

Jagiellonian Values in the Freiburg Declaration of Cultural Rights



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The considerations presented in this short text are an attempt to analyze the so-called Freiburg Declaration of Cultural Rights¹ for the presence of what is sometimes referred to as *Jagiellonian values*. It should be emphasized that what is meant is not a commonly known in the literature on the subject ‘Jagiellonian idea’, understood as *cooperation within one political body not based on coercion, and not only justifying coexistence of two entities*.² *Jagiellonian idea* may be understood more broadly as a political system, which involves attracting to Poland the neighboring territories located in the geographical area between the Carpathians and the Baltic Sea through voluntary accessions or unions. The Jagiellonian Republic, created by way of a union, was based on the following principles: the union system (The Crown – Lithuania), and within it there was autonomy of its individual components, administration composed of local citizens, language equality, religious tolerance, development of democratic civil liberties, reconciliation of patriotism of the Commonwealth with local and local-national patriotisms, the apostolate of Western civilization.³ Władysław Konopczyński expressed this notion briefly, writing that the Jagiellonian idea is on the one hand

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¹ ‘Kulturelle Rechte, Freiburger Erklärung’, in: Universität Freiburg, at <https://www.unifr.ch/iiedh/assets/files/Declarations/Erklaerung-dt4.pdf>, 20 September 2017.

² See: ‘Od redakcji’, *Politeja*, Vol. 16 (2011), pp. 5–6.

³ A. Górski, ‘Idea jagiellońska’, *Niezależna*, at <http://niezalezna.pl/49037-idea-jagiellonska>, 21 October 2017.

the opposite of the possessive imperialism in foreign policy, and on the other – rejecting nationalism in internal politics.⁴

Jagiellonian values

This article will be devoted to the Freiburg Declaration of Cultural Rights and *Jagiellonian values*, for which the three sets of values proposed by Leszek Korporowicz will be treated as a foundation for ‘Jagiellonian Cultural Studies’: *The inspiration for Jagiellonian cultural studies is determined by three major values – which have shown their significance both historically and presently, wherever they found understanding, as in the era of the search for their rebirth of Poland in the era of ‘Solidarity’ and they will certainly be necessary in the future, when we must undertake the task of fully perceiving man and culture, without functional, political and economic reductions.*⁵ Leszek Korporowicz further specifies this area of mega-values, pointing to its three components.⁶ These are:

- **man** as the principal subject of culture; in contrast to the British tradition of cultural studies which focus on relationship between *culture and power*, here the relation between *culture and man*⁷ is of primary importance.
- **dialogue**: emphasis on the dialogic nature of interpersonal relations; communication is not only the transmission of information but, in essence, inter-action. The first part of the word, *inter*, means a kind of reciprocity, while the ending *action* points to the intentional orientation of relations between entities; communication understood in this way respects the subjectivity of its participants, and further – reciprocity, empathy, the ability to transcend one’s point of view and the ability to learn,
- **development**: here Leszek Korporowicz emphasizes that *the developmental aspect of culture is openness to holistic but also dynamic processes combining different potentials of the human condition in the multiplicity of their real forms of existence and in various types of contemporary cultural space (...) Development, in contrast*

⁴ Ibid.

⁵ L. Korporowicz, ‘Jagiellonian Cultural Studies. Preface’, *Politeja*, Vol. 2/1 (2012), p. 11.

⁶ Ibid. pp. 11–12.

⁷ Ibid.

*to growth, means not only quantitative increase or increased technological and functional advancement of culture, usually defined as progress. Development is a structural, ontological change, engaging a more multidimensional and even trans-structural dynamics of the social and human personality and identity (...) In the Jagiellonian tradition, development meant mutual complementation in diversity, taking on the unknown and indescribable challenges over real differences and without taming (or even by stimulating) the subjectivity of process participants, both collective and individual.*⁸

What is very important, the three mega values – characteristic for the ‘Jagiellonian Cultural Studies’ – *find their contemporary analogies in the situation of the challenges of the multicultural world, community interactions, intercultural communication and threats to hybridization of social identities. Jagiellonian references do not particularize and close the ‘cultural space’ that is the subject of analysis, but on the contrary broaden it and open it to relations in the transnational and even virtual space.*⁹

Taking additionally into account the analyses carried out by Józef Łucyszyn¹⁰, it seems that the following conceptualization of the above-mentioned Jagiellonian values is possible:

1. **Man (individual) and his cultural community.** (1.1) Man and community are subjects of the created culture; (1.2) man is endowed with inalienable dignity, just as dignities are enjoyed by cultural communities to which he belongs. (1.3) Diversity is one of the natural properties of individuals and communities. (1.4) The description and understanding of the cultural community requires, among others, recognition of its core values¹¹. (1.5) The individual and the cultural community have the right to existence, defence and development.
2. **Dialogue:** (2.1) the postulated type of relationship between cultural subjects (individuals and communities) should take the form of interaction. Interaction assumes (2.2) subjectivity of dialogue

⁸ Ibid., p. 13.

⁹ L. Korporowicz, *Jagiellońskie studia kulturowe jako projekt kulturoznawczy*, manuscript.

¹⁰ J. Łucyszyn, *Polska tradycja tolerancji w kontekście kształtowania nowego społeczeństwa. Od Pawła Włodkowica do Jana Pawła II – recepcja polskiej myśli teologicznej i politycznej*, Kraków 2014.

¹¹ On indigenous values see: J.J. Smolicz, *Współkultury Australii*, Warszawa 2000.

participants, (2.3) their causative position, (2.4) purposefulness of relationships. (2.5) Interaction (dialogue) in intercultural space is also a value.

3. **Development:** as development is not just about quantitative growth, but primarily means qualitative changes in the area of the collective structure involved in the dialogue and the combination of individual and collective levels, thus, development as a value will manifest itself in: (3.1) the tendency to learn cultural diversity, and – what is very important – (3.2) the ability to exceed one's point of view, one's habits, particularisms, and even valuation patterns (generally, the ability to transgress). It is also necessary to take into account (3.3) the mutual complementation of the local and universal perspective when it comes to cultural heritage.

Cultural rights

Cultural rights are treated as the newest, third generation of human rights.¹² The first generation includes personal and political rights, which are considered fundamental, as those resulting from human nature. These include: the right to life, to personal freedom, the right to freedom of religion and conscience, the right to information, equality before the law, etc.

The second generation, in turn, includes economic, social and cultural rights. They are the basis for physical and spiritual development and guarantee of social security. They consist of: the right to work and pay, the right to join trade unions, to obtain health care, the right to education, etc.

These two sets of human rights were recorded in two covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both documents were adopted by the United Nations in 1966 and entered into force in 1976).

From the late 1970s the need for a third generation of human rights has been very much pronounced. They would be formed by collective and solidarity rights (the right to self-determination, the right to maintain

¹² M. Kania, 'Prawa człowieka i prawa kulturowe. Zarys problematyki', in: K. Derwich, M. Kania (ed.), *Prawa człowieka w Ameryce Łacińskiej. Teoria i praktyka*, Kraków 2014, pp. 66–85.

ethnic identity, the right to peace and development, the right to democracy and equality of all peoples and nations, the right to humanitarian aid, the right to a healthy natural environment and resources and natural resources or the right [access] to the common cultural heritage of humanity). Cultural rights have been included in several important international documents:

- UNESCO Declaration on Cultural Diversity (2001)
- UNESCO Convention on the Protection of Intangible Cultural Heritage (2003)
- UNESCO Convention on the Protection and Promotion of Diversity in the Forms of Expression of Culture (2005)
- UN Declaration on the Rights of Indigenous People (2007)¹³.

When talking about cultural rights, it is worth pointing to two related sets of issues. The first one deals with the beginnings of reflection on cultural rights. In this context, one should mention Paweł Włodkowic and his concept of ‘the basis of contemporary cultural rights’, both individual and community subjects of intercultural relations (...). This axiology is characterized by several important contemporary features:

- basing on the dignity of person and *dignity of communities* as an irreducible value in the understanding of human cultural rights
- *transfer of the rule of* respect for the dignity of the person and community into understanding the relationship between nations and cultures¹⁴
- *the pioneering outline of reflection about* cultural rights *as an aspect of human rights in the community and intercultural dimension*
- the application of the well-known theory of just war, which can inspire contemporary concepts of *cultural security* in multiple ways as the axiology of the right to defense, existence and development of cultural communities under conditions analogous to the law of nations.¹⁵

¹³ Ibid., p. 77–83.

¹⁴ L. Korporowicz, ‘Jagiellońskie studia...’; S. Wielgus, ‘Teoria *ius gentium* w średnio-wiecznej Polsce. Geneza, historia, twórcy, oryginalność, główne problemy’, *Człowiek w Kulturze*, Vol. 8 (1996), pp. 23–58.

¹⁵ L. Korporowicz, ‘Jagiellońskie studia kulturowe...’.

The second set deals with criticism of the very concept of cultural rights, formulated by Bogdan Szlachta in the text on the problematic nature of this kind of rights.¹⁶ Bogdan Szlachta refers in particular to the two documents mentioned above: *UNESCO Universal Declaration on Cultural Diversity* from 2.11.2001 and to *the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression* from October 20, 2005. The basis of these documents is the assumption of the equivalence of all cultures constituting the heritage of humanity.

According to Szlachta, the problem is that *the protection of cultural diversity is an integral part of human rights and as such should be perceived as an ethical imperative*. Cultural diversity is associated with rights granted to groups, not to individuals, including minority groups, and their protection is to be supported by public funds. In this context, Szlachta indicates the need to differentiate between actual multiculturalism of contemporary societies (which is an undeniable sociological fact) and multicultural projects. In order to be able to determine the value and consequences of granting cultural rights to groups in multicultural communities, it is necessary to analyze what the sources of these projects are and what political and legal answers they offer. Thus – still following Bogdan Szlachta – *the most theoretically fruitful and the point of reference for apologists and critics of the ‘multicultural ideology’ is the project by Will Kymlicka¹⁷, born in the liberal tradition (liberal culturalism)*. And the fundamental question that arises concerning cultural rights is the question of a unified normative order referring to all individuals, *regardless of their affiliation to a group belonging to the same country as other groups. The main conclusion is (...): the diversity of citizens connected with belonging to various groups cannot lead to differentiating between individuals and in their function of justifying universal norms binding all individuals in the same way, regardless of their possible membership in groups.*¹⁸ Therefore, the ideologues of multiculturalism are facing *the prospect of having to reformulate the legal systems in place in individual countries (no longer ‘national’ ones) or even putting in their place ‘conglomerates’ of legal systems derived from many different group identities. But the main question*

¹⁶ B. Szlachta, ‘Problem of Cultural Rights’, *Politeja*, Vol. 44 (2016), pp. 7–16.

¹⁷ W. Kymlicka, *Współczesna filozofia polityczna*, transl. A. Pawalec, Warszawa 2009.

¹⁸ B. Szlachta, ‘Problem...?’

(...) is extremely serious: will it then be possible to defend the existence of any normative point of reference common to all new legal systems (...)? The importance of this question can be demonstrated by the fact that when the meeting on 'Prepolitical moral foundations of the liberal state' of Cardinal Joseph Ratzinger, or later Pope Benedict XVI with Jürgen Habermas took place at the Bavarian Catholic Academy on January 19, 2004, Ratzinger emphasized that attention is paid to the fact that *in the process of communing and intermingling of cultures, the ethical certainties, which used to be the signposts, have been destroyed to a large extent. The question is, what is good, and why, even to the detriment of oneself it should be done – this basic question remains largely unanswered.*¹⁹

The Swiss researcher Alex Sutter points to another aspect of risk associated with minority rights: *legal protection of minorities has side effects – it gives ethnicity political strength. There are fears that minority rights strengthen those behaviors that are aimed at collective identity politics, with an increased risk of stressing a sense of community and collective separation in politics. For this reason, minority rights should be considered counter-effective or even dangerous, and should be rejected for socio-political reasons.*²⁰

To sum up, cultural rights granted not only to individuals, but also to entire communities, can lead to weakening of social cohesion, either through the deconstruction of the existing normative order, or by strengthening the separatist tendencies in minority groups.

Freiburg Declaration of Cultural Rights

A set of cultural rights referred to as *Freiburg Declaration of Cultural Rights* was proclaimed on May 7, 2007 at the University of Freiburg, and the next day at the Palace of Nations in Geneva. The document was created at the Observatory of Diversity and Cultural Rights, whose leadership is related to the Interdisciplinary Institute of Ethics and

¹⁹ 'Stellungnahme – Professor Dr. Jürgen Habermas, Stellungnahme – Joseph Kardinal Ratzinger', in: *Katholische Akademie in Bayern*, at http://www.kath-akademie-bayern.de/tl_files/Kath_Akademie_Bayern/Veroeffentlichungen/zur_debatte/pdf/2004/2004_01_habermas.pdf, 20 October 2017.

²⁰ A. Sutter, 'Ausgleich statt Anerkennung Zur Begründung von Sonderrechten für Angehörige kultureller Minderheiten', in: *Die Informationsplattform humanrights.ch*, at <https://www.humanrights.ch/de/menschenrechte-themen/minderheitenrechte/begriffe/minderheitenrechte-ethnisierung-identitaetspolitik>, 20 October 2017.

Human Rights at the University of Freiburg (Switzerland).²¹ The authors of the Declaration represent the following scientific institutions and institutions: the Arab Institute of Human Rights (University of Tunis), Collège de France (Paris), OIDEL Geneva²², Council of Europe, UNESCO, University of Abomey Calavi (Cotonou, Benin), University of Amsterdam, University of Freiburg, University of Geneva, University of Nouakchott (Mauritania), University of Paris, University of Paris II, Robert Schuman University (Strasbourg). The ambition of the authors of the *Declaration of Freiburg* was to gather together those human rights that apply to culture, and which so far have been dispersed in various codes of civil, political, economic and social rights²³.

The authors of the commentary to the *Declaration of Freiburg*²⁴ state that its main purpose is to emphasize and increase the importance of cultural rights in international human rights documents, as well as the function of culture as a factor in creating identity. The main emphasis of the *Declaration* lies in an attempt to weaken the conviction that human rights have no universal binding force due to differences in cultural identities. In this way, the danger of relativism would be removed. The abovementioned commentators to the *Declaration*, however, see some risks associated with the fact that the *Declaration* refers to the concept of *cultural identity* regarding both the individual and collective level. While at the individual level this does not raise doubts, at the collective level there is a threat of association with certain forms of culturalism, understood as ideologies built on the myth of culturally homogeneous groups. In other words, the *Freiburg Declaration* can be used as an argument for the supporters of various ethno-nationalist views whose identity discourse would thus

²¹ 'Kulturelle Rechte...'

²² 'Presentation', in: *Oidel*, at <http://www.oidel.org/en/presentation.htm>, 20 September 2017.

²³ 'Launch of the Fribourg Declaration on Cultural Rights', in: *Die Informationsplattform humanrights.ch*, at <https://www.humanrights.ch/en/standards/international/un-bodies/launch-fribourg-declaration-cultural-rights>, 20 September 2017.

²⁴ 'Lancierung der Fribourger Erklärung über die kulturellen Rechte', in: *Die Informationsplattform humanrights.ch*, at <https://www.humanrights.ch/de/internationale-menschenrechte/nachrichten/initiativen/lancierung-declaration-de-fribourg>, 20 September 2017.

gain legitimacy within the framework of human rights. Is this ‘political naivety?’ – the commentators rhetorically ask.

Jagiellonian Values in the Freiburg Declaration of Cultural Rights

The analysis of the presence of Jagiellonian values in the Freiburg Declaration of Cultural Rights will be carried out in reference to the conceptualization of these values, presented above.

Ad 1.1 and 1.2. *Subjectivity of the individual and cultural community and personal dignity* are confirmed in the Declaration several times. First, this thread appears in the document’s preamble. Just after mentioning the Universal Declaration of Human Rights, the UNESCO Convention on the Protection of Intangible Cultural Heritage (2003), the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expression Forms (2005) and the UNESCO Declaration on Cultural Diversity (2001), the authors of the Freiburg Declaration emphasize that ‘cultural rights, like other human rights, are an expression and a precondition for **human dignity**’ [p. (2) of the preamble]. A little further, in Article 1, it is stated that ‘all the rights mentioned in this Declaration are relevant to **human dignity**’. Article 9 states that the recognition of cultural rights imposes on every person and community a special obligation, which, by responsible cooperation within the framework of democratic state structures, should identify and take into account the cultural dimension of human rights, with the prospect of enriching what is universal through what is diverse and contribute to the fact that each person, individually or in combination with others, she could have these rights [Art. 9., para. d]. And finally Art. 11 refers to the fact that individual states, together with various other public entities, should provide each person, individually or in combination with others, with defence against violation of their cultural rights [Art. 11, para. c.].

Ad 1.3. *Diversity as a natural property of individuals and communities* it is indicated first in Art. 3, when talking about the right of every person – individually or in combination with others – to choose their cultural identity and to be respected in the diversity of forms of expressing this identity [Art. 3., para. a.], and the right to know and respect their

own culture as well as other cultures that ‘in their diversity constitute the common heritage of humanity’ [Art. 3., para. b].

Ad. 1.4. **Recognition of indigenous values** of cultural communities is mentioned in Art. 5, when, after finding that each person, individually or in combination with others, has the right – also across state borders – to have free access and participate in cultural life, it is pointed to the requirement of freedom ‘in performing their cultural practices and maintaining such a lifestyle is indicated, which is in line with respect for one’s own cultural resources’ [Art. 5., para. b].

Ad. 1.5. **The right to existence, defense and development of the individual and the cultural community** is indicated in two articles: in Art. 7. which describes the right to free and diverse information which supports full development of cultural identity; and in Art. 8., confirming the right of each individual – individually or together with others – to cooperate for the development of those communities of which he remains a member.

Ad 7. **Dialogue:** Although the very concept of dialogue does not appear in the Declaration, it seems, however, that the imperative of cooperation between the main recipients of this document – the governments of states, non-governmental organizations and entrepreneurs, formulated in Art. 9 – is based on the value of dialogue.

Ad 3.1. **Getting to know and learning cultural diversity is included** in the Freiburg Declaration many times. Article 3. tackles the right to learn one’s own culture and other cultures that make up the diverse heritage of humanity [Art. 3 para. b.] and the right to education and information that allows access to this heritage [Art. 3., para. c.]. Article 5 mentions the right to free development of knowledge of cultural expressions [Art. 5., para. b]. The next, sixth article of the Declaration concerns the right to acquire knowledge about one’s own and other cultures [Art. 6., para. b]. Finally, Art. 9. calls for staff training in government, NGOs and private agencies that will ensure knowledge of cultural rights [Art. 9., para. c].

Ad 3.2. **The need to go beyond one’s point of view and particularisms** is mentioned in the fifth article, where on the occasion of formulating the right to access and cooperation in cultural life, the issue of sharing knowledge and forms of cultural expression with others is also tackled [Art. 5., para. b].

Ad 3.3. *Mutual complementation of the local and universal perspectives* is implicitly included in the call for such action by various social, governmental, non-governmental and private entities that will enable enriching the universal with what is different [Art. 9, para. d].

Summary

The analysis presented above seems to allow the statement that the Freiburg Declaration on Cultural Rights contains a variety of references to Jagiellonian values. Although the creators of this document do not *explicitly* express Jagiellonian cultural heritage, the presence of a way of thinking about man and culture shaped by the greatest thinkers of that era, including the most modern catalogue of cultural rights, seems to be indisputable.



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