

Article

Human Rights and Democracy—Obligations and Delusions

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Abstract: Based on today's compromises with human rights and the numerous violations of them, which for several countries seems to be the rule rather than an exception, this article discusses the cause of the delusions that in today's politics are attached to human rights. An analysis is made of the nature of human rights understood as something common and universal for all people. On this basis, a division of human rights is proposed, which at the same time means limiting them to perfect, imperfect and adventitious rights. Central to the discussion is the question of how the normative element of human rights should be understood. This article distinguishes between two approaches to the question, where one is identified as a source of current misconceptions about human rights, while the other is highlighted as a possible answer to key challenges facing democracy.

Keywords: rights; democracy; nature and organization of human rights; normative ethics; delusions

1. Introduction

Despite the fact that human rights are entrenched in various international bills and treaties, they mostly play a minor role in current politics, both at the national and international level. Frequently, they must give way to other interests, especially of an economic, diplomatic, ideological, or religious nature.

A reason for the problematic status of human rights is the way their existence is justified. Commonly, they are considered coming into existence as norms of national law "that are created by enactment, custom, and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law" [1]. An objection to this comprehension of human rights would be that if they exist only because of enactment by law, their practicability is contingent on domestic and international political developments [1]. Hence, they are in the strict sense neither absolute nor universal rights.

Considering human rights as depending on domestic and international issues tends to overlook the fact that human rights do not concern the individual as such, but the general human in each human being. Human rights address not that or that particular person, neither all the individuals put together, but the common human that makes the human a human. More than simply being a list of rights and guarantees that a state has undertaken to respect, they are answering the question of what it means to be a human. This point is often overlooked in today's discussion of human rights.

Another important point is that human rights, as a result of their fundamental insistence on human dignity, are intricately linked with the idea of democracy. It is no coincidence that the idea of the natural rights of the individual first gained practical significance with the new popular constitutions in the wake of the American and French revolutions. Both have rightly been perceived as liberation movements, one as freedom from an absolute and authoritarian national system of government, and the other as liberation from a foreign colonial power. Both wanted to replace an anti-human system with a humane government. For that reason, both the American and the French constitution include a declaration of what it means to be a human.

However, both failed to implement a genuine human rights policy. The French Revolution provided rights only to those citizens who were granted active citizenship, that



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is to men who were French, at least 25 years old and paid a certain amount of taxes, leaving out non-wealthy people, women and children [2]. Though the United States Declaration of Independence was made to guarantee equal rights for every person, many in the new republic did not gain access to fundamental political and civil rights. The government denied some or all rights to people without property and also to women, children, slaves, free blacks, and Native Americans [3,4]. In fact, in both cases, rights were more understood as rights granted to man as a citizen (where citizenship was granted to a minority of the population) than as strictly speaking human rights.

Consequently, we are confronted with two questions. The first one is: What do we mean by human rights as absolute and universal rights?

The same values are at the heart of both democracy and human rights. One cannot understand the one without the other—democracy, as it constitutes the constitutional framework for human rights, and human rights, as they consist in a transformation of the basic principles of democracy into something universally binding and necessary. This point is equally commonly overlooked in today's political thought.

Hence, our second question: What constitutes the binding element of human rights, which in democracy commits governments at both the national and international level? In what does the transformation of the principles of democracy into something binding and natural/necessary consist? The answer brings us to the delusion about the type of obligation that human rights entail, which has led to today's compromises in democracy with human rights both at the national and international level. To explain more precisely the delusion, we must start with an examination of why and how human rights are imperative for democracy, and of the nature of the binding element of human rights.

2. Liberty and Rights in Democracy

Unlike other forms of government, democracy is not about the exercise of power for the sake of power. On the contrary, democracy is the only form of government that is rooted in a moral idea of the community. That is to say, democracy consists in a unique social and political order, or a higher "empire" that is fundamentally different from other ways of organizing society. Therefore, it must be treated from a different point of view than the one that applies to these.

In the history of humankind, the moral idea of democracy has manifested itself as an aspiration for liberty, equality, and brotherhood [5]. These three terms are, however, vague and stand in need for clarification. In the following, we will be focusing particularly upon the analysis of the meaning of the first term of the triad.

With respect to the individual's relationship with the state and society, liberty, or freedom (I use both terms to mean the same), in democracy traditionally means *liberty from* somebody or something, that is, the absence of coercion and foreign rule or, in short, simply freedom from ties imposed by others or any specific thing. Consequently, it means autonomy and independence. In the broadest sense, liberty means autonomy for a nation vis à vis other nations or for an ethnic unit within a larger population group. In the narrow sense, it means the individual's right to decide over himself and not to recognize decisions that regulate his life, other than those he himself has been involved in making, or that he himself inwardly can approve.

Thus understood, liberty implies a negative conception of freedom, since it says nothing about what freedom is to be used for. It defines merely liberty in the formal sense but leaves open the material side of the concept. Liberty in the latter sense consists of freedoms, which in democracy anchor the negative conception of freedom in specific rights to do something or to be done unto, or simply to be this rather than that. In other words, liberty has both a formal and a material side, where the former consists in the negative conception of freedom (so-called *negative liberty*) understood as freedom from subjection to other men's acts of will and the latter in the positive conception of freedom (*positive liberty*) understood as freedom to do or to be something, or to be entitled to a specific service or treatment from others. ¹

Traditionally, liberty is linked to several freedoms or rights that are considered fundamental in democracy.² These include freedom of expression, thought, speech, conscience, and religion, freedom of movement and press, the right to asylum and a nationality, the right to assembly and freedom of association, the right to vote and to stand for election, the right to practice any profession or carry on any occupation, the right to own property and to defend oneself as well as the right to life, security, privacy, respect and bodily integrity, and the right to welfare, health care and medical treatment [6]. The right of due process of law is also traditionally considered to belong to the fundamental freedoms of democracy, although it does not concern the individual's latitude of action independent of state control.

The formal and material aspects of liberty are closely tied to each other. One cannot be imagined without the other. However, we are here faced with a complicated point, which needs to be elucidated.

It is undeniable that liberty understood as absence of coercion and subjection in democracy constitutes a prerequisite for freedoms. You have freedom of expression and other freedoms because you are not subject to another person's will. Positive liberty is inconceivable without negative liberty. Liberty in its negative sense is fundamental as it enables rights as freedoms.

At the same time, negative liberty gives the freedoms their full meaning and content. Because the latter cannot be imagined without the former, positive liberty is meaningful first and foremost to the extent that it defends and maintains liberty in the sense of absence of coercion and subjection. Additionally, in this regard, negative liberty is the basis in democracy.

This limits the freedoms. They have as their premise a higher purpose than just the unfolding of the individual's personality and must be perceived as relative values, that is as a means to achieve liberty in the sense of autonomy and independence rather than as a goal in itself. The more the freedoms strengthen and maintain overall liberty, the more they legitimize their existence.

Negative liberty can never become a means to positive liberty. Liberty in its formal sense has an intrinsic value in itself that is absolute and final, and that exceeds individual freedoms. In short, negative liberty is desirable in itself, regardless of appreciating the freedoms.

For this reason, choosing not to be free is not an option. In this case, one would be confusing freedom as an intrinsic and absolute value with freedom as a right that one can abstain from, and hence as a relative value depending on something other than itself. But on what could freedom be depending? To let freedom depend on something else would be the same as making freedom unfree. Freedom, in order to be free, can never depend on anything but itself.

Individual freedoms concretize negative liberty by giving it practical significance. Only through active freedoms is liberty as absence of coercion and subjection rooted in the concrete, existential situation of man as a member of a free, democratic community. The freedoms actualize liberty, as they make one aware of one's freedom as the basis for one's rights. Without freedoms, negative liberty remains an abstract and passive concept without a concrete field of action. Negative liberty in democracy is an empty liberty. To simply be autonomous or independent without being able to do or to be what one is able to do or to be is simply a meaninglessness.

In addition to constituting the material side of liberty, individual freedoms may also have their own value relevance. Being able to speak freely, participating in associations of any kind and cultivating their religion are for many people an essential component of their personality. All of these are cultural goods that in many cases may have an intrinsic value in addition to simply being a means to express one's liberty. Insofar as the assertion of one's rights in these and other areas does not conflict with neither one's own nor other peoples' formal liberty, it constitutes a progress of civilization, the appreciation of which is desirable in itself.

The fact is, however, that today we largely perceive freedoms as rights in themselves and consequently democracy as a rights democracy. This risks removing the focus from the more substantial question of the “why” or the purpose of the rights in democracy. Understanding rights as merely a means to the unfolding of one’s personality has today apparently led to the oblivion of the liberty that constitutes the basis of the freedoms if not to the rejection of the negative conception of freedom altogether in favor of its positive counterpart. The result is that rights have got something self-centered and compelling about them. They have become synonymous with what one can master oneself in the sense of being able to do or to be this rather than that if only for the sake of just being able to do or to be this rather than that. In both cases, the rights of the individual seem to be absolute and imperious, thus threatening to enslave him.

In this way, one loses sight of the rights as real freedoms. By putting a high value on other goals, such as justice, or happiness, or security, or varying degrees of equality, the freedoms are curtailed in the interests of these values. But not only are freedoms threatened, liberty itself, which enables rights as freedoms, is also threatened. In fact, liberty does not only mean freedom from bonds imposed by others, but also from bonds imposed by the tyranny of one’s rights. One is only free to the extent that one fights against the temptation that lies in the blind submission to one’s own rights.

By confusing freedom with mastery in rights democracy, one loses one’s free personality also in another sense. In “Two Concepts of Liberty”, the Latvian-British philosopher Isaiah Berlin (1909–1997) writes that by making being in control of one’s freedoms the highest principle, one will inevitably identify oneself with the part of oneself that is asserting itself as the master of one’s acts, something that leads to a self that dominates and, on the other hand, something in one’s personality that is reduced to passivity. This dominant self has been “variously identified with reason, with my ‘higher nature’, with ‘the self which calculates and aims at what will satisfy it in the long run’, with my ‘real’, or ‘ideal’, or ‘autonomous’ self,” in contrast to whatever in my “lower” nature that threatens the free action of the dominant self, and that needs to be rigidly disciplined if the dominant self “is ever to rise to the full height of its ‘real’ nature” [7]. Thus, the personality is split into two different selves, where the one self is exercising the authority as the subject of one’s acts while the other has no rights at all.

Hence, in rights democracy, one exposes oneself to the danger of losing one’s freedom. In the first case one risks becoming a slave of one’s rights, in the second of one’s rational self. In both cases, liberty becomes an endangered freedom.

Therefore, the actualization of negative liberty in positive liberty consists in the awareness of a fighting freedom. This applies both to the positive conception of freedom as consisting in a certain area within which the subject is left to do or to be what he is able to do or to be, and of freedom as consisting in the self-assertion of the higher part of the personality as the source of control that determines someone to do or to be this rather than that.

The necessity of a constant fighting freedom becomes even more apparent if we consider society as a whole. Blindly affirming one’s own rights threatens not only the individual’s own freedom, but also the freedom of others. One’s own freedoms are not necessarily everyone else’s rights but may lead to the rights of others being ignored. As Berlin points out, “human purposes and activities do not automatically harmonize with one another [. . .]. Men are largely interdependent, and no man’s activity is so completely private as never to obstruct the lives of others in anyway” [7].

If liberty entailed unrestricted freedom for everyone to do what he wanted to do, the result would be a state where the boundless interests of man would interfere with the interests of all other men and thus “lead to social chaos in which men’s minimum needs would not be satisfied” [7]. In short, it would cause everyone to struggle against each other where the liberties of the weak would be suppressed by the strong. Consequently, it would threaten social cohesion and eventually lead to the collapse of the society all together by making society a battlefield of each person’s interests [7].

In brief, rights democracy menaces both the free personality and democracy itself. A new understanding of freedoms that unites and does not separate is needed to harmonize man both with himself and with others.

3. The Idea of Human Rights

Civil, political, social, and cultural rights protecting one's freedom to do something or to be done unto, or simply be this rather than that, from infringement by governments, organizations, and private individuals—either in written form guaranteed as constitutional rights in separate national bills of rights or similar documents³ or throughout history tacitly assumed as natural rights without needing being codified in order to be protected—were given status at the global level as universal human rights by being enshrined in international law first by the Universal Declarations of Human Rights adopted by the United Nations in 1948 in response to the atrocities during the Second World War and later by the UN's International Covenant on Civil and Political Rights from 1966. In Europe, they were stated within the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe in 1950 and within the Charter of Fundamental Rights of the European Union from 2000.

However, faced with the numerous compromises with human rights in today's politics and the challenge of shaping an effective human rights policy, it seems pertinent to ask how the principle that democracy looks for, to unite people in a true community feeling, can be human rights, and all the more so if human rights imply the freedom of every human being to set aside the rights of others.

The fact is that more than seventy years after its issue, the Universal Declaration of Human Rights is still more a dream than a reality. Violations exist in every part of the world,⁴ either by being intentionally performed by the state or coming as a result of the state failing to prevent violations, which for example occurs when there is a conflict between individuals or groups within a society where the state does nothing to intervene and protect vulnerable people and groups.

Among the gravest infringements of human rights, if the idea of universal human rights is to make any sense at all, is the violation of the right to life, which is enshrined in article 3 of the Universal Declarations of Human Rights ("Everyone has the right to life, liberty and security of person" [6]). Despite the article's explicit statement about the right for everyone to live free, the number of people actually being killed or deprived of their liberty in recent years must be counted in the hundreds of thousands rather than as a few cases.⁵

The incessant violations of human rights are only one part of the challenge of establishing a consistent human rights policy. Another problem is the proliferation of what are understood as human rights. As if we did not have enough complying with existing human rights, new ones are constantly being proposed, the practical feasibility of which presents us with a new challenge.

Today, we are witnessing an almost unlimited increase in the number of human rights. As an example, it should be mentioned that while the Virginia Declarations of Rights of 1776 stated 5 political and social rights (life followed by liberty, property, happiness and safety [8]), the Universal Declaration of Human Rights mentions 26 human rights, which it splits into civil and political rights (19 rights), and social and cultural rights (7 rights) [6].

In his classification of human rights from 1977, the Czech-French professor of public law Karel Vašák (1929–2015) reckoned with three generations of human rights: a first generation comprising civil and political rights (including the right to life and political participation), a second generation consisting of economic, social, and cultural rights (including the right to subsistence and education) and finally a third generation, also known as solidarity rights (including the right to a healthy environment and rights to intergenerational equity and sustainability) [9].

However, a fourth generation of human rights is presently emerging, which would include rights in relation to technological development (particularly information and

communication technologies and cyberspace), also called digital rights [10]. Among the proposed digital rights are the right to equally access computing and digital spaces, the right to digital self-determination, the right to digital security, and the right to access one's own digital data.

The proliferation of human rights does not stop here. New human rights generations seem to pop up for each new epoch. For example, climate rights [11], environmental rights [12], and nature rights [13] can be understood as important for the human being, as people's livelihoods, their health and sometimes their very existence depend on the quality of their surroundings and could therefore in a broader sense become human rights. Another suggestion is to give human rights not only to individuals, but also to groups (collective rights) [14], or to include in human rights the right to natural resources [15], and to participate in cultural heritage [16]. This leaves us with possible both fifth and sixth generations of human rights. The list of what are considered being human rights are apparently endless, which, if the rights inflation continues, will make the concept of human rights almost unmanageable.

The increasing number of rights aspiring to be recognized as human rights confronts us with an important practical question: granted that human rights are indivisible in the sense of being interrelated and interdependent, that is, every human right without exception belongs to everyone, and if all were to defend their rights at trial, we may, out of a population of 8 billion people, theoretically have to deal with hundreds of billions of lawsuits based only on the human rights of the first three generations. A multiplication of new human rights would proportionally increase the number of lawsuits. It is difficult to imagine any legal institution that on these premises could uphold human rights laws.

Faced with the impossibility of enforcing every human right in every possible situation, not only does the concept of human rights risk being devoid of any value but its existence is also threatened: if every possible human right is deemed to be essential or necessary, then nothing will be treated as important.

What was once given can be taken back. For example, in times of crisis, fundamental freedoms are frequently suspended.⁶ This shows that human rights, as generally perceived, depend on human agreements (positive or human-made law, judicial decisions, or a given country's customs), which the government may at its discretion disregard when it deems it appropriate to do so, and so these are not innate rights, but are conferred by act of legislation and not by "God, nature or reason" [17].

Consequently, if human rights were to strengthen the individual's sense of community, we must first ask ourselves how they can be limited to certain fundamental rights made possible for everyone, individuals as well as groups of individuals and states, in any situation, to comply with, and second how they can be perceived as normative principles that cannot be abridged but would apply to every citizen without exception.

To limit human rights to a list of manageable rights, we should first try to establish a criterion for what a human right is. Having established such a criterion, we should then endeavor to arrange human rights in a priority order based on the criterion.

To find such a criterion, we must first discuss what constitutes a right. We then have to answer the question: In what sense can we talk about a *human* right?

The answer to the first question lies in the distinction between two ways in which we think about rights. Only in one of these meanings can a right also be called a human right in the strict sense of the word.

The general view of rights implies that a right is a claim with several features: it is a claim, first, that someone has, second, against specifiable individuals or group of individuals, third, to their action or omission on one's behalf, and fourth, when it is supported by legal rules or moral principles and so 'valid' [18].

The first thing to be noticed is that 'having', as pointed out by the French philosopher Gabriel Marcel (1889–1973), is used in a passive way, where the focus shifts from the I who has, to the object that it is in possession of. The passive way in which having-as-possession manifests itself presents an appearance of externality to my own self. In principle, what we

have is in the strict sense something whose existence, like that of a material object, up to a certain point, is independent of my own being. In other words, what I have is added to me as something separate from what I am, and the fact that it is possessed by me is added to what else I might possess, as one thing mechanically is added to another. At the same time, I can, in some manner and within certain limits, dispose of what I have. I can transmit it to another or, in a more drastic way, dispose of it altogether as something unimportant to me [19].

The passive way in which 'having' is used does not only apply to physical objects, but also to our ideas. 'Having an idea' denotes the same kind of externality between the idea and ourselves as the physical ownership of a thing does. Indeed, as soon as I consider an idea that I have, I am treating it as an object that I am in possession of, because the conceptual thought requires detachment from the object under analysis, and hence a relationship between my idea of something and the I who has this or that idea that leaves out my own self [19].

As 'having' involves taking possession of objects, it constitutes the realm in which one seeks technical mastery and dominion, both at the physical and the conceptual level. In both cases, we encounter the world in a manipulative way, in which there is a gap between our inner self and the world around us. Therefore, the application of this way of relating to our fellow human beings can have serious consequences and not at least for what a human right is.

Although being something mental and not a palpable, material thing, a right can, like any idea, be treated as a material object, that is, as an independent entity different from my own being, and therefore as a kind of property belonging to the human subject much as material or economic possessions do. Rights understood in this way can be said to be something one has and consequently something that can be manipulated.

Whenever we talk about rights in a material way, we presuppose a kind of ownership or a having-as-possession. However, by considering our rights as something we have, we are confronted with a paradox. For as soon as I consider my rights to be something, they cease strictly speaking to be *my* rights. Because rights are something external to me, they depend on someone other than me who undertakes to respect my rights as part of the prevailing political or moral order within a country.

For these reasons, it is difficult to see how human rights can be perceived as rights in the usual way. Rights in the sense of having-as-possession, which are considered as objects added to me, split the I so to say in two halves, one the rights are added to, and another who perceives itself as the deeper self of my being. Human rights, on the contrary, are commonly supposed to be inherent rights by virtue of being a human being, and not something one has as an additional value to being a human. Moreover, rights in the sense of having-as-possession are, as any object or idea, subject to our manipulation and dominion, while human rights are understood as identical with what it means to be a human being. As little as we can manipulate our human being, we can manipulate what it means to be a human being. Finally, rights as having-as-possession separate me from the other. Human rights, on the contrary, are universal and therefore common to me and the other. Rather than separating us, they unite us.

Hence, though it is possible to adopt a material attitude towards human rights, this is a distortion of their nature. In this misrepresentation of the essence of human rights lies the fallacy that explains today's compromises with human rights at all political levels in society and consequently the apparent impossibility of shaping a consistent human rights policy.

The other way of thinking about rights involves the I in an active way, where the focus lies on the subject whose rights they are. Rights here are not understood as external to or independent of my own self. On the contrary, they are perceived as consubstantial with what I am, and that to such a degree that I cannot really set them before myself like an external object and so form a conception of it.

Rights, understood in this way, belong to the area that Marcel calls the realm of being. The realm of being implies, contrary to the realm of having, a living experience, where the self identifies itself with the object of its experience as part of itself [19].

In a word, rights-as-being constitutes the exact opposite of rights-as-having. Rights-as-being are not something added to my own self, but identical with my inner self's own nature. Nor are they as being identical in substance or essence with my inner self manipulable in the way outer objects are. Finally, constituting an essential quality of myself, they do not depend on any other than me.

On all these points, rights understood as being avoid the fallacy and hence the mistakes and abuses that rights understood as something we possess is leading to. Only by perceiving rights as partaking in our own self can we overcome the fallacy that consists in the understanding of rights as having-as-possession.

Talking about rights in this way may seem unusual. But rights-as-being simply denotes the right to one's own self-expression and the freedom that lies in the unfoldment of one's own self. To the extent that rights-as-being constitutes a "claim", this is not a claim against specifiable individuals or group of individuals supported by legal rules or moral principles, but against oneself that alone is valid by virtue of the inherent power of one's own being.

This takes us to our next point. After having distinguished between rights-as-having and rights-as-being, we must ask: What makes a right a *human* right?

For a right to be a human right, it cannot simply express the accomplishment of our individual self. It must, somehow, be related to the idea of something universal in human nature, which makes the individual a human being regardless of individual distinctions. In order for human rights to make any sense at all, we must therefore think about everyone's inner self as participating in a broader universal self, which is everyone's true human self. Human rights pertain certainly to my deeper self, but only as part of a greater self. That is why we understand human rights as rights we have not by virtue of our individual being, but by being united with the other in a common human nature. The same and the other are united here in a larger whole, in which we must seek the core of human rights.

Like any right, human rights presuppose a society. It would be pointless to talk about human rights or even rights in general if man were alone in the world. But the society we are referring to when we talk about human rights, is principally not the outer society where everyone is each other's object, but the inner society, which is identical with each person's human self. This inner community constitutes the basis for finding the criterion for what a human right is, and by virtue of which to say that human rights simply are something one has like a material object, is a distortion of their essence.

Hence, our answer to the question of what human rights are: they are rights valid by themselves as claims against individuals or groups of individuals by virtue of the universal self or inner society that everyone is part of. Human rights pertain to man's higher self. For that reason, they are valid as an expression of his own being. Only those rights that express one's own higher self are truly human rights. Thus understood, human rights are what makes the human a human being in the true sense of the word. Therefore, human rights are absolute and not relative rights being allocated by a government and thus depending on something else other than human nature itself. On the contrary, they are valid before and independently of any positive law. In other words, they are applicable everywhere and at every time in the sense of being the same for everyone and consequently imposing an obligation on governments, individuals, or groups of individuals to respect the human rights of man considered solely as a human being.

From this definition of what human rights are in essence, we can now establish a criterion for a right to be a human right. By being claims against individuals or groups of individuals as an expression of man's higher being, in which every other person participates and so absolute, it follows that the criterion for something to be a human right, is that it cannot come into conflict with another person's human rights. Only on this condition can a right claim to be a human right.

However, this is not all of it. Though the criterion is a necessary one for a right to be considered a human right, it is not in itself sufficient. Considered by itself, it merely constitutes a formal criterion in the negative sense of determining what a human right is not. It says nothing about how it is to be positively understood. In fact, even if all the riches of the world were equally distributed among all the people on earth, so that no economic conflicts could arise between them, this does not mean that an eventual right to wealth would be a human right. In order to be a human right, a right must, in addition to satisfying the formal criterion, also fulfill three other conditions: first, it must be inherent to every human being as pertaining to its universal self, regardless of age, gender, ethnicity, nationality, language, religion, or any other status; second, it must be inalienable; and third, it must be indivisible. Inherency [20], inalienability [21], and indivisibility constitute together the condition for the criterion to be not only a necessary, but also a sufficient criterion for a right to be called a human right.

To say that human rights are inherent to every human being, means that they are natural [22] in the sense of being innate [1] to every human irrespective of age, gender, ethnic origin, and so forth [21]. They are applicable everywhere and at every time in the sense of being universal [1], and they are egalitarian in the sense of being the same for everyone [21].

To say that they are inalienable would mean that they are rights that cannot be changed, lost or taken away, and that one cannot waive them. This would be the same as renouncing being a human being.

To say that they are indivisible means, in this context, that each right in all its aspects is given in an unrestricted sense. Since the essence of a human right does not vary from one situation to another, a human right does not permit 'a more' or 'a less'. In the same way that one cannot be a human being to a greater or lesser degree, one cannot be a bearer of a human right in a greater or lesser sense.⁷

Each of these three conditions for a right to be a human right actualizes one aspect of the formal criterion by giving it a positive determination. Inherence defines the criterion positively by stating in what way human rights pertain to the individual as part of the universal self. Inalienability and indivisibility define the way the criterion actualizes itself in the practical actions in which human rights are engaged.

By being inherent to every human being, inalienable and indivisible, human rights are perceived as natural rights that impose themselves in the choices people make in actual life, natural in the sense of being an essential and necessary part of every person's true humanity, imposing in the sense of being norms for certain standards of human behavior.

Based on the prerequisites for a right to be a human right, we can now proceed to their classification or priority order.

Rights that meet all three conditions to be human rights (inherence, inalienability, and indivisibility) we call perfect rights or human rights in the absolute or full sense of the word.

Among the rights commonly called human rights, there is strictly speaking only one perfect human right. It is stated in the first article of the UN's Universal Declaration of Human Rights: "All human beings are born free [. . .]" [6].

In its fundamental sense, freedom as a human right means the autonomy and independence of everyone's inner self as being part of the universal self.⁸ As such, freedom is the ultimate example of a perfect human right as one's liberty cannot conflict with another person's freedom and so an absolute right.

That freedom is inherent to every human being means that it is considered an essential and necessary part of each person's humanity. That it is an inalienable right means that it cannot be taken away from you. This would be equal to take away from you your humanity and hence to treat you as an object like any material object. Neither can you relinquish from your own freedom without committing a contradiction, as previously pointed out. In the opposite case, freedom would relate to something other than itself, while freedom does not relate to anything but itself. That it is indivisible means that it cannot be split up

in bigger or lesser parts. You cannot be more or less free, as this would be equivalent to being more or less a human being.

Freedom is not something that one can objectively observe. Being formally independent of any individual, groups of individuals or of something is not the same as the subjective certainty of truly being free. The kind of freedom that pertains to everyone is a question of a feeling within each person.

For this reason, freedom belongs to the realm of being and not of having. To have freedom is not the same as to be free. The first statement implies some kind of restriction of one's freedom and therefore makes it unfree, as the other does not.

Civil and political rights as well as economic, social, and cultural rights or even solidarity rights presuppose that you are free to enjoy them. To be forced to enjoy these rights does not make them, in fact, freedoms and, to an even lesser extent, human rights, but on the contrary makes them depend on another than oneself. For example, the right to vote or to stand for election would be meaningless if you were forced to vote or to stand for election. Thus, freedom serves as a basis for all other rights. Freedom precedes any other human right by making them true human rights.

Of the other rights, some are perfect by satisfying one or two conditions, but imperfect in the sense of failing to satisfy all the three. That they are perfect means in this respect that they cannot conflict with the rights of others, and imperfect that they can come into conflict with someone else's rights by failing to meet all the conditions for being a perfect right in the strict sense of the word.

Among these are rights that are perfect in the sense of being inherent to man and indivisible, that is not permitting 'a more' or 'a less'. However, they are imperfect in the sense of not being inalienable.

This group can be divided into material and immaterial human rights, the first one comprising political rights, rights concerning the law and certain economic and social rights, and the second one concerning cultural rights. They constitute a major part of the human rights mentioned in the UN's Declaration of Human Rights [6].

Among the material rights belonging to this group is first and foremost the right to life. Though it can be said to be an inalienable right, this is only in a negative sense as it implies that no one can deprive another of this person's life without violating the person's human rights. It is not inalienable in the positive sense as an individual may in certain circumstances give up his life without implying that the individual violates his human rights. The former is prohibited as a violation of somebody's human rights, and the latter is admitted as the individual's right to refrain from the very same human right. Nevertheless, the right to life is indivisible in the sense that one cannot have a more or less right to life. In this sense, it is an unconditional right.

Other material rights in the same group include the right to security for one's person, and legal rights such as the right to a fair and public trial (but one can imagine situations where an individual may wish to refrain from a fair trial by sacrificing oneself), equality before the law and the right to the protection of the law, the right to vote and to stand for election, the right to marry and to found a family (but there is no human duty to marry), the right to privacy and to respect for their person, to asylum in other countries, to a nationality, to freedom of assembly and association, the right of equal access to public service, to social security, to economic and social rights indispensable for his dignity and the free development of his personality, to rest and leisure and to a standard of living adequate for health and well-being. All of them are inalienable in the negative but not in the positive sense.⁹

In addition to the group of material rights, there is also the group of immaterial or cultural rights. Among these are the right to conscience, thought and religion.

All the mentioned rights are perfect rights as being inherent and indivisible (one cannot have a right to 'a more' or 'a less' security, 'a more' or 'a less' equity or justice, 'a more' or 'a less' equality before the law, to 'a more' or 'a less' asylum or nationality, or to 'a more' or 'a less' conscience, thought, or religion, and so forth.) At the same time,

they are inalienable in the negative sense that nobody can deprive anybody of them, but not in the positive sense that anyone of their own free will can abstain from them. To the extent that they are inalienable in the negative sense, they are considered perfect rights, that is not to conflict with the rights of others, but to the extent that they are not inalienable in the positive sense, they are seen as imperfect rights, that is, they may conflict with others' rights.

Other rights are neither inalienable nor indivisible, for instance various social and cultural rights. These rights imply a possible disposal in both a negative and positive sense (both in the sense that someone may be refused to exercise their rights, and that they themselves may also refrain from exercising them, without this in both cases constituting an infringement of the person's human rights). Among these are the right to work, to the free choice of employment, to protection against unemployment, to a just and fair remuneration for one's work, and the right to a free education. They are not indivisible as they can be limited to 'a greater or 'a lesser' degree. Nonetheless, they are considered inherent to man as they are perceived as an essential and necessary part of each one's humanity. Still, their actualization in real life depends on outer circumstances, where they may conflict with other people's rights.

Consequently, they are considered perfect rights only in the sense that they are inherent to man, but imperfect in the sense that they are neither inalienable nor indivisible.

Rights that meet none of the three conditions for being a perfect human right we call imperfect rights in the full sense of the word. They are neither inherent, nor inalienable or indivisible and consequently rights that in all respects may conflict with the rights of others. As with the previous group of rights, they can be divided into material and immaterial rights. A typical example of an imperfect, material right is the right to own property. This is an imperfect right since one's right to property can come into conflict with the claim of other people to the same property, as for instance was the case with Jewish property after the Second World War in many European countries, which during or after the war happened to have been sold to other persons and thus become their legal property. Other examples are for instance the right to residence within the borders of a state, and to leave and return to one's country.

Among the imperfect, immaterial rights are presumably the rights of expression, opinion, and thought. A total freedom of expression and opinion can easily lead to a lack of respect for other people's human rights, which we have seen in recent years in matters concerning religious beliefs and convictions. Consequently, they entail limitations or restrictions, which in turn means that one hardly can perceive them as neither inherent, inalienable nor indivisible rights.

Being imperfect rights, we may venture to ask in what sense they are called human rights.

The rationale for these rights lies in the extent to which they are experienced as a condition for enforcing and realizing the perfect rights when considered in their moral being, that is, as a means to a higher purpose than just being an end in itself. However, considered in their substantive nature, they have something restricted over them.

Finally, there are adventitious rights. These are rights pertaining to a person having a subjective human value, but not to a common universal human standard encompassing the whole of humankind. They could for instance be common for a certain culture or region without being common for humankind as a whole. Another group of adventitious rights are rights pertaining to specific groups of people, as for instance digital rights. It is only indirectly or by way of association that these rights can be said to be human rights.

These are all adventitious rights, in the sense that they are not universal, and hence neither inherent, inalienable nor indivisible, meaning that they can come into conflict with the rights of others.

The essential point here is that they can only be called human rights so far as not infringing on or conflicting with the groups of perfect and imperfect human rights, or as long as their implementation does not limit other people's adventitious rights.

This way of looking at human rights presents us with a new problem. As stated, human rights belong to the realm of being and not having. Strictly speaking, this only applies to the one perfect human right. As all the other rights are not absolutely inalienable (only in the negative sense), nor indivisible nor to a certain extent inherent to man, they are treated as a kind of object and hence belong in a certain sense to the realm of having. In fact, when we abstain from a right by alienating it or dividing it by admitting it to 'a more' or 'a lesser' extent, we conceptualize the right and consequently think about it as we think about any idea that we can transform or change like any material object. In short, we are treating human rights as something external to ourselves, thereby transforming a part of our being into something we have.

This is all the more the case when we are claiming our human rights. Again, here we transform something originally belonging to the realm of being into something we have. The confusion of rights-as-being and rights-as-having is even stronger when human rights are codified in law as rights or as something one has and that somebody is committed to respect.

This means that it is not an absolute distinction between human rights in the strict sense of the word and rights in the traditional way of having, or between the realm of being and of having, as Marcel has also emphasized [19]. However, if we talk about human rights in both of these ways, this is because even the having of human rights is based on a presupposition of their being as rights. Ideally, they still belong to the realm of being; but under certain circumstances, we make them fall into the realm of having by thinking of them as material objects that are independent of my own being and hence depending on something other than me. Nevertheless, they can never in order to really be treated as human rights be dependent on anybody else nor on anything else (for instance, the law) than myself—in which case, they become having-as-possession.

Thus, we have to distinguish between two kinds of having, having-as-possession and having-as-being. These two understandings of rights are easily confused with each other. The confusion of them is the reason why the question of the status of human rights is a very unclear and confusing problem. In short, we are using the same word, namely 'right', in both cases and not distinguishing between the two ways in which a right can be said to be something we have. We have only one word, 'right', to utter the two different understandings of 'right' in, which then creates the false assumption that it refers to the same phenomenon.

Usually, we refer to rights from the material way of understanding them. What is needed when talking about human rights is to change the perspective altogether: we must understand human rights not from the perspective of having rights but having rights from the perspective of human rights. Only in this way can we understand what human rights are about and avoid confusing the one way of having rights with the other.

4. Human Rights as Norms

In the foregoing, we have tried to define what human rights are based on an analysis of the two ways in which somebody can be said to have rights. The analysis involves a purely descriptive approach to human rights. However, the concept of human rights also involves a normative element, an 'ought' and not just an 'is'. It does not only state that human rights are inherent to every human being as a hallmark of humanity that cannot be lost or taken away, irrespective of external characteristics, but entails a normative corollary that makes human rights not only rules and guidelines for human behavior, but something compelling on the basis of equal treatment and respect for each other. The question is therefore in which sense human rights establish certain standards as normative principles, and in what the normative element itself consists. In the absence of an effective human rights policy, the issue has gained particular relevance in current politics.

Normative justifications for human rights go back to the theory of natural law, a system of law based on an observation of human nature and applied independently of the laws of a state or society (positive law) [23]. By using the word 'natural' in the name for the

theory, the mainstream of natural law theory is referring simply to what conforms to the requirements of reason. Natural law is held to be whatever is found acceptable by the right use of the reason, or quite simply right reason itself [17].

The development of natural law is usually attributed to the Stoics. According to this theory, there exists a rational and purposeful order to the universe, and the means by which a rational being lives in accordance with this order is the natural law. Similarly, there is in man a 'divine spark' (that is, reason), which helps them to follow natural law and to harmonize with nature [24].

From the idea of natural law, theologians and philosophers from the early Middle Ages and until today have tried to derive certain rights that are considered natural and inalienable (in the sense that they cannot be repealed by human laws, though one can forfeit their enjoyment through one's actions, such as by violating someone else's rights). Although they differ from one philosopher to another, they all include as a common feature the right to life and liberty as the two highest priorities, or to put it more properly, the right to free life [25].

However, the appeal to nature may seem like a vague and invalid argument for establishing a norm for human behavior or rights as normative principles. The reason for this is, first, that the argument consists in a tautology. To conclude that something is natural and therefore good or right presupposes the implicit primary premise "What is natural is good". The justification of the premise is here left open as the argument simply states that what is good or right, is good or right [26].

Second, one could, with Jean-Jacques Rousseau (1712–1778), object that "We do not know what our nature permits us to be" [27]. The question of what we are leaves open what kind of beings human beings *could* or *should* become. "What are we prepared to permit our nature to be? And on what basis should we give our permission?" Nikolas Kompridis significantly asks by applying Rousseau's axiom to modern debates [28].

Finally, one could object that by deriving prescriptions or normative statements from descriptive or positive statements about what is, we would be guilty of falling into the 'is-ought problem' as articulated by David Hume (1711–1776). According to Hume, from simply an observation concerning factual premises of 'is' or 'is not', one cannot logically infer the truth of evaluative or normative propositions connected with an 'ought' or 'ought not'. The reason is that the 'ought' or 'ought not' expresses some new relation or affirmation, whose logical deduction from a factual statement of 'is' or 'is not', which is entirely different from the evaluative proposition, is "altogether inconceivable" [29].

In short, there is nothing morally compelling about a law. Failing to respect the law does not constitute a moral failure, but simply a breach of the law. Hence, any attempt to establish norms by appealing to natural law, or simply 'what is natural', seems to be tainted by what we could call a 'moralistic fallacy'.

A political justification for human rights has been put forward by John Rawls (1921–2002) in the form of a utilitarian approach to human rights by describing the things that human rights do. In his account of human rights in particular, and of their normative force as well, Rawls places them in the structure of a larger theory of justice between peoples. Human rights appear in this larger theory as part of the political morality that governs relations between peoples and between the government of a people and its own citizens: their observance is necessary for a society's political order to be 'decent' and is sufficient, along with non-aggressiveness, to render any forceful intervention by other peoples unjustified [30,31].

The fact that human rights are considered inherent to man refutes the utilitarian conception of them as proposed by Rawls. Human rights apply to man essentially and not accidentally. Belonging to the universal human in each human, they are a necessary and natural part of each person's humanity. Therefore, the observance of human rights is not primarily a question about a political order's "decency", but about the dignity of human nature.

Considering human rights as a means to something other than human nature itself, be it as a means of maintaining the cosmic or political order, is the same as treating man as a means. In doing so, both the mainstream of natural law theory and the utilitarian approach to man and society takes for granted what they are supposed to explain, which leads to a circular reasoning. The circle lies in the fact that they derive the cosmic or political order, to which man is supposed to conform and which human rights are supposed to maintain, from a theory of what man in his being is, where the justification of the latter lies in whatever justification the larger setting gets without being established on its own premises.

Another way to look at human rights is to understand them as a means to realize each person's individual nature. But even such a narrowing of the perspective will not be precise enough. Human rights are not about the individual as such, but the common nature of man or what makes a human being human. As already mentioned, this is the greater self, of which everyone is a part.

However, thinking that human rights are a means to realize the greater self of each person is still too imprecise. This could be implying that the human self is something different and external to the individual self, and hence that it is something one has as an additional value to being an individual—in which case, human rights still could be considered as a means to something other than man himself.

On the contrary, the human self is not something outside of the individual. It embraces the individual self as the mature human being embraces the child and youth of man as a natural part of human maturation. At any stage of the process, the human self is inherent to man's being and not the goal of the process to which human rights are a means.

Hence, human rights establish certain norms for realizing the universal self of man that makes him a human being. It is in this sense that human rights are said to be inherent, inalienable and indivisible.

Consequently, we must entirely break with the way of thinking about human rights as a means to an end. To understand them in this way is to think of human rights as something we have. A means implies an externality to the subject for whom it constitutes a means. The focus is on what it is a means to, where what constitutes a means, like any object, is perceived as independent of the subject. On the contrary, human rights focus on the subject who is the bearer of the rights, and whose being they are part of. Again, we are here brought back to the difference between the realm of having and the realm of being.

While human rights belong to the realm of being, man, in choosing by his free will to renounce some of his rights or to choose "a greater" or "a lesser" part of them, does not give up his human nature, but on the contrary realizes it through the choices he makes. Even when he abstains from some or parts of his human rights, he affirms them as rights that are a natural part of him. To abstain from one's human rights is to confirm them as inherent rights by virtue of one's humanity. Abstaining from something that one has-as-being is not the same as disposing of something one has-as-possession. In the first case, you abstain only from the actualization of something; in the second, you dispose of something in itself. In the former case, that whose actualization you abstain from still remains an essential and necessary part of your own being. In the latter case, you dispose of an object foreign to you that has no bearing upon your being and, for this reason, can be disposed of altogether.

The realization of human rights as rights inherent to man consists in an inner process, whose course is never given in advance. As such, it is a living and dynamic experience, where the human self actualizes itself in each of the individual's choices. Human rights are not a means to something nor a goal for something other than themselves. Therefore, understanding human rights as a process means conceiving them both as their own means and goal. Thus, human rights belong to the realm of being not as some static element, but as a process that is carried forward by itself.

However, this analysis still does not explain in what the normative element itself consists. In order to shed more light on this question and to come up with a possible answer, we must go further into what constitutes the real compelling in human rights understood as a system of normative statements.

Hence, our question: In what consists the normative element of human rights?

The answer is that the normative element lies in the rights themselves considered a process and not static entities. The normative element of human rights resides in the inner strength that drives man forward towards realizing his nature as a human. This inner strength is experienced by all who are oppressed. How much stronger must the same experience not be if man is not even respected as a human being!

More precisely, the 'ought' of human rights lies in the rights experienced as a vocation or an aspiration of the individual towards accomplishing the humanity in each of us. The normative is synonymous with each person's inner striving to become a human being in its entirety and consequently to realize the common self within each of us that makes man truly human. The normative does not lie in what man is, but in what he aspires to be, not as a means of realizing a higher human being, but in the very process of fulfilling one's own being as a human.

The question is whether the argument avoids committing the 'moralistic' fallacy mentioned above or not. However, the important thing is to notice that the common self that is expressed in human rights is not a goal outside man's inner being, but a part of it that endeavors to accomplish itself within every human individual self. The 'ought' implied by human rights is not inferred from a factual statement of what man is. Rather, it is the opposite, where we in some way are confronted with the problem of inferring an 'is' from an 'ought'. This can hardly constitute a 'moralistic' fallacy if it is a fallacy at all.

5. Human Rights and Democracy

The human rights scheme as presented above describes a classification of rights where they are subordinate to one, common formal criterion, namely that for something to be a human right, it must not conflict with anyone else's rights. By classifying human rights according to this criterion inasmuch as they are considered inherent, inalienable or indivisible rights, human rights add to classical democratic rights an imperative or prescriptive element that cannot be accounted for considered solely on the basis of the theory of natural law.

Contrary to the traditional civil, political, social, and cultural rights in democracy, which are regarded more as rights assured or granted by the political system in order for democracy to exist as a democracy, human rights are rooted in a moral idea of man. In transforming the traditional democratic rights into human rights, we also establish democracy as a moral order. It is human rights that make this transition possible and thereby realize democracy in a more complete form than just in its political-technical sense.

Additionally, the classification has a practical significance for actual human rights policy as it arranges the rights in a priority order and thus avoids the rights inflation of today. A right can only be called a human right by virtue of a definition of what 'human' means, and it can only meet the definition either as a perfect, imperfect, or adventitious right in the sense explained above.

But the moral and practical significance of human rights for democracy that lies in the transformation of the classical civil, political, social, and cultural rights into human rights in the proper understanding of the word is just one aspect of the relationship between human rights and democracy. Human rights also intervene in two other fundamental ways in the understanding of democracy, namely both with respect to the idea of democracy and how the idea can be realized as a political idea.

The idea of democracy is expressed by the triad of freedom, equality and brotherhood, where each of these terms denotes one perspective of a larger unity. Freedom describes the formal determination of the unity, equality its material and brotherhood its ideal determination. In short, freedom answers the question: What is democracy about? Equality provides the answer to the question: What is the prerequisite for democracy? Brotherhood answers the question: What are the goals of democracy?

Together, freedom, equality and brotherhood characterize democracy as both a form of government and a community organization. Freedom expresses the basic idea of the

democratic view of life—the very beam on which democracy rests. Freedom without equality is inconceivable since democracy cannot be just for a few, but on the contrary means equal freedom for all. Equality without freedom will lack the idea of democracy. Freedom and equality, but without brotherhood are also excluded since freedom and equality in this case would be loosely bound together without a common, inner principle. Without brotherhood, democracy lacks a real universal consideration for the other. It could just as well be based on calculated self-interest: I want freedom for everyone because in the long run this serves my private interests, even if I do not really feel anything for the interests of others. Only with brotherhood does freedom and equality become truly universal. Brotherhood alone will not do it either. Brotherhood without freedom and equality is a community without real solidarity, which can easily end up in guardianship. Consequently, we are required to have the three. Only in this sense is democracy a real democracy.

Human rights meet the requirement of liberty in making it the only perfect human right. By basing freedom on what is common to all human beings—in short, their humanity—human rights also lay the foundation for equality between all human beings in all political, legal, social, economic, and cultural respects. Equality is synonymous with each individual's common humanity. Finally, in that human rights realize the human or greater self of which everyone is a part, human rights imply a universal brotherhood. In the wanting of one's own humanity also lies respect for others' humanity. One is an aspect of the other. It is in this sense that we can say that human rights unite and do not separate. They unite precisely by making us aware of a fundamental kinship or brotherhood between all human beings by virtue of which the rights are not only rights like any other right but differ from all other rights by being *human* rights.

Democracy and human rights are also interrelated in the way democracy realizes itself. Although human rights are inherent to everyone by virtue of each person's humanity, men only become aware of their common human nature step by step. The awareness of this consists in an inner process in each individual being. Being is therefore not static, but dynamic. The fulfillment of human rights lies in the process of man's gradual affirmation of himself as a human being in the deepest sense of the word.

Just as human rights must be thought of in terms of an internal process in each individual as a gradual maturation of the individual's human nature, democracy must be thought of as a progressive realization of itself. Democracy is more an idea than a reality, more of an ideal or a guiding star than a fact. To understand the processes of democracy and to contribute to its development in a positive direction, we must see democracy as a project of civilization. Today's forms of democracy constitute stages of the process and do not represent its final destination. The goal is a moral brotherhood that unites everyone in freedom and equality.

Human rights suggest important guidelines for the process of democracy. As democracy requires mature citizens, human rights can serve as the focal point of democratic maturation. Man matures by developing his rights as a human as part of his being. He evolves by embracing the values expressed in human rights as a necessary part of his being. At any stage of the process, the human self is realizing itself within man, making him become more human and consequently to a greater extent a citizen of human rights. Thereby, he also develops as a citizen in democracy. The realm of human rights constitutes the realm of democracy. The two concepts are synonymous with each other. That is why realizing human rights is the same as realizing democracy. Both must be seen as one and the same process in that they establish a common, political order.

6. The Great Delusion

Although human rights are consigned in various international charters or declarations, which have been ratified by almost every democracy, human rights are transgressed daily. People are not treated as equals, discrimination has not stopped, and economic and social inequalities are becoming even greater year by year. This is not only a fact within democracies, but even more acute throughout the world in general.

The question here is what constitutes the delusion that apparently makes the violation of human rights legal.

One answer is that human rights, as pointed out earlier, are generally perceived as rights granted by the state, which it commits itself to respect. Therefore, they depend on the political authorities of the country, both in their justification and interpretation. Consequently, the state's violation of human rights does not involve an abuse of them, but a reprioritization of its wishes and goals.

Another way of saying the same thing is that human rights are something we have and that they therefore only concern the subject in a passive way. Consequently, human rights are not strictly speaking one's own rights, but something one has by virtue of others, and which can be repealed by an act of law.

However, and this has been the main thread in this essay, human rights are not the result of an act of legislation. Additionally, even to say that they are natural rights is not sufficient neither. From something that is natural, one cannot derive a binding norm for human relations.

A far stricter argument lies in showing that human rights are a part of the human being. They are rights that express the essence of what is generally meant by human nature. In this lies the strength of the human rights principle.

Human rights are moral norms for behavior, not positive guidelines declared and approved of by any political constitution or assembly, as they are part of human nature, and are previous to any constitution or assembly. In fact, they are what makes any constitution or assembly possible as a democratic constitution or assembly.

Since they are not something one has, human rights are part of what it means for man simply to be. As such, they raise the question of being and can only be understood in this perspective. Moreover, they imply that being, in order to be the basis for human rights, must be thought about as a process, that is, as something that evolves and develops in a movement of constant maturation.

Not realizing that human rights are rooted in the realm of being would mean a distortion of their essence and consequently the impossibility of shaping a consistent human rights policy.

It is, however, extremely difficult for the modern mind to recognize this. Since the Enlightenment, the modern mind has been molded to see things in a certain external way. Everything is grasped as an object and hence as something external to man, which he can dispose of or admit as he wants [19].

Thus, the horizon of meaning has, to the modern mind, been reduced to what one can master. This does not only apply to the outer world, but also to what constitutes man's own being. Only mastery gives meaning. In short, the world has become technical to man. The way of treating the world has become abstract and technical in order to give meaning.

Today, man has become a prisoner of the realm of having. Herein lies the most fundamental challenge for human rights. Even when we talk about being, we tend to talk about it as an object and consequently something we have. Thereby, we forget that, before we have, we *are*. Additionally, we forget that being consists in a constant movement of something living, which can only be experienced in an inner, dynamic and not an outer, static way. When today we have such a challenging time dealing with problems that human relationships raise, and finding solutions to acute issues, this is due to the fact that in all relationships with our fellow human beings, we treat them as objects that we have and not as subjects that in their process of being are intimately connected with ourselves. In other words, the basic delusion of modern man consists in the oblivion of being. The question of what human rights are and our duty to them is not the least important aspect of the delusion.

Human rights are relatively a new concept in history.¹⁰ Human rights presuppose a certain maturation of the human consciousness in the sense that it can rise above the differences between people either as belonging to different nations, ethnicities, genders, religious traditions, and so forth. Only in the last hundred years has man arrived at a point

in the development of his mind that makes this possible. The tragedy is that once arrived at this point, man has lost the capacity of expressing a relevant and accurate conception of what human rights are. He still lingers in an old conceptual way of thinking, which distorts the essence of human rights by making them something external to us that we can treat in a simple technical way, much like objects that we have.

At the same time, man is confronted with the challenges resulting from the abstract, technical way of thinking and whose solutions transcend a purely technological mindset [32]. Human rights could contribute to a solution to many of these problems once we realize that solutions to major political and social problems of today must involve every human being. The question then must necessarily be: What does it mean to be a human? Only by answering this question can we move to the next step, which consists in finding practical solutions to problems concerning us all.

Another delusion that paves the way for the violation of human rights lies in the state's abdication of its responsibility as a bearer of the obligation to human rights. Today, governments and party politics are first of all concerned with political ideologies [33] and not with the human being itself as the moral core agent of politics. One can hardly say that the supreme power in today's democracies is vested in the people, despite the common understanding of democracy as government of the people, by the people, and for the people [34]. As a result, both democracy and human rights are being lost. This too is part of the oblivion of being. With the growing influence of thinking as having in all areas of political and social life, respect for human rights, and thereby democracy, declines. In addition to this development distorting the concept of human rights, it is threatening the existence of democracy by emptying man of all dignity and existential substance.

7. Conclusions

This analysis does not pretend to solve all the problems that the question of human rights raises. Our main concern has not been to lay the premises for a human rights ideology nor to present a defense for them, but simply to clarify what we understand by human rights understood as absolute and universal rights. From this assumption follow certain necessary consequences for the understanding of the concept of human rights, if it should be a logical and consistent one. These consequences are the common thread in our analysis of human rights.

In what do human rights perceived as absolute and universal rights consist? In answering this first question, we have endeavored to show that in order for human rights to give rational meaning, they must be understood as rights that cannot come into conflict with somebody else's rights. Only in this sense can they be said to be inherent, inalienable and indivisible rights, meaning with inherent innate and natural rights, with inalienable rights that cannot be taken away nor waived, and with indivisible rights that do not permit 'a more' or 'a less'.

Based on this principle, we have proposed a classification of human rights into perfect, imperfect and adventitious rights. Strictly speaking, there is only one perfect human right, which is liberty. All other rights are to some degree imperfect in meeting all the conditions for a right to be a human right.

What constitutes the binding element of human rights? The answer to this second question lies in the aspiration of man to realize his fundamental human nature, which participates in a universal self, which every man is part of.

Understanding human rights as something universal and absolute, and its binding principle as an aspiration in man to realize his true human being, change our whole way of thinking about human rights.

First of all, we must not perceive them as something we have, but as belonging to the realm of being. Second, we have to understand human rights on the basis of something common in every human being. Finally, we must not understand them as something static, but as a living and natural process within each of us.

Only on these conditions can we understand human rights as something compelling or necessary to man and democracy. The normative element of human rights does not lie in what man is, but in what he wants to be as a human being. Human rights are not about what is, but about what ought to be.

As a result, it is possible to shed light on the type of delusion that has today led to the compromises with human rights at all levels of modern civilization. The delusion consists both in the confusion of being with having, and in the oblivion of being, as well as in the understanding of the justification of human rights by a given political order, and not by the man's aspiration to realize a more profound and true humanity than that which results from being passively subject to a prevailing political system.

Our analysis of the two questions about what human rights are, and in what consists their normative element, takes us to the heart not only of the moral perspective of what it means to be a human, but also to the moral idea of democracy. As rights presuppose a society in order to be supported, human rights presuppose democracy in order to uphold them. It is hard to see how human rights could be respected in their essence without democracy. Hence, the defense for human rights is also a defense for democracy just as the lack of respect for human rights or will to fulfill them is a hallmark of a democratic deficit.

Democracy as a moral order will probably never be fully realized. It must be seen as a guiding star rather than a complete readymade political system. At the very least, the realization of democracy depends on the realization of human rights as its binding element.

For the same reason, human rights will probably never be actualized in their complete form. But even so, the commitment to human rights, understood as a gradual maturation of man as a human being, must be seen as the engine that drives democracy forward as far as possible under human conditions. The process consists in the awareness of changing the fundamental rights of democracy and thereby also the principles it is based on, into something compelling and normative, that is into an 'ought'.

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Notes

¹ The terms *negative liberty* and *positive liberty* were originally introduced by Berlin [7]. We are using the terms in a slightly different way here.

² Also called civil, political, social, and cultural rights.

³ For example, Magna Carta or the Great Charter of Freedoms in 1215, the English Bill of Rights in 1689, the Virginia Declarations of Rights in 1776, the United States Bill of Rights in 1789 and the French Declaration of the Rights of the Man and of the Citizen of 1793.

⁴ According to Amnesty International's 2009 World Report, individuals are tortured or abused in at least 81 countries, face unfair trials in at least 54 countries and are restricted in their freedom of expression in at least 77 countries [35].

⁵ According to official figures, in Brazil, in 2007, police killed at least 1260 individuals. All incidents were officially labeled "acts of resistance" and received little or no investigation. In Uganda, 1500 people die each week in the internally displaced person camps. According to the World Health Organization, 500,000 have died in these camps. In Vietnam, Vietnamese authorities forced at least 75,000 drug addicts and prostitutes into 71 overpopulated "rehab" camps, labeling the detainees as "high risk" of contracting HIV/AIDS but providing no treatment [35].

⁶ An example is the suspension of the right to free movement during the COVID-19 pandemic.

⁷ In common human rights philosophy, indivisible may also mean that the human rights are inherently complementary and equal in importance in that they constitute an indivisible whole. Understood in this way, indivisibility means that human rights are interdependent and interrelated [36]. This, however, in addition to blurring the question of the nature of human rights, also leads to incalculable difficulties in putting them into practice, since in this case man is entitled to all human rights without exception. It is difficult to realize how this can be carried out without one's rights risking coming into conflict with others' rights. This could in

turn lead to an infinite number of lawsuits (as previously mentioned) and moreover involve the risk that the concept of human rights will dissolve into purely individual interests, which would lead to a complete atomization of society.

8 Opposite to the problematic freedom that man enjoys by merely being part of himself, which can hardly be considered any universal human right. Though commonly perceived as a freedom, one may ask how free man really is in this case as his freedom has every chance of conflicting with somebody else's freedom, and thus risks maintaining itself only by the oppression of others. Thereby, it becomes dependent on something other than itself. This applies not only to authoritarian societies, but also frequently to today's democracy.

9 The previous list is not exhaustive, but gives examples only.

10 The term human rights appeared for the first time in the French *The Declaration of the Rights of Man and of the Citizen* (1789, French: *Déclaration des droits de l'homme et du citoyen*) [22,37].

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