

Dangerous people's Human Rights.

The political-theological importance of heterotopic human beings

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Did you watch in 2011 the wedding of the year? I am sure some of you did so. Now, I don't want to know what you felt when Kate Middleton said 'yes, I will' to Prince William before the altar, close to her family, in front of all the nations of the United Kingdom and heavily watched by a huge TV-audience. It is estimated that more than two billion people were present at that moment. Now imagined for a moment what it would look like if in the Windsor's next generation the future king wouldn't have a woman on his side at his wedding but a man or what it would look like if Kate's and William's future daughter, the first-borne of course and the first in the row to become Queen, would stand before the altar in London and she would have a woman on her side.

The gay and lesbian alternative to last year's wedding of the year would be a revolution. The impossible would become possible. And the peoples of the UK had to restart their society and the public audience in mind it would even attach other civilisations as well. William was not simply a man marrying a woman. He is the future king. And a king is not just a living human being. He is a political human being. He has two bodies, a natural body and a political body. This is not a crazy idea around a wedding affecting rational minded people. It is a real problem and a long standing discourse. Ernst Kantorowicz wrote a famous book about it, entitled "The King's Two Bodies".¹ It argues: A King has a *body natural* and a *body politic*. These are the categories in a discourse at the Elisabethean Age Kantorowicz is dealing with. Constitutional jurists of early modern times created this famous two-bodily figure. One can find in the so called Plowden Reports. Their problem was if the king accommodating land would do so as a noble, but private man or as head of the state. This made a big difference in money. The intellectuals behind the Plowden Report argued that the king would do that as king, not as private person, which lowered the prize considerably. They picked up a tradition already present in High Middle Ages at the emperor Frederic II, the Staufer. And it even reaches further into the past, as Kantorowicz argues.

¹ Ernst Hartwig Kantorowicz, *The king's two bodies: a study in mediaeval political theology*, Princeton, NJ: Princeton University Press, 1957 (with a new preface republished by Willam Chester Jordan, Princeton Univ. Press 1997).

The king's two bodies – a political-theological discourse

The very bottom of this idea is the Christian tradition of Christ's two natures, his divine nature and his human nature. This was a major discourse in the ancient Church for five centuries, an intensive intellectual struggle from the second to the seventh century. It is present in the early Christian Creeds of Nicaea, Chalcedon and Constantinople and it produces numerous so called heresies and even more theologies up to this day. In this discourse, for the first time in history, bipolarity was discovered which is important for human beings. Jesus was a living human being, a historical entity, but he is at the same time a divine entity, a transhistorical figure, the living God himself. So, he has two bodies: a historical body, living at a real time and on a real space in history, which died at the cross in Jerusalem, and he has a resurrected body, pre-existent to his incarnation and for ever living through eternity, risen from death on the third day after his death, according to the Gospels. His body natural can be found at the Cross, on Good Friday, and his body politic can no longer be found in the grave since he is not there but risen, so the Good News on Eastern.

In the King's case this bodily bipolarity has a public impact. Whatever the status of the natural body – be it sick, silly, ugly, whatever – the King's political body is always perfect and pure. The political body was identified as the State. A king's body politic is dependant on the body natural, just as Christ's divine nature cannot be separated from Jesus' human nature. Only as living human being the King can have a body politic. The living, historical body is always the condition sine qua non for the body politic. Therefore, up to this day, the legal formula sounds 'the king is dead – long live the King!' There has always to be a living body in the case of the King. And since the English King still is head of State, Prince William has to take the State in consideration whatever he does as a living person in the public. Last year his marriage was not his private affair but a political act. And for that reason a same-sex-marriage of a future King would affect society pretty much – or he would loose his body politic and couldn't serve as head of State any more.

One can even do politics with the King's the bodies. The Puritans in the English civil war followed the rallying cry: "We fight the king to defend the King!", only the second with a capital K. And in 1997, Tony Blair was clever enough to use Lady Diana's body politic immediately after her tragic death for his own political stand and finally even the Queen had to bow her head towards the dead body natural of the Princess of the Hearts in order to come to terms with her own body politic.

Human rights as a political-theological discourse

After absolutism this twofold entity of a human being turned democratic, so to speak. By the American Revolution and the French Revolution human rights in general entered the political scene and today they are a major discourse for constitutions, States, societies, international and internal affairs. The declaration of independence of the United States of America in 1776 claimed “that all men are created equal”, that they have “unalienable rights”, “endowed by their Creator”. There is something in every living human being which is an unalienable political power which all politics has to pay respect to. According to this declaration especially “Life, Liberty and the pursuit of Happiness” have to be obeyed. That what once applied only to the King has to be taken into account for every human being.

One can bring this discourse on human rights into the bipolarity of the King’s two bodies. A human being’s body natural is endowed with a body politic which is his or her human rights. We all have two bodies not only the Staufer Emperor or the British King. We have a ‘body natural’ and we have a ‘body politic’. Our body natural is accompanied by a reality which is indispensable for us in society, culture, science, politics, religion. No power in the world can ignore what is discussed as human rights issue although it can very easily all be pushed aside within power struggles. The basis of our human rights, the body politic, is our body natural, i.e. the fact that we are alive. In case of torture and war crimes it is not only the body natural which is affected; our body politic is affected by that. Therefore victims of torture and victims of war crimes are political entities which are always a hotly debated issue in political matters. The same applies to children who are victims of paedophilia, to women and men victimized by rape, to the elderly not taken care of with due respect, etc. The body politic is immediately attacked when human beings are victims of discrimination. This is serious political violence in his or her living body, even if it is a violence taken place at the body politic.

This line of arguments is different than the normal discourse on human rights. For the mainstream the intellectual basis of human rights is human dignity. And this idea has some origin in ancient religious claims like that of the Bible that man is an image of God and it has some reasons in ancient philosophical claims that man has an eternal soul. I do not deny these origins. Yet, I want to claim the Christological discovery that there is a binarity in a human being, a divine nature and a human nature as major basis for the whole discourse on human rights. It combines the juridical discourse about unalienable rights with a bodily discourse about living persons. This combination is a source for political energy. Struggles in ancient Christology were heavily contested in the political field since they were able to create or

destroy coalitions in societies and between social classes. For that reason, creeds about Christ had a major social, cultural and political impact between the fourth and the ninth century.²

So, my question is how Christ's two natures create the theological backbone of human rights. Kantorowicz's discovery about the King's two bodies is an important step for that since it demonstrates that a twofold bodily matter leads to political theology. It is not only a historical truth but a sign to the crossroad of politics and theology, of religion and state, of culture and church. Human rights and religious truth-claims meet as soon as a living human being is presented as a locus for a meeting point of transcendence and society, of God and life.

But at the same time one has to admit that as the Ancient Church had a hard time to realize the Christological truths about the two natures the modern Churches had a hard time to realize the truths of human rights as divine presence. Not before the 20th century the big protestant Churches and the Catholic Church did accept human rights as equals to or as even higher than ecclesial rights. For the Catholic Church the Second Vatican Council is the breakthrough accepting human rights as magisterial teaching. The late Pope John Paul II is the major figure for a turnaround in the Church's policies on that. But especially the Catholic Church still has a hard time to come to terms with violations of human rights by members of their own inner ranks. Times are changing now after the scandals on sex abuse of children by priests but they do so very slowly. Human rights *ad intra* are still not on the same ecclesial level as human rights *ad extra*. There is reason for that in the Catholic Church's tradition.

Human rights are dangerous and they are in need to be corrected

This position can be found in the so called *Syllabus errorum* by Pope Pius IX attached to his encyclica *Quanta Cura* issued on Decembre 8, 1864.³ As 'Errores de ethica naturali et christiana' one can read in number 15 and in number 78: "every man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true [...] it has been wisely decided by law, in some Catholic countries, that persons coming to reside therein shall enjoy the public exercise of their own peculiar worship." (No. 15/no.78, DH 2915/2978) The final and most important error was found in the position: „the Roman Pontiff can, and ought to, reconcile himself, and come to terms with, progress, liberalism and modern civilization." (No. 80/DH 2980)

² Cf. Bernhard Lohse, *Epochen der Dogmengeschichte*. Geleitw. von Markus Wriedt, Berlin: Lit, 9th ed. 2011, p. 77-104.

³ Cf. Heinrich Denzinger, *Kompendium der Glaubensbekenntnisse und kirchlichen Lehrentscheidungen*, unter Mitarbeit von H.Hoping hg. v. Peter Hünermann, Freiburg: Herder, 37. Aufl. 1991, No. 2901-2980.

This *Syllabus* is not simply a dogmatic habitus of a religious community. It is linked to a political-theological discourse which is turned upside-down by Vatican II. In 19th century this discourse had a special anti-liberal focus created by Restauration. This discourse was formulated by a Spanish noble, the philosopher and diplomat Donoso Cortes. In 1852 his *Essay on Catholicism, Liberalism and Socialism* formulated as first Chapter: “How each great political issue embodies a great theological issue”.⁴ Theological considerations are never neutral in terms of politics, no matter how infra-theological their language and considerations may turn out to be. They represent political problems and they are able to shape political strategies. Cortes’ idea is definitely not motivated by a sort of liberation theology. As disappointed liberal he was an extreme representative of Restauration. He still is considered a mastermind for all dictatorships since he wrote a famous book on dictatorial rule. He argues that one has to defend the state by all legal means and if legal means don’t succeed one has to turn to dictatorship to do so. Against dictatorship of knife, i.e. ruling by the plebs, initiated by revolutions Donoso Cortes pleads for dictatorship of sword, i.e. ruling by elite, especially by nobility. One can find this idea realized in dictatorships by military, by communism parties or by mullah regimes.

Pius IX’ *Syllabus* belongs to this mode of the political-theological thinking. It is the ecclesial elite, the Church’s holy nobility, which alone is capable to rule society in terms of culture, morality and religion. Liberal human rights are nothing else than revolution made by people which are dangerous and which should to be ruled because they are dangerous. This is more than reminiscence to 19th century. It belongs to an anthropological belief which still is very much present in politics.

Human beings are dangerous and they are in need to be ruled

One can find this idea already in ancient times. Plato’s Republic institutionalized it as the class of the guard. The idea human beings were dangerous belongs to an ideal State.⁵ As more ideal a state has to be as more one can find the inclination to rule human beings because they are in need of it. No ideal state can trust those who constantly disregard ideals the state is built on. But living human beings do not always behave in the line of ideals. So, for idealists living human beings must constantly be watched.

⁴ Juan Donoso Cortés, *Essay über den Katholizismus, den Liberalismus und den Sozialismus*, hg., übers. u. komm. v. G. Maschke, Weinheim: Acta humaniora, 1989, 5-13.

⁵ Mark McPherran (ed.), *Plato's Republic. A critical guide*, Cambridge: Cambridge Univ. Press, 2010.

In 1930ies this idea was hotly debated in political philosophy. One can find it in a discourse about political theology between the Carl Schmitt, a influential and very controversial catholic thinker who admired Donoso Cortes, and a young Jewish scholar, Leo Strauss. Schmitt was not a theologian but a law-professor and later served as ‘Staatsrat’ for the Nazi-government in Germany. Schmitt is famous for a book entitled ‘political theology’ which claims that to be sovereign means to be capable to call a state of emergency and for positions like friend and foe being the basic political difference. He considered a foe as the figure of one’s own existential questions. After World War II he never got a position in a University again but his books keep being very influential, not only in Germany.

Schmitt’s counterpart Leo Strauss is considered to be the mastermind behind the neoconservative movement in the USA. Strauss is arguing in the line of Platonism. He gives republicanism more credit than liberal democracy. Rousseau and Locke are much less important for him than Hobbes and Spinoza. As a young and unknown scholar Strauss was debating with Carl Schmitt who wrote references for him. These debates have shaped Strauss’ political philosophy very much. And Schmitt, on the other hand, constantly used Strauss’ arguments from their debate without reference to the younger Jewish partner. He seemed to consider that as hazardous for him in Nazi-times. After the War Strauss had become an intellectual figure of his own not in need to stay in contact to Schmitt.⁶

While the two were debating, Strauss wrote a review *Anmerkungen zu Carl Schmitt, Der Begriff des Politischen*.⁷ There he argues that the political problem is not only possible for human beings but a reality resulting from human nature. The very basis of the political is the dispute about the human nature: is man by nature good or is he evil? ‘Good’ and ‘evil’ do not stand for morality or for ethical issues. Strauss: “‘Good’ is to be understood as ‘not dangerous’, ‘evil’ as ‘dangerous’. This is the ultimate question if man is a dangerous or a not-dangerous being, a risky kind of being or a harmless one. The position that man is dangerous is the very condition for the position of the political problem.” (112/113)

If man is dangerous then politics, i.e. living in a polis, have to count on that not only in practical matters but by principle. Politics result from man’s dangerousness and political issues agree with this condition. “It means to agree with man being dangerous to agree that there is a political problem.” And this leads to the issue of ruling people by other people. Is it necessary that people have to be ruled or not? Strauss’ answer: “For that reason

⁶ Cf. Paweł Armada, *Modernity and what has been lost. Considerations on the legacy of Leo Strauss*, South Bend, Ind.: St. Augustine's Press, 2011; Michaël Foessel, *Modernité et secularisation*. Hans Blumenberg, Karl Löwith, Carl Schmitt, Leo Strauss, Paris: CNRS Éd., 2007.

⁷ Heinrich Meier, Carl Schmitt, Leo Strauss und ‚Der Begriff des Politischen‘. Zu einem Dialog unter Abwesenden, Stuttgart: Metzler, 1988, p 97-125.

dangerousness means to be in need of being ruled. And the ultimate struggle is not between bellicism and pacifism or nationalism and internationalism for that matter but it is between authoritarian and anarchical theorems.” (114s)

Human beings are dangerous and so they have to be ruled. Actually they are in need of that and they are longing for that. For Strauss, liberal ideas arguing that there is only need for a very restricted form of government are only obstacles in the final fight between anarchy and authority. The liberal indifference to human nature is simply misleading. Liberals have to get out of the way when authoritarian and anarchical projects are fighting against each other. They cannot be respected – with all due respect, of course – and have to be pushed aside “with a wink of an eye in order to be able to shoot in direct line to one another.” (124) Liberals are giving tolerance to all honorable convictions accepting peace as basis of society but this omits the political problem. All honest convictions count on the political and so, they are capable to decide in favor of war. To accept the political problem means to disrespect liberalism and its idealistic human-rights-policies.

Kantorowicz’ contribution to the political-theological problem was published more than 20 years after Strauss’ review. So, the king’s two bodies are not in the range of Strauss’ arguments. The king’s body natural is the basis for the king’s body politic. Whatever the status of body natural – be it sick or silly, handicapped or handsome, abused by drugs or overwhelmed by feelings – the King’s body politic can always act in the full range of its abilities. But of course, the body politic is in danger if the body natural is torn apart and finally dead. Then a new body natural has to be found for the King’s body politic.

The same result can be seen if one brings Kantorowicz’ idea into Strauss’ theorem. The very basis of politics are dangerous living people and they are dangerous already for being alive. Their being alive is in need of being ruled politically. They are simply not good but evil. And politics has to react to this danger by creating a ruling constellation which is able to relativize this danger. So, body natural is the very problem of body politic, i.e. the ruling power. Every human being being alive and representing a body natural is in need of a ruled political body which gives him or her the chance to live with the danger of his or her being alive. In Strauss’ arguments body natural and body politic are in contrast to each other and this contrast has to be shaped along body politic.

This is a clue to the habit of religious communities towards people considered to be dangerous, like gay and lesbian people. Of course, Strauss is not at all dealing with religiously motivated positions on human rights of gay and lesbian people. But his theorem stands for three important concepts to analyze that problem: authority, anarchy and liberalism. For

christian religious communities in the latin tradition moral issues are not simply ethical problems but issues of personal discipline. The reason is the same reality as in Strauss' case: human beings are dangerous and their being alive is a dangerous fact for a community.

For the christian tradition it is not human nature that leads to being dangerous. It is the corruption of human nature which was originally created as a good nature. This corruption is the result of concupiscence, said Augustin whose theology decisively shaped the discourse on the corruption of human nature. Every human existence is rotten and permanently endangered by the power of sin, especially in the practice of freedom.⁸ Death is the result of the sin's power. This was Paul's position in his letters to the Romans, to the Galatians and to the Corinthians.

Paul's position of being endangered by the force of sin was linked to human bodies by Augustin. The very fact that human life is giving to a next generation by bodily behavior, i.e. sexuality, became Augustin's argument that the locus of original sin is concupiscence attached to one's living body. For that reason body natural has become a dangerous entity for ecclesial religious traditions. It was the beginning of christian bio-power and it shaped all religious communities in the latin tradition of the Church, especially Protestantism and Catholicism. Although they act very differently they agree on this point: There is a deep power in every human being alive giving reason to deal with him or her as a dangerous person. And a dangerous person needs to be ruled – to be ruled by discipline in order to set limits to his or her dangerous nature. The alternative means anarchy and chaos in existence and society. For implementing discipline authority is necessary and the religious authority is serving to strengthen people's discipline on their life, which means to discipline themselves within their bodily matters, especially in relation to sexuality. Liberal ideas in this respect are simply obstacles in the way and they have to be pushed aside.

For that reason human beings are in need to be ruled especially in sexual activities. Their body natural desperately needs a strong body politic to keep it out of dangerous activities and this body politic is implemented by disciplined religious activities. This has led to the strong tradition of ascetism in christian religious history, especially to its focus on sexuality in modern times. And discipline in body matters still is considered the only way to come to terms with the luring side of sexuality. Here body natural is ruled by an ascetic body politic.

Without a strong spirituality representing body politic one is hopelessly corrupted at body natural. This spirituality empowers religious and political authorities to act on behalf of the

⁸ Helmut Hoping, *Freiheit im Widerspruch. Eine Untersuchung zur Erbsündenlehre im Ausgang von Immanuel Kant*, Innsbruck: Tyrolia, 1990; Hermann Häring, *Die Macht des Bösen: das Erbe Augustins*, Zürich: Benziger, 1979.

natural bodies of people. So, it serves in social and political matters in favour of meeting the need of every human being to be ruled. In terms of homosexuality no liberal ideas about freedom can override the contradiction between anarchy and authority. All liberal ideas, i.e. a civil society based on equal rights for every citizen including rights of freedom in sexual matters, must be contrasted by religious arguments. For that reason most religious communities fight liberal ideas about homosexuality. Liberalism about homosexuality endangers not only ecclesial authority which is necessary to rule man's dangerous character but it endangers the political body of a society.

Strauss is a modern thinker, and his ideas are still pretty influential in political theorems. But his ideas are validated by a power struggle long before modernity which is very much linked to body-politics. It is inquisition. Inquisition was formulated as a legal position for the desperate need of dangerous human beings to be ruled. Inquisition even stood for a progress in legal terms since it enforced a structured legal process in the name of a higher authority ruled by truth. Inquisition was invented by Pope Innocence III who was the dominant papal figure in the middle ages. He added 'vicarius Christi' to the Papal titles, which means the Pope is God's vice-general on Earth. Being a real expert in legal matters Innocence was deeply convinced of the dangerousness of human beings. Basically he was a strong misanthrop distrusting all sorts of living people.⁹ He distrusted especially people belonging to the various movements of the poor. So it was a sort of miracle that he accepted Francis of Assisi's new order.

The clergy as Innocence saw it has to administer their pastoral work in line to politics formulated by God's vice-general. The Church as *civitas Dei* had to balance the dangerous powers of *civitas terrena*. This meant that Inquisition had to be a success not simply in front of heaven but already under earthly conditions. It had to bring salvation into the ruling powers on earth. Otherwise God's redemption cannot be found on Earth.

Based on this integral concept, Catholicism from the high middle ages up to modernity was very much in favour of religious wars in order to establish *vera religio* and its ruling in morality. And it constantly was working to discriminate which people must be considered dangerous. Inevitably this habit lead to contradiction with Enlightenment and after the French Revolution it culminated in the so called ultramontanism. Here, the Pope was seen to be the only remaining power capable to save from the revolutionary anarchy. That was the reason for Donoso Cortes' essay and it was enhanced by Pius IX's Syllabus. This sort of catholicism had to fight without mercy against dangerous people within its own religious community –

⁹ Cf. Lothario de Segni (Papst Innozenz III.), Vom Elend des menschlichen Daseins. Aus dem Lateinischen übersetzt und eingeleitet von Carl-Friedrich Geyer, Hildesheim/Zürich/New York: Olms, 1990

heretics, sodomites, witches in early modern times, and freemasons, theologians in favor of liberalism and modernism in high modernity. All these dangerous people visibly had to be attacked with all means and this had to happen in public. One tried to control their natural body in favor of a communal religious body the ecclesial magisterium is responsible for. This religious body is the mystical body of Christ, i.e. the Church.

Dangerous people have to be excluded from sacraments, from religious teaching, from their own religious home. In early modern times during the religious wars of Europe the dangerous people were given to the State for torture and for imposing death penalty. Everybody in the higher ranks of States and Churches believed that the only remedy against dangerous people is discipline enforced by all means of power at hand. This should cure their own body politic and the body politic of everybody else. Only very few like the Jesuit and poet Friedrich Spee of Langenfeld disagreed and formulated 'cautious examinations' (*cautio criminalis*) against the widespread practices to prosecute people suspected to be dangerous witches.¹⁰ In certain new religious communities in the traditional corners of the catholic world one can still find the grammar of prosecution and attacking others simply for reason that they are considered to be dangerous. Still today the Pius Brotherhood is arguing in favor of Inquisition in order to cure a rotten modern society by means of the eternal truth presented by its own religious community.

But the same catholicism has no means when dangerous people are revealed within its own hierarchical ranks – a reality now public by paedophilia-scandals of priests and bishops. Here one had to realize that the body politic one wants to push forward by religious arguments is the very danger for the victims' body natural. This sort of catholicism is simply helpless in the crisis. Stuck to a habit always to be in favour of its own hierarchy and in disfavor of victims if they claim that their suffering is caused by catholicism even this mode of catholicity cannot deny that part of the dangerousness is caused by ascetic life-form it is imposing on its inner ranks. And at the same time it cannot accept this precarious truth and it is eager to buy time for not acting at all.

This religious position is transforming the need of dangerous people to be ruled into a law-system to control peoples' believes and morality in general. They were subjected to ecclesial law which is considered to have a higher rank than secular law. It is an important aspect of this strategy to put canon law above secular law and ecclesial rights above human rights. This is the strategical background for Pius IX's contradiction to human rights. Pope Pius IX. started as a liberal. He was elected for cautiously bringing in elementary civilian rights into

¹⁰ Friedrich von Spee, *Cautio criminalis*, or a book on witch trials. Transl. by Marcus Hellyer, Charlottesville/London: Univ. of Virginia Press, 2003.

Papal States. But he was bitterly disappointed by the revolution in 1848 which forced him to seek asylum in Gaeta. After that experience he turned to strict restoration which he wanted to serve as a leading figure. At that time the Church was understood to be a supernatural *societas perfecta* which stands above the state understood as another, but only natural *societas perfecta*. The Catholic Church's strict contradiction to the liberal state was changed into an opposition by his successor Leo XIII who invented Catholic Social Teaching arguing in favor of basic human rights for working people like the right to organize themselves. With Pius XII. in the middle of 20th century the magisterial teaching moderately changed a bit into the direction of human rights. A difference of *thèse* and *antithèse* was applied to allow a sort of the ecclesial construction of human rights. The *thèse* said: Human rights are acceptable in societies where Catholics are a minority. Here they must be granted by the State. As minority Catholics need to be protected by human rights, especially in order to live their religion in freedom and to stand up for their religious truths in public. But there, where Catholics are the majority of people, human rights are not needed since the true religion is already ruling. This was the *antithèse*. In catholic states the Church strictly disfavored constitutions with human rights because then dangerous people would be protected and one couldn't contain them from public importance. The church was willing to accept human rights if they boost her power. It didn't accept them for the sake of people endangered by social, political, cultural threats. One of the major achievements by the Second Vatican Council from 1962 to 1965 is to finish this ambiguous position.¹¹ This council restarted the political-theological problem by a completely different position to dangers related to human beings. Much more important than dangerous human beings are human beings being endangered.

Human beings are endangered and they are in need of salvation

The strategy of modern Catholicism before Vatican II tried to solve the political-theological problem of dangerous people by means of power. This is still present in certain more fundamentalist groups in the Church. But one can also find that in other political groups.

Vatican II completely abandoned this strategy which had isolated the Church from the modern world. It was changed into a strategy which was called by Pope John XXIII at the Council's opening a "magisterium of pastoral character".¹² This 'pastoral' means a bit more than the

¹¹ For this change an American Jesuit was very important, John Courtney Murray. Cf. Thomas P. Ferguson, *Catholic and American. The political theology of John Courtney Murray*, Kansas, MO: Sheed & Ward, 1993; Lawrence E. Brandt, *John Courtney Murray and religious liberty. An American experience*, Rome 1983

¹² Ludwig Kaufmann/Nikolaus Klein, *Johannes XXIII. Prophetie im Vermächtnis*. Fribourg: Exodus, 1990, 136.

traditional pastoral care which was restricted to people belonging to one's own religious community or which are subjects to its mission. 'Pastoral' is related to all human beings, especially to human beings in situation of poverty and despair. It is a subject for that what Christians have to bring forward in terms of God, faith, salvation. That what happens to people living today and deeply affects them is a relevant topic for the dogmatics of catholic faith. In the first sentence of one of the most important texts, the Pastoral Constitution about the Church in the World of today: "The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ." Not the dangerous human beings are in the focus of attention but human beings which are endangered in all kinds of today's contexts.

This has two important consequences: The Church is in close relation to all human beings here and now, no matter what their religious affiliation is, simply because their humanity has a fragile locus in today's lifeworlds. Their body politic belongs to the range of the Christian Gospel even if their body natural belongs to other religions or to no religion at all. An endangered humanity is the very rock to deal with God and the Christian Good News. The first step to present the Gospel's Good News is to realize where, how, why and by whom human beings are endangered today. The dangerousness of a human being is not the basis for the Church's relation to him or her. Her or his humanity comes first. To put that into the two bodies: Their fragile body politic is the reason why the Church is in solidarity with their body natural.

Secondly, there is no human being whatsoever who is not a possible confrontation for the Church with the true meaning of her own Gospel. Everybody has a strong side in his or her human situation, no matter what the weak parts of her or his existence may be. This strong side is more important than the weak one. And so, the human rights are the locus for realizing what God's relation to a human being is meant to be. This locus is superior to any ecclesial positions or religious beliefs of these people. On that basis Vatican II could search for a new understanding with other religions, formulated in *Nostra aetate* which says that the Church is not opposing anything what is true and holy in other religions. And the Council's declaration on religious freedom is overcoming the traditional contradiction and/or opposition between religious beliefs and secular sphere: human rights, especially religious freedom, are belonging to that what God's revelation means to mankind. For that reason human rights are more valid for the Church's message than ecclesial rights.

This is a complete new approach to human rights by the Church. The secular belief in elementary rights empowering the freedom of a human being is turned into a locus to find arguments for dealing with Christian faith. By Vatican II human rights became *loci theologici*. There is no contradiction between secular problems and religious perspectives. Human rights' issues are part of the Christian religious agenda due to religious reasons. With this turnaround the strategy of Catholicism is abandoned and the Catholic Church became a World Church being present in mankind's human or inhuman situations here and now. „For though the same God is Savior and Creator, Lord of human history as well as of salvation history, in the divine arrangement itself, the rightful autonomy of the creature, and particularly of man is not withdrawn, but is rather re-established in its own dignity and strengthened in it. The Church, therefore, by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered.“ (GS 41)

The body politic of others has human authority the Church cannot avoid to be in favour of for the sake of her own religious message. The body politic of others is the very basis for a pastorally constituted Church. So, she has to go for cooperation with those who are working for human rights, fighting violations of human rights and she cannot avoid being a voice for people whose human rights are endangered or violated by others. There still are dangerous people in this world but human beings endangered by them are much more important. God is close to the victims and so the perpetrators cannot be in the centre of attention. Not the powerful dangerous people but the powerless endangered people are the body politic the Gospel's Good News is related to. Now: What does this paradigm shift means for the relation of Church and gay and lesbian people?

Sin is dangerous and it is in need of human rights

For Donoso Cortes the political-theological problem is built on the internal relation between big political issues with decisive theological issues. That what is called 'original sin' is a decisive theological issue, at least in the Latin tradition of Christianity. Does it mean that human beings are always dangerous or does it mean that human beings are constantly endangered? Both part of the question are internally related. Are human beings endangered because there are dangerous? Or do they become dangerous because they are endangered? In the first perspective one must fight against people dangerous even if this means to violate

human rights. In the second perspective one must not fight against human rights because this would increase the danger.

In the first perspective – being endangered is caused by being dangerous – gay and lesbian people must decisively be ruled because they are dangerous. In the second perspective such people must be protected against discrimination because otherwise their dangerous situation would increase. In this view they are even very precarious subjects because they are so easily to be endangered especially by being considered to be so dangerous for others.

In the first perspective their body politic must be violated to keep their body natural out of spreading danger towards others. In the second perspective their body natural must be protected in order to avoid violation of their body politic. It is always easy to get people to fight the dangerousness of gay and lesbian people and this is even a power mechanism especially in situations when people feel to be endangered by whatever threats. People doing that can easily get the feeling to be called to that by higher moral standards and by a higher, transcendental power. The strategy of inquisition is still very much available in globalized societies even after the downfall of ecclesial inquisition.

Original sin is nothing else than the experience that human beings are not capable to create salvation for themselves and out of themselves. All that is done by human beings can be turned into something very threatening for people. One can harm a person considerably in acting for his or her assumed very best. This applies to gay and homosexual people as well. They cannot create their own salvation. But this is also true for those who are inclined to fight them because they are considered to be dangerous. It is a demonstration of original sin to create dangerous people in order to be allowed to violate their human rights. Traditional Catholicism are in favour of that, Catholicism in the line of Vatican II must disfavour this position.

Vatican II does not deny original sin but it understands it through the fact that human beings are endangered. For that reason the human rights of everybody, including gay and lesbian people, are of higher value than the strict application of moral discipline. Human rights can protect endangered human beings. Morality strictly applied through ruling discipline must take care that it is not an endangering factor. Of course, this does not solve the problem what to do if people actually are dangerous for others but it relativizes this issue. The focus goes to being endangered, i.e. the victims; being dangerous is of secondary quality. This is true for religious positions and for political positions as well. Then God is a power to resist endangering people and by being that he is a power to deal with dangerous people. He cannot be used to fight only dangerous people. This fight must be in favour of endangered people.

So, it is no Christian strategy to fight gay and lesbian people because they are dangerous and are in need of being ruled. If they endanger people, one must do something against that. But this is not a special religious matter but a criminal matter. This will then be a practice taking into consideration their body natural. But this is not identical with the fact that they are gay and lesbian. Also in respect to be criminal threats to others their body politic must be protected since it is the body of their human rights. If somebody is a threat for others this does not result from his or her sexual orientation. So, it is not being gay or lesbian that a person is dangerous.

But the fact that a human being is gay or lesbian is a potential risk for this person to be endangered, i.e. for a violation of their body politic. Such a sexual orientation which belongs to body natural is still very often used for applying discrimination, i.e. a violation of body politic.

So, the ruling needed for dangerous people is not applicable to sexual orientation. But being endangered is applicable to that. It is not a matter of human rights to be dangerous but to be endangered by sexual orientation. For detecting God's place in this respect one must realize that his presence is bound to body politics, i.e. to human rights, and not to discipline towards body natural. One creates a God of strict power if God is ordered to empower disciplinary ruling over body natural. But one gets an insight into God by being close to powerlessness of body politic. Here God's presence has a preference. God being a power to resist violations of human rights reveals that God is to be found in human powerlessness.

God's part is not to empower sexual orientation of human beings. This would mean God is a power-machine for body natural. He is not. He is the creator of body natural and this creation is taken care of by body politic. God's part is to protect the body politics of human beings for instance from being discriminated on sexual grounds. He is not empowering a person being gay, being lesbian or being straight. But he is empowering gay and lesbian people – and of course straight people for that matter as well – to resist violations of their being human. But this has its locus at body politic. God is empowering human beings against the dangerous violence in becoming powerless. In situation of powerlessness sometimes only God is left as an empowering factor. A violated body natural of a human being who is endangered for reasons of his or her sexual orientation is a *locus theologicus*, a place to find arguments in favour of belief in God. It is not such a locus to be considered being dangerous for reasons of sexual orientation. In this argumentation, morality is a subproject of human rights and not the other way round. But of course, this question is still a very hot debated issue within all Christian Churches.

This reveals something important about human rights. They do not exist because they are there and simply given. They are not naturally given law generating mechanisms. Human rights do exist because they are violated. They have a political nature not a natural substance. Violations of human rights give reason to resist in favour of them and this means to act in favour of human beings' body politic. So, human rights are results of struggles in favour of body politic in history through relations to body natural being endangered. Human rights do not rule but they have authority against endangering authoritarian and powerful ruling. Human rights are not really based on power – besides a sometimes small, sometimes larger power of being part of constitutions -, they are based on human beings resisting powers endangering them like dissidents, people being tortured whose fate became public, persons demonstrating against violations of their elementary rights. In this respect religion may be influential in favour of human rights. It does so in the mode of public religion, i.e. a presence of religious convictions which is able to deal with urgent social and political problems. And human beings endangered here and now are such problems.

Gay and lesbian people are such endangered persons, still today and even in open democratic societies. You cannot expect that Christian religious communities especially those very much in line with a precarious tradition of ruling people because they are considered to be dangerous are in favour of gay and lesbian people simply because they are lesbian or gay. In other words: do not expect support for your body natural by religious discipline. That would simply be a utopian expectation. But there is no need for that because that is not the real problem in human rights' issues. Their very topic is being an endangered person, not being dangerous.

So, you can expect and you should claim that religious communities having accepted the superior position of human rights to ecclesial rights and to moral discipline support you in cases of violations of your body politic. You can even remind them that human rights are *loci theologici* even if this is precarious for these communities because this is dangerous for violations of human rights they are responsible for. Then you would do such a religious community even a favour. You would issue a dangerous reminder where they might find God and where they could not find him.

In this respect there is no reason to get rid of the tradition of original sin, i.e. the dangers imbedded in human beings. But this tradition would be reclaimed in the line of people being endangered. In this line this tradition belongs to salvation. In the other line, creating dangerous human beings as the focus of disciplinary attention, it does not belong to the Gospel of Salvation. Very often people are endangered because they are declared to be

dangerous and religion cannot avoid being part of this dangerous constellation if it has no option for powerlessness as the clue to salvation. With an option for power religious convictions trigger self-righteousness. And then religious communities are pointing to dangerous people in order to avoid realizing that they themselves are responsible for the real dangerous parts of the problem. For that reason they are in need to be ruled – by human rights which pay respect to human beings body politic no matter what their sexual orientation may be. In this respect the political-theological problem still may have meaning in public discourses.

For this reason gay and lesbian people are really dangerous for religious communities. They are dangerous for a ruling habitus of being self-righteous on religious grounds. In these cases such dangerous people cannot lead to a utopian ruling of a religious belief system. Then they are heterotopic persons enforcing a discourse about religious self-righteousness. They are heterotopic because their pure presence is a very precarious space for every religious community inclined to utopian ambitions to rule on grounds of dangerous human beings.¹³

But this resisting power, of course, confronts oneself with the danger to become self-righteous on grounds that one is a endangered human beings. But if one is endangered this gives reason to empower human rights which cannot be reserved for certain persons or special groups. Endangered human beings are heterotopic to a ruling order of things. They unavoidably are linked to other heterotopic people being endangered by ruling disciplines implied on societies or persons on utopian grounds.

One might even say: Human rights are always related to heterotopic people. Their body politic is part of a precarious discourse which reveals the dangers human beings are confronted with in society, culture, religion, politics by utopian power mechanisms. In empowering claims for respecting human rights in matters of sexual discrimination and resentment gay and lesbian people are taking part to democratise the King's body politic. And this support of everybody's body politic will enhance a public religion whose presence in society is based on human rights and whose future depends on solidarity with heterotopic people.

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¹³ For the concept of heterotopia cf. Michel Foucault, *Des espaces autres*, in: *Dits et Écrits II*, 1976-1988, Paris: Quarto Gallimard, 2001, 1571-1581. See also Trygve Wyller (ed.), *Heterotopic Citizen. New Research on Religious Work for the Disadvantaged*, Göttingen: Vandenhoeck & Ruprecht, 2009.