



Human rights in the prison system. Situation, legislation, prevention

Rüdiger Wulf

Lecture in „Crime and Criminology on the Balkans“

October 26th, 2017

International University Center Dubrovnik

Quotes

"It is everywhere attentive to human rights and certainly comes the turn to trapped people and princes, which it has still not done pay tribute once to their paternal care."

- Heinrich B. Wagnitz, 1755-1838

Prison chaplain in Halle/Saale, 1784-1817

"If you want to see the status of a state, go in its prisons."

- Nelson Mandela? –

" Enforcement law is applied constitutional law"

- Günter Dürig -

Human dignity

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- What is dignity?
 - Right to respect for the personality,
 - Ban, to humiliate others, so that it no longer even can show respect (Schaber).
 - Make people not to the object of the State (Dürig)
 - Who has dignity?
 - People;
 - Animals, plants? Other parts of creation?
 - Where does dignity come from?
 - From the people themselves (natural law)?
 - Ascription by others: people, state?
 - Awarded by God!

Violations of human rights

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- Person A kills person B intentionally:
Manslaughter, but no violation of human rights;
 - Person A kills person B intentionally on behalf of a
secret service for political reasons:
manslaughter and violation of human rights;
 - Person A kills person B intentionally and the state does
nothing, what would be possible for him:
manslaughter and violation of human rights.

**Human rights apply in the relationship
between state and citizen.**

Human rights as a „dowry“

- Human rights are those rights which derive from the dignity of man and constitute.
- They are essential, inalienable, indivisible.
- They are to people, regardless of where they live and how they live ("criminals").
- They are global rights (???)

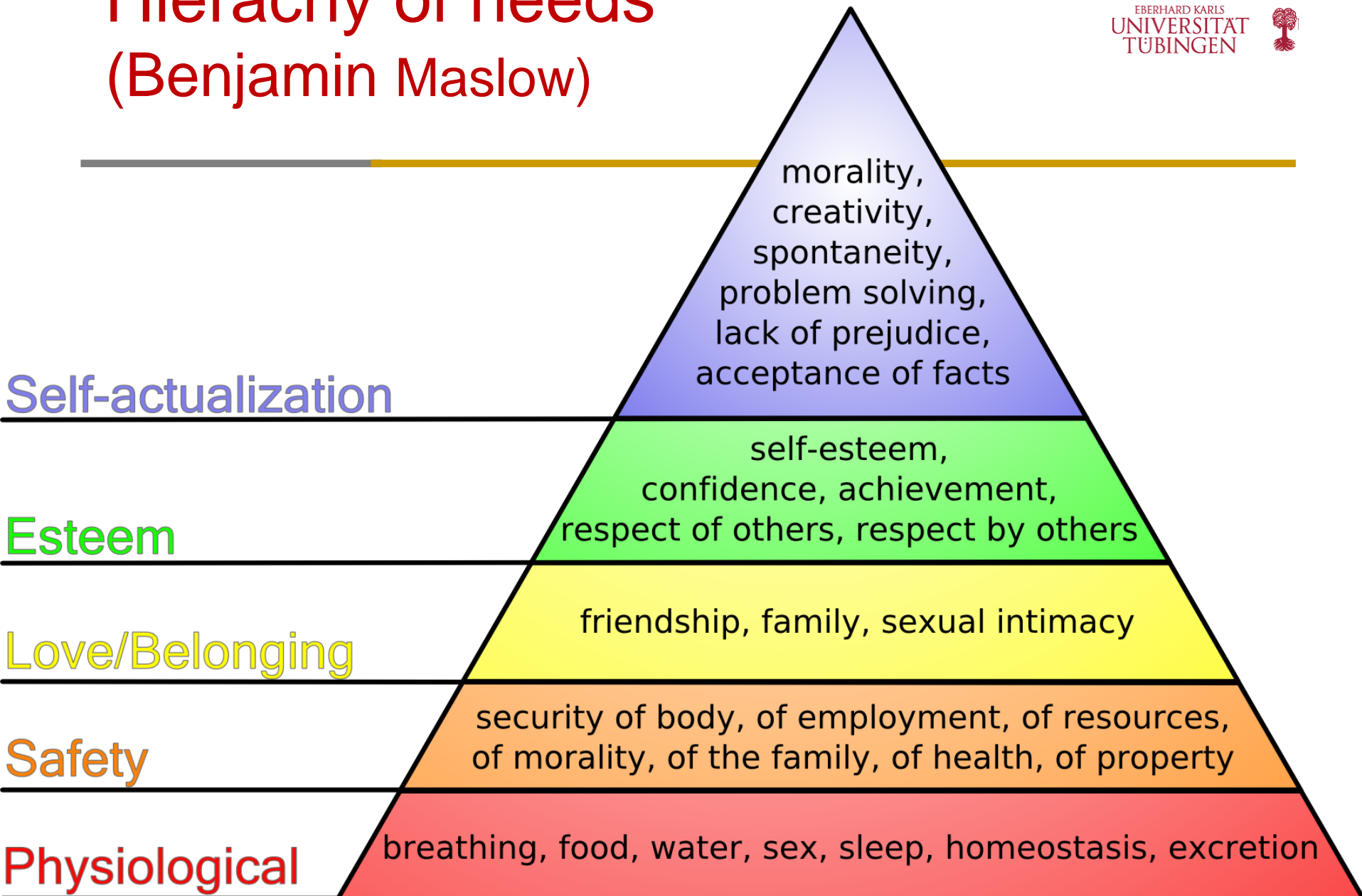


Human rights in justice systems

"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

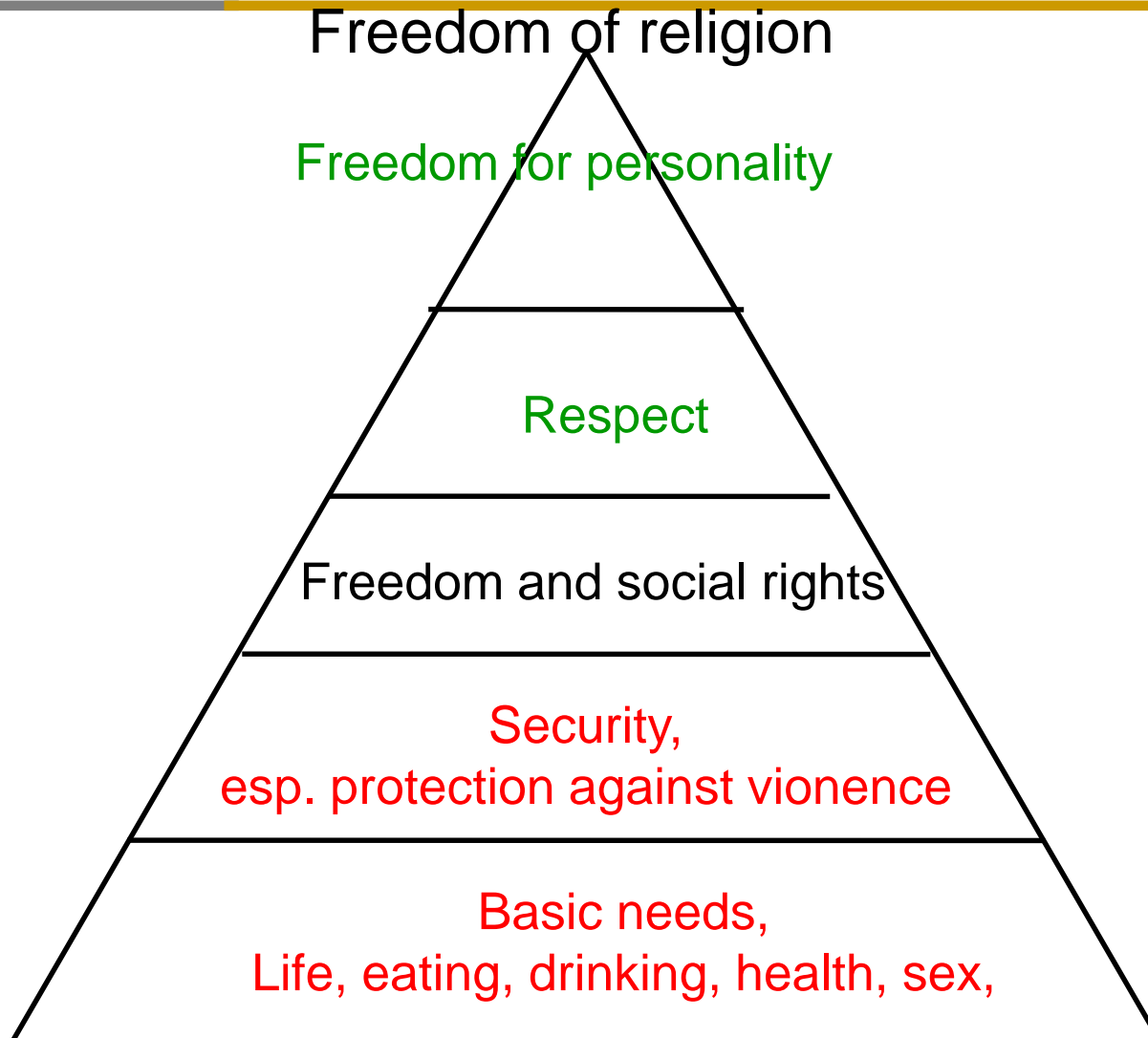
Article 5 General Declaration of human rights
Article 3 European Convention for the protection
of human rights and fundamental freedoms

Hierarchy of needs (Benjamin Maslow)



Pyramid of human rights

(Maslow: needs; Wulf: rights)



Legal bases of human rights



- General declaration of human rights; United Nations 1948;
- European Convention for the protection of human rights and fundamental freedoms, 1950/1953;
- Basic Law for the Federal Republic of Germany with the "Catalogue of fundamental rights", 23 May 1949;
- Constitution of Baden-Württemberg, 1953



Guardians of human rights I



- **Legislation:**
- **Verwaltung**
„Bindung om Justice and law
- **Justice system, esp. for Germany:**
 - Coinstitutional Court of Baden-Wuerttemberg, Stuttgart
 - Constitutional Court of germany, Karlsruhe
 - European Human rights Court, Straßburg.



Guardians of human rights II



- **Special supervisory bodies:**
- The Commissioner for human rights in the Ministry of Justice (1970);
- Commission against Torture (CPT);
- Federal Office for the prevention of torture (2008);
- **Non Governmental Organisations („NGOs“):**
 - Amnesty international (AI);
 - Human Rights Watch;
 - International Society for human rights;
- **Press und Public.**

Questions on human rights



- How one defines human rights of prisoners?
- Have 'criminals' human dignity/rights?
- Is human dignity always the scale?
- Are human rights universal ?
- Are human rights timeless, or convert them to?

Offenders, victims, situations



- Officials as perpetrators
- Assaults among prisoners
- Particularly vulnerable prisoners as victims
- Critical types of law enforcement
- Dangerous times and situations in prison

Pyramid of human rights in prison

Religious freedom for prisoners

Ethic treatment of prisoners

Humaner handling of prisoners

Access to courts

Security in prison,
esp. protection against violence of inmates or staff

Basic needs of prisoners
Life, health, sex, eating, drinking, dress

Violations of human rights in prison (case groups)

Disregard for basic needs:

- Food, beverages, health care
- Overcrowding, poor housing
- No/bad wages

No security:

- Torture, physical abuse
- No protection against assault another prisoner

Inhumane treatment:

- Stigma, humiliation
- Unethical treatment
- Ineffective treatment
- Unprofessional (intuitive) forecasts

Crime prevention: 3 steps (traditional approach)

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|----|---|
| 1. | Primary prevention: Create favorable conditions: "Social policy as criminal policy" |
| 2. | Secondary prevention: Minimize opportunity for crime |
| 3. | Tertiary prevention: Working with delinquent and criminal vulnerable. |

Crime prevention: 5 steps (Wulf)

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|----|--|
| 1. | Create favorable conditions: "Social policy as criminal policy". |
| 2. | Minimize opportunity for criminal offences: Approach to offenders, victims, situations. |
| 3. | Working with criminally endangered (early detection/early help). |
| 4. | Working with already delinquent Education, integration, rehabilitation). |
| 5. | Protection from untreatable offenders ("prevention through repression"). |

Prevention model for the prison system

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| 1. | To avoid human rights violations: Avoid prison, impose alternative sanctions |
| 2. | create prisons according to human rights: perpetrators, victims, situations |
| 3. | Increase risk of discovery: Preventive effect of legal protection |
| 4. | Strengthen the human rights culture in prisons: Culture of vision out, no wall of silence (Mission statement, legal order, reactive legal protection) |
| 5. | Human rights violations are punishable: disciplinary law, criminal law |

Prevention als buffer against violations of human rights



Alternative/Community sanctions

- Parol,
- Fine
- Non-profit services
- Victim offender compensation, restorative justice
- Place reference, place bids
- Electronic Monitoring,
- Therapy instructions, anti-violence training
- Care instructions
- Social group work, social training
- Leisure, driving bans

European rules on community sanctions and measures
(1991)

Create human rights compliant law enforcement

- Avoid overcrowding
- Neatly accommodate prisoners
- Prisoners deal with and adequately reward
- Open the prison on the outside
- Ensure good climate in prison
- Enforcement agents appropriately charge
- Combat corruption
- Offer opportunities for advancement
- Lead the staff in a good manner

Increase risk of discovery: Preventive protection

Possibility of complaint in the penal system:

- Director of the prison
- Supervisory authority

Judicial protection

Political control:

- Parliamentary control
- Public volunteers,
- Advisory board,
- Defender,
- NOG
- Press

Strengthen the human rights culture in prisons

“The prisoners must be treated with respect for their human rights. No one's allowed inhuman or degrading treatment.” (Section 2.1 JVollzGB III)

“Harmful effects of the execution is to counteract. The prisoners are to protect against assault.” (Section 2. 5 JVollzGB III)

“The basis of our work are human dignity and the human rights of all parties involved”. (BW mission statement)

Consistently punish violations of human rights

Staff:

- Service regulations
- Disciplinary law
- criminal penalties

Prisoners:

- Relocation in another prison
- Special precautionary measures
- Disciplinary measures
- Criminal sanctions

Violations of human rights in total institutions

- Prisons
- Psychiatric institutions
- Military
- Hospitals and hospices
- Schools
- Homes
- Family ("heaven and hell")