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THEORETICAL FRAMEWORK FOR UNDERSTANDING IDEOLOGICAL EXPLOITATION OF HUMAN RIGHTS: EXAMPLES OF FUNDAMENTAL DISSONANCES ON FOUR DIFFERENT LEVELS

Master's Thesis

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INTRODUCTION

In 1830, Auguste Comte celebrated the failure of theology, the failure of metaphysics, and a rising scientific trend toward positivity — truly, humankind's proclamation of omnipotence over morals, God, and nature.[1] One century later, the Earth became a battlefield for two World Wars, numerous violent conflicts, and a prolonged Cold War, the disrupting mistrust and tension of which continues to linger between the states to this day. The peacekeeper was supposed to be the international organization called the United Nations and the basis for peace was supposed to be its Universal Declaration of Human Rights. But an attentive person recognizes: something is not right.

"Have Human Rights Treaties Failed?" asked the New York Times in December 2014.[2] Without sounding too skeptical, I quickly thought of an answer: that human rights treaties are at least capable of failure, I have no doubt in.[3] If history has taught us anything, it is not the ratification of endless international treaties that ensures peace, but the actual behavior of states respecting and enforcing those treaties that makes peace possible. It is not the League of Nations or the United Nations having power to change the world through the safety net of international law, but it is the sovereignty, autonomy, and real power, which is held by states, that are making a difference in international relations.[4] One can proclaim its allegiance to the

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[1] A. Comte. Introduction to Positive Philosophy (1830). F. Ferré (ed). Indianapolis: Hackett Pub. Co., 1988, pp 3-4.

[2] Have Human Rights Treaties Failed? The Opinion Pages. Room for Debate. A debate between Kenneth Roth and Eric A. Posner. — The New York Times. 28 December 2014. Available online: http://www.nytimes.com/roomfordebate/2014/12/28/have-human-rights-treaties-failed (04.04.2015).

For Eric A. Posner's in-depth contribution to the skeptical works in the field of human rights law, see: E. A. Posner. The Twilight of Human Rights Law. Inalienable Rights Series. Oxford, UK; New York, NY: Oxford University Press, 2014.

[3] Consider the passage by Harold Joseph Laski: "An international Declaration of Human Rights must … take serious account of the fate of the Kellogg-Briand Pact which was introduced with an enthusiasm only surpassed by the contempt with which it was ignored by its signatories after the outbreak of the Italo-Abyssinian War. The danger is real that a Declaration, which is written in terms too far ahead of the probable practice of governments … will deepen the mood of cynicism and disillusion … . It is at least doubtful whether we can afford to risk the deepening of this mood." See: H. J. Laski. Toward a Universal Declaration of Human Rights. PHS/3 - IX - H. J. Laski. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 8-9.

Sociologist Jean Haesaert noted in a similar fashion: "[A]ll the declarations which have played a part in modern history, from the 1776 Declaration of Independence down to the Fourth French Republic's declaration of rights in 1946, have stumbled, mutatis mutandis, against similar difficulties. Their authors were unable, more particularly, to solve the technical problem before them … . The freedom of the press has become the perquisite of a few magnates who, whatever one may say, make and unmake opinion. … Other provisions … have remained a dead letter. Equality has been reduced to the narrow civic equality that we know so well. … Resistance to oppression is hunted down wherever it appears, but oppression itself is flourishing, thanks to the crises which pursue us, and it threatens rights the possessors of which have no means of defending themselves." See: J. Haesaert. Reflections on Some Declarations of the Rights of Man. PHS/3 - XI - J. Haesaert. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 1-2.

[4] To this effect, Aldous Huxley wrote, "Mere paper restrictions, designed to curb the abuse of a power already

values listed in the preamble of the Universal Declaration of Human Rights. Yet the sobering thought, of course, is that there have been too many dissonances between the particular actions and the proclaimed values.

In this work, I will draw on constructivism and legal realism to propose an original legal understanding of some dissonant events of the recent past that concerned ideological exploitation of human rights. Due to limitations of space, only the following events will be touched upon later in this work: I will remind the reader of the Norway attacks of 2011 and the dissonances surrounding the perpetrator Anders Behring Breivik; I will briefly describe the Ukrainian crisis (2013 — ongoing), focusing, in particular, on Ukrainian lustration policy; I will zoom in onto the Crimean crisis (2014 — ongoing) and the surrounding dissonance between the statements of the press and the political statements; finally, to show the dissonances surrounding the freedom of expression,[5] I will turn the reader's attention to the controversial March 2015 Southampton Conference on Israel's right to exist.

These few events bring into attention a whole array of problems, which necessitate a timely understanding and resolution if we wish to continue our existence as democratic societies based on the rule of law. The problem in the focus of the present inquiry can be summarized by what professor Eric A. Posner named "the vast ideological appeal of human rights," noting that human rights talk has "become the lingua franca for political action."[6] As a result of such ideology-driven activism, political action causes fundamental dissonances on different levels of human interaction. For the purposes of this work, I discerned four levels of human and state interaction: intra-personal,[7] intra-state, inter-state, and inter-personal. The range of questions for potential research is broad.

1. For example, at the intra-personal level, what should be the measurement of consistency of one's actions with the rule of law? What happens if a person exploits human rights and freedoms to the severe detriment of others — and is mere utilitarianistic approach to balance the harms adequate?

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concentrated in a few hands, are but the mitigations of an existing evil." See: A. Huxley. The Rights of Man and the Facts of the Human Situation. PHS/3 - XXII - A. Huxley. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 4.

[5] I could also have discussed the events of Paris on 7 January 2015 and the tragic Charlie Hebdo shooting that took place on that date, but in the interests of space and originality, I made a choice toward the more recent and less obvious event. For the discussion surrounding the Charlie Hebdo shooting of 2015, see, e.g.: G. Packer. The Blame for the Charlie Hebdo Murders. — The New Yorker. 7 January 2015. Available online: http://www.newyorker.com/news/news-desk/blame-for-charlie-hebdo-murders (04.04.2015); A. Lane. Shooting the Jesters. — The New Yorker. 8 January 2015. Available online: http://www.newyorker.com/culture/cultural-comment/shooting-jesters (04.04.2015).

[6] E. A. Posner. The Human-Rights Charade. — Chronicle of Higher Education, 2014/61(12).

[7] In this work, intra-personal interaction is taken to mean the mental processing activity of self-reflection. Cf: D. O. Brink. Prudence and Authenticity: Intrapersonal Conflicts of Value. — The Philosophical Review, 2003/112(2), pp 215-245.

2. At the intra-state level, are human rights also prone to ideological exploitation? In this work, I have used the following example to discuss the intra-state level: government's lustration policy and the ideological motivation behind that.
3. At the inter-state level, is violation of human rights in country A a sufficient justification for country B to intervene – if necessary, with violence – in the affairs of country A? Such was the critique by John Tasioulas who noted that the concept of human rights is "contested enough" but nevertheless is used as "*pro tanto* justifiability of international intervention against states that commit rights violations."[8]
4. Finally, at the inter-personal level, for example, what could be the limits of one's own actions? Should offense or disgust[9] be considered harm to others, and how would one weigh these against the freedoms of the source of action? In the interest of space, in the analysis at the inter-personal level, I will focus only on the phenomenon of free speech becoming offensive.

As far as the topic of ideological exploitation is concerned, above were listed only some of the questions which are yet without a satisfactory answer, at least within the Estonian academia. I will not analyze all related questions of ideological exploitation in detail, but I will map out the theoretical background and propose my own theory of four levels of fundamental dissonances to understand these types of ideological exploitations of human rights. Ultimately, I will have the following hypothesis to disprove.

The hypothesis that I will falsify is the cautious conjecture[10] that the concept of universal human rights is not prone to ideological exploitation. To falsify this hypothesis, it would be necessary to find at least one instance where the universal concept of human rights was exploited for the purposes of ideology. In this work, I will present four such instances from four different levels: intra-personal, intra-state, inter-state, and inter-personal; the latter two being especially important in the context of international law. By employing a method of qualitative inquiry,[11] describing the factual narrative from an analytical standpoint, I will reach the following conclusion: the universal concept of human rights is prone to ideological exploitation, and such ideological exploitation has taken place during many recent events that

[8] J. Tasioulas. Are Human Rights Essentially Triggers for Intervention? — Philosophy Compass, 2009/4(6), p 947.

[9] For instance, philosopher Martha C. Nussbaum may be consulted as one authority on the topic of law and disgust. See: M. C. Nussbaum. Hiding from Humanity: Disgust, Shame, and the Law. Princeton; Oxford: Princeton University Press, 2006.

[10] The phrase is borrowed from Alan F. Chalmers who argued that "contributions to the growth of scientific knowledge come about either when a bold conjecture is confirmed or when a cautious conjecture is falsified." See: A. F. Chalmers. What is this Thing Called Science? An Assessment of the Nature and Status of Science and Its Methods. (1976). St Lucia: University of Queensland Press, 1999, p 82.

[11] H. L. Goodall. Writing Qualitative Inquiry: Self, Stories, and Academic Life. Walnut Creek: Left Coast, 2008.

had a disruptive effect on the whole world.[12]

It is apparent to me that the subject of the present work could not have been more timely. In fact, as I started to work on the first drafts of my thesis, I began to notice more and more disturbing instances of ideological exploitation of human rights. Perhaps, these were the unfortunate geopolitical and intra-national tensions of the present time that caused such events, but perhaps it was merely my mind becoming more aware of the issue at hand. In any case, to eliminate a sense of uncertainty when observing complex political events and to eliminate the naiveté around universality of human rights, there is a timely need for a useful theoretical framework.

As far as the limits of jurisdictional scope of this work are concerned, I did not intend this thesis to be an interpretation of one particular legal system but rather a generalization at a theoretical level of some examples of the human rights discourse taken from different systems and jurisdictions. Naturally, I will draw some examples from Estonian law, particularly, concerning the Constitution of the Republic of Estonia. But mostly, I will be speaking of international law. There is an immense body of examples to choose from to discuss the legal framework of human rights; there is much to improve, and to critique. In short, there is much uncovered ground, which lies beyond the ambit of this work. In writing this thesis, I narrowed my focus; collected and listed only some of the most striking examples of seemingly unrelated factual circumstances, and used them in synergy to advance my argument; hopefully, in a way that has not been done previously at the place of my *alma mater*, the University of Tartu, Estonia.

My hope is that this work would be considered an original contribution to the international human rights law and to the legal philosophy works produced in the legal academia of Estonia. Unfortunately, in Estonia, there are not that many academic works in the field of human rights law.[13] Over the years, I have been left with a morbid perception that whilst human

[12] For the avoidance of doubt, I will not conclude that human rights system has been useless. To quote Radhika Coomaraswamy: "At one level, even in multilateral fora, the discourse of human rights is being challenged by powerful member states and some theorists from the developing world. At another level, human rights have begun to inform the lives of so many people, invoked by citizens and communities everywhere whenever they feel that freedom or justice is being denied." See: R. Coomaraswamy. The Contemporary Challenges to International Human Rights. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 127.

[13] In particular, there are no academic works in Estonia on ideological exploitation of human rights. The most closely related to the topic of this thesis is Varro Vooglaid's article, which was critically directed against the overly-naïve human rights rhetoric. Cf (in Estonian): V. Vooglaid. Hukutab või päästab? Inimõiguste retoorika ebaterve toime headuse idee väljendamisele. — Acta Societatis Martensis, 2005/1, pp 121-138.

In addition, there are some general local works on international law, on natural law, and on human rights in specific contexts. To pick the most relevant example, Daniel Kaasik's bachelor's thesis gave an overview of the effects of natural law in the modern international law, but has designated only two pages to the topic of human rights and concluded that human rights are intrinsically related to natural law. In contrast, in my master's thesis, I will argue against that conclusion, because universal human rights as envisaged by the Universal Declaration of

rights are important for lawyers in principle, many practitioners do not perceive legal writing or reading on the topic of human rights as worthwhile. Generally, three reasons are brought out not to spend time on writing or reading on human rights: (1) the far distance of the topic from real practice, (2) minimal usability of such knowledge, and (3) impracticality of such knowledge. There are, of course, notable exceptions, such as the works of Professor Lauri Mälksoo whom I hold in very high regard. Moreover, the negative attitude toward the human rights discourse in Estonia has been probably tendered a bit due to the nearby Ukrainian crisis (2013 — ongoing). Nonetheless, a negative attitude seems to prevail for the afore-mentioned reasons. Below, I will briefly describe these critiques, bearing in mind that my acknowledgment of such critique does not render the human rights discourse meaningless but rather makes it more important to address these issues.

First, (1) almost none of the Estonian practitioners rely on the human rights discourse in their everyday practice, unless, for example, they are human rights activists campaigning for the rights of the minorities.[14] The same, in fact, can be said about the majority of lawyers rarely encountering questions of international law or supranational law.[15] In the area of private law, for example, a legal specialist, be it an attorney-at-law, the notary public, or an in-house corporate counsel, has time within the hectic nature of legal work to only deal and analyze the client's situation at hand and to answer the client's specific questions, which probably concern not human rights but matters of everyday business and profitability.[16] Some lawyers

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Human Rights have little to do with natural law. See (in Estonian): D. Kaasik. Loomuõiguse mõjud kaasaegses rahvusvahelises õiguses: bakalaureusetöö. Juhendaja Lauri Mälksoo. Tallinn: Tartu Ülikool, 2009, pp 38-39.

[14] On this note, perhaps the human rights discourse in Estonia is scarce because human rights violations are generally associated only with gross violations such as genocide, disappearances, and torture. However, I agree with Richard L. Siegel who wrote, "It is not difficult to understand [that many issues are generally ignored in the sphere of international human rights law] given such concerns of international human rights activists as genocide, political prisoners, disappearances, and torture. These conjure up perceptions of wholesale murder and the depths of inhumanity to man, woman and child. I would not dream of denigrating the centrality of such "gross violations" of fundamental human rights, some of which led directly to significant advances in the international machinery designed to forestall their repetition and perpetuation. Yet the study of international human rights broadens one's thinking and raises consciousness about less obvious issues even as it deepens knowledge and commitment about known outrages." See: R. L. Siegel. Employment and Human Rights: The International Dimension. United States of America: University of Pennsylvania Press, 1994, pp 3-4.

[15] However, in Estonia, Hent Kalmo has suggested that the effect of European Union law has been noticed at least to some degree by all practicing lawyers. Cf: H. Kalmo. Euroopa Liidu õiguse ootamatud mõjud. — Juridica, 2015/II, pp 71-76.

See also, e.g.: Y. Ahmed. Why every aspiring lawyer should study international law. — The Guardian. 8 April 2015, 09:53 BST. Available online: http://www.theguardian.com/law/2015/apr/08/aspiring-lawyers-international-law (04.04.2015).

[16] For instance, the attorney's engagement letter, or the attorney's agreement with the client, usually specifies the scope of the billable work done for the client in great detail, understandably, for the client not to accuse the attorney of doing unnecessary expensive work, and rarely would a client wish for an analysis of something as ephemeral as the Universal Declaration of Human Rights. In fact, even the biggest law firms in the world do not list on their websites "human rights law" as an independent area of practice, but, at most, advertise "public international law" focusing on assistance with negotiation of trade treaties and on other commercial aspects of public international law.

like criminal law specialists, certain administrative workers, and police force personnel do have some connection to the area of protection of human rights, but they, too, do not have the time within their usual work to go too much in depth beyond what, for example, the Constitution or the Penal Code were intended to regulate. Moreover, since for a post-Soviet state the re-establishment of a working legal system is a priority, perhaps the disregard of such ephemeral notions as philosophy surrounding human rights is trumped by a general focus on legalism and positive law.[17] Thus, Estonian academics have little motivation to write on the topic, since for a young state like Estonia that is recovering from the stagnation of the Soviet idea of economy, there are, crudely speaking, more profitable topics to write or to read about.[18]

Second, (2) the usefulness of the present concept of human rights, as was defined by the Universal Declaration of Human Rights, is prone to heavy critique. The concept of human rights is too general and too abstract. The practitioners in Estonia in their everyday work do not even have to turn to the catalogue of human rights, because usually the most general legal act to turn to is the Constitution of the Republic of Estonia, which already contains a comprehensive list of fundamental rights, obligations, and freedoms, and the application of which requires deep knowledge of Estonian constitutional law. The comparison of the list of these domestic fundamental rights, obligations, and freedoms, to the general list of international human rights is not only unnecessary in practice, but also difficult, since there is no exhaustive and unambiguous list of international human rights. Certainly, the pretense to universal exhaustiveness and power may have been envisaged in international legal acts such as the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union, especially after the Treaty of Lisbon;[19] but the reality is that these international human rights instruments are "living creatures", the interpretation of which is open to change and thus to the influence of prevailing ideologies.

Third, (3) speaking of international legal acts, not only the concept of human rights

[17] See, e.g. (the critique of Estonian legalism by economist and politician Uno Mereste; in Estonian): U. Mereste. Legalismi ilminguist majanduspoliitikas ja õigusloomes. (1994). — U. Mereste. Õigusloome radadel. Õigusalaseid artikleid. Tallinn: Juura, 2001, pp 34-41.

[18] But cf, e.g. (many argue, that respect for and enforcement of human rights is a necessary pre-condition for sustainable development of the market economy, employment, and international trade): S. Leader. Human Rights and International Trade. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, pp 245-262; P. T. Muchlinski. International Finance and Investment and Human Rights. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, pp 263-284; L. A. Compa and S. F. Diamond (eds). Human Rights, Labor Rights, and International Trade. Philadelphia: University of Pennsylvania Press, 1996; L. Swepston. The International Labour Organization and International Human Rights System. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, pp 339-352; F. Garcia. The Global Market and Human Rights: Trading Away the Human Rights Principle. — Brooklyn Journal of International Law, 1999/25(1), pp 51-98.

[19] K. Nyman-Metcalf. The Future of Universality of Rights. — S. de Vries, U, Bernitz, S. Weatherill (eds). The Protection of Fundamental Rights in the EU After Lisbon. Oxford; Portland: Hart Publishing, 2013, p 21.

has been the object of criticism, but also the international legal acts *per se*. If critics name the international human rights convention a "toothless beast,"[20] it also undermines the credibility of the human rights system in general. For example, different international human rights conventions may not be in total harmony with each other and instead may have different scopes and important differences in content.[21] This also undermines the authority of organs applying these conventions as sources of international human rights law. For instance, some states are especially reluctant to observe the decisions of the European Court of Human Rights and instead may send heavy critique in the Court's address.[22] Despite the supposedly good intentions behind the human rights system, there are many decisions that the member states of the conventions are not happy with. In my view, thus, without a strong universal foundation, the human rights system is prone to collapse under its own weight.

Likewise, for the works in the field of philosophy of law, the threshold of originality, it seems to me, is presently also not that high in Estonia. The afore-mentioned reasons for critique of the human rights discourse — (1) the far distance of the topic from real practice, (2) minimal usability of such knowledge, and (3) impracticality of such knowledge — are, in fact, also addressable against the philosophy of law. Philosophy is considered the practice of

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[20] For example, Paul F. Diehl and Charlotte Ku argued in the following manner: "Support for normative change can largely be for symbolic reasons (e.g., the adoption of the Universal Declaration of Human Rights), but without substantive impact. Leading states might support human rights norms, for example, while also opposing individual standing before international bodies and other operating changes that would facilitate the observance of the norm." See: P. F. Diehl and C. Ku. The Dynamics of International Law. New York: Cambridge University Press, 2010, p 83.

[21] The Charter of Fundamental Rights of the European Union goes, for example, far beyond the scope of previous international human rights treaties. See, e.g.: K. Nyman-Metcalf. The Future of Universality of Rights. — S. de Vries, U. Bernitz, S. Weatherill (eds). The Protection of Fundamental Rights in the EU After Lisbon. Oxford; Portland: Hart Publishing, 2013, p 21.

But cf (even though in 1948 human rights were defined broadly, the juridification of human rights happened much later and elevated the ability to claim rights in courts, known as justiciability, to a constitutive element without which a right could not be considered as belonging to human rights): W. Osiatyński. The Historical Development of Human Rights. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 18.

A point that human rights regulation is only effective when the human rights are justiciable is daunting. Nonetheless, even if access to court is available, there may be a problem with enforcement of the court's decision. Such was the resistance within the Inter-American system of human rights. See, e.g.: C. Sandoval. The Inter-American System of Human Rights and Approach. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, pp 441-442; A. Huneeus. Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights. — Cornell International Law Journal, 2011/44(3), p 495.

[22] For a long time, the obvious example has been the United Kingdom. See: O. Bowcott. Conservatives pledge powers to ignore European court of human rights rulings. — The Guardian. 3 October 2014, 08:14 BST. Available online: http://www.theguardian.com/politics/2014/oct/03/conservatives-ignore-european-court-human-rights-rulings (04.04.2015).

See also, e.g. (the case of Russia; in Russian): А. Колесниченко, З. Титова. Страсбург - не указ. — Новые Известия, 11 March 2010. Available online: http://www.newizv.ru/society/2010-03-11/123088-strasburg-ne-ukaz.html (04.04.2015); Путин похвалил Конституционный суд: научился "корректно" игнорировать решения ЕСПЧ. — NewsRu.com, 13 December 2013, 13:52, updated on 17 December 2013, 09:12. Available online: http://www.newsru.com/russia/13dec2013/konstituz.html (04.04.2015).

logical reasoning that can also be done only in one's armchair. In a society that is applauding anything based on statistics and empiricism, such armchair science seems useless, perhaps as was also analogously the case with any intellectual activity in the Union of the Soviet Socialist Republics. Even though the Republic of Estonia is nowadays clearly turned West instead of East, certain effects of the mentality of the past sometimes prevail even in the academia. The practice of philosophy requires strict adherence to the methods of logical reasoning, and requires vast knowledge and deep understanding of previous thinkers.[23] Moreover, the credibility of philosophy is undermined in the present-time Estonia because of the misconception that philosophy has ceased to be a proper science and was replaced by "philosophizing" in the pejorative sense of the word. Often, the ideas of philosophers were much ahead of their time, just like, for example, Peter Abelard was considered to be a modern philosopher who time-traveled to the medieval times.[24] Sometimes, of course, it was the consequence of philosophers themselves that they were too difficult to understand, as was the case, for example, with Georg Wilhelm Friedrich Hegel.[25]

Ultimately, however, philosophy of law is the most fundamental of all legal sciences, because philosophical reflection is the safeguard against ignorance of unjust decisions which, at face value, may seem formally correct.[26]

Moreover, the philosophical focus on the underlying fundamental questions is the only approach to legal education that is truly timeless and practical in a sense that it is enabling the educators to teach a student of law the important skills of critical thinking. I cast no doubt that there is a certain time and place for the dogmatic approach. There is a certain value for the academic institution in being able to produce a student who is able to find his or her own way through the current legal system. Yet at the same time, such approach risks producing lawyers

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[23] To quote Bertrand Russell: "Philosophy is to be studied, not for the sake of any definite answers to its questions, since no definite answers can, as a rule, be known to be true, but rather for the sake of the questions themselves; because these questions enlarge our conception of what is possible, enrich our intellectual imagination and diminish the dogmatic assurance which closes the mind against speculation … ." See: B. Russell. The Problems of Philosophy. (1912). Indianapolis: Hackett Pub. Co., 1999, p 117.

[24] P. Adamson. History of Philosophy Without Any Gaps. Podcast number 209. It's the Thought that Counts: Abelard's Ethics. 31 January 2015. Available online: http://www.historyofphilosophy.net/abelard-ethics (04.04.2015).

[25] See, e.g.: G. A. Maggee. Hegel and the Hermetic Tradition. Ithaca: Cornell University Press, 2001, pp 1-2.

Bertrand Russell criticized Hegel in the following way: "Hegel's philosophy is so odd that one would not have expected him to be able to get sane men to accept it, but he did. He set it out with so much obscurity that people thought it must be profound. It can quite easily be expounded lucidly in words of one syllable, but then its absurdity becomes obvious." See: B. Russell. Philosophy and Politics. Cambridge: Cambridge University Press, 1947, p 16.

[26] See, e.g. (M. Luts-Sootak, at the present moment, is perhaps the most famous writer on legal philosophy in Estonia; in Estonian): M. Luts. Milleks juristile õigusfilosoofia ja juriidiline meetodiõpetus? — Juridica, 2001/IV, pp 211-213.

Ilmar Tammelo is another Estonian jurist whose works in defense of legal philosophy were published in Estonia. See: I. Tammelo. Võitlus õigusfilosoofia pärast. — L. Mälksoo (trans). Juridica, 2002/VIII, pp 511-513.

who are not critical enough of the current legal system, because the dogmatic approach overestimates the importance of positive legal texts and of recent court decisions, while disregarding anything historic as irrelevant, anything philosophical as impractical, and anything pertaining to sociology, psychology, or linguistics as pertaining to practically unrelated disciplines of science.[27] The reality is that, at the time of finalizing this thesis, the State Gazette of the Republic of Estonia, currently being published exclusively in an online format, hosted the texts of over 4000 legal acts currently in force, over 500 legal acts to be entered into force in near future, and over 6000 legal acts not in force any longer,[28] and this shows inevitably, first, the limitation of the dogmatic approach, and second, its feebleness as far as the amendments to legal texts are concerned.[29]

In contrast, the fundamental questions, which only a philosopher of law could be constantly aware of, do help to have a more all-encompassing view of the object of the scientific inquiry. Therefore, it is my hope, that with the passing of time we will see a disappearance of the popular negative perception that a legal philosopher is being an impractical *тунеядец* (a pejorative legal term in the criminal code of the 1961-1991 Soviet Russia that condemned persons unwilling to do physical work).

For me to be able to write this work as a culmination of my master's studies at the University of Tartu, I am very grateful to my friends, family, the helpful workers at the University of Tartu, and my supervisor. Not less importantly, I am grateful to all lecturers at the University of Tartu Faculty of Law and to all authors cited in this work — one can see much farther while standing on the shoulders of giants.

For the avoidance of any doubt, in writing this work, I was guided by the principle of objectivity and all viewpoints expressed here are my own. Particularly, I am grateful to Mr. Vooglaid,[30] whom I hold in very high regard as a talented lecturer, for trusting me with con-

[27] At the University of Tartu, there are many notable exceptions to my critique of courses focusing heavily on dogmatic approach. For instance, to name a few, docent of European Law Mr. Carri Ginter and associate professor of intellectual property law Mr. Aleksei Kelli have always explained, in my view, with talent the underlying fundamental issues of their areas of expertise.

[28] See (in Estonian): Riigi Teataja. Otsingutulemused. Available online: https://www.riigiteataja.ee/tervikteksti_tulemused.html?pealkiri=&tekst=&valjDoli1=&valjDoli2=&valjDoli3=&nrOtsing=tapne&aktiNr=&minAktiNr=&maxAktiNr=&kehtivusKuupaev=06.04.2015&_valislepingud=on&_valitsuseKorraldused=on&_riigikoguOtsused=on&kehtivuseAlgusKuupaev=&kehtivuseLoppKuupaev= (06.04.2015).

[29] After all, in the post-Soviet Estonia we perhaps all know at least one senior lawyer who expressed frustration with the inevitable and sometimes difficult need to adaptation and to learning of new concepts due to the adoption of hundreds of new legal acts which, fundamentally, differed from what the Estonian society has seen and expected under the Soviet rule.

[30] To my surprise, during the writing of this thesis, I have found the Estonian mass media to be severely attacking Mr. Varro Vooglaid, because Mr. Vooglaid was and currently is the main voice and the member of the management board at the Estonian non-governmental organization "*SA Perekonna ja Traditsiooni Kaitseks*" (in English: Foundation for Defense of Family and Tradition), that, among other things, publicly opposed the emotionally-laden and gender-neutral *Kooseluseadus* (in English: Cohabitation Act), which was introduced in

duct of all individual research and for academic freedom that I have been able to enjoy.

A short remark is due regarding the choice of language for this work. To choose English for this work was not an easy decision; in the University of Tartu, the default language to use is, of course, Estonian, and for the small state of Estonia, the preservation of Estonian language through the generations is one of the top priorities that are even put down in writing in the preamble of our Constitution.[31] However, without a doubt, the lingua franca of the legal academic world is at the present time the English language, for understandable reasons of global popularity and recent tradition. Consider the language dilemma as described in the visionary edition of the booklet published by the University of Tartu: "Do we or do we not want to participate in top scientific work — that is a clear dilemma"; contrasted to the fear that Estonian-speaking intellectuals will cease to respect the Estonian language.[32] Thankfully, I hold

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Riigikogu (the Estonian parliament) in April 2014. The aggressive media campaign made it seem as though the opposing voices were in the minority, but the reality was more complex, because, first, the representatives of the Estonian people in the parliament enacted the Cohabitation Act on 9 October 2014 only by a slight majority of 40 to 38 votes with 10 abstaining, and second, there were also circulating statistics that the majority of Estonian people did not support the Cohabitation Act. There was no unity of opinions amongst high-level lawyers as well. Consider Mrs. Liiri Oja's, who is currently a legal adviser at the *Riigikogu*, critique of *Õiguskantsler* (the Estonian Ombudsman), the post of which was at the time held by Mr. Indrek Teder. The latter found out that it is not contrary to the Constitution of the Estonian Republic that the same-sex couples do not have a right to marriage. Oja, however, argued that the Estonian heteronormative legal system marginalizes human rights of same-sex couples. See: Liiri Oja: seksuaalne orientatsioon heteronormatiivses inimõiguste süsteemis. 26. detsember 2013, 10:47. Available online: http://arvamus.postimees.ee/2640788/liiri-oja-seksuaalne-orientatsioon-heteronormatiivses-inimoiguste-susteemis (04.04.2015); Õiguskantsler. Õiguskantsleri 2011. aasta tegevuse ülevaade. Tallinn, 2012. Available online: http://oiguskantsler.ee/sites/default/files/ylevaade_2011__qr.pdf (04.04.2015), pp 14, 79; Registered Partnership Act. Passed 09.10.2014. Available online: https://www.riigiteataja.ee/en/eli/527112014001/consolide (04.04.2015).

Moreover and on a more general level, the situation of the legal rights of the same-sex couples to, for example, marriage is not, as of the writing of this work, a settled matter neither in the neighboring countries, in the European Union in general, nor even in the United States of America the civil rights movements of which can be seen as the birthplace for the global same-sex rights activists. Without affirming my supervisor's position on the matter, I do support one idea that I am willing to stand by firmly: respectful opposing voices should have the right to be expressed without being labeled as 'hate speech'.

Nonetheless, to avoid accusations of conflict of interests, I will not discuss within the scope of this work the emotionally-laden topics of the Estonian Cohabitation Act, the rights of the same-sex couples, or the debate around the right to abortion. Often heard remarks of people, including students and practitioners, after inquiring who my supervisor is, that I would necessarily write a biased opinion on the afore-mentioned topics were, in my view, premature and also worrying, as I took them to be indirect comments on the state of the Estonian higher education and on the perceived biased nature of master's theses, even at the largest and at the most renowned Faculty of Law in Estonia. These perceptions are, thus, to be always kept in mind and hopefully one day to be proved wrong.

[31] Perhaps the preservation of language is a struggle that is only understood living in states like Estonia, with long history of oppression and assimilation of language by other bigger states. To quote the preamble of the Constitution of the Republic of Estonia: "With unwavering faith and a steadfast will to strengthen and develop the state … which must guarantee the preservation of the Estonian people, the Estonian language and the Estonian culture through the ages, … adopted the following Constitution." See: The Constitution of the Republic of Estonia. RT 1992, 26, 349. English translation. Available online: https://www.riigiteataja.ee/en/eli/530102013003/consolide (04.04.2015).

[32] M. Himma, S. Ivask, V. Päärt, M. Zirnask (toim). Visioon 2032: Tartu Ülikooli konverents. Universitas Tartuensis eriväljaanne. Tartu: Tartu Ülikool, 2014, pp 42-44.

Cf (the prediction that by year 2032, the bachelor studies in Estonia will remain to be in Estonian, but the master's studies will be taught mostly in English): Ibid., p 25.

the Estonian language, literature, and culture in very high regard, I have written many course works in Estonian, and in the future I plan to write academic works in Estonian if the readership would be limited only to the borders of Estonia. For this work, however, I have chosen the more international approach.

Another short remark should be made regarding my choice of tone for this work. I am aware that in the academia there is a general conventional disapproval of writing in the first person. However, in my view, it is unrealistic to expect, that merely by writing of oneself in the third person or even avoiding the mention of the author, the subjectivity bias would be automatically quashed. Instead, for the sake of clarity, in this work I have consciously differentiated between writing in the first person versus writing in the third person. Whenever writing concerned my own interpretations and arguments, I stated so.[33] However, whenever I was describing the facts, the objective circumstances or logical inferences, I used the third person. In my view, it should be possible to preserve an academic style of writing without jeopardizing clarity and readability, because plain English is often better for the academic argumentation purposes.[34] This kind of condensed clarity is what I was striving for in writing this thesis. For this purpose of clearer academic writing, I have found to be indispensable Jean-Luc Lebrun's book "Scientific Writing"[35] and the Academic Phrasebank of the University of Manchester.[36]

To finish the introduction, I will explain the structure of the later sections. Since there is no set convention on how to structure one's master's thesis, I have used this opportunity to structure this work according to the functions of each section: methodological, theoretical, and factually-analytical. For my understanding of the importance of theoretical and methodological sections, I am forever grateful to the renowned Estonian scientist Mr. Ülo Vooglaid whose methodology of science course at the University of Tartu Faculty of Law in years 2009/2010 has remained very memorable to me. Likewise, American sociologist Robert King Merton has similarly defended the importance of methodological awareness: "Sociologists, in company with all others who essay scientific work, must be methodologically wise; they must be aware of the design of investigation, the nature of inference, the requirements of a theoretic

[33] For the support of using such 'I', see, e.g.: J. Fahnestock, M. Secor. A Rhetoric of Argument. New York: McGraw-Hill, 1990, pp 335-336.

[34] Consider the example of sociologist Charles Wright Mills, who boldly suggested — bearing in mind that Talcott Parsons' writing is already quite clear — that "one could translate the 555 pages of [Talcott Parsons'] *The Social System* into about 150 pages of straight-forward English"; and then proceeded to summarize Parsons' *The Social System* in four short paragraphs. See: C. W. Mills. The Sociological Imagination. With a new afterword by Amitai Etzioni. Oxford; New York: Oxford University Press, 2000, pp 31-33.

[35] J.-L. Lebrun. Scientific Writing: A Reader and Writer's Guide. Hackensack, N.J.: World Scientific, 2010.

[36] J. Morley. The University of Manchester. Academic Phrasebank. Online: http://www.phrasebank.manchester.ac.uk (04.04.2015).

system."[37] However, the same is true for the field of legal studies; for instance, the importance of justification of one's jurisprudential arguments has been convincingly underscored by the Finnish jurist Aulius Aarnio.[38]

Below, thus, Section 1 will describe the methodological background for this work. Section 2 will describe and discuss the applied theories and, in particular, used concepts, borrowings from other disciplines, and the legal paradigm. Section 3 will describe the analyzed factual framework that I have used to falsify the posed hypothesis at the four levels: intra-personal, intra-state, inter-state, and inter-personal. Since the latter two levels are in my view in terms of international law more important than the former two levels, I accorded the inter-state and inter-personal levels more attention. Finally, after the concluding section and according to the internal regulations at the University of Tartu, I provided an Estonian abstract for this work.

[37] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, pp 140-141.

[38] See, e.g. (in Estonian): A. Aarnio. Õiguse tõlgendamise teooria. Tallinn: Juura, 1996, pp 145-147.

1. METHODOLOGICAL PRINCIPLES FOR UNDERSTANDING IDEOLOGICAL EXPLOITATION OF HUMAN RIGHTS

1.1. Interdisciplinarity

First and foremost, I have approached the analysis in this work from an interdisciplinary viewpoint.[39] By 'interdisciplinarity' I mean my awareness of the possible interplay between different disciplines in the field of social studies. According to James B. Rule's account of Talcott Parsons' contribution to the social sciences, the aggregate amount of knowledge produced by the social sciences may be viewed as a system that is similar to the periodical system of chemical elements, with new elements being added as the new discoveries or understandings are made.[40] Perhaps, this kind of understanding allows us to refute Paul Feyerabend's anarchistic contention that science is best practiced with no adherence to a specific method;[41] when the approach is inspired by many different fields of science, the risk of having one's scientific field-of-vision too narrow is not increased, but, to the contrary, decreased.

Therefore, in the large sense, no inquiry in the field of social studies would be complete without borrowings from the historical, anthropological, sociological, and psychological realms. In the more narrow sense, the interdisciplinarity is also warranted between such closely related fields of studying law as sociology of law, psychology of law, history of law, philosophy of law.[42] Importantly, from the outset, I have adopted what sociologist Charles Wright Mills called the sociological imagination:

> The sociological imagination is becoming, I believe, the major common denominator of our cultural life and its signal feature. This quality of mind is found in the social and psychological sciences, but it goes far beyond these studies as we now know them. Its acquisition by individuals and by the cultural community at large is slow and often fumbling; many

[39] The call for more interdisciplinarity within the academia has also been made in the University of Tartu. See, e.g. (in Estonian): M. Himma, S. Ivask, V. Päärt, M. Zirnask (toim). Visioon 2032: Tartu Ülikooli konverents. Universitas Tartuensis eriväljaanne. Tartu: Tartu Ülikool, 2014, p 25.

[40] J. B. Rule. Theory and Progress in Social Science. Cambridge: Cambridge University Press, 1997, p 101.

See also, e.g.: A. F. Chalmers. What is this Thing Called Science? An Assessment of the Nature and Status of Science and Its Methods. (1976). St Lucia: University of Queensland Press, 1999, p 168; I. Lakatos, A. Musgrave (eds). Criticism and the Growth of Knowledge. Cambridge: Cambridge University Press, 1970.

[41] See, e.g. (in Russian): П. Фейерабенд. Против метода. Очерк анархистской теории познания. Перевод А. Никифорова. Москва: АСТ, 2007, p 42, *passim*.

Cf: A. F. Chalmers. What is this Thing Called Science? An Assessment of the Nature and Status of Science and Its Methods. (1976). St Lucia: University of Queensland Press, 1999, pp 149-160.

[42] In Estonia, the importance of such interdisciplinarity has been convincingly defended by Professor Raul Narits. See, e.g. (in Estonian): R. Narits. Õigusteaduse metodoloogia. Tallinn: Juura, 1997, pp 9-26.

> social scientists are themselves quite unaware of it. They do not seem to know that the use of this imagination is central to the best work that they might do … .[43]

Moreover, being concerned with such concepts as ideological exploitation and human rights, the present work has been inspired also by the realist constructivism research in the field of international relations and politics, the disregard of which in a legal work would be naive, since law does not exist in a vacuum separate from other areas of life. Particularly, from a realist constructivism perspective it is precisely the politics and the international relations that shape the content of law, mostly at the level of international law, but indirectly also at the domestic level.

Thus, from the outset of my work, I have adopted an awareness that law does not exist in a vacuum and that some ideas of great psychologists, sociologists and political scientists may be well borrowed to explain the ideological exploitation of human rights. That is the notion of interdisciplinarity that I have first and foremost been guided by in writing the present work.

1.2. Falsificationism

The purpose of the present inquiry was to disprove the hypothesis set out in the beginning: that the concept of universal human rights is not prone to ideological exploitation. Falsification is thus the second fundamental methodological approach used in this work.

Verificationism, according to Karl Popper, is an exercise in futility, because empirical facts collected to confirm the set hypothesis do not guarantee that the hypothesis would not ever be disproved.[44] There is some place for and value in verificationism, although the true criteria for a theory to be considered scientific are, according to Karl Popper, the theory's ability to be falsified or disproved.[45] Thus, empirical and factual data should be used mostly for the purpose of falsification of the set hypotheses and not to confirm them.

However, I have not used empirical data as a safe haven for scientism. In my view, empirical data is not an end but only the means of conducting scientific work. Sometimes,

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[43] C. W. Mills. The Sociological Imagination. With a new afterword by Amitai Etzioni. Oxford; New York: Oxford University Press, 2000, p 14.

[44] K. R. Popper. Objective Knowledge: An Evolutionary Approach. Oxford: The Clarendon Press, 1972, p 191.

Cf, e.g.: A. F. Chalmers. What is this Thing Called Science? An Assessment of the Nature and Status of Science and Its Methods. (1976). St Lucia: University of Queensland Press, 1999, pp 59-103.

[45] K. R. Popper. Conjectures and Refutations. The Growth of Scientific Knowledge. London: Rutledge, 1989, p 37.

For the importance of understanding the logic of scientific procedure, see, e.g.: P. O. Sijuwade. Recent Trends in the Philosophy of Science: Lessons for Sociology. — Journal of Social Sciences, 2007/14(1), pp 53-64.

quantitative analysis or abstract empiricism is valued more than qualitative analysis. However, quantitative analysis is not prone to subjective biases, especially for the inexperienced scholars. Sociologist Charles Wright Mills criticized the use of abstracted empiricism;[46] he blisteringly wrote of the often selfish and misguided goals of social empiricists:

> In the discourse of the more sophisticated, or in the presence of some smiling and exalted physicist, the self-image [of the social studies empiricist] is more likely to be shortened [from social scientist] to merely 'scientist'.[47]

Thus, in conducting my research for the present work instead of, for example, creating surveys, I only relied on the analysis of a handful of controversial factual events. I have conducted what may be characterized as *post factum* analysis, without any pretense to prediction of future events. Consider Charles Wright Mills criticizing this popular purpose of social studies, the prediction of human behavior, comparing such purpose to Karl Marx's idea, that the world was meant to be manipulated:

> Among the slogans used by a variety of schools of social science, none is so frequent as, 'The purpose of social science is the prediction and control of human behavior' … . They are, they suppose, out to do with society what they suppose physicists have done with nature. … The use of such phrases reveals a rationalistic and empty optimism which rests upon an ignorance of the several possible roles of reason in human affairs, the nature of power and its relations to knowledge, the meaning of moral action and the place of knowledge within it, the nature of history and the fact that men are not only creatures of history but on occasion creators within it and even of it.[48]

Thus, in conducting the present research, I have not set out "to manipulate the world," but rather to propose one out of many possibilities to understand the ideological exploitation of human rights.

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[46] C. W. Mills. The Sociological Imagination. With a new afterword by Amitai Etzioni. Oxford; New York: Oxford University Press, 2000, p 50.

[47] Ibid., p 56.

Cf: G. A. Lundberg. The Natural Science Trend in Sociology. — The American Journal of Sociology, 1955/61(3), pp 191-192.

[48] C. W. Mills. The Sociological Imagination. With a new afterword by Amitai Etzioni. Oxford; New York: Oxford University Press, 2000, pp 113-114.

2. THEORETICAL BACKGROUND FOR UNDERSTANDING IDEOLOGICAL EXPLOITATION OF HUMAN RIGHTS

From philosophy and logic we are accustomed with the following axiom: one cannot make an inference from nothing.[49] In other words, nothing can be born *ex nihilo*,[50] and such is also the reasoning behind my decision to describe in detail the theoretical background for this work, especially given the fact that I am proposing a theory of my own to understand fundamental dissonances within international human rights law. In other words, to quote Jeanne Fahnestock and Marie Secor: "You would not even bother to read an argument written by someone who betrayed fundamental ignorance on the subject."[51]

Below, thus, I will first shortly describe my understanding of important concepts[52] that concern the subject of my thesis: law, political manipulations, ideology, power, individualism, freedom and sovereignty, and human rights. Nevertheless, I did not set out to comprehensively define complex concepts, since such concepts as human rights or ideology do not have a direct antonym, and such terms do not have easily definable limits.

Second, I will explain the interdisciplinary links that I have made in this thesis by reference to Leon Festinger's theory of cognitive dissonances, and Robert King Merton's sociological strain theory. At first glance, psychology and sociology have little do to with international law, yet, in my view, the reasoning behind the theories of these scientists may be applied analogously to the understanding of the complex facts and dilemmas of the ideological exploitation of human rights.

Third, I will describe legal approaches used in the analysis of the factual background: legal realism, hierarchy of rights, and the view of human rights as principles. In a general sense, this is the scientific paradigm[53] in Thomas Kuhn's sense of the word that I approached the legal analysis of the ideological exploitation of human rights with.[54]

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[49] See, e.g. (in Russian): В. Соловьев. Философские начала цельного знания. Сочинения в 2-х т. Москва: Мысль, 1988, pp 179-181.

[50] See, e.g. (in Russian): Лукреций. О природе вещей. Перевод Ф. Петровского. Москва: Художественная литература, 1983, pp 31-34.

[51] J. Fahnestock, M. Secor. A Rhetoric of Argument. New York: McGraw-Hill, 1990, p 134.

[52] According to Javier Treviño, concepts are "ideas that represent some important features of the social world." See: A. Javier Treviño. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, p 1.

[53] Javier Treviño has defined a paradigm as "a theoretical perspective, school of thought, or intellectual tradition" that "serves as an orientation that reflects a particular set of ideas and assumptions regarding the nature of people and society." See: A. Javier Trevino. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, p 3.

See also generally, e.g.: J. Losee. Historical Introduction to the Philosophy of Science. 4th ed. Oxford: Oxford University Press, 2001.

[54] T. S. Kuhn. The Road Since Structure: Philosophical Essays, 1970-1993. J. Conant and J. Haugeland (eds). Chicago and London: The University of Chicago Press, 2000.

2.1. Elaboration on Main Concepts and on Their Weaknesses

As a preliminary remark, I should explain the reason of defining in the following subsections the major concepts related to this thesis. What sociologist Charles Wright Mills meant when he said that "[g]rand theory is drunk on syntax, blind to semantics,"[55] is that definitions should not be the end in themselves and that social scientists, including legal academics, should be aware of the level of abstractness they are operating on.[56] After all, many of the major concepts have complex factual backgrounds underlying them and have thus naturally ambiguous semantic limits. The limits set by the scientist may thus seem artificial and contrived and may lead, instead of problem resolution which was the original focus of the scientist's work, to further inquiry and argument over the object of definition. For this purpose, I have not set out as purpose of this thesis to propose a 'grand theory', but instead to propose one of many theoretical ways to understand the problem of ideological exploitation of human rights.

2.1.1. Law

In this subsection of my thesis, I will briefly mention only those definitions that I have consciously used for the understanding of the concept of law within this thesis;[57] the remaining definitions of law should be deemed as either the definitions that I have been yet unaware of or as the definitions that I have consciously carved-out from the scope of this work, for example, Austin T. Turk's conflict-coercion model of law[58] and the modern intellectual trend of Critical Legal Studies.[59]

See also, e.g.: A. F. Chalmers. What is this Thing Called Science? An Assessment of the Nature and Status of Science and Its Methods. (1976). St Lucia: University of Queensland Press, 1999, pp 104-129; A. Bird. Thomas Kuhn. Princeton: Princeton University Press, 2000.

[55] C. W. Mills. The Sociological Imagination. With a new afterword by Amitai Etzioni. Oxford; New York: Oxford University Press, 2000, p 34.

[56] Ibid.

[57] To quote F. S. Cohen: "A definition of law is *useful* or *useless*. It is not *true* or *false*, any more than a New Year's resolution or an insurance policy." See: F. S. Cohen. Transcendental Nonsense and the Functional Approach. — Columbia Law Review, 1935/35, pp 835.

[58] Turk's conflict theory has roots in Karl Marx's theory concerning class struggle and political economy and Georg Simmel's theories of group conflict. In my view, it is unhelpful for the purposes of my thesis to focus on the notions of dissensus, conflict, and coercion, and of law as being used as a malevolent weapon; after all, my ultimate goal is not to suggest an overhaul of the existing legal system or to promote social conflict, but instead to promote understanding and beneficial social change in attitudes and behaviors. On Turk's theory, see, e.g.: A. T. Turk. Law as a Weapon in Social Conflict. — Social Problems, 1976/23(3), pp 276-291.

[59] Critical Legal Studies draw from the methodology of pure critique, as exemplified by such critical theorists as Erich Fromm, Herbert Marcuse, Max Horkheimer, and Jürgen Habermas. In my view, critique should not be an end in itself. Negative critique often stifle, instead of fueling, the social discourse. For a general account of the Critical Legal Studies school, see, e.g.: A. Javier Treviño. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, pp 391-438.

In this work, when I am speaking of law, I am speaking of rules striving to govern human conduct. Sociologist Robert King Merton noted that "[n]o society lacks norms governing conduct."[60] These norms can also be the norms of morality.[61] American Justice Benjamin N. Cardozo gave law the following definition: "[A] principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged."[62] Anthropologist Bronislaw Malinowski defined the concept of law as "the specific result of the configuration of obligations, which makes it impossible for the native to shirk his responsibility without suffering for it in the future."[63] Sociologist Max Weber gave law the following definition: "An order will be called *law* if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a *staff* of people in order to bring about compliance or avenge violation."[64] Sociologist Talcott Parsons defined law "as a generalized mechanism of social control that operates diffusely in virtually all sectors of the society."[65]

Interestingly, Parsons made two points about law that, in my view, may explain why during ideological exploitation of law, the law does not function well. First, Parsons observed that law is not the only one element of social control, and, in addition, that law may be disregarded if the society at large is unstable:

> [I]t may become evident that the prominence of and the integrity of a legal system as mechanism of social control is partly a function of a certain type of social equilibrium. Law flourishes particularly in a society in which the most fundamental questions of social values are not currently at issue or under agitation. If there is sufficiently acute value conflict, law is likely to go by the board.[66]

Second, Parsons also observed, that law has the function of balancing pluralistic views and during a disregard of pluralism of opinions, the law likewise does not function well:

> Finally, it may perhaps be suggested that law has a special importance in a pluralistic liberal type of society. It has its strongest place in a society where there are many different kinds of interests that must be balanced

[60] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, p 188.

[61] See, e.g.: J. Finnis. Aquinas: Moral, Political, and Legal Theory. New York: Oxford University Press, 1998.

[62] B. N. Cardozo. The Growth of the Law. New Haven: Yale University Press, 1924, p 52.

[63] B. Malinowski. Crime and Custom in Savage Society. (1932). Totowa, NJ: Littlefield, Adams, 1982, p 28.

[64] M. Weber. Economy and Society. Volumes I-II. G. Roth and C. Wittich (eds). Berkeley: University of California Press, 1978, p 34.

[65] T. Parsons. The Law and Social Control (1962). — reproduced in: A. Javier Treviño. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, p 334.

[66] Ibid., p 338.

> against each other and that must in some way respect each other. As I have already noted, in the totalitarian type of society, which is in a great hurry to settle some fundamental general social conflict or policy, law tends to go by the board.[67]

Therefore, a fair understanding of law could be a synergy of the above-quoted definitions. Necessarily, however, the comprehensive definition of law should, in my view, include a reference to the possible failure of law, which so often becomes imminent within unstable and tense societal situations. To quote an elegant metaphor by Terry Eagleton, "[t]he law, so to speak, is stretched so tight across such a multitude of men and women that it dwindles to an extreme thinness."[68]

2.1.2. Political Manipulation, Ideology, and Power

Estonian international law specialist Rein Müllerson named the states' manipulative and sometimes hypocritical behavior "geopolitical games."[69] Moreover, even the largest international organizations such as the United Nations have been accused of hypocrisy — "failing to act with the ideals [the organization] espouses."[70] Müllerson suggested that democracy and human rights are important, but that there is no need to repeat these words as a mantra, the whole purpose of which is the accusation of other states.[71]

Accusative political manipulation, hypocritical, Orwellian doublespeak is no stranger to the present-day politics.[72] As Stephen Krasner put it: "Organized hypocrisy is the normal

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[67] Ibid., p 338.

[68] T. Eagleton. Trouble with Strangers. A Study of Ethics. Chichester; Malden, MA: Wiley-Blackwell Pub., 2009, p 103.

[69] R. Müllerson. Demokraatia - kas inimkonna tulevik? Tingimusliku ja kontekstuaalse lähenemise vajalikkusest demokraatia levitamisel. P. Kruus (tõlk). Tallinn: Tallinna Ülikooli Kirjastus, 2013, p 96.

But cf (not all states are realistically capable of large-scale manipulation or even autonomy): S. D. Krasner. Wars, Hotel Fires, and Plane Crashes. — Review of International Studies, 2000/26, p 132.

[70] M. Lipson. Peacekeeping: Organized Hypocrisy? — European Journal of International Relations, 2007/13(1), pp 5-34.

[71] R. Müllerson. Demokraatia - kas inimkonna tulevik? Tingimusliku ja kontekstuaalse lähenemise vajalikkusest demokraatia levitamisel. P. Kruus (tõlk). Tallinn: Tallinna Ülikooli Kirjastus, 2013, p 97.

Consider Wiktor Osiatyński's account of the hypocrisy during and after the Cold War: "[T]he Great Powers expressed criticism of the violations of rights by their enemies while turning a blind eye on the abuses by friendly regimes, as with Panama, Guatemala and other US allies, as well as a number of African regimes befriended by France. This was paralleled by Soviet criticism of neo-colonialism and racism, coupled with the USSR's simultaneous support for the Castro regime in Cuba and other oppressive regimes in Africa and Asia. Soon after the end of the Cold War, double standards reappeared with the introduction of the 'war on terror'." See: W. Osiatyński. The Historical Development of Human Rights. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 21; see also, e.g.: L. Hunt. Inventing Human Rights: a History. New York; London: Norton, 2008, p 202.

[72] Edward S. Herman and Noam Chomsky have even argued that control over the public mind is the essence of democracy; after all, open totalitarian violence is no longer an option. See: E. S. Herman and N. Chomsky. Manufacturing Consent: the Political Economy of the Mass Media. New York: Pantheon Books, 2002.

state of affairs."[73] For example, we heard the current President of the Russian Federation Vladimir Putin accusing Western mass media of using doublespeak and portraying "white as black and black as white" during the Crimean crisis[74]; while the question was, of course, whether Russia itself was using doublespeak in addressing the Crimean referendum of 2014. The mass media may name such rhetoric 'propaganda',[75] although, of course, not all propaganda is inherently negative. Talcott Parsons spoke of propaganda as "one kind of attempt to influence attitudes, and hence directly or indirectly the actions of people, by linguistic stimuli, by the written or spoken word."[76] The effect is nonetheless the same: the obscurity of the objective information. Thus, in this work, given the complexity of obtaining objective information from the current mass media,[77] I will refrain from conclusions that may be interpreted as accusations. From the outset, I have adopted neither an apologetic nor an accusatory stance.

Besides, taking sides would be naive, since even democratic regimes can fall prey to ideological exploitation of human rights.[78] David Runciman wrote, "[d]emocratic hypocrisy involves a kind of benign self-deception – its stability depends upon people growing comfortable with the mask that conceals some of the brute facts about power, and thereby moderating the ways that those facts play themselves out."[79] Particularly so, consider the tricky relationship between democracy and human rights, as noted by Scott Sheeran and Sir Nigel Rodley:

> Democracy, in its most basic sense, is not a guarantee of respect for human rights: there remains the potential tyranny of the majority. … Human rights have been successfully manipulated and the subject of *realpolitik*

[73] S. D. Krasner. Sovereignty: Organized Hypocrisy. Princeton, NJ: Princeton University Press, 1999, p 9.

[74] President Putin mentions a new "period of differing interpretations and deliberate silences in world politics" that we have entered with the help of "total control of the global mass media" that "made it possible when desired to portray white as black and black as white." See: Заседание Международного дискуссионного клуба «Валдай». 24 октября 2014 года, 19:00 Сочи. Available online in Russian: http://www.kremlin.ru/news/46860; and in English: http://eng.kremlin.ru/news/23137 (21.03.2015).

[75] I. Smolenova. Russia's Propaganda War. 25 March 2015, 11:59 a.m. — Forbes. Available online: http://www.forbes.com/sites/realspin/2015/03/25/russias-propaganda-war/ (29.04.2015).

[76] T. Parsons. Propaganda and Social Control (1942). — T. Parsons. Essays in Sociological Theory. Revised ed. New York: The Free Press, 1954, p 142.

[77] To understand the conflicting statements of the press, it is enough to observe the difficulties encountered by Wikipedia, the collaboratively edited Internet encyclopedia, where, depending on the chosen language version of the article on Crimean referendum of 2014, the reader will be faced with substantially different content and interpretations. This, in my view, reflects the broader confusing effect of global media on readers, wishing to receive objective information regarding the situation. See, e.g.: "Крымский кризис" в "Википедии": дьявол в деталях? 17 марта 2015. — BBC. Available online:
http://www.bbc.co.uk/russian/society/2015/03/150316_tr_wikipedia_crimea_annexation (22.03.2015).

[78] See, e.g.: M. A. Peeters. Hijacking Democracy. The Power Shift to the Unelected. *Sine loco*: M. A. Peeters, 2001.

[79] D. Runciman. Political Hypocrisy. The Mask of Power, from Hobbes to Orwell and Beyond. Princeton; Oxford: Princeton University Press, 2008, p 203.

by political elites and decision-makers.[80]

In this respect, Erik von Kuehnelt-Leddihn explained the effects of the democratic ideology[81] on justice: justice is what the majority likes to see.[82] Precisely, there was potential in the human rights system, but there were also flaws due to differences in what people liked to see. Tove H. Malloy wrote regarding the "twisting of the meaning of human rights":

> Unfortunately, the potential energy of this social power [formed by human rights] has dissipated into a regime of bureaucracy where human rights have been emptied as the reservoir of unlimited power. Thus, rather than fearing the power of human rights, governments have labored to twist the meaning of human rights.[83]

Such ideological exploitation is especially easy for those who have power.[84] To finish this subsection with a quote from Micheline Ishay, "[o]ppression and emancipation are closely intertwined, requiring scholars of human rights to understand how the nature and extent of power politics or corporate economic interests, hiding behind the veneer of civilization, shape different forms of struggles for human rights."[85]

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[80] S. Sheeran and Sir N. Rodley. The Broad Review of International Human Rights Law. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 5.

Slavoj Žižek has observed this characteristic of politics: "The lesson of politics is that you cannot distinguish between *means and ends (goals)*. We all know this was the big contradiction of Stalinism. They wanted communist freedom, but the way they went about it achieved the opposite." See: S. Žižek. Demanding the Impossible. Y. Park (ed). Cambridge; Malden (Mass.): Polity Press, 2013, p 13.

[81] In this thesis, I am using the word 'ideology' in the meaning of a set of beliefs that binds a particular group of people and determines the course of actions they take. See, e.g.: *sub verbo* ideology — S. Blackburn. The Oxford Dictionary of Philosophy, 2 rev. ed. Oxford: Oxford University Press, 2008; *sub verbo* ideology — I. Buchanan. A Dictionary of Critical Theory. Oxford: Oxford University Press, 2010.

Cf: T. A. van Dijk. Ideology: a Multidisciplinary Approach. London: Sage Publications, 1998.

[82] E. von Kuehnelt-Leddihn. Demokratie: eine Analyse. Graz: L. Stocker, 1996, § 135.

[83] T. H. Malloy. National Minority Rights in Europe. Oxford: Oxford University Press, 2005, p 308.

Consider Wiktor Osiatyński's explanation why the human rights treaties were at first shelved after adoption: "… [Western European states] were suddenly even further away from universal human rights than during World War II. European colonial powers sought to stop national liberation movements unleashed before 1948. France went to war to perpetuate its colonial rule in Indochina and Algeria; Great Britain used force to suppress the Mau Mau uprising in Kenya. Western representatives in the United Nations' Third Committee argued for a special clause that would exempt their colonies from the application of human rights covenants. Rene Cassin, one of the main drafters of the [Universal Declaration on Human Rights], now argued in favor of relativism, asserting that ''human rights might "endanger public order" among backward colonial populations, and "subject different people to uniform obligations." See: W. Osiatyński. The Historical Development of Human Rights. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 14.

[84] Professor J. Samuel Barking noted the importance of the concept of power from the realist constructivism standpoint: "Power is implicated not only in determining which social structures triumph over others, but in the construction of these structures in the first place." See: J. Samuel Barkin. Realist Constructivism and Realist-Constructivisms. — International Studies Review, 2004/6, p 351.

See also, e.g.: J. Sealer. The Construction of Social Reality. New York: Free Press, 1995.

[85] M. Ishay. The Evolving Study of Human Rights: Interdisciplinarity and New Directions. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 71.

2.1.3. Individualism, Freedom, and Sovereignty

Don Salvador De Madariaga explained the nature of an individual: "Man is a synthesis which might be described as individual-in-society; and an individual without a society is no more thinkable than a society without individuals."[86] According to Serge I. Hessen, liberal democracy is an "unstable tension" between three principles: equality, liberty, and solidarity.[87] In that regard, we should be reminded of Alexis de Tocqueville who predicted that the hypertrophy of the principle of equality, which is cherished with more fervor than the principle of liberty, would undermine the principle of liberty.[88]

For the purposes of the present work it is enough to be aware of the subjective and objective definitions of freedom. The subjective freedom was well explained by Isaiah Berlin in one of his essays on the concept of liberty:

> [A free person has a] wish above all to be conscious … as a thinking, willing, active being, bearing responsibility for … choices and able to explain them by reference to … own ideas and purposes. [The person feels] free to the degree that [this person believes] this to be true and enslaved to the degree that [this person is] made to realise that it is not [true].[89]

Antony Anghie noted the different dangers which developing countries face "… from a hostile international system that often reproduces neo-colonial structures, on the one hand, and on the other from authoritarian rulers who commit massive violence in the name of sovereignty and nationalism, even while often effectively acting on behalf of the foreign agents and instrumentalities they condemn." See: A. Anghie. International Human Rights Law and a Developing World Perspective. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 125.

For a critical appraisal of the human rights system as neoimperialism of the West, see, e.g.: M. Mutua. Human Rights: A Political & Cultural Critique. Philadelphia: University of Pennsylvania, 2002; M. Mutua. The Ideology of Human Rights. — Virginia Journal of International Law, 1995-1996/36, pp 592-593; M. Mutua. Savages, Victims and Saviors: The Metaphor of Human Rights. — Harvard International Law Journal, 2001/42(1), pp 204-206.

But cf (Dr Guglielmo Verdirame argued that to criticize the human rights system for its Western origin "is just an *ad hominem* fallacy on a civilizational scale which, curiously, is often advanced by individuals who are themselves part of the West"): G. Verdirame. Human Rights in Political and Legal Theory. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 26.

[86] S. de Madariaga. Material Security and Spiritual Liberty. PHS/3 - VII - S.de Madariaga. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 1.

See also, e.g.: R. P. Teilhard de Chardin. Some Reflections on the Rights of Man. 22 March 1947. PHS/3 - XII - R. P. Teilhard de Chardin. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 1-2; R. W. Gerard. The Rights of Man: A Biological Approach. PHS/3 - XXIII - R. W. Gerard. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 2.

[87] S. I. Hessen. The Rights of Man in Liberalism, Socialism and Communism. PHS/3 - XIII - S. I. Hessen. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 8-9.

[88] A. de Tocqueville. Why Democratic Nations Show a More Enduring Love of Equality than of Liberty. — On Democracy, Revolution, and Society. Selected Writings. J. Stone and S. Mennel (eds). Chicago; London: Chicago University Press, 1980, pp 351-353.

[89] I. Berlin. Two Concepts of Liberty. — I. Berlin. Four Essays on Liberty. Oxford: Oxford University Press,

The objective freedom may be understood through the Anglo-American tradition of freedom "to be left alone"[90] and, for example, through the works of John Stuart Mill and his famous harm principle: with some limited exceptions, society should allow the person to harm oneself as long as the person does not harm others.[91] Without a doubt, the harm principle does not say much about, for example, whether offending[92] or disgusting[93] should be also considered harmful.[94]

To complement the subjective and objective aspects of freedom, the government, then, can and should, to a certain degree, in the words of Rousseau, "force the freedom."[95] Christian Starck has referred to Karl von Rotteck who considered the multi-layered nature of freedom: the State must "respect and protect the freedom which its subjects enjoy in every sphere of activity simply by virtue of being human beings," even if the State "has itself refrained from infringing its subjects' rights of freedom, it must still protect its subjects against those who might threaten them in the course of their interaction."[96] One of the many problems, of course, lie in defining the precise borders of government intervention into the realm of personal autonomy, because the government has a certain autonomy of its own.

In comparison to freedom and liberty, the concepts of sovereignty and independence are similar to freedom and liberty in nature, but distinct insofar as the peculiarities of statehood are concerned. According to Stephen Krasner, the term sovereignty has been used,

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1969, p 131.

[90] See, e.g.: F. S. C. Northrop. Toward a Bill of Rights for the United Nations. PHS/3 - XVIII - F.S.C. Northrop. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 2.

For example, fundamental rights and freedoms may serve as a barrier to the regulative force of the state or a supranational body, as is the case with the European Union. See: O. Hamulak. Idolatry of Rights and Freedoms. Reflections on the Autopoietic Role of Fundamental Rights Within Constitutionalization of the European Union. — S. de Vries, U, Bernitz, S. Weatherill (eds). The Protection of Fundamental Rights in the EU After Lisbon. Oxford; Portland: Hart Publishing, 2013, p 187.

[91] See, e.g.: J. S. Mill. On Liberty. (1859). Edited with an introduction by Gertrude Himmelfarb. Harmondsworth: Penguin Books, 1985.

[92] On the notion of offense and censorship, see, e.g.: J. M. Coetzee. Giving Offense. Essays on Censorship. Chicago; London: University of Chicago Press, 1996.

[93] On the notion of disgust, shame, and the law, see: M. C. Nussbaum. Hiding from Humanity: Disgust, Shame, and the Law. Princeton; Oxford: Princeton University Press, 2006.

[94] On the complex concept of harm in international relations, see: A. Linklater. The Problem of Harm in World Politics: Theoretical Investigations. Cambridge; New York: Cambridge University Press, 2011.

[95] J. J. Rousseau. The Social Contract. (1762). Harmondsworth: Penguin Books, 1968.

[96] C. Starck. Human Rights and Private Law in German Constitutional Development and in the Jurisdiction of the Federal Constitutional Court. — D. Friedmann, D. Barak-Erez (eds). Human Rights in Private Law. Oxford: Hart Publishing, 2001, p 100.

But cf (Roger Brownsword used an example of the peculiar practice in local pubs of the France's Morsang-sur-Orge and Aix-en-Provence: dwarf-throwing; which had been banned on the grounds of protecting human dignity and *ordre public* but the ban of which did nevertheless receive criticism even from the dwarves themselves on the grounds of loss of income and constraint of their freedom of activity): R. Brownsword. Freedom of Contract, Human Rights and Human Dignity. — D. Friedmann, D. Barak-Erez (eds). Human Rights in Private Law. Oxford: Hart Publishing, 2001, p 192-193.

somewhat chaotically,[97] with at least four different variations: domestic sovereignty, interdependence sovereignty, international legal sovereignty, and, referring to "the exclusion of external actors from domestic authority configurations," Westphalian sovereignty.[98] Just like a free person is a sovereign over oneself, the modern state is sovereign constitutionally and as an actor in the international arena.[99] The degree of sovereignty's absoluteness and divisibility has been noted as a controversial issue just like the definition of sovereignty itself:

> But many jurists deny the divisibility of sovereignty, and maintain that a State is either sovereign or not. They deny that sovereignty is a characteristic of every State, and of the membership of the Family of Nations. … [T]here exists perhaps no conception, the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon.[100]

Nevertheless, on a very abstract level, freedom, liberty, sovereignty, and independence are similar: they all necessitate unobstructed leeway of action or inaction and autonomy, unless, of course, given away in part or in whole. However, it is also freedom, liberty, sovereignty, and independence that objectively allow their possessors to harm others.

2.1.4. Human Rights

Human rights as known from the Universal Declaration of Human Rights are not an unprecedented challenge to state sovereignty. Stephen D. Krasner noted that before the introduction of universal human rights instruments, states were already compelled by certain international rules and "natural rights"[101] to treat the states' subjects in a certain way: from religious toleration to minority rights.[102] It is helpful to understand the dynamics of human rights

[97] For understanding of this "notoriously elusive concept" see, e.g.: H. Suganami. Understanding sovereignty through Kelsen/Schmitt. — Review of International Studies, 2007/33(3), pp 511-530; S. de Madariaga. Material Security and Spiritual Liberty. PHS/3 - VII - S.de Madariaga. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 7.

[98] S. D. Krasner. Sovereignty: Organized Hypocrisy. Princeton, NJ: Princeton University Press, 1999, p 9.

[99] On the differences between sovereignty and independence, see, e.g.: S. Talmon. Recognition of Governments in International Law. Oxford Monographs in International Law Series. Oxford: Oxford University Press, 1998, p 50.

[100] L. Oppenheim, R. Roxburgh. International Law: A Treatise. Volume 1. Clark, NJ: Lawbook Exchange, 2005, p 129.

[101] See, e.g.: H. J. Steiner, P. Alston, R. Goodman. International Human Rights in Context: Law, Politics, Morals. 3rd ed. Oxford: Oxford University Press, 2008, p 476.

[102] S. D. Krasner. Sovereignty. — Foreign Policy, 2001/122, p 22.

within the framework suggested by Karel Vašák and called three generations of human rights[103]; the first generation being "blue rights" dealing with liberty and participation in political life as promoted by the United States Bill of Rights of 1789[104] and the French Declaration of the Rights of Man and of the Citizen of 1789;[105] the second being "red" economic, social and cultural rights relating to equality as promoted by the Universal Declaration of Human Rights of 1948;[106] and the third being "green" rights relating to matters beyond the mere civil and social sphere of human life such as environment and economic development.

Once human rights reached their second generation and were for the first time proclaimed universally, the topic of human rights has become apparently riddled with unresolved issues: the basis, the content, and the universality of universal human rights are all in question.[107] Conor Gearty has described this paradox concerning human rights as follows:

> [T]he idea of human rights has been reaching dizzying heights in the worlds of politics and law whilst its philosophical base has been increasingly called into question, challenged as to its very existence in ways that would have been unthinkable in previous epochs.[108]

"How can human rights be universal if they are not universally recognized?" asked in 2008 historian Lynn Hunt.[109] According to the Universal Declaration of Human Rights, humans are ascribed human rights because all humans are worthy of respect due to their human

[103] K. Vašák. Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights. — UNESCO Courier 1977/11, p 29.

[104] The U.S. Bill of Rights. Ratified on 15 December 1791. Available online: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html (04.04.2015).

[105] Declaration of Human and Civic Rights of 26 August 1789. Available online: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst2.pdf (04.04.2015).

Historian Lynn Hunt noted that "rights of man" had become a common term in French by June 1763 and back then was directly associated with Jean-Jacques Rousseau's *Social Contract* of 1762. See: L. Hunt. Inventing Human Rights: a History. New York; London: Norton, 2008, p 24.

[106] See also, e.g.: E. H. Carr. The Rights of Man. PHS/3 - III - E. H. Carr. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

[107] Quincy Wright suggested rightly that to formulate common values one should first resolve the potential conflicts between different values, groups and cultures. See: Q. Wright. Relationship between Different Categories of Human Rights. PHS/3 - XIV - Quincy Wright. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 1.

[108] C. Gearty. Can Human Rights Survive. The Hamlyn Lectures 2005. Cambridge: Cambridge University Press, 2006, p 8.

[109] L. Hunt. Inventing Human Rights: a History. New York; London: Norton, 2008, p 20.

Michael Freeman noted: "There is no universally agreed philosophical foundation of human rights, and therefore there is no universally agreed method for settling disagreements about the interpretation and implementation of human rights. … Where disagreement remains, simple appeals to universalism or relativism are likely to be neither convincing nor effective." See: M. Freeman. Universalism of Human Rights and Cultural Relativism. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 61.

dignity.[110] The human dignity claim is made as though this belief transcends all theories of human nature in the same way.[111] John Lewis referred to Abraham Lincoln saying "in fundamental things severe difference may destroy the community. A house divided against itself cannot stand."[112] Unfortunately, one can find too many examples of such divides in the house of the universal human rights doctrine.

First, Joseph Raz stated that "respecting human dignity entails treating humans as persons capable of planning and plotting their future. Thus respecting people's dignity includes respecting their autonomy, their right to control their future[113] … ." Yet the human rights instruments were drafted with a top-down approach in mind and, according to UNESCO, "a programme of actions to be carried out."[114]

Second, while drafting the Universal Declaration of Human Rights, the United Nations

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[110] Article 2 of the UNESCO Universal Declaration on the Human Genome and Human Rights digs even further into the concept of human dignity. Hector Gros Espiell, the then Chairman of the Legal Commission of UNESCO's International Bioethics Committee, commented: "… In taking the dignity of the human person as its reference, the [UNESCO Universal Declaration on the Human Genome and Human Rights] seeks above all to condemn any attempt to draw political or social inferences from a purported distinction between "good" genes and "bad" genes." See: H. G. Espiell. Birth of the Universal Declaration on the Human Genome and Human Rights. Paris: UNESCO, 1999, p 3.

Consider a quote from Immanuel Kant: "Every human being has a legitimate claim to respect from his fellow human beings and is *in turn* bound to respect every other. Humanity itself is a dignity; for a human being cannot be used merely as a means by any human being… but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all *things*. But just as he cannot give himself away for any price (this would conflict with his duty of self-esteem), so neither can he act contrary to the equally necessary self-esteem of others, as human beings, that is he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other human being. Hence there rests on him a duty regarding the respect that must be shown to every other human being." See: I. Kant. The Metaphysics of Morals. (1797). M. Gregor (trans; ed). Cambridge: Cambridge University Press, 1996, p 209.

[111] But cf: L. Stevenson, D. L. Haberman, P. M. Wright. Twelve Theories of Human Nature. Oxford: Oxford University Press, 2012.

Cf, e.g. (Pope John Paul II criticizing neoliberalism of violating the very same human rights neoliberalism strives to promote): J. Paul II, Pope. Evangelium vitae: present-day threats to human life. Christian message concerning life. God's holy law. For a new culture of human life. — J. Paul, Pope, J. M. Miller. The Encyclicals of John Paul II. Huntington, Ind.: Our Sunday Visitor, 1996.

Cf also (Kirill, Patriarch of Moscow and All Russia, making an argument that there is no freedom, no unlimited reservoir of human dignity to exploit, without moral responsibility): Kirill, Patriarch of Moscow and All Russia. Freedom and Responsibility: A Search for Harmony, Human Rights and Personal Dignity. Foreword by Richard Chartres, Bishop of London. London: Darton, Longman and Todd, 2011; E. Weingärtner, M. Weingärtner. Human Rights is More than Human Rights: a Primer for Churches on Security and Cooperation in Europe. Rome: IDOC International, 1977; R. Traer. Faith in Human Rights: Support in Religious Traditions for a Global Struggle. Washington, D.C.: Georgetown University Press, 1991.

[112] J. Lewis. On Human Rights. PHS/3 - VIII - J. Lewis. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 15.

[113] J. Raz. The Authority of Law. Oxford: Oxford University Press, 1979, p 221.

[114] UNESCO. The Grounds of an International Declaration of Human Rights. PHS/3 - Appendix II. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

But cf (Edward Hallett Carr criticized the hasty declaration that was pushed to be adopted without a preceding factual inquiry as a declaration that "would seem to be beating the air"): E.H. Carr. The Rights of Man. PHS/3 - III - E. H. Carr. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

UNESCO Committee on the Philosophic Principles of the Rights of Man has surveyed the leading thinkers of the time, including Mahatma Gandhi, Aldous Huxley, and others, to answer, in essence, a simple question: what is the common ground for human rights?[115] Yet the received answers were so divergent that UNESCO was left to resort to a interpretative declaration that "the members of the United Nations share common convictions on which human rights depend" and that the divergent answers also share the same common conviction but simply were "stated in terms of different philosophic principles and on the background of divergent political and economic systems."[116] Perhaps the most damning was Mahatma Gandhi's three-paragraph-short comment ending with the following:

> I learned from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.[117]

Consider the response of Karel Vašák, who was then the Director of UNESCO's Division of Human Rights and Peace, that philosophical and legal quarrel around the nature of human rights is not as important as the message that the Universal Declaration of Human

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[115] The questionnaire was more detailed than this one question, outlined the philosophical concerns, and requested comments regarding the list of the proposed universal rights. See: UNESCO. Memorandum and Questionnaire Circulated by UNESCO on the Theoretical Bases of the Rights of Man. PHS/3 - Appendix I. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

[116] UNESCO. The Grounds of an International Declaration of Human Rights. PHS/3 - Appendix II. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

[117] M. K. Gandhi. A Letter Addressed to the Director-General of UNESCO. 25 May 1947. — PHS/3 - II - M. Gandhi. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

For a commentary on reasons behind Gandhi's response, see, e.g.: C. N. J. Roberts. The Contentious History of the International Bill of Human Rights. Cambridge Studies in Law and Society. New York: Cambridge University Press, 2015, p 141.

English historian Edward Hallett Carr reached the same conclusion: "A declaration of rights which placed on society the obligation to furnish certain material goods and services to the individual citizen without placing on the individual the obligation to produce his required share of those goods and services would be a hollow sham." See: E.H. Carr. The Rights of Man. PHS/3 - III - E. H. Carr. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

For an argument in similar vein, see, e.g.: C.-S. Lo. Human Rights in the Chinese Tradition. 1 June 1947. PHS/3 - XIX - Chung-Shu Lo. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 2-3; S. V. Puntambekar. Human Freedoms and Hindu Thinking. PHS/3 - XXI - S.V. Puntambekar. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 4.

But for a contrary argument, that the bill of duties would be exploited by the totalitarian government, cf, e.g.: K. Riezler. Reflections on Human Rights. PHS/3 - XVI - K. Riezler. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 1-4.

Rights strives to convey:

> Some specialists today consider that the Universal Declaration [of Human Rights] is binding on Member States; others feel it has become part of customary law; still others see it as a kind of "common law" …. In all probability, none of these views is entirely correct. But by recognizing the Universal Declaration as a *living* document and leaving the jurists to argue among themselves, one can proclaim one's faith in the future of mankind.[118]

Although the desired future of mankind, according to the preamble of the Universal Declaration of Human Rights, is obviously consisting of such important and emotional[119] notions as "freedom, justice and peace in the world," one cannot argue that we should ignore the meek philosophical foundation of the document bearing such important slogans and rely only on "social consciousness"[120] that humans would not exploit human rights to their self-interest. To quote Ludwig Wittgenstein, "[a]t the core of all well-founded belief, lies belief that is unfounded."[121] The universality of human rights and its pretense to having a natural law character are only some examples of such unfounded beliefs.

Regarding the universality of human rights and their supposedly natural law character, there could be made many examples, where the claim of universality would be put convincingly into question. For instance, in 1990, the Organization of the Islamic Conference promulgated the Cairo Declaration on Human Rights in Islam, the article 22 of which stated that "[e]veryone shall have the right to express his opinion freely" but also added that only "in such manner as would not be contrary to the principles of the Shari'ah."[122] The referred article

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[118] K. Vašák. Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights. — UNESCO Courier 1977/11, p 29.

[119] There is no doubt that the United Nations has narrated the emotional need for universal declaration of human rights "through a depiction of [their] initial absence, [their] ultimate conquest, and [their] continued prevalence." For a sense of "a mass media program designed to propagate the Universal Declaration of Human Rights," see, e.g.: Visualizing Universalism. The Unesco Human Rights Exhibition, 1949-1953. Available online: http://static1.squarespace.com/static/521fa71ae4b01a7978566e1e/t/53a33cc1e4b0f162d6886609/1403206849021/Universalism_pamphlet.pdf (04.04.2015).

[120] For example, Arnold J. Lien suggested funneling the self-interest of many into common interest of all: "Self-interest is the force of gravity which draws individuals together. That is the force on which the new order must be built. … Their self-interest will find itself on ever higher levels until it ultimately coincides with the common interest of all." See: A. J. Lien. A Fragment of Thoughts Concerning the Nature and the Fulfillment of Human Rights. PHS/3 - IV - A.J. Lien. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015).

See also: J. Maritain. Introduction. PHS/3 (rev.). Paris, 25 July 1948. – UNESCO. Human Rights. Comments and Interpretations. Available online: http://unesdoc.unesco.org/images/0015/001550/155042eb.pdf (04.04.2015).

[121] L. Wittgenstein. On Certainty. New York: J. & J. Harper Editions, 1969, paragraph 253.

[122] Cairo Declaration on Human Rights in Islam. 5 August 1990. United Nations General Assembly Official Records. World Conference on Human Rights, 4th Session, Agenda Item 5. United Nations Document

should be understood, for example, in conjunction with the crime of blasphemy in Islam; an impious utterance or action concerning anything sacred in Islam may even be punished by death.[123] As Jason Kuznicki blisteringly noted: "[R]eaders should realize that not everything appearing under the name "human rights" has been accurately labeled."[124]

Do human rights as envisaged by the Universal Declaration of Human Rights form a part of natural law? Hardly so. Consider the following passage by an Italian philosopher, "icon of liberal anti-fascism", Benedetto Croce:

> [The UNESCO report and questionnaire itself] says that [human rights] vary historically; thereby abandoning the logical basis of those rights regarded as universal rights of man, and reducing them to, at most, the rights of man in history. … Thus, they are not eternal claims but simply historical facts, manifestations of the needs of such and such an age and an attempt to satisfy those needs.[125]

However, human rights are indeed rooted in political and legal theory. Today's human rights policymaking and legislation resembles William Talbott's modern utilitarian theory of human rights according to which human rights are justified by the good consequences universal rights yield; the system being thus "self-improving and self-regulating."[126] Dr Guglielmo Verdirame noted also the foundationalist argument that is used to ground human rights in basic human needs and thus grounding human rights in a scientifically based theory of human rights.[127] Naturally, there were also theistic attempts to explain human rights.[128] However, I

A/CONF.157/PC/62/Add.18 (1993) [English translation]. Available online: http://www1.umn.edu/humanrts/instree/cairodeclaration.html (04.04.2015).

[123] A. Saeed, H. Saeed. Freedom of Religion, Apostasy and Islam. Burlington VT: Ashgate Publishing Company, 2004, pp 38-39.

Professor Christopher J. van der Krogt has suggested that Islam should be understood as a "communal" religion and as a "socio-political" order, where individual religious doubts are not punishable, but "*expressed"* doubts are. See: C. J. van der Krogt. Why is Freedom of Speech a Problem for So Many Muslims? — E. Kolig (ed). Freedom of Speech and Islam. The United Kingdom: Ashgate Publishing, 2014, p 41.

That is not to say that Islam and human rights are irreconcilable, but perhaps the conception of human rights is "too western." See, e.g.: H. Kabir. The Rights of Man and the Islamic Tradition. 1 May 1947. PHS/3 - XX - H. Kabir. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 2.

[124] J. Kuznicki. Attack of the Utility Monsters: the New Threats to Free Speech. — Policy Analysis, 2009/652. Available online: http://www.cato.org/sites/cato.org/files/pubs/pdf/pa652.pdf (04.04.2015), p 11.

[125] B. Croce. The Future of Liberalism. 15 April 1947. PHS/3 - X - B. Croce. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 1.

[126] W. Talbott. Which Rights Should Be Universal? Oxford: Oxford University Press, 2005, p 37.

[127] G. Verdirame. Human Rights in Political and Legal Theory. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 37.

See also: P. Streeten. Human Rights and Basic Needs: Theory and Practice. — World Development, 1980/8, p 107.

The currently most famous theory of physical and psychological needs of human beings is, of course, a work by

agree with Verdirame's remark:

> The … problem with theistic justifications is that they only succeed insofar as we share [the common] belief, whereas it is clearly the case that we do not. Even if we look at the history of humanity as a whole, we obviously never really did. Outside religion, there is no comprehensive theory that tells us what we *must* believe.[129]

This is also the problem with the concept of universal human rights: it tells us what we must believe. However, the theistic approach would have had at least a theological belief as the basis for the approach. The concept of universal human rights has no common basis, and this allows the meaning of universal human rights to be so easily twisted according to different ideologies.

2.2. Interdisciplinary Links

2.2.1. Leon Festinger's Theory of Cognitive Dissonances

In this work I draw upon Leon Festinger's theory of cognitive dissonance, which explained from the psychological perspective how humans strive for internal mental consistency and for eradication of contradictions,[130] whether they do it to protect public self-image[131] or for other reasons. Truly, it may seem that contradictions are a part of human life, yet contradictions cause noticeable mental discomfort to those who try to hold at the same time two or more contradictory beliefs or who acquire new conflicting information about existing beliefs.[132] Elliot Aronson explained the role of dissonance theory in the field of social psychology as being a theory about "sense-making":

> Dissonance theory is more than simply a theory about consistency. It is essentially a theory about sense-making: how people try to make sense

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Abraham Maslow. See: A. H. Maslow. A Theory of Human Motivation. — Psychological Review, 1943/50, p 370.

[128] N. Wolterstorff. Understanding Liberal Democracy. Oxford: Oxford University Press, 2012;M. Perry. The Idea of Human Rights: Four Enquiries. Oxford: Oxford University Press, 1998.

[129] G. Verdirame. Human Rights in Political and Legal Theory. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 41.

[130] See, e.g.: L. Festinger. Cognitive Dissonance. — Scientific American 1962/207(4), pp 93-107.

Cf: M. S. Krause. An Analysis of Festinger's Cognitive Dissonance Theory. — Philosophy of Science, 1972/39(1), pp 32-50.

[131] J. T. Tedeschi, B. R. Schlenker, T. V. Bonoma. Cognitive Dissonance: Private Ratiocination or Public Spectacle? — American Psychologist 1971/26(8), pp 685-695.

But cf: G. Coppin, S. Delplanque, I. Cayeux, C. Porcherot, D. Sander. I'm No Longer Torn After Choice: How Explicit Choices Implicitly Shape Preferences of Odors. — Psychological Science 2010/21(8), pp 489-493.

[132] See, e.g.: L. Festinger. Cognitive Dissonance. — Scientific American 1962/207(4), pp 93-107.

> out of their beliefs, their environment, and their behavior — and thus try to lead lives that are (at least in their own minds) reasonable, sensible, and meaningful.[133]

The concept of cognitive dissonances is thus helpful to understand international law in postmodern society, because international law is used today as one of the means to resolve conflicts, but international law itself may also be the source of dissonances.[134] In this respect, sociologist A. Javier Treviño's description is appropriate: "In postmodern society the law is seen either as reflexive system driven by paradoxes or as a set of discourses, or 'stories,' rife with contradictions."[135]

2.2.2. Robert King Merton's Strain Theory

In addition, this work has been influenced by Robert King Merton's strain theory, the simple yet profound addition to sociology. Adhering to a strain theory means having, essentially, a structural-functionalist[136] viewpoint that it is the social structures within society that may pressure citizens to commit crimes, or, more broadly put, deviations from socially accepted norms.[137] Robert King Merton has drawn upon Émile Durkheim's ideas of structure and anomie,[138] but was the first in 1957 to frame the ideas into a theory of its own.[139] The main ideas remained the same: the existence of strain toward deviant behavior due to the structure of the society, and different reaction to these strains, sometimes deviant and unacceptable, yet understandable in practice.

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[133] E. Aronson. Review: Back to the Future: Retrospective Review of Leon Festinger's "A Theory of Cognitive Dissonance." — The American Journal of Psychology, 1997/110(1), p 129.

[134] To draw an analogy, Lorenzo Zucca called dissonances in constitutional law constitutional dilemmas, stemming from the clashes between fundamental legal rights. See: L. Zucca. Constitutional Dilemmas. Conflicts of Fundamental Legal Rights in Europe and the USA. Oxford: Oxford University Press, 2007.

Any deep constitutional disagreement is in essence what Eskrdige and Levinson named a constitutional tragedy. See: W. N. Eskrdige and S. Levinson (eds). Constitutional Tragedies and Constitutional Stupidities. New York: New York University Press, 1998.

In this respect, Attracta Ingram wrote that all rights are "products of agreements reached in a certain well-defined situation," and are based on the "thought and action and disagreement on the worthwhile life." See: A. Ingram. A Political Theory of Rights. Oxford: Oxford University Press, 1994, pp 16-17.

[135] A. Javier Treviño. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, p 6.

[136] On the applicability of structuralism in law, see, e.g.: *sub verbo* structuralism. — S.A. Barber and J. E. Fleming. Constitutional Interpretation: The Basic Questions. Oxford: Oxford University Press, 2007.

[137] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, pp 186-193.

[138] Ibid., p 189.

[139] One of the latest notable strain theorists who added some modifications to Merton's strain theory was Robert Agnew. See: R. Agnew. Foundation for a General Strain Theory. — Criminology, 1992/30 (1), pp 48-49; R. Agnew. Building on the Foundation of General Strain Theory: Specifying the Types of Strain Most Likely to Lead to Crime and Delinquency. — Journal of Research in Crime and Delinquency, 2001/38 (4), p 321.

Robert King Merton's strain theory is still relevant even in the context of this work, perhaps, due to his deep understanding of sociological theories that are "consonant with a variety of systems of sociological thought."[140] Social structures are, according to Merton, the "organized set of social relationships in which members of the society or group are variously implicated."[141] Anomie, according to Durkheim, was a state of normlessness, and, according to Merton, it arises when there is "an acute disjunction between the cultural norms and goals and the socially structured capacities of members of the group to act in accord with them"[142]. Since social norms are broad enough to include moral norms, the phenomenon of normlessness can be understood as the lack of morals, or in the words of Spanish philosopher José Ortega y Gasset, *amoralidad* — the state in which the formless mass of average people thrives.[143] Merton notes, that paradoxically, "cultural values may help to produce behavior which is at odds with the mandates of the values themselves",[144] producing thus a sort of an iatrogenic (Greek: "brought forth by the healer") unintended result.

Thereby, Merton distinguished five modes of adaptation to such disjunction between set cultural or social goals and available institutionalized means, or, in other words, strain: conformity, innovation, ritualism, retreatism, and rebellion.[145] These modes of adaptation depend on two factors: attitude toward goals, and attitude toward institutionalized, or, in other words, culturally acceptable means. Using a simple example from criminology, we can imagine two teenagers, similar in goals but differing in wealth. The wealthy child may, for example, afford to buy a new piece of technology. The other child, however, whilst likewise wishing to obtain that piece of technology, will not have the institutionalized means, in this case, money, to obtain it, and may resort to crime. Whilst the first child would be a conformist[146]

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[140] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, p 68.

[141] Ibid., p 216.

[142] Ibid.

[143] It is notable that the critique by José Ortega y Gasset that was made primarily against "invertebrate" Spain is still relevant in the present days. See: J. Ortega y Gasset. The Revolt of the Masses. Authorized translation from the Spanish. New York: W. W. Norton & Co., 1932.

See also, e.g. (Pedro Blas Gonzales explained why Ortega's phrase "revolt of the masses" is not to be understood in the common sense of people uniting against common evil, but rather as boring existential coming of average, formless, people): P. B. Gonzalez. Ortega's "The Revolt of the Masses" and the Triumph of the New Man. New York: Algora Pub., 2007.

For a recent example, the observations in a similar vein have been made by the Finnish historian Timo Vihavainen. See (in Estonian): T. Vihavainen. Äratuskell õhtumaadele. E. Kaaber (tõlk). Lohkva: Greif, 2010, p 94.

To quote Terry Eagleton: "Everyone is equal — but only, it would appear, because they have been reduced to straw men with the stuffing knocked out of them." T. Eagleton. Trouble with Strangers. A Study of Ethics. Chichester; Malden, MA: Wiley-Blackwell Pub., 2009, p 103.

[144] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, p 216.

[145] Ibid., pp 195-211.

[146] Ibid., p 195.

using institutionalized means for attainment of culturally acceptable goals, the other child will be labeled a juvenile delinquent that, despite having an innovative[147] way to overcome the lack of wealth, has nevertheless behaved in a socially unacceptable way. At least we can imagine the society in our example to remain content, that the second child did not turn to rebellion as a mode of adaptation, because rebellion would entail both the rejection of institutionalized means and of culturally acceptable norms, and may end in violent or non-violent propagation of new goals and means.[148]

For the purposes of the present work, it is not as important to understand the concepts of ritualism, or abandonment of cultural goals and retention of institutional means,[149] and retreatism, or abandonment of both cultural goals and institutionalized means.[150] These types of modes of adaptation to structural strain are not necessarily deviant or harmful.

However, in my view, — and here the social-scientific proximity of law and sociology can be used to our advantage — the strain theory may be well applicable in the context of international law in understanding the behavior of different actors: states, persons, organizations. For instance, we can likewise imagine a state that does not have the institutionalized opportunity to annex a certain desired territory, because the particular law at the moment does not permit it, even though that foreign territory may be culturally very desirable to that said state. There are certain difficulties with the applicability of a strain theory to international relations, because, for example, we cannot easily juxtapose the concepts of society and of an international arena, yet with certain assumptions it may be possible, if, for example, we consider only the member states of the United Nations to be the members of such society. Thus, we can imagine the international arena viewing negatively the state that wished to annex the said foreign territory in our example above. Thus, we can understand the state resorting to rebellion if it disregards the views of the United Nations' majority and finds other means to gain control over the desired foreign territory. To reiterate, the strain theory, in itself, is, in my view, nothing revolutionary, yet this theory, in conjunction with legal realism and differentiation between law in the books and law in action, helps to understand certain behaviors adequately and with more empathy toward the acting state, person, or organization.

[147] Ibid., pp 195-203.
[148] Ibid., pp 209-213.
[149] Ibid., pp 203-207.
[150] Ibid., pp 203-209.

2.3. Legal Paradigm for Understanding Ideological Exploitation of Human Rights

As a preliminary remark, I wish to reiterate the methodological importance of the chosen legal paradigm. Robert King Merton has well described the reasons for choosing and adhering to specific paradigms. According to Merton, paradigms have at least five related functions:[151]

1. First, paradigms "provide a compact arrangement of the central concepts and their interrelations that are utilized for description and analysis."
2. Second, paradigms "lessen the likelihood of inadvertently introducing hidden assumptions and concepts, for each new assumption and each new concept must be either logically derived from previous components of the paradigm or explicitly introduced into it."
3. Third, "paradigms advance the cumulation of theoretical interpretation," being "the foundation upon which the house of interpretations is built."
4. Fourth, paradigms "promote analysis rather than the description of concrete details" and "can sensitize the analyst to empirical and theoretical problems which he might otherwise overlook."
5. Fifth, paradigms legitimize the use of qualitative analysis, because qualitative analysis "often resides in a private world of penetrating but unfathomable insights and ineffable understandings."

Thus, the following three subsections explain the author's legal paradigm for understanding ideological exploitation of human rights.

2.3.1. Legal Realism

An instinct that we all seem to possess is to 'majestify the law',[152] to believe that law is sacred, mighty, and universally just. But that instinct is not always rightly oriented. As a consequence, we may observe that the ideas of law are often incongruent with the realities of life.

Former American Justice Oliver Wendell Holmes has famously proposed that the law does not live in mystery or in the realm of deductive logic, the law lives in practical experience:

[151] Ibid., pp 70-72.

[152] Harvey C. Mansfield described the majesty of law as an idea, according to which the law and its rituals, or, using modern language, procedures, demand admiration and regard. This idea is by no means new. To the contrary, majestification of law has been a key characteristic of human societies. See: H. C. Mansfield. On the Majesty of Law. — Harvard Journal of Law & Public Policy 2013/36(1), p 117.

> When we study law we are not studying a mystery but a well-known profession. … If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.[153]

Indeed, the legal realist school of thought is most often linked to American legal realism of 1920s, fueled by cynicism, skepticism, and pragmatic jurisprudence of that time. Pragmatism, according to the father of pragmatic thought William James, is an "attitude of orientation" that requires to look away "from first things, principles, 'categories,' supposed necessities" and to look "toward last things, fruits, consequences, facts."[154] At the time of its flourishing, pragmatic legal realism was a natural reaction to the optimism and formalism in the society; after all, the naive optimism lead to the Great Depression and to two World Wars. Perhaps, thus, given the unstable geopolitical events of the early 2000s, there is still room for a dose of such skepticism also in the present days, almost a hundred years after the works of the first American legal realists.

Karl N. Llewellyn has put forth 9 basic tenets of legal realism, which I, too, adopted before writing the present work:[155]

1. The law is in the ever-changing flux, fueled by judicial interpretation, and for common law countries, creation of law.
2. The law is a means to social ends, and not an end in itself.
3. The society is also in a constant state of flux, which is "typically faster than the law."
4. The Is and Ought must be "temporarily divorced," for the introduction of Ought obscures the investigation of the facts.
5. The traditional legal rules and concepts insofar as they have the pretense to describing what the courts are doing should be distrusted.

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[153] O. W. Holmes. The Path of Law. (An Address at the dedication of the new Hall of the Boston University School of Law on 8 January 1897). — Harvard Law Review, 1996-1997/110(5), pp 991-993.

See also: A. W. Alschuler. The Descending Trail: Holmes' Path of the Law One Hundred Years Later. — Florida Law Review, 1997/49(3), pp 353-420; D. Luban. Bad Man and the Good Lawyer: A Centennial Essay on Holmes's the Path of the Law. — New York University Law Review, 1997/72, pp 1547-1585; S. M. Novick. Holmes's Path, Holmes's Goal. — Harvard Law Review, 1996-1997/110, pp 1028-1032.

But cf (for a critical review of Justice Holmes's contribution to jurisprudence): L. Weinberg. Holmes' Failure. — Michigan Law Review, 1997-1998/96, pp 691-723.

[154] W. James. Selected Papers on Philosophy. New York: E. P. Dutton and Co, 1938, p 204.

[155] K. N. Llewellyn. Some Realism about Realism: Responding to Dean Pound. — Harvard Law Review, 1931/44(8), p 1236-1237.

6. The formalistic theory of over-reliance on the above-mentioned legal rules should be also distrusted.
7. Cases and legal situations should be grouped into narrower unique categories.
8. Law should be evaluated in terms of its effects.
9. The above-mentioned tenets should be applied for a "sustainable and programmatic attack on the problems of law."

Moreover, according to sociologist A. Javier Treviño, legal realism of the early 20th century was also for the intellectual community "a reaction against abstractions and universal principles and a movement toward the idea of a changing and developing society."[156] As lawyers, we know that in practice, not always do law and legal rules predict the outcome of the client's case. Prominent American pragmatic instrumentalist John Dewey famously advanced a "logic relative to consequences rather than to antecedents, a logic of prediction of probabilities rather than one of deduction of certainties."[157] In other words, it is, in fact, more useful to look at the possible practical consequences of the particular legal framework, than to stay in the abstract realm of legal rules.[158]

Realist approach, thus, means staying grounded in reality, noticing the undesirable as well as the desirable behavior without apologism or idealism. Sociologist Robert King Merton noted that generally, "[t]he technically most effective procedure, whether culturally legitimate or not, becomes typically preferred to institutionally prescribed conduct."[159] This is the same logic behind persons wishing to optimize their tax behavior, sometimes crossing the legally acceptable line toward the evasion of taxes, because they believe they can do so. Merton, using an example from competitive athletics, calls this behavior to be construed as "winning the game" instead of "winning under the rules of the game."[160]

The same is true, of course, for international relations. After all, international interaction between the states and other actors at the international arena happens within the confines of the same social reality.[161] Moreover, commentary on the behavior of states tends to overlook that states, too, are concerned more with own gains rather than the meek safety-net of

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[156] A. Javier Treviño. The Sociology of Law. Classical and Contemporary Perspectives. New Brunswick; London: Transaction Publishers, 2008, p 69.

[157] J. Dewey. Logical Method and Law. — Cornell Law Quarterly, 1924/10(1), pp 17-27.

[158] According to sociologist Talcott Parsons, the attorney advising a client has a very practical task at hand: "Like the physician, [the attorney] helps his client to "face reality," to confine his claims to what he has a real chance of making "stand up" in court or in direct negotiation, and to realize and emotionally accept the fact that the other fellow may have a case too." See: T. Parsons. A Sociologist Looks at the Legal Profession (1952). — T. Parsons. Essays in Sociological Theory. Revised ed. New York: The Free Press, 1954, p 383.

[159] R. K. Merton. Social Theory and Social Structure. Enlarged ed. New York, NY, US: Free Press, 1968, p 189.

[160] Ibid.

[161] D. J. Karp. The Utopia and Reality of Sovereignty: Social Reality, Normative IR and 'Organized Hypocrisy'. — Review of International Studies, 2008/34(2), pp 313-335.

international law.[162]

Jason Goldsmith described realists, in comparison to optimistic institutionalists, in the following way:

> [Realists] think that a nation's primary interest is security, and they view international behaviors largely as a function of national power. … [Realists] believe most international institutions reflect distributions of national power, and that the little cooperation we see is fragile. Institutionalists, by contrast, … acknowledge that nations have partially conflicting interests, and they model international life as a multilateral prisoner's dilemma or some version of a coordination problem.[163]

Just as not all natural law should be rejected as irrelevant and metaphysical,[164] in the realist context, the behavior of the states should not be viewed pessimistically only as negative or violent and aggressive. It is well possible, as it is often the case, that the state plays a crucial, vital role in safeguarding the well-being of its subjects. To finish this discussion of legal realism with a quote by Karel Vašák: "[Human rights] remain dead letters as long as the political power which emanates from society fails to insert them in the social order."[165]

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[162] Consider the following critical passage by Stephen D. Krasner: "Ideally, a body of law comprises a set of coherent and consistent rules. These rules contribute to the creation of an environment that is predictable, efficacious, and just. Most international lawyers hope, expect, or believe that such a body of law can exist for the international system. This is fools' errand." See: S. D. Krasner. The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law. — Michigan Journal of International Law, 2003-2004/25, p 1075.

See also, e.g.: S. D. Krasner. The Case for Shared Sovereignty. — Journal of Democracy, 2005/16(1), pp 69-83.

Jason Goldsmith also observed this phenomenon: "International lawyers tend to ignore or decry the gap between international law norms and the actual behavior of nations." See: J. Goldsmith. Review: Sovereignty, International Relations Theory, and International Law. — Stanford Law Review, 2000/52(4), p 960.

[163] Ibid., p 963.

[164] Consider the blistering passage by the famous representative of the Scandinavian school of legal realism, Alf Ross, on natural law: "Like a harlot, natural law is at the disposal of everyone. The ideology does not exist that cannot be defended by an appeal to the law of nature. And, indeed, how can it be otherwise, since the ultimate basis for every natural right lies in a private direct insight, an evident contemplation, an intuition. Cannot my intuition be just as good as yours? Evidence as a criterion of truth explains the utterly arbitrary character of the metaphysical assertions. It raises them up above any force of inter-subjective control and opens the door wide to unrestricted invention and dogmatics." See: A. Ross. On Law and Justice. Berkeley; Los Angeles: University of California Press, 1959, p 261.

But cf, e.g.: R. P. George. In Defence of Natural Law. Oxford: Oxford University Press, 2004; R. P. George. Making Men Moral: Civil Liberties and Public Morality. Oxford: Clarendon Press, 1996.

[165] K. Vašák. Human Rights. A new school of law and learning. — UNESCO Courier, 1978/10, p 6.

2.3.2. Hierarchical Interplay between Human Rights and Other Rights

In this subsection, a brief comparison will be made between concepts of human rights and other rights. In 2001, Estonian constitutional law specialist Madis Ernits translated a short article by Martin Borowski, then assistant to Robert Alexy at the Kiel Christian Albrecht University.[166] Martin Borowski in his article distinguished essentially four categories of fundamental rights: human rights, international constitutive rights, supranational human rights, national human rights.[167] In the present work, I relied on the same understanding of the following four categories of rights.

First, Borowski considered human rights to be abstract, universal "moral rights", which due to their fundamental nature are at the heart of theories of justice.[168]

Second, Borowski also distinguished as a category, that is separate from human rights, international and supranational fundamental rights.[169] According to him, international fundamental rights are the rights which derive from international treaties and conventions, such as, for example, the 19 December 1948's United Nations Universal Declaration of Human Rights,[170] but also 19 December 1966's International Covenant on Civil and Political Rights,[171] 19 December 1966's International Covenant on Economic, Social and Cultural Rights,[172] and, with particular interest for the European continent, 4 November 1950's Convention for the Protection of Human Rights and Fundamental Freedoms,[173] and 18 October 1961's European Social Charter.[174]

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[166] M. Borowski. Ad rem ja ad acta - Põhiõigused ja inimõigused. — M. Ernits (tõlk). Juridica, 2001/I, pp 3-4.

[167] Ibid.

[168] Ibid.

[169] Ibid.

[170] United Nations. The Universal Declaration of Human Rights of 19 December 1948. Available online: http://www.un.org/en/documents/udhr/ (04.04.2015).

[171] United Nations. International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available online: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (04.04.2015).

[172] United Nations. International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976. Available online: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (04.04.2015).

[173] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended by Protocols No. 11 and No. 14. Available online: http://conventions.coe.int/treaty/en/treaties/html/005.htm (04.04.2015).

[174] European Social Charter of 18 October 1961. Available online: http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm (04.04.2015).

See also: European Social Charter (revised) of 3 May 1996. Available online: http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm (04.04.2015).

On the details of a recent conference on the increasing importance of the European Social Charter, see: Council of Europe. The Turin process for the European Social Charter. Europe restarts in Turin. Conference on the future of the protection of social rights in Europe (Brussels, 12-13 February 2015). Available online: http://www.coe.int/en/web/portal/high-level-conference-esc-2014 (04.04.2015).

Third, Borowski named the economic freedoms and fundamental rights in the European Union to be in the category of supranational constitutive rights. In the present moment we may find in this category the four freedoms of the European Union's internal market: the free movement of goods, capital, services, and people; but also, due to the Maastricht Treaty signed on 7 February 1992,[175] the European Union citizenship rights, and, due to the Treaty of Lisbon signed on 13 December 2007,[176] the fundamental rights according to the Charter of Fundamental Rights of the European Union.[177]

Fourth, Borowski recognized as a distinct category domestic constitutional rights.[178] Domestic human rights are, according to Borowski, an attempt to "transform" human rights into national positive law, in a way that makes these rights to have "a higher grade" in comparison to international and other rights, because national rights are justiciable and enforceable through the national court system.[179]

2.3.3. Human Rights as Principles: Analogy to Constitutional Rights

Finally, I am of the opinion that, at most, the Universal Declaration of Human Rights proclaimed a set of principles. Sociologist Jean Haesaert suggested that framing the declaration in general, but not too general, manner in terms of standards, instead of rules, would ensure that proclaimed framework will prevail through generations.[180] To draw an analogy, of similar principle-like nature are many constitutional norms.[181]

In Estonia, just like in many other states, the main fundamental legal act is the Consti-

[175] Maastricht Treaty of 7 February 1992. Official Journal of the European Communities (OJEC). 29.07.1992, No C 191, p 1.

[176] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. Official Journal of the European Union, C 306, 17 December 2007. Available online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:306:TOC (04.04.2015).

[177] Charter of Fundamental Rights of the European Union (2007). OJ C 303, 14.12.2007. Available online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:303:TOC%20 (04.04.2015).

[178] M. Borowski. Ad rem ja ad acta - Põhiõigused ja inimõigused. — M. Ernits (tõlk). Juridica, 2001/I, pp 3-4.

[179] Ibid.

[180] J. Haesaert. Reflections on Some Declarations of the Rights of Man. PHS/3 - XI - J. Haesaert. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), pp 3-4.

[181] Julian Rivers wrote in an introduction to Robert Alexy's book 'A Theory of Constitutional Rights': "[Constitutional rights in Germany] represent a rejection of Nazi ideology in favour of liberal democracy, they bind all three powers in the state, and, according to the long-standing case-law of the Federal Constitutional Court, they express an objective order of values which permeates the entire legal order. … [A constitution] such as the German one which makes human rights enforceable as supreme law risks becoming purely substantive. All law becomes an outworking of the resolutions of competing constitutional rights and principles, resolutions which are reviewable for their correctness by the judiciary. The legislature ceases to have any autonomous law-making function, which renders the commitment to on-going democratic legitimacy practically meaningless." See: J. Rivers. A *Theory of Constitutional Rights* and the British Constitution. — R. Alexy. A Theory of Constitutional Rights. (1986). J. Rivers (trans). Oxford: Oxford University Press, 2002, pp xix-xx.

tution.[182] Estonian constitutional law specialist Madis Ernits has recently suggested that the majority of constitutional rights are to be interpreted as principles, and not as rules.[183] In making that statement Ernits, in particular, has drawn on the theory of the legal philosopher Robert Alexy,[184] influential in Estonia for providing an important commentary to the post-Soviet Constitution of the Republic of Estonia.[185] Robert Alexy has found that principles are not as rigid and inflexible in application as rules: rules in conflict with each other necessitate overhaul of the conflicting regulation, and, in contrast, principles in conflict with each other may very well be reconciled through a balancing interpretation of these principles.[186]

In particular, Robert Alexy postulated the Law of Competing Principles: "The circumstances under which one principle takes precedence over another constitute the conditions of a rule which has the same legal consequences as the principle taking precedence."[187] Another law was then born, the Law of Balancing: "The greater the degree of non-satisfaction or limitation of one principle, the greater must be the importance of satisfying the other."[188] Moreover, Alexy, by citing long-standing case law of the German Federal Constitutional Court, put forward what he called a 'radiation' thesis: constitutional rights norms have a 'radiating effect' "on the entire legal system by appealing to the concept of an objective order of values."[189] However, Alexy noted the following disadvantages of principle-like norms:

> The adoption of principles at the highest level of abstraction has advantages and disadvantages. The advantages lie in their flexibility. They can be used as the starting-points of doctrinal justification for a great variety of structural and substantive constitutional requirements in all areas of law. The disadvantage lies in their vagueness. They invite one of the most obscure forms of legal justification, the 'deduction' or 'derivation'

[182] For a comprehensive commentary on the Constitution of the Republic of Estonia, see in Estonian: Ü. Madise jt (toim). Eesti Vabariigi Põhiseadus. Kommenteeritud vlj. Kolmas, täiendatud vlj. Tallinn: Juura, 2012.

[183] M. Ernits. Millestki ürgsest ja kargest ning autoriteediröövist. — Juridica, 2015/II, p 77.

But cf (the theory of constitutional rights as principles has been the object of critique as well. For example, Hent Kalmo suggested that the Constitution of the Republic of Estonia contains specific and unambiguous clauses; in Estonian): H. Kalmo. Põhiseadus ja proportsionaalsus — kas pilvitu kooselu? — Juridica, 2013/II, p 83.

However, Kalmo's suggestions were not accepted by Ernits, who objected that the constitutional text is largely abstract, often ambiguous and prone to different interpretations, and most importantly, in nature, more close to containing principles instead of rules, with the exception of certain technical clauses that are clearly rules. See (in Estonian): M. Ernits. Millestki ürgsest ja kargest ning autoriteediröövist. — Juridica, 2015/II, p 80.

[184] M. Ernits. Millestki ürgsest ja kargest ning autoriteediröövist. — Juridica, 2015/II, p 77.

[185] R. Alexy. Põhiõigused Eesti põhiseaduses. — Juridica, 2001/ERI, pp 5-96.

[186] R. Alexy. Kollisioon ja kaalumine kui põhiõiguste dogmaatika põhiprobleemid. — M. Ernits (tõlk). Juridica, 2001/I, pp 5-13.

[187] R. Alexy. A Theory of Constitutional Rights. (1986). J. Rivers (trans). Oxford: Oxford University Press, 2002, p 54.

[188] Ibid., p 102.

[189] Ibid., p 352.

of concrete content from abstract principles.[190]

In that sense and on that abstract level, constitutional rights may be compared to human rights.[191] The crux of differentiation between rules and principles seems to be the content and effect of the particular norm, and not, for example, merely the title of the norm. Indeed, some principles may have a rule-like nature. Ernits makes an example of the "principle" of proportionality, which, in reality, is a specific three-step test, which can be either "met or not met."[192] At least in the context of Estonian law, the principle of proportionality has acquired a nature of a rule that courts apply in cases of determining the proportionality of certain measures.

In contrast, some rule-like clauses may, in practice, be on the level of principles. For example, the sovereignty clause in the Constitution of the Republic of Estonia has also been named to be a principle,[193] albeit a very important one; nevertheless even a portion of state's sovereignty may be limited, for example, by an international treaty. Thus, in a *European Stability Mechanism* case before *Riigikohus* (the Estonian Supreme Court) in 2012, the Supreme Court has set out to test the limits of the sovereignty clause in the Constitution of the Republic of Estonia, and decided that by acceding to the European Union and through the respective accession legal acts, Estonia has given away a part of its sovereignty.[194] The Supreme Court noted that such erosion of sovereignty is not uncommon, as, for example, there are over 1000 international treaties between Estonia and its counter-parties.[195] To take another example, from international law, in 1975 the European Court of Human Rights has not reached an absolute unanimity in deciding whether there is a right of access to courts under paragraph 1 of Article 6 of the European Convention on Human Rights and Fundamental Freedoms.[196]

Thus, if constitutional norms are mostly principles, and if human rights are like constitutional norms, then human rights should also be deemed, at most, to be principles. It should be unsurprising, then, that the meaning of universal human rights can be so easily twisted.

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[190] Ibid., p 354.

[191] But cf (as Gordon Graham has noted that the present days' human rights activists are moral objectivists — people who think that "human rights … generate universal and inescapable obligations," the activists' view is thus that the human rights norm is a rule and not a principle): G. Graham. Eight Theories of Ethics. London: Routledge, 2004, p 2.

[192] M. Ernits. Millestki ürgsest ja kargest ning autoriteediröövist. — Juridica, 2015/II, p 77.

[193] See, e.g. (in Estonian): B. Aaviksoo. (Konstitutsiooniline) renvoi: kas põhiseaduslik nõue või kaera Trooja hobusele? — Juridica, 2015/II, p 96.

[194] Riigikohus (the Estonian Supreme Court). 12. juuli 2012. a otsus asjas number 3-4-1-6-12. Õiguskantsleri taotlus tunnistada Brüsselis 2. veebruaril 2012 alla kirjutatud Euroopa stabiilsusmehhanismi asutamislepingu artikli 4 lõige 4 põhiseadusega vastuolus olevaks.

[195] Ibid.

[196] European Court of Human Rights. Case of Golder v. the United Kingdom (Application no. 4451/70). 21 February 1975.

3. EXAMPLES: FOUR VARIANTS OF FUNDAMENTAL DISSONANCES

3.1. Intra-personal Level: Freedom against Freedom of Others; Example from Norway Attacks (2011)

Consider a quote by Jill Marshal:

> … [F]or some people choices are made that others find unpalatable. The role of law is crucial in preventing or permitting or even encouraging certain ways of being, living and existing.[197]

Is the conception of law as being the guardian of the society, in practice, adequate? In a liberal society, the freedom and personal autonomy means also the freedom to commit undesirable acts that often have tragic consequences. In this section, I will explore on the intra-personal level of fundamental dissonances the example of Norway Attacks of 2011 by a radical nationalist Anders Behring Breivik and will conclude that it is possible to ideologically twist the meaning of human rights and human freedoms to the tragic detriment of human rights and human freedoms of others.

On 21 July 2011, Anders Behring Breivik distributed the ultra-nationalist compendium called "2083: A European Declaration of Independence"[198] to around 1000 of recipients. Breivik later admitted that the 1515-pages long work consisted for about 60% of cut-and-paste thoughts of other people,[199] yet the compendium also contained many of Breivik's own thoughts and even personal curriculum vitae with interview-style questions and answers. The main idea behind Breivik's compendium was to warn and to call to action the fellow European "brothers and sisters" against the dangers of the "Islamification of Europe" and of the liberal politics promoting multiculturalism.[200] Breivik's solution was violently ruthless, and plotted for the duration of five years with strenuous attention to detail; under cover of running a fake farm, which he created for the sole purpose of receiving the subsidies available for farmers and fertilizers used in production of a lethal bomb, with which Breivik tried to kill the

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[197] J. Marshall. Personal Freedom through Human Rights Law? Autonomy, Identity and Integrity under the European Convention on Human Rights. International Studies in Human Rights. Leiden; Boston: Martinus Nijhoff, 2009, p 66.

[198] A. Berwick (A. Breivik). 2083: A European Declaration of Independence. De Laude Novae Militiae. Paupers commilitones Christi Templique Solomonici. London, 2011. Available online: https://info.publicintelligence.net/AndersBehringBreivikManifesto.pdf (04.04.2015).

[199] T. Sorvaag. Anders Behring Breivik trial, day four - Thursday 19 April. — The Guardian. Updated 21 May 2014. Available online: http://www.theguardian.com/world/2012/apr/19/anders-behring-breivik-trial-live (04.04.2015).

[200] On the history of multiculturalism politics from the viewpoint of Sweden, see, e.g.: M. Ekstrom. The Multicultural Moment. The history of the idea and politics of multiculturalism in Sweden in comparative, transnational and biographical context, 1964-1975. Åbo: Åbo Akademi University, 2015.

For the Estonian post-Soviet perspective, cf, e.g. (in Estonian): E. Krull. Inter- ja multikultuurilised kasvatustaotlused Eestis. — Akadeemia, 1999/11(1), pp 114-129.

prime minister of Norway, and thus instill fear into the politicians of Norway supporting multiculturalism.[201]

However, The Guardian reasonably calls "the worst manifestation of Breivik's scrupulous attention to detail" Breivik's subsequent act after setting up the bomb in Oslo: illegally wearing a police uniform and posing as a policeman sent to reassure the teenagers at the Utoya Island's Labor Party's youth camp, meticulously hunting down and shooting the most attendees of the camp that he could find.[202] "The objective was not to kill 69 people at Utoya. The objective was to kill all of them. … The main goal was to use the water as a mass-destruction method. Basically, I assumed most people would drown [due to] death anxiety," Breivik explained during the court trial.[203] He deemed shooting the youth to be a barbaric method of attaining his goals, which was, according to him, was nevertheless necessary since European Union and Norwegian regulations made it difficult to acquire the required undiluted fertilizer for bomb making and since these youth were due to their political devotion to multiculturalism his "legitimate targets."[204] Thus, through this ruthless behavior he tried to prove and publicize his extreme ideology and allegiance to other anti-Islamists of Europe that he called the "Knights Templar," alluding to the Europe's crusader conquests of the middle ages. In fact, during the Utoya massacre he called the Norwegian police, which according to the critique of journalist Åsne Seierstad was poorly prepared for such massacre to happen,[205] to offer his surrender and introduced himself to the telephone operator as "Commander of the Knights Templar Europe – … organised in the anti-communistic and Norwegian resistance movement against the Islamisation of Europe and Norway."[206]

Anders Behring Breivik was accused of "setting off a bomb in central Oslo that killed eight people, then fatally shooting 69 people at a youth camp run by the ruling Labor Party on nearby Utoya Island."[207] He received the Norway's maximum punishment: 21 years in pris-

[201] H. Pidd. Anders Behring Breivik spent years training and plotting for massacre. — The Guardian. 24 August 2012, 10:42 BST. Available online:
http://www.theguardian.com/world/2012/aug/24/anders-behring-breivik-profile-oslo (04.04.2015).

[202] Ibid.

[203] H. Pidd. Anders Behring Breivik describes Utøya massacre to Oslo court. — The Guardian. 20 April 2012, 18:32 BST. Available online: http://www.theguardian.com/world/2012/apr/20/anders-behring-breivik-massacre-court (04.04.2015).

[204] H. Pidd. Breivik: I shot Utøya victims because EU law made it hard to make bombs. — The Guardian. 19 April 2012, 14:21 BST. Available online:
http://www.theguardian.com/world/2012/apr/19/anders-behring-breivik-utoya-victims (04.04.2015).

[205] Å. Seierstad. Anders Breivik massacre: Norway's worst nightmare. — 22 February 2015, 09:00 GMT. Available online:
http://www.theguardian.com/world/2015/feb/22/anders-breivik-massacre-one-of-us-anne-seierstad (04.04.2015).

[206] H. Pidd. Anders Behring Breivik spent years training and plotting for massacre. — The Guardian. 24 August 2012, 10:42 BST. Available online:
http://www.theguardian.com/world/2012/aug/24/anders-behring-breivik-profile-oslo (04.04.2015).

[207] D. Magnay. Rampage suspect says he acted to save Norway. — CNN. Updated 01:46 GMT. 17 April 2012.

on.[208] During the court trial, the accused was acting calm and confident, saying that he does not recognize the Norwegian Court system for it is supported by the political party that supports European liberalism, Muslim immigration, and multiculturalism.[209] Though it seems very much misplaced to attack and hurt young people of Norway in order to "save Norway," Breivik, according to his manifesto, and according to his lawyer believed himself to be acting as a free savior of free Europe.[210] Notably, Breivik was found by the majority of psychiatric experts to have been sane at the moment of the killings.[211] Nevertheless, though saddened by the grief of the incident, Norway relied on its judiciary to find a punishment for the killer. CNN described Norway as respecting human rights of the killer even despite the killer's violence and reluctance to accept or recognize the Norwegian court system.[212]

In 1947, French professor of philosophy René Gabriel Eugene Maheu argued: "I cannot, without danger of self-contradiction, use my liberty to appeal to the liberty of others without treating their liberty as liberty, i.e. without respecting it."[213] This reasoning could not have been more powerful. In the case of Norwegian attacks of 2011, when Breivik expressed radical views, he had a justified right to do so, but in resorting to violence as an argument or as a vehicle for publicity, he has self-contradicted his own views by disregarding the liberty of others with no justification for such disregard, even despite his radical contempt for certain cultures and nationalities. In other words, it has been proved possible to ideologically and radically exploit the meaning of human rights and human freedoms and in the process to cause ruthless rampage to others' property and lives.

Available online:
http://edition.cnn.com/2012/04/16/world/europe/norway-breivik-trial/index.html?hpt=hp_t3 (04.04.2015).

[208] M. Lewis and S. Lyall. Norway Mass Killer Gets the Maximum: 21 Years. — The New York Times. 24 August 2012. Available online:
http://www.nytimes.com/2012/08/25/world/europe/anders-behring-breivik-murder-trial.html?_r=0 (04.04.2015).

[209] D. Magnay. Rampage suspect says he acted to save Norway. — CNN. Updated 01:46 GMT. 17 April 2012. Available online:
http://edition.cnn.com/2012/04/16/world/europe/norway-breivik-trial/index.html?hpt=hp_t3 (04.04.2015).

[210] Ibid.

[211] Ibid.

[212] D. Magnay. Norwegians value respecting killer's human rights. — CNN. Updated 10:56 GMT. 17 April 2012. Available online: http://edition.cnn.com/2012/04/17/world/europe/norway-breivik-court-magnay/ (04.04.2015).

[213] R. Maheu. Right to Information and to the Expression of Opinion. 30 June 1947. PHS/3 - XXVI - R. Maheu. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015), p 3.

3.2. Intra-state Level: Government against People; Example from Lustration during Ukrainian Crisis (2013 — Ongoing)

On 21 November 2013, Ukraine suspended preparations for the implementation of an association agreement with the European Union.[214] The same day, mass protests ensued in the Ukrainian capital city of Kyiv. The unrest in the country was not only internal, but also seemed to affect the geopolitical situation in the whole region.

Since international law can rarely affect intra-state affairs, this section will be short. In this section, I will examine on the intra-state level of fundamental dissonances the example of lustration law adopted during the Ukrainian crisis. I will conclude that lustration is an example of exploitation of the meaning of human rights and human freedoms in the unstable situation of the changed ideology.

Indeed, one of the examples of violation of human rights by the pretense of protecting the rights of others was the lustration[215] law in Ukraine in 2014, according to which many government workers, unless they resigned themselves, would be dismissed because of their work for the previous government.[216] Moreover, the law also stipulated a prohibition into the future, prohibiting "from working in public administration for ten years and others for five years" officials, who worked in Yanukovich-era positions "for a total of at least one year in the period between February 25, 2010, and February 22, 2014."[217]

The lustration law was received with severe criticism. For example, the Venice Commission, the consultative body on constitutional law issues in the Council of Europe has criticized the Ukrainian lustration law for harsh and unjustified lustration criteria, for violating human rights of the people in question, and for disregarding the judiciary's role in safeguard-

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[214] See, e.g.: I. Traynor, O. Grytsenko. Ukraine suspends talks on EU trade pact as Putin wins tug of war. — The Guardian. 21 November 2013, 16:31 GMT. Available online: http://www.theguardian.com/world/2013/nov/21/ukraine-suspends-preparations-eu-trade-pact (04.04.2015).

For the political background, see, e.g.: O. Grytsenko, S. Walker. Ukraine faces critical east-west tug of war over EU association agreement. The Guardian. 20 November 2013, 15:09 GMT. Available online: http://www.theguardian.com/world/2013/nov/20/ukraine-eu-association-agreement-europe-russia (04.04.2015).

[215] For the comparative experience of post-Soviet Czech Republic and Poland with lustration policies, see, e.g.: T. Kupatadze. Coming to terms with communist past: Comparative study of lustration policy in the Czech Republic and Poland. Master's thesis. Supervisor: Eva-Clarita Pettai. Tartu: University of Tartu, 2014; R. David. Lustration and Transitional Justice. Personnel Systems in the Czech Republic, Hungary, and Poland. Philadelphia: University of Pennsylvania Press, 2011.

For the Estonian basis for post-Soviet lustration policy, see: Act on Procedure for Taking Oath. RT 1992, 31, 408. English translation. Available online: https://www.riigiteataja.ee/en/eli/520052014002/consolide (04.04.2015).

See also, e.g. (in Estonian): M. Toomiste. Lustratsioon kui üleminekuõiguse vahend ja selle kooskõla rahvusvahelise õigusega. Magistritöö. Juhendaja René Värk. Tartu: Tartu Ülikool, 2011.

[216] See, e.g.: Thirty-nine Ukrainian top officials to lose jobs under lustration law. — Interfax-Ukraine. 16 October 2014, 13:19. Available online: http://en.interfax.com.ua/news/general/228988.html (04.04.2015).

[217] Lustration law takes effect in Ukraine. — Interfax-Ukraine. 15 October 2014, 10:22. Available online: http://en.interfax.com.ua/news/general/228694.html (04.04.2015).

ing the human rights in violation.[218] In November 2014, the Supreme Court of Ukraine filed a constitutional petition for verification of the lustration law and found the lustration law to be unconstitutional.[219] In particular, there is a serious problem of judiciary lustration undermining the principles of individual responsibility of the judges and judicial independence.[220]

The above-mentioned critique shows that, although being justified as safeguards of the new political order, harsh lustration policies, which do not stipulate fair lustration criteria, affect human rights to the detriment of people, who have been expended only due to the change in ideology, be it democracy or any other governing regime. It is thus possible to exploit the meaning and belittle the influence of human rights also at the intra-state level, if the defense of the governing ideology justifies such exploitation.

3.3. Inter-state Level: Political Manipulation against Objectivity

3.3.1. Introduction to Crimean Crisis (2014 — Ongoing)

Since ideological exploitation of human rights happens very often at the inter-state level, Section 3.3 of this thesis has been given proportionally more attention and has been divided into three subsections. In this first short subsection I will briefly introduce the Crimean Crisis (2014 — ongoing). In the next, longer subsection, I will present my analysis of the key speeches made by the current President of the Russian Federation Vladimir Putin in relation to the Crimean Crisis. I the subsection after that, I will conclude that it is possible to ideologically exploit the concept of human rights at the inter-state level when states use political manipulation, accusations, and power.

By 'Crimean Crisis' I mean the specific political situation in Ukraine (2014 — ongoing); named by many Western states to be an illegal annexation of the Crimean peninsula by the Russian Federation; and named by the Russian Federation to be the execution of the Crimean people's right to self-determination. It is an ongoing crisis, in my view, because Ukraine's continuous ambition is to regain the control of the Crimean peninsula, which is currently under political and military control of the Russian Federation. In general, the situation is emotionally laden and tense.[221]

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[218] Council of Europe Venice Commission: some provisions of Ukrainian lustration law should be revised. — Interfax-Ukraine. 12 December 2014, 17:39. Available online: http://en.interfax.com.ua/news/general/239646.html (04.04.2015).

[219] Consultative Council of European Judges (CCJE). Answers to the Questionnaire for the preparation of CCJE Opinion No. 18 (2015): "The independence of the judiciary and its relations with the other powers in a modern democratic state." Available online: http://www.coe.int/t/dghl/cooperation/ccje/textes/op18_ukraine.pdf (04.04.2015).

[220] Ibid.

[221] See, e.g.: M. Birnbaum, K. Demirjian. A year after Crimean annexation, threat of conflict remains. — The

Eventually, as Crimean referendum of March 2014 effected *de facto* accession of the Crimean peninsula into the Russian Federation, the unrest was felt in the whole world as the West, once again, opposed itself against the East. The interpretation of the legality or illegality of the situation as far as the international law was concerned, it seemed, depended on the side one sympathized with. If one turned to media of or to political statements of the states involved, one would feel an immense dissonance because of the contradictory messages and accusations. Questions such as whether the Crimean situation was an illegal annexation or a legal accession, whether the actions of the Russian Federation constituted a non-violent interventionist aggression against the sovereignty of the Ukrainian state or whether the actions of the Russian Federation constituted aid to the people's right to self-determination,[222] were not easy to answer. Answers to these and many other related dilemmas depended on the objective interpretation of the facts surrounding the ongoing Ukrainian crisis and, not less importantly, on the ability to access a truthful factual framework of reference.

In the next subsection, I will analyze three key speeches by President Putin made in address of the Crimean Crisis. I will find that Russia was aware of twisting the norms of international law but due to historical pressures had no other choice but to show its power on the Crimean Peninsula.

Washington Post. 18 March 2015. Available online: http://www.washingtonpost.com/world/europe/a-year-after-crimean-annexation-threat-of-conflict-remains/2015/03/18/12e252e6-cd6e-11e4-8730-4f473416e759_story.html (21.03.2015);

A. Withnall. Vladimir Putin says Russia was preparing to use nuclear weapons 'if necessary' and blames US for Ukraine crisis. 15 March 2015. — Independent. Available online: http://www.independent.co.uk/news/world/europe/vladimir-putin-says-russia-was-preparing-to-use-nuclear-weapons-if-necessary-and-blames-us-for-ukraine-crisis-in-crimea-documentary-10109615.html (21.03.2015);

K. Adler. Baltic states shiver as Russia flexes muscles. — BBC. 6 March 2015. Available online: http://www.bbc.com/news/world-europe-31759558 (24.03.2015).

[222] The question of humanitarian intervention for the purposes of protection of human rights is by itself a controversial topic. To quote Françoise J. Hampson: "It is clear that the relationship between [International Humanitarian Law] and [Human Rights Law] is currently causing a problem, particularly for human rights treaty bodies. It is less clear that there is agreement as to the nature of the problem, the goal to be achieved or especially the means of getting there." See: F. J. Hampson. The Relationship between International Humanitarian Law and International Human Rights Law. — S. Sheeran and Sir N. Rodley (eds). Routledge Handbook of International Human Rights Law. New York: Routledge, 2013, p 209.

For the debate of Ian Brownlie and Richard B. Lillich on and a comprehensive account of the topic of lawfulness of humanitarian intervention for the purposes of human rights, see, e.g.: Problem VIII. When May the UN or Its Member States Use Armed Force for Human Rights Purposes? (Bangladesh) — R. B. Lillich. International Human Rights. Problems of Law, Policy, and Practice. Boston; Toronto; London: Little, Brown and Company, 1991, pp 566-632.

3.3.2. Analysis of President Putin's Crimean Speeches of 2014

In this subsection, I will focus on three key speeches delivered by the President of Russian Federation Vladimir Putin in 2014 in relation to the Crimean Crisis.[223] As a result of my analysis, from the perspective of the Crimean Crisis and international law, in these three speeches I found the following common messages and threads of rhetoric.

Block of ethnic and nationalistic messages:[224]

1. Russia is strong;
2. Russia's task is to protect the Slavic nation;
3. Slavs are spiritually one;
4. Crimean referendum was legitimate.

Block of international relations messages:

5. Russia is consistent with own previous statements;
6. Western colleagues are not;
7. West is under an illusion of power;
8. All international actors must be respected;
9. West can exploit and defy international law, and Russia can, too.

There are many tangents one can take in exploring President Putin's arguments. Due to space limitations, I will only offer moderate critique of Professor Lauri Mälksoo's civilizational argument and will conclude the following: in the analyzed speeches, President Putin's justification for intervention in Crimea was legally flawed in theory but inevitable in practice due to the governing ideology in Russia.

Professor Lauri Mälksoo hypothesized that when we hear President Putin speaking of 'international law', we hear Russia's own peculiar interpretation of 'international law', historically and culturally different from that of the West.[225] However, there are some drawbacks in

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[223] Address by President of the Russian Federation, 18 March, 2014, 15:50, Moscow, Kremlin. Обращение Президента Российской Федерации. 18 марта 2014 года, 15:50 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/20603; and in English: http://eng.kremlin.ru/news/6889 (21.03.2015);

Meeting of the Valdai International Discussion Club, 24 October 2014, 19:00, Sochi. Заседание Международного дискуссионного клуба «Валдай». 24 октября 2014 года, 19:00 Сочи. Available online in Russian: http://www.kremlin.ru/news/46860; and in English: http://eng.kremlin.ru/news/23137 (21.03.2015);

Presidential Address to the Federal Assembly, 04 December 2014, 13:20, Moscow, Kremlin. Послание Президента Федеральному Собранию, 4 декабря 2014 года, 13:20 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/47173; and in English: http://eng.kremlin.ru/transcripts/23341 (12.03.2015).

[224] President Putin seems to dislike the term 'nationalism', preferring 'patriotism'; see, e.g.: Заседание Международного дискуссионного клуба «Валдай." 24 октября 2014 года, 19:00 Сочи. Available online in Russian: http://www.kremlin.ru/news/46860; and in English: http://eng.kremlin.ru/news/23137 (21.03.2015).

However, nationalism is not an inherently bad ideology. It is "an ideology that supports a direct relationship between political state and ethnic group" and can be also used for good causes; see: *sub verbo* nationalism — P. Cane, J. Conaghan. The New Oxford Companion to Law. Oxford: Oxford University Press, 2008.

[225] In his 2015 work, Professor Mälksoo seems to build upon his 2014 critique of the human rights concept of the

using professor Mälksoo's hypothesis as a starting point for argumentation. Not only 'differing interpretation' hypothesis opens the Pandora's box of debate on universality of international law, the rhetoric behind the 'differing interpretation' hypothesis, in my view, would likely purport the stereotype of Russia as being intrinsically different,[226] and since difference is often taken as a sign of danger,[227] Russia would continue to be viewed not as a strong participant in the international arena but as a monstrosity that the West must constantly fend against. Christopher Scott Browning's geopolitical observation that in the 'othering' discourse "Russia remains construed as the object to be acted upon, the diseased that needs to be cured", whilst the Western identity continues to thrive "as charitable and benevolent",[228] suggests that Russia continues to be demonized and antagonized. I would even suggest that, especially after the fall of USSR, Russia has been outright humiliated in the international arena.[229] Thus, to

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Russian Orthodox Church, the institution that is undoubtedly playing an important role in forming the modern Russian cultural narrative. For example, according to its Patriarch Kirill I, the Universal Declaration of Human Rights is overly individualistic and globalist, especially the concept of human dignity. Dignity, should humans do evil, asserts Kirill, is bound to degrade. To that, however, Mälksoo responds in a Socratic fashion by asking whether "bad people, terrorists, by their acts lose all their human dignity and rights", and "who gets to decide about the nature of good and bad" as well as "why and when dignity — or the main source for one's human rights — has been lost." See: L. Mälksoo. Russian Approaches to International Law. London: Oxford University Press, 2015, pp 17-18; L. Mälksoo. The Human-Rights Concept of the Russian Orthodox Church and its Patriarch Kirill I: A Critical Appraisal. — L. Mälksoo (ed). Russia and European Human-Rights Law: the Rise of the Civilizational Argument. Leiden; Boston: Brill Nijhoff, 2014, pp 15-24.

Cf (the idea of a *sui generis* state is indeed a grandiose contention that a state may be so powerful as to civilizationally isolate itself from other actors at the international arena and thus to develop as a civilization of its own; the case of China): Z. Weiwei. The China Wave. Rise of a Civilizational State. Hackensack, NJ: World Century, 2012.

[226] In particular, Professor Mälksoo draws from Patriarch Kirill I of the Russian Orthodox Church as one of the sources of the civilizational argument: Russia being "an independent 'civilization' in its present historical formation." See: L. Mälksoo. The Human-Rights Concept of the Russian Orthodox Church and its Patriarch Kirill I: A Critical Appraisal. — L. Mälksoo (ed). Russia and European Human-Rights Law: the Rise of the Civilizational Argument. Leiden; Boston: Brill Nijhoff, 2014, pp 24, 29.

See also, e.g.: O. Kazmina. The Russian Orthodox Church in a New Situation in Russia: Challenges and Responses. — A. Krawchuk & T. Bremer. Eastern Orthodox Encounters of Identity and Otherness: Values, Self-Reflection, Dialogue. New York: Palgrave Macmillan, 2014, p 227.

However, to be fair, the United States has also been suspected of using peculiar interpretations of international law; for example, in the context of war in Iraq. *Ad absurdum*, one can ask whether political decisions of the United States government trump the opinion of the majority of American scholars on legality of war in Iraq, and does these political decisions, despite the view of the majority, isolate the United States as a civilization that has its own differing way of interpreting international law. Cf, e.g.: S. V. Scott. The Nature of US Engagement with International Law: Making Sense of Apparent Inconsistencies. — D. Armstrong (ed). Routledge Handbook of International Law. London; New York: Routledge, 2011, p 211.

[227] One economic and political rationale behind such 'othering' is control. In addition, from the psychological perspective, it is our fears, insecurities, and resentment that fuel 'othering'. See, e.g.: L. M. Russell. Encountering the 'Other' in a World of Difference and Danger. — The Harvard Theological Review, 2006/99(4), p 459.

From the constructivist perspective, international social interaction has been found to influence state behavior, sometimes inducing undesirable behavioral changes; see, e.g.: R. Goodman & D. Jinks. How to Influence States: Socialization and International Human Rights Law. — Duke Law Journal, 2004/54(3), p 626.

On the effects of intra-national social interaction, see, e.g.: A. K. Woods. A Behavioral Approach to Human Rights. — Harvard International Law Journal, 2010/51(1), p 61.

[228] C. S. Browning. The Region-Building Approach Revisited: The Continued Othering of Russia in Discourses of Region-Building in the European North. — Geopolitics, 2003/8(1), pp 45-71.

[229] Such sentiment was also expressed by President Putin while explaining what residents of Crimea felt after

avoid oppressive 'othering', I would suggest, rather, that Russia viewed international law the same way the West did,[230] but, to be precise, Russia wished to exploit international law, just as the West does, in order to follow and promote Russia's own ideological agenda,[231] which is indeed culturally and historically specific.

Did the actions of Russian Federation in Crimea go in consistency with and form a part of customary international law? President Putin's answer to this question, at first glance, needed no explanation; as the head of the Russian state he was expected to justify Russia's actions. However, was President Putin not indirectly admitting the violation of international law, after so many references to the international law's feebleness, accusations of violations by the West, and a subtle message: why cannot Russia, too, tag along with the systematic defiance of international law? *"[Н]е мы это начали,"* President Putin proclaimed calmly.[232]

Thus, we can conclude that during the Crimean Crisis, the Russian Federation has ex-

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waking up in a different state due to the fall of the Union of Soviet Socialist Republics in 1991 and why Russia was helpless at the time: "And what about the Russian state? What about Russia? It humbly accepted the situation." The original passage is even more emotional, describing Russia with head down and swallowing its pride: "*Российское государство, что же оно? Ну что, Россия? Опустила голову и смирилась, проглотила эту обиду.*" See: Обращение Президента Российской Федерации. 18 марта 2014 года, 15:50 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/20603; and in English: http://eng.kremlin.ru/news/6889 (21.03.2015).

Cf, e.g.: A. Applebaum. The myth of Russian humiliation. 17 October 2014. — The Washington Post. Available online:
http://www.washingtonpost.com/opinions/anne-applebaum-nato-pays-a-heavy-price-for-giving-russia-too-much-credita-true-achievement-under-threat/2014/10/17/5b3a6f2a-5617-11e4-809b-8cc0a295c773_story.html (23.03.2015).

The problem is thus posed by good faith, estoppel and principle of consistency, since passive Russia would have possibly breached its previous commitments and promises to Ukraine. Professor Ian Brownlie suggested, however, that these principles should be used with caution, "more particularly in dealing with territorial issues." See: I. Brownlie. Principles of Public International Law. 7th ed. Oxford; New York: Oxford University Press, 2008, 2012, p 153; cf: [1962] Case Concerning the *Temple* of Preah Vihear (Cambodia v. Thailand), Merits. — ICJ Reports 1956, p 6.

[230] Consider the conclusion of Vladislav Starzhenetskii to his recent analysis of human rights law in Russia: "[T]here is no genuine conflict between Russia and the Council [of Europe], between Russian and European values or notions of human rights." See: V. Starzhenetskii. Assessing Human Rights in Russia: Not to Miss the Forest for the Trees, a Response to Preclik, Schönfeld and Hallinan. — L. Mälksoo (ed). Russia and European Human-Rights Law: the Rise of the Civilizational Argument. Leiden; Boston: Brill Nijhoff, 2014, p 214.

[231] President Putin seems to promote multilateralism instead of bi- or monopolarism; underscoring that "most important is respect for one's partners and their interests," implying, of course, that Russia must also be respected. See: Заседание Международного дискуссионного клуба «Валдай." 24 октября 2014 года, 19:00 Сочи. Available online in Russian: http://www.kremlin.ru/news/46860; and in English: http://eng.kremlin.ru/news/23137 (21.03.2015).

Of course, it is contestable whether respect should be demanded or whether respect should be earned. Perhaps, the powerful states can do both, since, after all, we are speaking of, to use Anne-Marie Slaughter Burley's wording, "the inherent anarchy of the international system." See: A.-M. Slaughter Burley. International Law and International Relations Theory: A Dual Agenda. — The American Journal of International Law, 1993/87, p 208.

Cf: H. H. Koh. Review Essay. Why Do Nations Obey International Law? — The Yale Law Journal, 1997/106, p 2600; see also: T. M. Franck. Fairness in International Law and Institutions. Oxford: Oxford University Press, 2002.

[232] In my view, the phrase is better translated, "it was not us who started this." See: Заседание Международного дискуссионного клуба «Валдай." 24 октября 2014 года, 19:00 Сочи. Available online in Russian: http://www.kremlin.ru/news/46860; and in English: http://eng.kremlin.ru/news/23137 (21.03.2015).

ploited the norms of international law and human rights law. In the following subsection, I will elaborate that such exploitation is not uncommon at the inter-state level and will suggest that is precisely due to ideological needs and societal strains that such exploitation at the inter-state level occurs.

3.3.3. Subconclusion to Crimean Crisis Example of Political Manipulation against Objectivity

In this subsection, I will conclude that during the Crimean Crisis the Russian Federation had no other choice but to show its power on the Crimean peninsula and that states often exploit in international relations the norms of international law and human rights law to the benefit of their ideology. This resembles the classical legal realist theory of law in the books versus law in practice.[233] To pick an example from far 2003, Amnesty International noted on the state of human rights in Russia, that "[t]he law has extended its reach in the Russian Federation, but flaws in the way it is applied mean that it still offers little protection to many people."[234] Frankly, Russian Federation, being the successor of the Union of Soviet Socialist Republics, is not new to such dissonances.[235] What if law on paper versus law in practice is indeed the main systemic malaise that is continuously parasitic on the legal organism of Russia?

Even more so, to be fair, some defiance of international law is common to other states as well. Consider certain Western actions, which seemed like hypocrisies to President Putin.[236] For instance, one case of avoiding international law is Guantanamo Bay,[237] which

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[233] See, e.g.: R. Pound. Law in Books and Law in Action. — American Law Review, 1910/44.

[234] Amnesty International. Rough justice: the law and human rights in the Russian Federation. London: Amnesty International Publications, 2003, p 12.

[235] Law on paper was strikingly different in the Union of Soviet Socialist Republics; for example, Professor Lauri Mälksoo wrote that "Stalin's Constitution of 1936 included human rights such as freedom of conscience (Article 124) and freedom of expression (Article 125a) although in reality these rights were non-existent in the USSR." See: L. Mälksoo. Russian Approaches to International Law. London: Oxford University Press, 2015, p 6.

To expand on Professor Mälksoo's observation, these and many other proclaimed rights remained only on paper because the Soviet government had been in practice trumping such civil rights through censorship, persecution, arrests and executions. Optimistically, historian John Archibald Getty suggested that Stalin's Constitution was a genuine but failed attempt to democratize the Soviet Union. Cf: J. A. Getty. State and Society under Stalin: Constitutions and Elections in the 1930s. — Slavic Review, 1991/50(1), pp 18-35.

[236] For example, President Putin harshly accused the West of the 1999 NATO bombing of Yugoslavia, and that it was not authorized by the United Nations Security Council: "It was hard to believe, even seeing it with my own eyes, that at the end of the 20th century, one of Europe's capitals, Belgrade, was under missile attack for several weeks, and then came the real intervention." See: Обращение Президента Российской Федерации. 18 марта 2014 года, 15:50 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/20603; and in English: http://eng.kremlin.ru/news/6889 (21.03.2015).

See also, e.g.: 15 years on: Looking back at NATO's 'humanitarian' bombing of Yugoslavia. 24 March 2014, 04:01, edited on 26 March 2014, 12:09 — RT. Available online: http://rt.com/news/yugoslavia-kosovo-nato-bombing-705/ (23.03.2015).

[237] Guantanamo has been numerously named to be a 'black hole', out of which "there is no way out, except

was not expressly mentioned by President Putin in the analyzed speeches but which nevertheless remains to be one of the most prominent areas with alleged extra-legal violations of human rights. There are, of course, many other instances of human rights violations in the West; to pick another example from the fertile fields of counterinsurgency law: Israeli targeted killings.[238] Thus, in reality, we can point our finger to any place on the world map, and in the lands nearby we would find the effect of the same generalities: the meekness of international law, and the need to reiterate international law's universality.

Could it be, that in certain cases *prima facie* defiance of international law is allowed by virtue of custom?[239] However, here, too, I would distinguish between what the law is, in principle, and what the actual practice may have been. While Article 92 of the United Nations Charter and Article 38(1)(b) of the Statute of the International Court of Justice, for example, do allow international custom to be the source of international law, it is questionable whether customary disobedience of law could reasonably be considered a source of international law in the first place. Such dissonance between obligations and practice is probably why Michael Byers suggested to differentiate "between 'opinio juris' and 'state practice' with the distinction between international law and international politics, between what states might legally be obligated to do, and what they actually did as the result of far wider range of pressures and opportunities."[240] President Putin has made it clear that there were no other options for Russia

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through the good grace of the military." See, e.g.: G. Fletcher. Black Hole in Guantanamo Bay. — Journal of International Criminal Justice, 2004/2, p 123; G. Neumann. Anomalous Zones. — Stanford Law Review, 1996/48, pp 1228-1233.

See generally, e.g.: F. Johns. Non-Legality in International Law. Unruly Law. Cambridge Studies in International and Comparative Law. New York: Cambridge University Press, 2013, pp 69-108.

[238] In a case before the Supreme Court of Israel, the Petitioners' main position was, in quite absolute terms, built around human rights and customary international law; in particular, that Israeli policy of targeted killings, for example, of bombing possible terrorists (and possibly nearby civilians) violates "the basic right to life, and no defense or justification is to be found for that violation." The Supreme Court of Israel's judgment, however, has received criticism for providing an overly general answer as well as an inadequate test for reviewing the legality of targeted killings. See: The Supreme Court of Israel, *Targeted Killing Case*, 11.12.2005, HCJ 769/02, p 2.

For the critique of the court's judgment, cf, e.g.: M. Lesh. Case Notes. The Public Committee against Torture in Israel v the Government of Israel. The Israeli High Court of Justice Targeted Killing Decision. — Melbourne Journal of International Law, 2007/8.

Analogously, on abusive treatment of potential terrorists in British Forces' detention camps see, e.g.: The Rt Hon Sir William Gage (Chairman). The Report of the Baha Mousa Inquiry. Volume I. Presented to Parliament pursuant to Section 26 of the Inquiries Act 2005. Ordered by the House of Commons to be printed on 8 September 2011. London: The Stationery Office, 2011.

[239] After all, *raison d'être* of international custom is to take into account the "fluctuation of States' interests and behaviours." See: J. d'Aspremont. Formalism and the Sources of International Law: a Theory of the Ascertainment of Legal Rules. Oxford: Oxford University Press, 2011, 2013, p 164.

In that respect, on recently resurrected line of realism, see: J. L. Goldsmith and E. A. Posner. The Limits of International Law. Oxford: Oxford University Press, 2005, 2007; but cf: O. A. Hathaway and A. N. Lavinbuk. Book Review. Rationalism and Revisionism in International Law. — Harvard Law Review, 2006/114, pp 1404-1443 (a highly critical review of "The Limits of International Law").

[240] M. Byers. Custom, Power and the Power of Rules: International Relations and Customary International Law. Cambridge: Cambridge University Press, 1999, p xi.

than to aid Crimea.[241] If certain interpretation of international law results in Russia's actions to be named a violation of international law, this does not affect the reality, that the majority of Crimean population viewed Russia's actions as aid and viewed prohibitions of international law for such interventionist aid as formality.[242] On this point, I agree with professor Jean d'Aspremont, that until "certified by a law-applying authority," "customary international rules *often lack normative character* and, hence, their authority is gravely enfeebled."[243]

Thus, to finish with an example of Crimean Crisis, even if Russia's appeal to the Kosovo analogy was irrelevant[244] and even if there was no justification under international law to be used in principle,[245] Russia's intervention was nevertheless inevitable in practice; and continuing scrutiny of international law arguments and counter-arguments would not resolve this deadlock. The analysis of the Crimean Crisis situation allows us to conclude that on the inter-state level states often exploit international law and human rights law to the benefit of their culturally and historically specific state ideology.

See also, e.g.: G. Simpson. The Situation on the International Legal Theory Front: The Power of Rules and the Rule of Power. — European Journal of International Law, 2000/11(2).

Sometimes the pressure on the state might be the belief that the law in question is wrong. For example, should the state always blindly follow the binding acts of the United Nations Security Council? Practical reason suggests answering in the negative. After all, the United Nations Security Council is, in the words of Antonios Tzanakopoulos, an "oligarchic organ," and there are many challenges in holding the United Nations Security Council accountable for potentially wrongful actions; there is potential for moral hazard. See e.g.: A. Tzanakopoulos. Disobeying Security Council: Countermeasures against Wrongful Sanctions. Oxford Monographs in International Law. Oxford: Oxford University Press, 2011, 2013, p 13.

[241] President Putin declared as though protection of Crimea was Russia's duty, that "[abandoning Crimea and its residents in distress] would have been betrayal on [Russia's] part." See: Обращение Президента Российской Федерации. 18 марта 2014 года, 15:50 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/20603; and in English: http://eng.kremlin.ru/news/6889 (21.03.2015).

[242] This statement is, of course, only true under the assumption that Russia had, in fact, such support on part of the majority of Crimean population.

[243] J. d'Aspremont. Formalism and the Sources of International Law: a Theory of the Ascertainment of Legal Rules. Oxford: Oxford University Press, 2011, 2013, p 164.

Nevertheless, I cast no doubt that customary international law is still law. As Professor Nicholas Onuf has elegantly put it, "[t]he preoccupation with custom as a source of international law is recognition that by some mysterious process *practice* yields *law*." See: N. Onuf. Do Rules Say What They Do? From Ordinary Language to International Law. — Harvard International Law Journal, 1985/26(2), p 410.

[244] For counter-arguments regarding using the *Kosovo* case as justification, see, e.g. (in Estonian): R. Värk. Enesemääramine, lahkulöömine ja Rahvusvahelise Kohtu nõuandev arvamus Kosovo küsimuses. — Juridica, 2014/VII, pp 561-568 (Värk dissects the *Kosovo* case and concludes that the case should not be used as justification by separatists in Ukraine).

[245] For example, Russia's reliance on the doctrine of "rescue of nationals abroad" and the doctrine of humanitarian intervention has been dismissed by Professor Marc Weller. See, e.g.: Analysis: Why Russia's Crimea move fails legal test. 7 March 2014. — BBC. Available online: http://www.bbc.com/news/world-europe-26481423 (24.03.2015).

In addition, it remains questionable whether Russia was correctly differentiating between and relying on humanitarian intervention arguments and self-defense, that is defense only of own citizens. President Putin seemed to assert, that Russia's obligation is to defend all Russian and "brotherly" ethnos, irrespective of state borders. See, e.g.: Обращение Президента Российской Федерации. 18 марта 2014 года, 15:50 Москва, Кремль. Available online in Russian: http://www.kremlin.ru/news/20603; and in English: http://eng.kremlin.ru/news/6889 (21.03.2015).

3.4. Inter-personal Level: Expression Becoming Offensive

3.4.1. Description and Analysis of Events Surrounding Cancellation of Southampton Conference of 2015

Since ideological exploitation of human rights happens also very often at the inter-personal level, Section 3.4 of this thesis has been given proportionally more attention and has been divided into two subsections. In this first subsection I will analyze the events surrounding the lobbied cancellation in March 2015 of the Southampton academic conference on Israel's right to exist. In the next subsection, I will elaborate on the conclusion, using the example of freedom of expression being limited due to offensiveness, that human rights could be ideologically exploited also at the inter-personal level.

In March 2015, in Southampton, United Kingdom, the Southampton University was pressured to cancel a planned academic conference titled "International Law and the State of Israel: Legitimacy, Responsibility and Exceptionalism"[246] which questioned, quite critically, whether the state of Israel has under the international law a right to exist.[247] The organizers' position was critical in the sense that it criticized Israel of, for example, "apartheid, of which the Gaza violence is a symptom."[248] Given the nature of such critical position and given that such position has the potential to seriously offend, the University claimed that it did "not have enough resources to mitigate the risks"[249] and thus justified the cancellation of the conference. The University of Southampton confirmed that it is legally obliged "to ensure that freedom of speech within the law is secured for members, students and employees of the University, as well as for visiting speakers" for the speakers to be able "to have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, with due regard for the need to respect others and promote the best interests of the University and academic learning, without placing themselves in jeopardy of losing their jobs or privileges."[250] On 2 April 2015, the representative organization for the universities of

[246] O. Ben-Dor, S. Sharkh, J. Asmail, J. Hazell. International Law and the State of Israel: Legitimacy, Responsibility and Exceptionalism. University of Southampton. Available online: http://www.southampton.ac.uk/israelpalestinelaw/index.page? (06.04.2015).

[247] H. Siddique. University event questioning Israel's right to exist is cancelled. — The Guardian. 14:31 BST, 31 March 2015. Available online: http://www.theguardian.com/uk-news/2015/mar/31/southampton-university-cancels-event-questioning-israel-existence (04.04.2015).

[248] For example, for the University of Southampton School of Law's legal and political philosophy Professor O. Ben-Dor's public opinion, see, e.g., O. Ben-Dor. There Has Never Been a True Left in Israel. Israeli Apartheid is the Core of the Crisis. — Counterpunch. Weekend Edition June 23-25, 2007. Available online: http://www.counterpunch.org/2007/06/23/israeli-apartheid-is-the-core-of-the-crisis/ (04.04.2015).

[249] B. White. Statement in support of the University of Southampton. Monday, 30 March 2015. Update from the organisers, 31 March. Available online: http://freespeechsouthampton.blogspot.co.uk/2015/03/update-from-organisers-31-march-it-is.html (04.04.2015).

[250] University of Southampton. Statements. International Law and the State of Israel — Public Statement. Avail-

the United Kingdom "Universities UK" released a press release in support of the University of Southampton's decision to cancel the academic conference, but recognized it aptly that the situations such as at the University of Southampton "illustrate how extraordinarily difficult it can be to balance the duty to promote free speech with the duty to protect health and safety, particularly in the context of highly contentious issues where there are real and serious threats to health and safety."[251] Yet ultimately, the University of Southampton relied on the provisions requiring it to ensure the safety and security of its staff, students and visitors, and expressed that it "was not an easy decision" but one that was conducted after "a full assessment of the University's ability to manage these threats to individual safety and public order."[252]

The lobby groups applying pressure on the University of Southampton feared that the academic conference would be "an apparently one-sided event" that would not be far from descending "into naked antisemitism,"[253] that it would be "a hate-fest, full of people who associate with dyed-in-the-wool antisemitism."[254] Many alumni of the University of Southampton were also upset with the University of Southampton potentially holding such a conference, promised to look "unfavorably" at job applications sent by graduates of Southampton and even returned their own Southampton diplomas as a sign of protest.[255] A petition by Zionist Federation UK gathered over 6700 signatures and urged the University of Southampton not to allow the academic conference "on the legitimacy of a state that was established over 60 years ago," as such conference would be "strange enough [to question the existence of Israel after so many years]", "harmful," a "disgrace," and a "kangaroo court."[256] The organizers of

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able online: http://www.southampton.ac.uk/news/statements.page (06.04.2015).

[251] Universities UK. Promoting freedom of speech and ensuring safety on campus. Press Releases. 2 April 2015. Available online: http://www.universitiesuk.ac.uk/highereducation/Pages/Promotingfreedomofspeechandensuringsafetyoncampus.aspx (06.04.2015).

[252] University of Southampton. Statements. International Law and the State of Israel — Public Statement. Available online: http://www.southampton.ac.uk/news/statements.page (06.04.2015).

[253] H. Siddique. University event questioning Israel's right to exist is cancelled. — The Guardian. 14:31 BST, 31 March 2015. Available online: http://www.theguardian.com/uk-news/2015/mar/31/southampton-university-cancels-event-questioning-israel-existence (04.04.2015).

See also, e.g.: Human Rights Group Slams Southampton University Conference on Israel's Legitimacy, Says Agenda 'Redolent of Nazism'. — The Algemeiner. 1 April 2015, 10:46 AM. Available online: http://www.algemeiner.com/2015/04/01/human-rights-group-slams-southampton-university-conference-on-israels-legitimacy-says-agenda-redolent-of-nazism/ (06.04.2015).

[254] Jenni Frazer: Don't doubt it, this Southampton debacle would be a total hate-fest. — Jewish News. 2 April 2015. Available online: http://www.jewishnews.co.uk/jenni-frazer-southampton-hate-fest/ (06.04.2015).

[255] P. Sawer and J. Paul. Southampton University conference questioning right of Israel to exist scrapped after protests. — The Telegraph. 01 April 2015, 03:23 pm BST. Available online: http://www.telegraph.co.uk/news/worldnews/middleeast/israel/11506045/Southampton-University-conference-questioning-right-of-Israel-to-exist-scrapped-after-protests.html (06.04.2015).

[256] ZF UK. Petitioning University of Southampton. Cancel Your Upcoming Anti-Israel Conference. — Change.org. Available online: https://www.change.org/p/university-of-southampton-cancel-your-upcoming-anti-israel-conference (06.04.2015).

the academic conference were considerably upset by the cancellation of the academic conference:

> The University is a public space, it was established by a Royal Charter and it has public roles and duties including upholding freedom of speech and to that extent it should be able to resort to police assistance in order to curb security risks to enable it to fulfil its legal obligation to uphold freedom of speech. If this is not done, if commitment to safety is not undertaken by the police, freedom of speech becomes an idle worthless notion.[257]

The University of Southampton was thus faced with initially the same dilemma that the government of France was faced with in respect of the Charlie Hebdo publishers:[258] freedom of speech versus potential to offend and cause violence. Accordingly, the organizers of the academic conference used the situation revolving around Charlie Hebdo indeed as an analogy:

> Freedom of speech inherently involves taking risks, and hence the presence of risk cannot be used to curtail it! The UK Government and many other governments have refused to give in to attempts by Islamic extremists to stop the publication of pictures of Prophet Mohammad despite serious risks of violence. The correct response by the governments was to confront and contain that violence and not to cancel the publication of these pictures by Charlie Hebdo and others.[259]

Notably, over 915 academics from different well-known and lesser-known institutions from around the world have signed a statement in support of "the University of Southampton's commitment to freedom of speech and scholarly debate" citing the affirmation "that the themes of the conference, such as the relationship of international law to the historic and ongoing political violence in Palestine/Israel, and critical reflections on nationality and self-determination, are entirely legitimate subjects for debate and inquiry," and expressing a con-

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[257] B. White. Statement in support of the University of Southampton. Monday, 30 March 2015. Update from the organisers, 31 March. Available online: http://freespeechsouthampton.blogspot.co.uk/2015/03/update-from-organisers-31-march-it-is.html (04.04.2015).

[258] See, e.g.: G. Packer. The Blame for the Charlie Hebdo Murders. — The New Yorker. 7 January 2015. Available online: http://www.newyorker.com/news/news-desk/blame-for-charlie-hebdo-murders (04.04.2015); A. Lane. Shooting the Jesters. — The New Yorker. 8 January 2015. Available online: http://www.newyorker.com/culture/cultural-comment/shooting-jesters (04.04.2015).

[259] B. White. Statement in support of the University of Southampton. Monday, 30 March 2015. Update from the organisers, 31 March. Available online: http://freespeechsouthampton.blogspot.co.uk/2015/03/update-from-organisers-31-march-it-is.html (04.04.2015).

cern "that partisan attempts are being made to silence dissenting analysis of the topic in question" and that such censorship of a "lawful academic discussion would set a worrying precedent."[260]

Whilst the University's spokesperson underscored that "the University of Southampton is not expressing an opinion or taking any particular standpoint in relation to the conference, 'International Law and the State of Israel', but is fulfilling its legal obligations,"[261] the reality remained at the moment of cancellation to be the contrary: censorship of a controversial opinion.

The fact, whether censorship is done at the pretense of law abidance, does not answer the fundamental question, whether such censorship was right, especially given the counter-arguments that police enforcement could have apparently well secured the conference, the academics, and the attendees. The very same fact that there was a reasonable fear and risk of violent demonstrators protesting the controversial conference,[262] however, suggests that the more powerful voice prevailed, by force, to suppress the expression of controversial opinions. Yet that is not what freedom of expression is about. It is even more telling that this cancellation happened at an academic institution, canceling the conference of academics and professors, thereby completely trumping the principle of academic freedom, which should supposedly be even more precious that simple freedom of expression.

For the avoidance of doubt, in this section of the work, I did not set out to analyze or to agree with the organizers' opinion on Israel's right to exist. To me, it is understandable that many members of the Jewish community, which historically suffered from a lot of traumatizing antisemitism, were offended by the controversial views of the organizers of the academic conference. Yet, in my view, the situation should have been won or at least should have moved toward mutual understanding through words and arguments, a peaceful demonstration even, and perhaps through an alternative conference presenting opposing views, but definitely not through suppression of the speakers, a social media campaign, and political lobbying. Nevertheless, in practice and in the end, the latter methods did work well for the protesters of the Southampton conference. Thus, the present analysis showed that it is in practice possible to exploit the notion of human rights and human freedoms according to one's own ideological understanding of such rights and freedoms.

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[260] Ibid.

[261] M. Reisz. Academics back decision to press ahead with controversial conference on Israel. — Times Higher Education. 16 March 2015. Available online: http://www.timeshighereducation.co.uk/news/academics-back-decision-to-press-ahead-with-controversial-conference-on-israel/2019115.article (06.04.2015).

[262] University of Southampton. Statements. International Law and the State of Israel — Public Statement. Available online: http://www.southampton.ac.uk/news/statements.page (06.04.2015).

3.4.2. Subconclusion to Southampton Conference Example of Expression becoming Offensive

In this section, I will elaborate on the conclusion that, in the context of freedom of expression, at the inter-personal level it is possible to exploit the concept of human rights. The previously described canceled Southampton Conference of 2015 on Israel's right to exist is only one of the instances where we may observe the clash of freedom of expression against the obligation not to offend.[263]

Other notable example could have been made of the flag-burning, or the flag desecration, cases. In the United States, the proposed constitutional amendment to give the Congress power to prohibit physical desecration of the flag of the United States, has been a controversial issue for over twenty years and has not been yet approved by the Senate. Notably, in *Texas v. Johnson*[264] and in *United States v. Eichman,*[265] the Supreme Court of the United States ruled that flag burning is a constitutionally protected act of public expression and that we should be strong and resilient not to punish for difference in opinion:

> To paraphrase Justice Holmes, we submit that nobody can suppose that this one gesture of an unknown man will change our Nation's attitude toward its flag. … We are tempted to say, in fact, that the flag's deservedly cherished place in our community will be strengthened, not weakened, by our holding today. Our decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. Indeed, one of the proudest images of our flag, the one immortalized in our own national anthem, is of the bombardment it survived at Fort McHenry. It is the Nation's resilience, not its rigidity, that Texas sees reflected in the flag … . The way to preserve the flag's special role is not to punish those who feel differently about these mat-

[263] Lee Bollinger argued convincingly in defense of speech restrictions: "[I]f the people themselves, acting after full and open discussion, decide *in accordance with democratic procedures* that some speech will no longer be tolerated, then it is not 'the government' that is depriving 'us', the citizens, of our freedom to choose but *we* as citizens deciding what the rules of conduct within the community will be." See: L. C. Bollinger. The Tolerant Society: Freedom of Speech and Extremist Speech in America. New York: Oxford University Press, 1986, p 50.

Cf (Stanley Fish argued in 1994, that "[f]reedom of expression would only be a primary value if it didn't matter what was said, didn't matter in the sense that no one gave a damn but just liked to hear talk"): S. Fish. There's No Such Thing as Free Speech and It's a Good Thing, Too. New York: Oxford University Press, 1994, p 106.

[264] The United States Supreme Court case Texas v. Johnson, 491 U.S. 397 (1989).

[265] The United States Supreme Court case United States v. Eichman, 496 U.S. 310 (1990).

ters. It is to persuade them that they are wrong.[266]

Of course, the flag burning may be considered an extreme example of protecting freedom of speech and certainly not the only one.[267] The nation's flag is indeed a symbol with great value, and to take the example of the flag of the United States, it is also a symbol of courage and determination that was used in many battles in the past. This is why Justice John Paul Stevens dissented in *Texas v. Johnson* that the accused was supposedly punished only for the means by which he expressed his opinion, not the opinion itself.[268] However, to repeat the Supreme Court of the United States in *United States v. Eichman*, "the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[269]

On a theoretical level, the question of freedom of speech contrasting the concept of hate speech may be viewed in terms of utilitarianism. Yet, utilitarianism is rarely a good theory to approach a complex situation, where both sides of the story can be right in some respect. Pure utilitarianism, despite its pretense at objectivity, is not free from the subjectivity bias. In 1974, Robert Nozick has made a convincing criticism of the utilitarian theory in that regard:

> Utilitarian theory is embarrassed by the possibility of utility monsters who get enormously greater sums of utility from any sacrifice of others than these others lose … . [T]he theory seems to require that we all be sacrificed in the monster's maw, in order to increase total utility.[270]

A utility monster is an overlooked byproduct of the utilitarian theory, since we all, to use the terminology of the theory itself, derive different utility units from different things. The problem arises, then, when someone derives considerably more units of utility from a certain act to the considerable detriment of others. Jason Kuznicki suggested in 2009 what would be

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[266] The United States Supreme Court case Texas v. Johnson, 491 U.S. 397 (1989), pp 418-419.

[267] For example, for a more recent clash of freedom of speech with state policy, one can turn to the Texas Confederate flag license plate case story for the debate over limits of what messages one can demand to be put on one's car license plate. See, e.g.: J. Kasperkevic. US Supreme Court wrestles with Texas Confederate flag license plate. — The Guardian. 23 March 2015, 16:46 GMT. Available online: http://www.theguardian.com/us-news/2015/mar/23/texas-confederate-flag-license-plate-supreme-court-us (04.04.2015).

In that respect, during the oral argument in the Supreme Court, Justice Ruth Bader Ginsburg pointed to a possible slippery slope argument: "So they could have the swastika. And suppose somebody else says, I want to have "Jihad" on my license plate. That's okay, too?." The oralist, after some hesitation, answered the hypothetical with a "Yes," noting that the state can nevertheless disclaim or disapprove of the said license plates. See: Oral Argument in the Supreme Court of the United States, No. 14-144. Washington, D.C., 23 March 2015. Available online: Available online: http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-144_5i36.pdf (04.04.2015), pp 32-33, 54.

[268] The United States Supreme Court case Texas v. Johnson, 491 U.S. 397 (1989).

[269] The United States Supreme Court case United States v. Eichman, 496 U.S. 310 (1990), p 319.

[270] R. Nozick. Anarchy, State, and Utopia. New York: Basic Books, 1974, p 41.

the result of providing such subjective well-being to certain utility monsters, even at the expense of free expression:

> The result is not more happiness, but a race to the bottom, in which aggrieved groups compete endlessly with one another for a slice of government power …. Restrictions on free expression do not make societies happier or more tolerant, but instead make them more fractious and censorious.[271]

One can understand the silencing of free expression via the analogy to the press censorship. "[The press] is the spiritual mirror in which a people can see itself,"[272] Karl Marx wrote in 1975. Marx relied on the idea that censorship is contrary to the nature of free press:

> The essence of the free press is the characterful, rational, moral essence of freedom. The character of the censored press is the characterless monster of freedom. … In order to really justify censorship, the speaker … would have to prove that censorship is part of the essence of freedom of the press.[273]

To finish this subsection with a quote from Kuznicki:

> Free speech [does not] need anything else to balance it, because in a free society, we may always balance "bad" speech with "good speech." Attempting to balance free expression with censorship leads to a serious *im*balance in political power.[274]

That is also the argument here in this section: *mala fide* exploitation of certain human rights and freedoms means and leads to censorship, violence, and the use of power, ultimately to silence the other. Thus, using the example of freedom of speech turning into offense, the present analysis showed at the inter-personal level it is possible to ideologically exploit human rights and human freedoms to the detriment of others.

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[271] J. Kuznicki. Attack of the Utility Monsters: the New Threats to Free Speech. — Policy Analysis, 2009/652. Available online: http://www.cato.org/sites/cato.org/files/pubs/pdf/pa652.pdf (04.04.2015), p 1.

[272] K. Marx. Debates on Freedom of the Press and Publication of the Proceedings of the Assembly of the Estates. — Karl Marx-Friedrich Engels: Collected Works. Volume 1. New York: International Publishers, 1975, p 165.

[273] Ibid., p 158.

[274] J. Kuznicki. Attack of the Utility Monsters: the New Threats to Free Speech. — Policy Analysis, 2009/652. Available online: http://www.cato.org/sites/cato.org/files/pubs/pdf/pa652.pdf (04.04.2015), p 2.

CONCLUSION

The practice of law is in some sense a practice of interpretation, of justification, and of advocacy. It happens sometimes that lawyers and academics, and on a larger scale states and governments, have to go to remarkably great lengths to justify the legality and logic of certain actions, especially when doing so under the powerful peer pressure. Since legal arguments are rarely won by consensus, the judge, either real or hypothetical, reviewing the situation and different arguments, is posed with a hard choice to make. The difficult question to be answered, naturally, is whose interpretation is to prevail.

Difficulties arise when there is a perceivable gap between what people believe to be fair and between what law stipulates, on one hand, and between what the law stipulates and what the real practice is, on the other hand. In a very general sense, there are, thus, three levels to be in harmony: the level of the idea of justice, the level of the law, and the level of practice. Ideally, the concept of justice should flow strongly through the medium of law right into the everyday real practice of humans and states. Such harmony, one can imagine, would be pleasant to observe, and, depending on the idea of justice, such society, where real practice is congruent with law that is in turn congruent with the idea of justice, would be pleasant to live in.

However, it is often forgotten that law, as it is grounded in tradition and history, and, in particular, international law, as it is grounded in international custom and international history, do not always have strong links with the present time practice. The result is that human and state actions are bound to often blatantly defy law, as the real practice, pressures, and opportunities as well as the subjective sense of justice may have, in fact, dictated. Inevitably, for realist observers, there is felt an uneasy dissonance.

In this work, after comprehensively explaining the methodological principles in Sections 1.1-1.2 and the interdisciplinary theoretical background in Sections 2.1.1-2.3.3, I laid out an original theoretical framework for understanding dissonances caused by ideological exploitation of human rights on four different levels: intra-personal, intra-state, inter-state, and inter-personal; with the latter two levels, in the interest of space and importance, warranting more attention than the former two levels.

I was curious to falsify the set hypothesis: the concept of universal human rights is not prone to ideological exploitation. I have succeeded in falsifying the set hypothesis. I drew on powerful paradigms of constructivism and legal realism to propose an original and timely theoretical framework for understanding some dissonant events of the recent past that concerned ideological exploitation of human rights. As examples of ideological exploitation of human rights, I have used the following: at the intra-personal level, I analyzed the clash of

human freedom against the freedom of others by referring to Anders Behring Breivik's radical and violent Norway Attacks of 2011; at the intra-state level, I briefly analyzed the violation of human rights caused by the lustration policy during the Ukrainian crisis (2013 — ongoing); at the inter-state level, I have given a great deal of attention to the views of Russian Federation concerning the Crimean referendum of 2014; at the inter-personal level, I analyzed the cancellation of the controversial Southampton Conference of March 2015 on Israel's right to exist. In synergy, the analysis has shown that it is well possible to exploit and to twist the meaning of universal human rights.

First, in Section 3.1, I concluded, as far as the Norway Attacks of 2011 were concerned, that, when Anders Behring Breivik expressed radical views, he made a strong appeal to his own freedom, but in resorting to violence, he has self-contradicted his views by disregarding the liberty of others with no further justification for such disregard, even despite his radical contempt for certain cultures and nationalities. Thus, Breivik has ideologically and radically exploited the meaning of human freedom to the severe detriment of many others.

Second, in Section 3.2, I concluded that Ukraine had a justification during the Ukrainian crisis (2013 — ongoing) to adopt a lustration policy and to lay off government officials of the past, but it had no justification for such a harsh lustration policy that violated human rights of government officials and many judges simply because they were for the new ideology the resemblance of the old, conflicting ideology. It is thus well possible to exploit the meaning of human rights also at the intra-state level, if the governing ideology can justify such exploitation.

Third, in Sections 3.3.1-3.3.3, I explained the complexities of obtaining objective information regarding the Crimean Crisis (2014 — ongoing) and analyzed in detail key speeches of the President of Russian Federation Vladimir Putin that he made to address the Crimean Crisis. I reached a conclusion that many states might be pressed to choose defiance of international law. Thus, I have shown that Russia, even if having disobeyed certain norms of customary international law, had nonetheless its own justifications, backed up by power and alleged support of Crimean people, to intervention in Crimea. If there had been no such alleged support from Crimea itself, then we could have more effectively accused Russia of aggression.

Finally, in Sections 3.4.1-3.4.2, I concluded that ideological exploitation of human rights can occur on the inter-personal level and often leads to censorship, violence, and the use of power, ultimately to silence the other. Thus, using the example of Southampton Conference of March 2015 being canceled by forceful lobbying, my analysis showed that, given the power, it is possible to ideologically exploit human rights and human freedoms to the det-

riment of others at the inter-personal level.

In my thesis, I did not set out to overhaul the current human rights system.[275] However, I am very excited for the present work opening many possibilities for future research. One such question is the falsifiability of my proposed theory of fundamental dissonances for understanding ideological exploitation of human rights. Another unanswered question is the possibility of grounding human rights in natural law.[276] Yet another such question is the exploration of options alternative to the human rights regime: could there be alternative regimes? For example, Professor Eric A. Posner proposed, drawing on ideas on economic development, that it would be better to focus on human welfare rather than on human rights.[277] Whether Posner's suggestion is correct, it remains to be seen. As Mary Ann Glendon put it:

> Our rights talk, in its absoluteness, promotes unrealistic expectations, heightens social conflict, and inhibits dialog that might lead toward consensus, accommodation, or at least the discovery of common ground. In its silence concerning responsibilities, it seems to condone acceptance of the benefits of living in a democratic social welfare state, without accepting the corresponding personal and civic obligations.[278]

Mary Ann Glendon has also written, as her conclusion to a morbid description of the politics of the early 1990s, that, despite the struggle, certain groups, for example, "learned that they could enter into dialogue, find some common ground, and, where common ground did

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[275] In this regard, I agree with Lynn Hunt who reached the following conclusion regarding the current system of human rights: "The human rights framework, with its international bodies, international courts, and international conventions, might be exasperating in its slowness to respond or repeated inability to achieve its ultimate goals, but there is no better structure available for confronting these issues. … The history of human rights shows that rights are best defended in the end by the feelings, convictions, and actions of multitudes of individuals, who demand responses that accord with their inner sense of outrage." However, in my view, the problem may also lie in the fixation on the rights-talk and in disregard of such notions as human obligations, responsibilities, and honor. Cf: L. Hunt. Inventing Human Rights: a History. New York; London: Norton, 2008, p 213.

[276] In my view, we should not remain content with UNESCO's conclusion that there is no common philosophical ground for human rights to be found. See: UNESCO. The Grounds of an International Declaration of Human Rights. PHS/3 - Appendix II. 15 June 1948. Available online: http://unesdoc.unesco.org/images/0015/001550/155041eb.pdf (04.04.2015). In this respect, the separation of human rights from its Thomistic, religious, and ethical roots may have been a mistake. Cf, e.g.: J. H. Madigan. Truth, Politics, and Universal Human Rights. New York: Palgrave Macmillan, 2007; J.-P. Rentto. Natural Personalism. A Secular Rearrangement of Catholic Themes in Bioethics. An Academic Dissertation. Turku: University of Turku, 2004; M. A. Peeters. The New Global Ethic: Challenges for the Church. *Sine loco*: Institute for Intercultural Dialogue Dynamics asbl, 2006.

[277] E. A. Posner. Human Welfare, Not Human Rights. — Columbia Law Review, 2008/108(7), pp 1758-1801.

Cf ("[P]ublic discourse on human rights and development too often ignores their fundamental two-way relationship. The world now accepts that sustainable development is impossible without human rights. What has been missing is the recognition that the advancement of an interconnected set of human rights is impossible *without development*."): World Bank. Development and Human Rights: the Role of the World Bank. World Bank, 1998. Available online: http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186409169154/08DHR.pdf (04.04.2015).

[278] M. A. Glendon. Rights Talk: The Impoverishment of Political Discourse. New York: The Free Press, 1991, p 14.

not seem to exist, achieve mutual understanding — all without losing their own … distinctiveness."[279] To have this kind of policy of mutual understanding instituted globally is also my hope.

Finally, I understand why one would turn to the letter of law in times of need for legal justification. But if books are inconsistent with practice, does it not mean that books have distanced too far from reality? I would rather follow the wise words of Roscoe Pound, who cautioned us to "not become legal monks" and "not allow our legal texts to acquire sanctity and go the way of all sacred writings,"[280] than completely disregard the actual practice and behavior of states, humans, and organizations. And until the actual practice becomes to obey the international human rights in a universally accepted or a globally understood way, which at the moment is an unrealistic expectation, the concept of universal human rights will continue to be exploited and twisted for the benefit of ever changing and often harmful ideologies.

[279] Ibid., p 181.

[280] R. Pound. Law in Books and Law in Action. — American Law Review, 1910/44, p 36.

RESÜMEE. Teoreetiline raamistik inimõiguste ideoloogilise ekspluateerimise mõistmiseks: fundamentaalsete dissonantside näited neljal eri tasandil

Trend positivismile on võtnud hoogu juba 19. sajandi algusest. Kuid me kõik teame, mis juhtus maailmaga umbes sada aastat pärast seda: maailmasõjad, külm sõda, paljud vägivaldsed konfliktid. Rahu eest pidi seisma Ühinenud Rahvaste Organisatsioon ning rahu ja kindla tuleviku aluseks pidi olema 1948. aastal vastu võetud Inimõiguste Ülddeklaratsioon. Siiski ei näe maailm rahu ka tänapäeval.

Mitmed skeptikud on tõstatanud küsimuse, kas inimõiguste süsteemil on mõni lahendamatu viga. Mõned on pakkunud välja uued süsteemid, mis näiteks ei keskenduks mitte inimõigustele, vaid inimarengule. Käesoleva töö autor ei ole seisukohal, et inimõiguste süsteem tuleb asendada mõne muu süsteemiga; ka on üldteada, et inimõiguste aktivism on toonud muuseas palju head. Kuid käesoleva töö autor kahtleb, kas inimõiguste süsteem suudab vastu pidada ühele autori seisukohal aktuaalsele ohule: ideoloogilisele ekspluateerimisele. Tegemist ei ole mitte ainult õigusfilosoofiliselt, vaid ka poliitiliselt olulise probleemiga.

Autori hüpotees on järgmine: universaalseid inimõigusi ei ole võimalik ideoloogiliselt ekspluateerida. Oma töös falsifitseeris autor nimetatud hüpoteesi ning läbi mitmete aktuaalsete näidete jõudis järeldusele, et inimõigusi on võimalik ideoloogiliselt ekspluateerida ning seda on ka tihti tehtud inimeste või riikide kahjuks.

Käesoleva töö struktureerimisel on lähtutud peatükkide ja alapeatükkide funktsioonidest ja tähtsusest ning arusaamast, et korrektne, jälgitav ja kontrollitav teadustöö peab üldreeglina sisaldama muuhulgas ka metodoloogia ja teooria osa. Seega, töö koosneb kolmest peatükist, milleks on metodoloogia osa, baasteooria osa, ja näited.

Töö esimene peatükk keskendub töö metodoloogiale ning seletab lahti põhilised metodoloogilised printsiibid, mida autor järgis käesoleva töö kirjutamisel: interdistsiplinaarsus ja falsifitseeritavus. Interdistsiplinaarsuse all pidas autor silmas teadvustamist, et õigusteadus ei ole mitte ainult õigusdogmaatika, vaid näiteks ka õiguse filosoofia, õiguse psühholoogia, õiguse sotsioloogia ja õiguse lingvistika, ja et sotsiaalteadus ei ole mitte ainult õigusteadus, vaid ka näiteks psühholoogia ja sotsioloogia laiemalt. Falsifitseeritavuse all pidas autor silmas Karl Popperi teadusmeetodit ning väidet, et teaduslikuks saab pidada ainult sellist teooriat, mis on falsifitseeritav või tagasilükatav.

Töö teine peatükk keskendus töö teoreetilisele baasile: põhikontseptsioonidele ja põhikontseptsioonide nõrkustele, interdistsiplinaarsetele teooriatele laiemalt, ja õigusteaduslikele teooriatele kitsamalt. Põhikontseptsioonideks on käesoleva töö raames õigus, poliitiline manipuleerimine, ideoloogia, võim, individualism, vabadus, suveräänsus ning inimõigused.

Kriitiline arusaam eelnimetatud kontseptsioonidest lubab väita, et inimõigused on ideoloogiliselt ekspluateeritavad. Lähtudes aga interdistsiplinaarsuse printsiibist, autor tutvustas lähemalt ja rakendas analüüsi koostamisel autori poolt välja valitud kahte interdistsiplinaarset teooriat: Leon Festingeri kognitiivsete dissonantside teooriat psühholoogia valdkonnast ning Robert King Mertoni pingeteooriat sotsioloogia valdkonnast. Autori arvates põhjustavadki olukorrad, milles inimõigusi ideoloogiliselt ekspluateeritakse, selliseid kognitiivseid dissonantse, mida autor käesoleva töö raames nimetab fundamentaalseteks dissonantsideks, ning nende järgi võib selliseid ideoloogiliste ekspluateerimiste olukordi ära tunda. Pingeteooria võimaldab aga aru saada, miks üks või teine isik või riik võib olla sunnitud inimõigusi enda kasuks pöörama. Õiguslik-teoreetilisest küljest on aga käesolevas töös piirdutud kolmel lähenemisel: õigusrealismil; arusaamal, et inimõigusi võidakse kasutada "moraalsete õiguste" tähenduses, kuigi neid on puudulikult kirja pandud kui positiivset õigust rahvusvahelistesse, supranatsionaalsetesse ja siseriiklikke õigusaktidesse; ning arusaamal, et universaalsed inimõigused on õigusaktides kajastatud pigem printsiipide kui reeglitena.

Töö kolmas peatükk on jagatud neljaks, vastavalt autori välja pakutud jaotusele: fundamentaalsete dissonantside neli erinevat tasandit. Nendeks tasanditeks on järgmised iniminteraktsiooni variandid: isikusisene, riigisisene, riikidevaheline, ja isikutevaheline tasandid.

Isikusisene tasand oli töös näitlikustatud läbi Norra 2011. aasta kuulsa juhtumi. Kirjeldades Anders Behring Breiviku plaanitud ja teostatud pommi seadmist Oslos peaministri hoone lähedale ja mitmete noorte tulistamist Utoya saarel poliitilise partei noortelaagris, autor jõudis järgmisele seisukohale: Breivik on kuritarvitanud oma inimõigusi vabale eneseteostusele ning seeläbi sisemiselt ekspluateerinud inimõiguste tähendust oma radikaalse poliitilise ideoloogia elluviimisel, millega pani toime mitmed kuriteod ja põhjustas Norra elanikele varalise ja mittevaralise kahju. Seega on isikusisene tasand ilmne siis, kui isik kuritarvitab endale kuuluva moraalse õiguse.

Riigisisene tasand oli töös näitlikustatud läbi Ukrainas 2014. aastal seoses sealse kriisiga vastuvõetud lustratsiooni õigusakti. Lustratsiooni poliitika järgi pidid ametist lahkuma mitmed ametnikud, sealhulgas ka mitmed kohtunikud, ainuüksi seetõttu, et nad olid ametis kriisieelse valitsuse juures. Seega, lühikese analüüsi järel jõudis autor seisukohale, et ka riigisiseselt on inimõigusi võimalik ekspluateerida, kui seda õigustab või nõuab valitsev ideoloogia.

Riikidevaheline tasand oli töös näitlikustatud läbi eelmise teemaga seotud Krimmi kriisi. Autor analüüsis kolme Vene Föderatsiooni presidendi Vladimir Putini 2014. aasta kõnet, tuvastades neist kõnedest mitmed vastuolud rahvusvahelise õigusega. Autor jõudis järeldusele, et Vene Föderatsiooni president oli Vene Föderatsiooni esindajana teadlik rahvusvahe-

lise õiguse normide eiramisest, kui Krimmi poolsaar jõudis faktiliselt Venemaa kontrolli alla, kuna rahvusvahelise õiguse norme eiratakse, kui seda õigustab ideoloogia, ka mujal maailmas ja kuna Venemaal olid omad ideoloogilised põhjused selleks, et Krimm enda kontrolli alla saada. Riikidevahelisel tasandil on seega inimõiguste ideoloogiline ekspluateerimine eriti sagedane ja tihtipeale eriti vastuoluline, kuna reeglina süüdistavad konflikti mõlemad pooled teineteist inimõiguste rikkumises, ent rikuvad inimõigusi ka ise.

Viimane, isikutevaheline tasand oli töös näitlikustatud läbi väljendusvabaduse solvata võivate avaldumisvormide probleemi. Käesoleval ajal oleks sellest probleemist ilmne näide 7. jaanuaril 2015. aastal Pariisis aset leidnud tulistamise juhtum kirjastuses "Charlie Hebdo". Kuid autor valis näite, mis on vähem tuntud, ent samamoodi problemaatiline: märtsis 2015 pidi Ühendkuningriikide Southamptoni Ülikoolis toimuma akadeemiline konverents Iisraeli eksistentsi õigustatuse teemal, mis pahandas mitmeid inimesi ja mille toimumine lõpuks tugeva surve ja lobi tagajärjel ülikooli administratsiooni poolt tühistati. Võtmata seisukohta konverentsi teemal leidis autor siiski, et korraldajate ja osalejate inimõigust väljendusvabadusele oleks ülikool pidanud austama ning pigem rakendama politseijõudude abi, et ei oleks toimunud vägivaldseid konflikte. Autor tõi argumendiks Ameerika Ühendriikide riigilipu hävitamise kaasused, milles Ameerika Ühendriikide Ülemkohus leidis, et kuigi on tegu solvava väljendusvabaduse teostamisvormiga, on ühiskond piisavalt tugev, et austada õigust sellisele väljendusvabadusele. Isikutevahelisel tasandil on seega võimalik täheldada seda, et isik, tulenevalt vääradest arusaamadest utilitarismist, võib enda ideoloogiast lähtudes survestada teisi inimesi loobuma oma inimõigustest.

Kokkuvõtteks, autori kinnitusel sai hüpotees, et universaalseid inimõigusi ei ole võimalik ideoloogiliselt ekspluateerida, tagasi lükatud. Autor loodab, et käesolevas töös toodud metodoloogilised, teoreetilised ja analüütilised arusaamad innustavad Eestis edasist diskursust inimõiguste teemal ja aitavad kasvatada suuremat teadlikkust inimõiguste temaatikaga seotud probleemidest. Õigusfilosoofia tähtsust ei tohi alahinnata, kuna fundamentaalseid küsimusi küsides märkame ka fundamentaalseid probleeme. Autor loodab ka, et Tartu Ülikoolis, uskudes, et Eesti sotsiaalteadlased ei unusta iial Eesti kui oma kodumaa keelt, hakatakse avaldama aina rohkem inglisekeelseid töid, et oleks võimalik pidada teaduslikku dialoogi ka teiste maade *socialia* valdkonna teadlastega.

04.05.2015 _____

Robert Suir

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