Cf. Bayertz 1996.

[40]   AK-GG-Podlech 2. Aufl. Art. 1 Abs. 1 Rz. 12-55.

represent different understandings of how the world is supposed to me. Despite the project of the enlightenment and the bourgeois revolution, for a long time – too long – European modernity excluded others exactly where it spoke in the name of 'humanity', 'history', 'rationality', 'philosophy' and 'values'. Epistemic pluralism cleared the way towards a new insight: Cultures have differing and often conflicting answers to essential questions, and difference and conflict must then only defend their legitimacy when in the name of one culture, a particular claim is made whose validity comes at the expense of others.

We don't come from nowhere and we aren't on the road to nowhere. Philosophy takes this into account when it presents reality in its historical origin, present and possible future, or, to be more precise, makes this understanding vivid. Philosophy, as it is often said, is the science of the universal. As a rule, however, humans are interested in the individual and the particular. The ideas of universality and totality therefore lead to dead ends when 'the whole' swallows up the individual.

It is something different, though, to maintain the multiplicity of ways of life and thought in the abstractions of philosophy in such a manner that a *concrete* universal remains recognizable or capable of being recognized. This concrete universal is what binds all cultures with one another. What exactly binds them is not fixed; it must be negotiated. Human rights are an example of what is negotiated. They would not have come into being without epistemic pluralism, without oppositional cultures of knowledge, and without the pluralist idea of the freedom to think up and shape diverse world-versions.

I would like to close with the question of what all of this means for a philosophy that indends to intervene. Whoever studies or teaches philosophy today can know that Europe is a small province in a world of complex and dynamic cultures. The world of philosophy is transcultural; within it, there is no *one* correct philosophy. Philosophical thinking is now marked by the very pluralism of styles of thought, attitudes, valuations and behaviours which characterize modern society. Under these conditions, philosophy must work to contribute to a situation in which particular interests may be realized in freedom, *and* that those for whom particular interests are valid do not take on just a limited responsibility for their interests.

Philosophers will not refrain from the impulse of intervening with their own conceptions, reasons and arguments. Yet philosophies under the conditions of factual pluralism and with the perspective of a rationally corrected pluralism run a particular risk. This risk consists in succumbing to the temptation that one should, for the purposes of a simpler, clearer, more ordered life, not take account of truths in the plural but rather the

singularity of *one* truth. Thinking must experiment; truths are provisional, and this is not to be lamented. 'Philosophy' is not a cipher for consumable, ready-made knowledge about a ready-made world, but a way towards better argumentation, more lasting foundations, and to clearer thinking – in short: to rationality. So understood, it is a means for the fostering of the ability to judge and autonomy. This was the real the motive behind Otto Neurath's assertion that „nobody can use logical empiricism for to ground a totalitarian argument. […] Pluralism is the backbone of my thinking. Metaphysical stances often lead to totalitarianism".[41]

'The reality', of which metaphysicians speak, prescribes no determined path. Philosophies – in the plural – participate in the symbolic formation of phenomenal reality. As in all other cultures of knowledge, the 'reality' discussed in philosophy is always a particular reality, a reality with *indices*. These *indices* result from traditions, from selectively remembered history, from ideas of the future, from chosen epistemological profiles, from preferred interpretive horizons. Reality is not an 'actual source', not an original whose copy is to be produced in the languages of religions, arts, sciences and philosophies.

„*It is the speaker speaking, not a color or a thing..*" So we find it in Protagoras, that early protagonist of enlightenment.

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[41]   Neurath, in Kallen 1946, 533.

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