Walter Schweidler

Introduction

There is hardly any field of sociocultural reflection that would demand more of an interdisciplinary approach than the question regarding Human Rights. Ethical, political, historical, juridical, economical and religious aspects are interwoven in numerous ways and to a great degree inseparable from one another. No individual thinker will ever be able to combine in his person all the kinds of competencies which are afforded by this complex field of research. But this does not release us from the philosophical problem of how to make the interdisciplinary discussion about human rights possible, where to find its starting points and how to understand at least the practical consequences and alternatives with which we are confronted when we try to learn from all the different perspectives which are involved in this discussion. The contributions to this volume cannot be more than exemplary attempts to highlight the variegated theoretical ways of the approach to this discussion under the special conditions of the aims and claims of a Catholic university. More than other institutions, the Catholic Church has changed her view of the principle of human rights within a relatively short period. In short, within a century the popes changed from condemning human rights as an invention of hell to the recognition of this principle as a basis of political legitimation and a just society and a "culture of life".[1] Last, but not least, this challenging process we try to understand somewhat better by learning from one another in the following interdisciplinary approach.

What I can do in these opening remarks is but to indicate one perspective which perhaps, more than many others, can allow us to combine and exchange our different theoretical methods and standards. This is the perspective of social consensus as the undeniable but also unenforceable presupposition of human rights.

Considering the worldwide experience in the 20th century, it seems as if there are at least three fundamental factors whose combination is necessary in order to create the spirit of community and a social consensus which is constitu-

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[1] Cf. Walter Schweidler: The Culture of Life and its Reasons, in: Marcello Pera/Marek Jedraszewski/Walter Schweidler: Per una cultura dell amore, Roma: Cantagalli 2015.

tive for the will of a people to live together in political forms governed by the principles of human rights and freedom:

1. The historical experience of a people's unity in the fight against political oppression; e.g. the process of decolonization in Africa and Asia, the West European experience of overcoming dictatorships in the years between 1974 and 1989 as an experience of solidarity of free peoples concerning their support for the liberation of others, and of course the 1989 revolution in East and Central Europe and in other parts of the world;

2. The evidence and conviction of a large majority of the population that social cooperation is the obvious way to economic progress and to the growth of prosperity, i.e. that there is a chance for the improvement of life for almost everybody;

3. The experience of stable and peaceful relations between neighbor states and within countries themselves over an extended period of time, and the conviction that such stability is due to a political system in which the ruling class is responsible for the governed.

I do not wish to go into the question of the first factor. The historical experience of national unity can never be created by abstract principles; it is not a question of human rights if a certain community wants to live together or not. And it is obvious that the breakdown of law and order in any state or any area of the world is a murderous threat to the reality of human rights.

Rather, I would like to concentrate on the other two factors which are not bound to any regionally restricted political experience, but to principles which are universally valid. Let me first mention the third principle, i.e. the principle that the rulers of a state are responsible to the people they govern. This is the principle which Immanuel Kant called the principle of "republicanism".[2] We should keep in mind that this principle was the result of immense conflict within the European traditions. The idea that states and government are instituted to secure the rights of individuals were ideas which almost cost the lives of the theoreticians who created them. Even in Europe until the beginning of the 20th century, most states were governed by sovereigns who did not at all justify their power by a consensus of the governed people, but by their divine institution. The worldwide movement in which the principle of control over the national powers by the people and the principle of the equality of all citizens was politically executed against immense conservative powers who refused them. The history of the 20th century in this respect is characterized by a certain homogeneity between the liberation of women in Western societies in the beginning and the liberation

[2] Immanuel Kant: Zum ewigen Frieden …

of African societies from colonialism at the end of the century. The worldwide implementation of human rights has never been a result of European chauvinism but the consequence of processes of liberation and revolution within Western societies.

What exactly did Kant mean by "republicanism"? He did not mean the structures of one particular political system in one or some Western states. Kant thought that republicanism was a movement all over the world which was directed to the overcoming of all "despotic" forms of power. Despotic, according to Kant, is a power which is not "representative", i.e. in which the governing forces are not justified by the will of the governed. A republican regime is a regime in which the ruling class has to justify its power by the consensus of the governed. There are certain institutional presuppositions for a republican system, especially the separation of powers and the principle of control of the governing class by the governed. But there is something more, a kind of collective consciousness, i.e. a certain mood which is shared by the governing and the governed persons.

I would like to describe this mood as the idea that there is a natural solidarity of all citizens in the world which unites them in a way that under extreme circumstances even can be directed against the powers who govern them. The consequence of this idea is that if the rights of people in a certain state are injured by the actions of the ruling class, then there is a responsibility of the rulers of other states to protect the people against their political powers. This is the basis of one of the most concrete and decisive developments in the international protection of human rights in the last decades, namely the legal persecution of criminal actions of governments. By decision of the United Nations Security Council of February 26, 1993, an international court was instituted in order to persecute severe crimes committed by state powers against the citizens of former Yugoslavia. This has been followed by the institution of legal courts which persecuted crimes in Rwanda, in Bosnia, and in Kosovo, and has nowadays led to a historically new situation in which no ruler around the globe can expect to be protected against the prosecution of crimes he has committed. For the first time in the development of international law we encounter the fact that the governed are acting together in order to hold the rulers of another state responsible for the actions which they execute against their own people. We can interpret this development as a sign of a global republicanism in the sense which Kant promoted: a movement directed towards the responsibility of all governing forces through the will and the control of the governed.

Kant interpreted the movement of global republicanism as a way to universal freedom and peace: the principle which brings human beings to live together in peace is the principle that they who have to bear the costs of conflicts are the

same who have to decide about starting conflicts. The principle that governments instituted to secure the rights of the governed people indeed seems to have become a factor of creating peace and stability in the international world. The question is why there should be any doubt about the validity of that principle. Isn't it obvious that the control of the governed people over the governing classes is the way to a peaceful and further developing society? Which reasons could put this idea into perspective?

I want to argue that it is exactly the second principle mentioned above which brings us into some contradiction with the claims of universalism. The social consensus which is the necessary basis for any legal system and of the implementation of any concrete respect for human rights in any country presupposes the conviction of a large majority of the people that living together in their society is a rational way to work for the improvement of their lives. If there is a national or even an international consensus about the necessity and rationality of human rights then it is rooted not in religious or metaphysical beliefs but in a process of social and economical development for large parts of the population of democratic countries – or at least: in the *expectation* that such a process of development will take place and will more probably take place in a democratic, than in any other, political system. The force of attraction of Western forms of political institutions all over the world is certainly based on the relative wealth and development of the societies in which they are working. But what will happen if the common desire for most people in a society to improve their lives should come into conflict with a political system based on the principle that not the most, but *all* human beings have to be respected as persons with absolute dignity? What if the conviction should gain ground that happiness for most of us is incompatible with the demand of respect for life and freedom of *all* of us? Here we have to become aware of the fact that social consensus is rooted in a deeper sphere, namely in certain forms of *culture*. And the social consensus which is basis of universal republicanism might turn out to be torn between two different and not easily reconcilable cultures within our societies – and so to be challenged by a conflict which itself is rooted in the core of the ideas of human rights and human dignity.

There is a conflict between two fundamental concepts of humanity which can be characterised as the conflict between a culture of norms and a culture of utility. This conflict is rooted deeply not only in different traditions but also in the core of the idea of human rights and human dignity. It was one of the great steps in the development of this idea when the Americans, after having overcome the King of England, declared solemnly that "governments are instituted among men" for one reason, i.e. to secure the rights of human beings. And it was one of the historical results of the European philosophical tradition that, according to the American "Declaration of Independence", "life, liberty, and the pursuit of

happiness” build the core of the catalogue of rights which defines the conditions of legitimate government. But the concept of “happiness” contained deep elements of ambiguity and open questions which have been transmitted up to our current situation. The term “happiness” could and can be understood on the basis of a classical concept of virtues which tells us that there are elements of a good life which define happiness as the constitution of the life of a virtuous person. In the core of such an understanding of happiness we find the idea of justice as the virtue which characterises the good life as the life of a person who accepts responsibility not only for his own but also for all the other human beings’ striving for happiness. We find this idea of happiness and justice not only in the philosophical ideas of a “categorical imperative” or of “positive freedom” but also in the basic concepts of all modern constitutions which define legitimate government as a government which has to guarantee the respect of human dignity and to secure the rights of all human beings, no matter what their social, intellectual or physical status may be. This is the core of modern *universalism* postulating that there are certain claims which every human being on earth will always have the right to maintain against any other person.

Universalism in this fundamental sense is not, as it is often seen, the same as *individualism*. It has always been the general idea of universalism that morally relevant actions are actions in which we represent our responsibility to the whole of mankind by the way we treat one or some of its members.[3] And the structures which define our obligations to these members are of course *social* structures. A mother who in an emergency situation saves her child first before trying to help other children is justified not because she would suffer more from her child’s death than the death of the others, but because the relation between parents and children constitutes duties and obligations which are crucial for the existence of humanity. Mankind would not exist if there would not be the elementary structures of help and solidarity which determine who is responsible for whom and for whom whose needs are more relevant than they are for others. If we want to act in a responsible way, it is never enough “to do something good” in the abstract sense of performing actions of a good type, but it is always necessary to obey the demands of the concrete relationships and situations in which we have to act. Given these elementary structures of obligation, responsible action in its necessarily limited horizon is the indirect fulfilment of our relation to mankind as a whole. “Treat with respect due to the aged your own family’s elderly, so that you become able to treat the elderly in other families alike. Treat with affection due to infants the minors in your own family, so that you become able to treat the

[3] In this principle, I see the philosophical impact of the Qur’an passage (v/35): “Whoever killeth a human being, not in lieu of another human being nor because of mischief on earth, it is as if he hath killed all mankind. And if he saveth a human life, he hath saved the life of all mankind.”

infants in other families alike",[4] we read in Mengzi. To act according to the moral demands resulting from the natural structures of humanity: this is the universalist alternative to the utilitarian principle of maximizing pleasure and minimizing pain.

But this classical, virtue-based concept of happiness has been denied in various ways within the development of modern political philosophy, and there are understandable reasons for this denial. If happiness is defined in terms of virtues and of a good life rooted in "human nature", then we have to presuppose the existence of some universal norms valid for everybody, and we have to raise the question about the authority which is entitled to lay down these norms and to decide what belongs to our presupposed human nature or not. In order to avoid this problem, utilitarian ethics refused to accept any universal standards of the definition of a good life. In the utilitarian perspective, happiness can only be defined as a state of consciousness, a feeling of pleasure, so that everybody has to decide for himself what happiness means and wherein it consists. If this principle is considered the unique and absolute answer to the question what happiness means, then the "pursuit of happiness" can only be understood as the aim to maximise states of pleasure. And states of pleasure are always states of one individual being. Utilitarianism therefore is necessarily *individualism*. If this kind of individualism is generally accepted in a society, then the limits of a person's capability to feel pleasure and to identify himself with the conscious self who does have these feelings is at the same time the limit of other persons' obligation to respect his striving for happiness. And then the principle that governments are legitimated by their obligation to the human "pursuit of happiness" has to be interpreted as the demand to work as well as possible for the aim of the maximisation of pleasure for the individuals who can feel it and who have the interest in enjoying it. Then there can also be conflicts between the respect for life and liberty on the one side and the aim to maximise subjective happiness on the other side. The solution of such conflicts then becomes a matter of calculation and deliberation. And this means that the rights of persons who are not or not yet or no longer able to calculate and to deliberate become completely dependent on the decision of others. Life and liberty themselves have to be considered in relation to their utility for the general aim to maximise pleasure; and the "quality of life" becomes a criterion for the ethical justification of the existence of a human being.

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[4] Mengzi 1 A 7.12; cf. the much instructive contribution of Ole Doering: *Euthanasia, and the Meaning of Death and Dying: A Confucian Inspiration for Today's Medical Ethics*, to the Internationale Bioethics Conference on The Ethics of Letting Die, May 8 – 9, 2001, Chungshan Medical College, Tichung, Taiwan.

It seems obvious to me that the two different understandings of the concept of happiness are rooted in different ideas of humanity and of human responsibility. The principles of our written constitutions and of the international conventions which refer to human rights and human dignity are based on the presupposition of a cultural background which cannot be created or compensated for, but only explicated and guaranteed by the laws of a state. I would call this background a culture of norms, i.e. the self-understanding of society as the organisation of respect and protection of every human being against any attempt to divide mankind into different parts with different standards of dignity. A culture of norms is a culture which preserves the idea of an abstract connection between all members of mankind, a connection which, as far as the fundamental rights of human beings are concerned, forbids us from taking into account any aspect of the "quality" or concrete desirability of their real or potential lives.

But, at the same time, the social practice and the attitudes of a growing number of people towards human personality and towards the "quality of life" are characterised by the tendency to a different culture, which I would call a culture of utility. In such a culture, human life is seen as a stock of potential states of pleasure, and the obligation of others to respect such a life extends only to a certain limit. This limit is reached if there is no longer a chance, or if there will never be any chance, for a human being to improve its balance of pleasure, or if there is the chance to replace such a stock of potential states of pleasure by another, more pleasant life. In a culture of utility human life is seeing as something which has to fulfil certain standards of quality and utility in order to justify its existence, and it is not that life in itself, but its utility, which constitutes the obligation of the state to protect and promote it. The consequence is that human life is divided into two different parts: the life of persons who have to be respected by others and human life as a kind of raw material which is more or less useful for the persons.

It seems clear to me that the danger arising for our social consensus from such a cultural split is not at all limited to the area of bioethics which I here just took as its most obvious present example. There are almost explosive forces and developments which will all too sudden extend the effects of this and other cultural splits within our societies: demography, multiculturalism, international migration, technological innovation and many more. If our societies do not keep or reach again certain standards of shared understanding regarding the views of what it means to be a human being and what follows from this fact for rights and duties among their members, then we will end up with parallel societies unable to maintain the cultural presuppositions for peace within them and in relation to other societies. Then Kant's idea of republicanism will have lost the historical and political conditions of its realization in the world.

Joachim Eck

Isaiah’s Song of the Unfruitful Vineyard (Isa 5.1-7) and the Biblical Concept of Justice and Righteousness

Abstract

The Judean prophet Isaiah (8th cent. B.C.) announced doom to the Israelite society because, driven by greed for power and wealth, the upper class had developed oppressive structures and habits which deprived poorer and weaker citizens of their very own rights. The Song of the Unfruitful Vineyard, a masterpiece of poetry, communicates through the metaphorical story of a vineyard the desastrous impacts of Israel’s failure to be fruitful in terms of justice and righteousness (מִשְׁפָּט and צְדָקָה). As part of a cosmic world order, these two values are crucial for a society to develop towards peace and happiness and contribute to God’s glory. Where they are ignored, destructive forces will ruin the community.

Zusammenfassung

Der judäische Prophet Jesaja (8. Jh. v. Chr.) kündigte der israelitischen Gesellschaft Unheil an, weil ihre Oberschicht aus Gier nach Macht und Reichtum Strukturen und Gewohnheiten der Unterdrückung entwickelt hatte, die ärmere und schwächere Mitbürger ihrer ureigensten Rechte beraubten. Das Weinberglied, ein Meisterwerk der Poesie, verdeutlicht mittels der metaphorischen Geschichte eines Weinbergs die katastrophalen Auswirkungen von Israels Versagen, positive Früchte des Rechts und der Gerechtigkeit (מִשְׁפָּט and צְדָקָה) hervorzubringen. Als Teil einer kosmischen Weltordnung sind diese beiden Werte entscheidend, damit sich eine Gesellschaft zum Frieden und Glück hin entwickeln kann, und tragen zur Ehre Gottes bei. Wo sie missachtet werden, treiben destruktive Kräfte die Gemeinschaft in den Untergang.

Introduction

The Biblical era does not know yet the comparatively modern concept of human rights which intends to protect human persons, their dignity and freedom from arbitrary and injust acts exerted by state powers. Nonetheless the ancient Israelite religion developed certain concepts which, in an adapted form, belong to the foundations of the idea of human rights. The most famous one is the conviction that the human being was created in God’s image and likeness in order to have dominion over the animals (Gen 1.26-28). In other Ancient Near Eastern religions, especially Egypt, this idea of a being placed on top of all other crea-

tures is linked with the king. Thus the Egyptian pharao is considered a son of a god,[1] in whose image and/or likeness he is born. He is regarded as his divine father's embodiment on earth and rules as his authentic representative.[2] Seen against this background, the biblical statement in Gen 1.26 – 28 is unique in so far as the idea that originally referred to the king is now applied to all human beings and thus may be said to have been democratized.[3] Not only one king or royal family but all human persons are created in God's image and likeness and thus bestowed with royal dignity. A legal consequence of this is that slavery, which in Mesopotamia and Egypt could be backed by an assumed ontological inferiority of ordinary people in comparison with the king and his family,[4] now loses its theoretical foundation. Although, in practice, various forms of slavery nonetheless continued to exist in Israel (see e.g. Lev 25.39-55), the biblical laws do forbid permanent slavery among Israelites in principle and demand slave owners to release Israelite slaves after six years (e.g. Ex 21.2; Dtn 15.12),[5] with only one exception when, at the end of this period, the slave himself explicitly wishes to permanently stay with his master. Slavery among fellow Israelites is thus basically limited to serve as a temporary measure for overcoming the consequences of an economic disaster suffered by an Israelite family (cf. e.g. Lev 25.39).

Probably less well-known than the idea of a human likeness to God but equally important to the issue of human rights is the specific concept of justice and righteousness (מִשפט וצדקה)[6] as found in the Old Testament. As the number of

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[1] For an outline of this idea see Görg, Manfred, Religionen in der Umwelt des Alten Testaments III: Ägyptische Religion (Studienbücher Theologie 4.3), Stuttgart 2007, pp. 42, 44, 92 – 3, 99 – 101.

[2] For parallels to Gen 1.26-28 in Mesopotamian and Egyptian royal ideologies see Ruppert, Lothar, Genesis: Ein kritischer und theologischer Kommentar. 1st vol.: Gen 1.1 – 11.26 (FzB 70), Würzburg 2003, pp. 89 – 91.

[3] Ruppert, Genesis 1.1 – 11.26, p. 91.

[4] In Mesopotamian mythology we find the idea that man was destined for slavery from his origin. Thus the myth of Atra- asīs tells the lower gods (Igigi) seek from the higher gods (Anunnaki) relief of their heavy burden and begin a revolt (cf. Lambert, Wilfred G. / Millard, Alan R., Atra- asīs: the Babylonian story of the flood, Oxford 1969, p. 43). In response, the gods create man as a slave destined to do the work, cf. Tablet I, lines 190 – 7 (op. cit. p. 57): "[190] Let the birth-goddess create offspring (?), [191] And let man bear the toil of the gods. […] [195] Create Lullû (= man) that he may bear the yoke, [196] Let him bear the yoke assigned by Enlil, [197] Let man carry the toil of the gods."

[5] Lev 25.39 – 41 presents a modified regulation: The creditor of an impoverished Israelite is not allowed to treat his "brother" like a slave but his debtor has to work for him until the year of jubilee, which, according to Lev 25.10, is every 50th year (instead of every 7th).

[6] In this article, we translate מִשפט וצדק/צדקה as "justice and righteousness". This translation is used e.g. by Williamson, Hugh G. M., A Critical and Exegetical Commentary on Isaiah 1-27, vol. 1: Isaiah 1-5 (The International Critical Commentary), Edinburgh 2006, p. 316, in Isa 5.7, by the New American Standard Bible e.g. in Isa 1.21, 27; 5.7; 9.6; 16.5; 28.17; 2 Chron 9.8. The translations of the two notions vary significantly, cf. the same seven verses in NAS, King James Version and New Jerusalem Bible. This is due to the fact that Hebrew notions often refer to dynamic developments as a whole, from origin to result, whereas modern European languages tend to differentiate and describe

OT texts using this word pair is too large to be considered in one article, we will focus on one meaningful example. Among the many possible options, Isaiah's Song of the Unfruitful Vineyard is particularly attractive as it uses an interesting combination of metaphor and topic in a fine poetical form in order to highlight the crucial importance of justice and righteousness (Isa 5.7b: וַיְקַו לְמִשְׁפָּט וְהִנֵּה מִשְׂפָּח לִצְדָקָה וְהִנֵּה צְעָקָה NAS: "Thus he looked for justice, but behold, bloodshed; for righteousness, but behold, a cry of distress."). For reasons of space, we limit ourselves to a synchronical reading of the text.[7] As Williamson recently presented a comprehensive and thorough discussion of the textual issues of Isa 5.1-7,[8] there is no need to repeat the arguments here.

Structure

The Song of the Vineyard comprises five clear-cut units. Verse 1a introduces a singer's voice in 1st person sing. announcing a song about[9] a dear friend and his vineyard. The small section is not only the introduction of the subsequent song but also presents the subjects involved in the story. אָשִׁירָה נָּא לִידִידִי "I will …" or "Let me sing for my dear friend" informs the listeners or readers that there is a relationship of deep trust between the singer and his friend. By a repetition of the preposition ל in the next phrase שִׁירַת דּוֹדִי לְכַרְמוֹ ("a song about my intimate friend concerning his vineyard") the friend's relationship to his vineyard is set into parallel with the one between him and the singer. In the light of what is to come, this puts the singer alias prophet into a position peculiarly apart from the people later (v. 7) equalled with the vineyard. The good relationship between the singer and his friend is thus contrasted with the broken relationship between the prophet's friend and his vineyard. Although a born Israelite, the prophet is not included in the second relationship, the one between YHWH and his people (v. 7). His

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separate aspects. Referring to the Hebrew terminology for "sin" (עָוֹן and חטא), Knierim, Rolf, Die Hauptbegriffe für Sünde im Alten Testament, Gütersloh 1965, pp. 251-254; 73-112, describes a similar semantic dynamism as "dynamistisches Ganzheitsdenken". For details of the linguistic and semantic aspects of the root שׁפט (including the derived noun משׁפט) see Liedke, Gerhard, article שׁפט *šp* richten, in: Ernst Jenni / Claus Westermann (eds.), Theologisches Handwörterbuch zum Alten Testament, vol. II, 6th ed., Gütersloh 2004, 999 – 1009, and of the root צדק (including the nouns צדק/צדקה) see Koch, Klaus, article צדק *dq* gemeinschaftstreu / heilvoll sein, in: *ibidem*, 507-530.

[7] The literary unity of Isa 5.1-7 is discussed by Irsigler, Hubert, Speech Acts and Intention in the 'Song of the Vineyard' Isaiah 5:1 – 7, in: OTE 10 (1997), 39-68 (here: 43 ff.). Williamson, Isaiah 1 – 5, pp. 330-1, and Kilian, Rudolf, Jesaja 1 – 12 (NEB), 2nd ed., Würzburg 1999, p. 39, opt for Isaianic authorship.

[8] Williamson, Isaiah 1 – 5, pp. 316-324.

[9] The construct chain שִׁירַת דּוֹדִי here has the meaning of a *genetivus obiectivus* "about", see Williamson, Isaiah 1 – 5, pp. 317-8, with reference to Isa 23.15 and Am 8.3, the only other occurences of שִׁירָה in construct, which also form a *genetivus obiectivus*.

way is distinct from theirs. This is in line with what is told about him in the next chapter 6, his vocation account, where his purification from sin (Isa 6.6-7) seperates him from the people's sinful ways (cf. Isa 6.5, 7 and 8.11-2), and his commission to make their heart fat, their ears dull and their eyes dim (cf. Isa 6.9-11) implies that he will act as God's trustee against his own people. Both in Isa 6.9-11 and 5.1-7 the prophet is no longer regarded as a member of the people but its opponent because he serves his divine master YHWH, whose enemy the people has become.[10] How and why this has happened, is metaphorically explained by the Song of the Vineyard: instead of justice and righteousness, the people of Juda and the House of Israel have brought forth bloodshed and oppression (cf. Isa 5.7b). Before this, the prophet presents himself in the introductory verse 1a as his friend's independent trustee.

In vv. 1b-2, the song tells in 3rd person sing.[11] how the singer's friend does what can be done for the vineyard to bear good fruit (v. 2b: עֲנָבִים "grapes") but is disappointed: the vineyard produces (וַיַּעַשׂ) foul fruit (בְּאֻשִׁים).[12]

The further structure of Isa 5.1-7 is formally highlighted by the twofold use of וְעַתָּה ("but now") in vv. 3 and 5, and the particle כִּי in v. 7. In addition, v. 3 is marked off from the preceding song by its direct address to the people of Jerusalem and Judah as well as by an unexpected change of the speaker's identity which is suddenly revealed at the end of v. 3: "please judge between *me* and *my* vineyard" (שִׁפְטוּ־נָא בֵּינִי וּבֵין כַּרְמִי). It is now the vineyard owner himself who is speaking. The prophet's narration of the past events (vv. 1b-2) has ended, now the owner addresses the question of what might be the future of his vineyard by asking the audience for their judgement on two questions (vv. 3-4). In the light of the preceding song, both turn out to be rhetorical:[13] the owner could have done no more than he had done (v. 4a), and there was no reason for the vineyard to yield diseased grapes instead of the expected good ones (v. 4b). However, especially the second rhetorical question raises questions about the owner's identity. What kind of person is he who can assert there was no reason for his vineyard to yield diseased fruit? Even the most careful human vine grower is unable to exclude unfavourable conditions such as bad wheather, etc., that may spoil the grapes of a good and fruitful vineyard.

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[10] Cf. e.g. Isa 5.3-7 but also e.g. the use of הָעָם הַזֶּה both in divine words (6.9-10; 8.12; 29.13-14) and prophetic speech (8.6, 11; 9.15; 28.11, 14), whereby the people is characterized as opposed to YHWH and his prophet.

[11] Since שִׁירַת דּוֹדִי is an objective genetive meaning "song *about* …" the third person perspective of the song is a natural continuation of the text. See above footnote 10, esp. Williamson.

[12] For a discussion of the translation issues of בְּאֻשִׁים see Williamson, Isaiah 1 – 5, pp. 319-20.

[13] Cf. Irsigler, Speech acts, p. 53, who assumes verses 3-4 include an interrogative speech act which is "semantically and contextually presented as a statement".

In accordance with the rhetorical character of the preceding questions, the vineyard owner does not wait for the addressees' answers but immediately announces in the next section, vv. 5-6, what he is going to do: by removing the vineyard's protection (v. 5b), witholding the necessary care (v. 6a) and forbidding the clouds to pour out further rain upon it, he will abandon it to destruction. It strikes that the vineyard owner's planned activities are not immediately directed against the vineyard itself – he does not intend to cut it down or burn or otherwise destroy it actively – but they indirectly result in the destruction of the vineyard. The owner removes the hedge and breaks down the wall (v. 5b)[14] but does not touch what he has planted (cf. v. 2). Thus the vineyard loses its indispensable protection against enemies from outside, especially wild beasts, so that it becomes something "to be eaten up" (v. 5b: לְבָעֵר)[15] and "to be trampled down" (לְמִרְמָס, cf. 2 Kings 14.9b, where the generic singular חַיַּת הַשָּׂדֶה "the wild beasts" is the subject of the verb רמס). As the owner removes the vineyard's protection against destructive forces, he shows he no longer regards this piece of land as his property. The relation of ownership between him and the land is broken up, which implies the owner will make no more efforts to render the land fertile by cultivation (v. 6) and protection from chaotic threats (v. 5). Since the existence of the vineyard depends on this, the owner sums up his future behaviour by declaring he will "put it to destruction" or "make an end of it" (v. 6aα: וַאֲשִׁיתֵהוּ בָתָה).[16] The verb וַאֲשִׁיתֵהוּ "I will put/set it" indicates here that the owner sets a cause which permits destruction to take place but it does not necessarily imply a direct act to this effect. As already observed by Williamson,[17] the phrase וַאֲשִׁיתֵהוּ בָתָה is the climax of three expressions announcing ruin. It sums up the negative consequences of what is described by the preceding impersonal infinitive forms הָסֵר מְשׂוּכָּתוֹ וְהָיָה לְבָעֵר "remove its hedge so that it will be eaten/destroyed" (v. 5bα) and פָּרֹץ גְּדֵרוֹ וְהָיָה לְמִרְמָס "break down its wall so that it will be trampled down" (v. 5bβ). At the same time, וַאֲשִׁיתֵהוּ is one of four phrases in vv. 5-6 expressing an action in first pers. sing. Thus, אוֹדִיעָה־נָּא "I will let you know" (v. 5aα) announces to the audience that they will be informed about something

[14] The two absolute infinitives in הָסֵר מְשׂוּכָּתוֹ וְהָיָה לְבָעֵר (v. 5bα) and פָּרֹץ גְּדֵרוֹ וְהָיָה לְמִרְמָס (v. 5bβ) follow the *futurum instans* of v. 5aβ: אֲשֶׁר־אֲנִי עֹשֶׂה לְכַרְמִי and are therefore an equivalent of a future, continued in the first person sing. in v. 6a: וַאֲשִׁיתֵהוּ, cf. Joüon, Paul, S. J./ Muraoka, T., A Grammar of Biblical Hebrew (Subsidia biblica 14/I + II), Rome 1991, § 123 w. Nonetheless the impersonal infinitive forms leave indetermined whether the speaker acts in his own person or by means of other beings or forces which have to serve him.

[15] Following a frequent translation, see e.g. King James Verison. For a discussion of the problems see Williamson, Isaiah 1 – 5, pp. 321-2.

[16] Like Williamson, Isaiah 1 – 5, pp. 322-3, we follow the traditional explanation of the hapax legomenon בָתָה as coinciding with בַּתּוֹת in Isa 7.19 and being derived from the hypothetical root בתת, which in analogy to its Arabic parallel means 'to cut off'. For further details and discussion of other explanations, which do not result in substantially different meanings, see Williamson, loc. cit.

[17] Williamson, Isaiah 1 – 5, p. 340.

specified by the next phrase אֲנִי עֹשֶׂה "[what] I am going to do" (v. 5aβ: independent pronoun with participle) and the subsequent infinitives. The next first pers. sing. form is וַאֲשִׁיתֵהוּ בָתָה "I will make an end of it" (v. 6aα). It sums up both the preceding phrases (v. 5b) and the following ones which describe the imminent stop of cultivation (v. 6). The fourth expression in first person singular, אֲצַוֶּה "I shall command" (v. 6bα), aims at another negative end (v. 6bβ), which is lack of rain. The first and fourth phrases in first pers. sing. (אוֹדִיעָה־נָּא and אֲצַוֶּה) describe acts of speech, in the first case directed to the audience and in the second case to the clouds. The second and third phrases (אֲנִי עֹשֶׂה and וַאֲשִׁיתֵהוּ) refer to distructive behaviour with negative consequences: the vineyard's protection is to be removed and the necessary pruning and hoeing is to be stopped. So the structure of vv. 5-6 has a chiastic aspect: act of speech (v. 5aα) / destructive behaviour (v. 5aβ-b) / destructive behaviour (v. 6a) / act of speech (v. 6b). At the same time, the first verb אוֹדִיעָה־נָּא (v. 5aα) is separate from what follows as it directly addresses the audience and introduces the subsequent report of what the speaker intends to do with his vineyard (vv. 5aβ-6). In terms of content, this report has three aspects. First, the removal of the protection surrounding the vineyard against chaotic intruders (v. 5b) so that it is left to (twice וְהָיָה לְ) destruction. Second, the future omission of treatments necessary for the vineyard's sound growth and fertility so that wild weeds (שָׁמִיר וָשָׁיִת) are able to overgrow it (v. 6aβ-γ). Third, the owner will command (אֲצַוֶּה "I shall command") the clouds to refrain from further irrigation of the vineyard (v. 6b). This third aspect shows that the vineyard owner, who mysteriously speaks through his friend in first person sing., has power over heaven and earth.[18] These three aspects are structured in two groups which run toward a climax. Thus, הָסֵר "remove", פָּרֹץ "break down" and אֲשִׁיתֵהוּ בָתָה "I shall make an end of it" describe actions which culminate in the last expression whereas לֹא יִזָּמֵר "it will not be pruned", לֹא יֵעָדֵר "it will not be hoed" and מֵהַמְטִיר "not to let fall" express omissions with gradually deteriorating impacts.

[18] There are differing opinions on whether וְעַל הֶעָבִים אֲצַוֶּה "I shall command the clouds" (v. 6b) makes clear that YHWH himself is the owner or not, see Williamson, Isaiah 1 – 5, p. 343. From its beginning, the text contains a number of allusions to the owner's divine rank, which is in contrast to the natural assumption that a vineyard owner is a human person, see next point below. In our opinion, the resulting ambiguity is a rhetorical strategy provoking an increasing uncertainty and curiosity about the person of the owner until his identity is finally disclosed in v. 7. Therefore the two alternatives in discussion do not necessarily exclude each other. Nonetheless there are important elements in v. 6b that imply a divine power. Although, as in the case of Elijah's rain miracle in 1 Kings 18,42-45, a great prophet might cause rain by a prophetic act, the verb "command" צוה (Pi.) in combination with the clouds as object expresses a sovereignty over the heavens that strongly points to YHWH, who was presented as the ruler of heavens and earth in Isa 1.2a and counts the clouds among his servants (cf. e.g. Pss 104.3; 147.8; Isa 19.1).

The subsequent fifth and last main section of the song (v. 7) is formally set apart by a particle כִּי, which might be translated as "for" in the sense of a cause.[19] However, this is not entirely satisfying since v. 7 contains no reason for the destruction of the vineyard at all. The reason was explained before in vv. 1b-2 and 4 by the contrast between the owner's perfect care and the vineyard's incomprehensible unfruitfulness. Therefore it is preferable to translate כִּי with a particle like "now!"[20] which serves to catch the listeners' attention. Another change in the form of the text concerns its speech perspective. While the vineyard owner himself was speaking from v. 3 on, the expression כֶּרֶם יְהוָה צְבָאוֹת ("the vineyard of the Lord of Hosts") now tells something *about* him in third person, which means he no longer speaks himself. The last section therefore seems to be spoken by his friend, who had already spoken in vv. 1a and 1b-2. Thus, with regard to their speech perspectives, the four sections of the song after the introductory prologue in v. 1a follow a chiastic pattern: friend (v. 1b - 2) – owner (v. 3 - 4) – owner (v. 5 - 6) – friend (v. 7).[21]

The content of v. 7 discloses the metaphoric value of the story of the unfruitful vineyard and its owner by presenting it as an image of what happened between YHWH and Israel. For this purpose, v. 7a defines relationships of symbolic reference between the subjects of the story and those of Israel's religious history. It is explicitly revealed that the vineyard is not an ordinary man's property but that of YHWH, the Lord of Hosts (v. 7a: יְהוָה צְבָאוֹת), and it is now identified with "the house of Israel and the people of Judah". The fact that God himself is the owner retrospectively highlights the perfect quality of the vineyard owner's care and protection (cf. vv. 2 and 5b-6a) as well as his absolute power over the clouds (cf. v. 6b). The use of the divine title יְהוָה צְבָאוֹת both underlines YHWH's unlimited and universal power[22] and provides an intertextual link to other passages in Isaiah such as Isa 1.9, 24; 3.1, 15; 5.9, 16, 24; 6.3, 5; 8.13, 18; 9.6, 12, 18; 10.16, 23, 24, 26, 33. When v. 7a states the house of Israel is YHWH's vineyard, and the people of Judah the planting of his joy, this means YHWH took care of his people like the owner did of his vineyard. Like him, he also expected them to yield fruit. The use of the same verb קוה ל ("to expect") in vv. 2b, 4b and 7b makes clear that YHWH hoped his people would yield מִשְׁפָּט ("justice") and צְדָקָה ("righteousness") like the owner expected his vineyard to yield good grapes (עֲנָבִים) but, in fact, was confronted with מִשְׂפָּח ("bloodshed") and צְעָקָה ("cry of distress") like the vineyard owner with diseased fruit (בְּאֻשִׁים). Thus, parallel to

[19] See e.g. New American Standard Version and King James Version.

[20] See e.g. New Jerusalem Bible or "Ja" in the German Einheitsübersetzung.

[21] Cf. Irsigler, Speech acts, p. 45, with reference to Petersen and Richards.

[22] For a discussion of יְהוָה צְבָאוֹת with further references see Kreuzer, Siegfried, Zebaoth – der Thronende, in: VT 65 (2006), 347-362.

the vineyard owner's experience told in v. 2b, Verse 7b describes the aims God had planned to realize in Israel's history and contrasts them with the unbearable results it had in fact produced (מִשְׂפָּח "bloodshed" and צְעָקָה "cry of distress"). While v. 7b precisely mentions Israel's guilt, two other important questions remain unpronounced and have to be inferred from the story of the vineyard. The first one is what were exactly YHWH's deeds to the benefit of Israel that are to be compared to the vineyard owner's efforts. Although the Book of Isaiah contains no detailed narrative of the founding of Israel, this question is basically answered in Isa 1.2b where the Lord declares: "Sons I have reared and brought up, but they have revolted against me" (NAS). All the other details of Israel's history are left to be supplemented by the listener or reader himself. The second open question is what YHWH will do with his people. Here, the answer given by the metaphoric story of the vineyard is that he will stop his care for Israel and remove all its protection in order to leave it to destruction. However, it is the text recipient himself who has to transfer the meaning of the doom announced against the unfruitful vineyard upon the situation of Israel. But here, too, the opening chapters of the Book of Isaiah contain texts that specify the kind of doom envisaged by the Song of the Vineyard (see e.g. Isa 1.5 - 8; 3; 6.11).

The structure of the vineyard song can be summed up as follows:

1. V. 1a: Introduction by a prophetic speaker

2. Vv. 1b-2: Story of the speaker's friend and his vineyard, told by the prophetic speaker.

a. V. 1b: A fertile place in possession of the friend

b. V. 2aα: The planting of the vineyard

c. V. 2aβ: The preparation of the harvest

d. V. 2b: Diseased instead of good grapes

3. Vv. 3-4: The vineyard owner's presentation of his case to the people of Jerusalem and Judah

a. V. 3: Exhortation to render judgement

b. V. 4: Rhetorical questions proving his perfect care and diligence

4. Vv. 5-6: Anticipation of the audience's judgement by the owner himself

a. V. 5a: Solemn announcement of a decision concerning the vineyard

b. V. 5b: Removal of its enclosing protection by the owner and destruction by enemies

c. V. 6aα: Determination of the owner to make an end to it

d. V. 6aβ-γ: Future omission of cultivation

e. V. 6b: Future omission of irrigation

5. V. 7: The story of the vineyard and its owner as a parable of the history of YHWH and his people

a. V. 7a: The House of Israel as YHWH’s vineyard

b. V. 7b: Israel’s foul fruit: violence instead of justice and righteousness

Strategies in the Disclosure of the Owner’s and the Vineyard’s Identities

Although the explicit disclosure of the vineyard owner’s identity comes late in the text (v. 7), it is gradually prepared from the beginning. Elsewhere in the OT the form אָשִׁירָה (v. 1a: “let me sing”) is exclusively used in psalms and songs of praise as a self-exhortation to sing to YHWH (Ex 15.1; Jdg 5.3; Pss 13.6; 27.6; 57.8; 89.2; 101.1; 104.33; 108.2; 144.9).[23] Therefore one would expect a song dedicated to God in Isa 5.1, too. Considering this background, the dedication of the song “to my dear friend” (לידידי – the prefixed lamed meaning “for”, “of” or “regarding”) in v. 1 might already raise the question whether this is not YHWH himself. The second moment when the vineyard owner’s divine identity seems to appear inbetween the lines are the rhetorical questions in v. 4. These imply his care was of a kind that would exclude any reason for the vineyard to yield foul instead of good fruit. Such perfection of care is only possible if the owner’s power is beyond that of a human wine grower and includes dominion over weather conditions, diseases and other natural influences beyond manpower.[24] A third point where light falls on the owner’s divine power is his announcement in v. 6b to command the clouds not to let any rain fall upon the unfruitful vineyard. This retrospectively confirms the extraordinary quality of his care, which guaranteed even all necessary conditions beyond human control. Immediately after this third hint, the owner’s divine identity is revealed in v. 7.

[23] Cf. Irsigler, Speech acts, p. 45: “the Hebrew Bible knows ל שׁיר with the exception of Psalm 137:3 referring only to YHWH/God”, which “might evoke among the addressees of Isaiah 5:1a slight suspicion about the real identity of the singer’s ‘friend’”.

[24] Cf. the remarks on v. 4 above under “structure”.

The identity of the vineyard is disclosed suddenly, however (v. 7a). It represents the house of Israel, which here most probably refers to the people of God as a whole including the "people of Judah", as does "Israel" in the epitheton קְדוֹשׁ יִשְׂרָאֵל "the Holy One of Israel".[25] If we are entitled to assume the vineyard as a methaphor of Israel is not older than the vineyard song itself and therefore unknown to the audience,[26] then the question whom or what the vineyard stands for remains obscure in vv. 1-6. The first two occurences of כֶּרֶם ("vineyard") in v. 1 remind of a story like Nabot's (cf. 1 Kings 21.1: ... כֶּרֶם הָיָה לְנָבוֹת ...), where a man is envied by the king for his possession inherited from his fathers.[27] There is nothing specific about the vineyard in Isa 5.1 that would point to Israel. The introduction of the song rather suggests some story about a wine grower's troubles. That a vineyard was an enterprise of great value but exposed to many risks is well attested in the OT. As Isa 5.2 illustrates, a considerable amount of work, effort and investment was required to set it out, and a long period of patient waiting had to pass before it yielded the first grapes. Therefore the frustration and damage caused to a wine grower by a loss of the yield were particularly hard. It was considered as contrary to natural justice when a man who had laid out a vineyard was prevented from enjoying the first yield. For such a man Dtn 20.6 provides he should not go to war together with the other Israelites but "return unto his house, lest he die in the battle, and another man eat of it" (KJV) - יֵלֵךְ וְיָשֹׁב לְבֵיתוֹ פֶּן־יָמוּת בַּמִּלְחָמָה וְאִישׁ אַחֵר יְחַלְּלֶנּוּ. And among the curses against Israel in case of a breach of the covenant with the Lord we find in Dtn 28.30: "[…] thou shalt plant a vineyard, and shalt not gather the grapes thereof" (KJV) - כֶּרֶם תִּטַּע וְלֹא תְחַלְּלֶנּוּ. In this case, the injustice caused by a breach of the covenant falls back upon Israel and causes the injust acts listed in the curses to become true. Conversely, it is characteristic of a blessed and happy time when the people of God "plant vineyards and eat their fruit" (ESV), Isa 65.21: וְנָטְעוּ כְרָמִים וְאָכְלוּ [...] פִּרְיָם (cf. also Am 9.14). The existence of a special law protecting an owner of a new vineyard from the risk of falling in battle, of a curse threatening the accursed ones with the loss of a new vineyard before its first yield, and of prophetic

[25] The relationship between the terms בֵּית יִשְׂרָאֵל "House of Israel" and אִישׁ יְהוּדָה "man/people of Judah" in v. 7a is discussed by Williamson, Isaiah 1 – 5, pp. 342-3. He convincingly argues that "Israel refers to the people of God as a whole, further defined more specifically as the people of Judah" (p. 342). Cf. also Wildberger, Hans, Jesaja 1 - 12 (Biblischer Kommentar Altes Testament 10/1), Neukirchen-Vluyn 1978, pp. 171-2.

[26] Cf. Höffken, Peter, Das Buch Jesaja. Kapitel 1 – 39 (Neuer Stuttgarter Kommentar Altes Testament 18/1), Stuttgart: Kohlhammer, 1993, p. 64; Williamson, Isaiah 1 – 5, p. 343, who both assume the older metaphor of Israel is that of a vine (cf. Psalms 80.9, 15; Hos 10.1) whereas Isaiah was the first to use the metaphor of a vineyard. Wildberger, Jesaja 1 – 12, p. 172.

[27] The phrase also occurs in Song of Songs 8.11-2 (v. 11: כֶּרֶם הָיָה לִשְׁלֹמֹה). As Song of Songs is probably of late (hellenistic) origin, see e.g. Mathys, Hans-Peter, Die Ketubim, in: Dietrich, Walter, et al. (eds.), Die Entstehung des Alten Testaments (Theologische Wissenschaft 1), Stuttgart 2014, pp. 481-594 (here: 549), 8.11 did not influence Isa 5.1. Yet, it shows the phrase "something belonged to someone …" (...הָיָה לְ ...) was common to introduce the subjects of a subsequent episode.