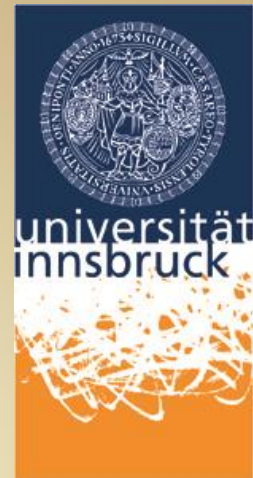


pädagogische  
hochschule tirol

pht



# Anthropological and Legal Underpinnings of the Educational System in Austria

Erasmus-Program  
Innovative Approaches in Special Needs Education  
Innsbruck, March 3 – 16, 2013

Prof. Dr. Dr. Karl Heinz Auer  
University of Innsbruck / Department of Law  
Pädagogische Hochschule Tirol





Jeg byder især velkommen til professorerne og studenterne fra University College Syddanmark fra Danmark. University College Syddanmark er kendt som nationalt kompetencecentrum på områderne sundhed, social integration og indlæringsressourcer samt deres mange internationale Kooperationer.

Jeg ønsker Dem to interessante uger i Innsbruck og takker for Deres interesse for mit foredrag om "antropologiske og retslige grundlag for uddannelsessystemet i Østrig".



**Vítám zejména profesory a studentky Univerzity Palackého v Olomouci v České republice.**

**Stejně jako Univerzita v Innsbrucku byla i Univerzita Palackého v Olomouci založena v 16. (šestnáctém) století jezuity.**

**Přeji Vám dva zajímavé týdny v Innsbrucku a děkuji za Váš zájem o mé výklady na téma „Antropologické a právní základy systému vzdělávání v Rakousku“.**



**Saludo de manera muy especial a las profesoras y profesores de la Universidad de Almería en España así como a sus estudiantes. Reconocida ésta como tal, más allá de las fronteras de su país. Su lema “Lumine Sapientia” ya lo dice: un lema para cada tipo de formación académica.**

**Les deseo a todos ustedes dos semanas en Innsbruck con un sin fin de atractivos de todo tipo.**

**Gracias por el interés dedicado a mi ponencia sobre los fundamentos antropológicos y jurídicos del sistema de formación en Austria.**



**Különös szeretettel köszöntöm Magyarországról a szegedi egyetem professzorait és hallgatóit.**

**Magyarországot és Ausztriát hosszú közös múlt köti össze. Egyetemünk mottója három fontos vezérfonal, az „Igazság, Bátorság, és Szabadság”, amely minden oktatási rendszerben érvényes.**

**Két értékes hetet kívánok Önöknek Innsbruckban és köszönöm „Az osztrák oktatási rendszer antropológiai és jogi alapvetéseiről” szóló előadásom iránti érdeklődésüket.**



**Last but not least begrüße ich die Professorinnen und Professoren und Studentinnen und Studenten der Pädagogischen Hochschule Tirol. Ich freue mich, dass die PHT Austragungsort dieses ERASMUS-Programms ist und Ihnen die Möglichkeit zu grenzüberschreitendem akademischen Austausch gibt. Ich wünsche Ihnen zwei interessante Wochen und ich bedanke mich für Ihr Interesse an meinen Ausführungen über „Anthropologische und rechtliche Grundlegungen des Bildungssystems in Österreich“.**



# Topics at a glance

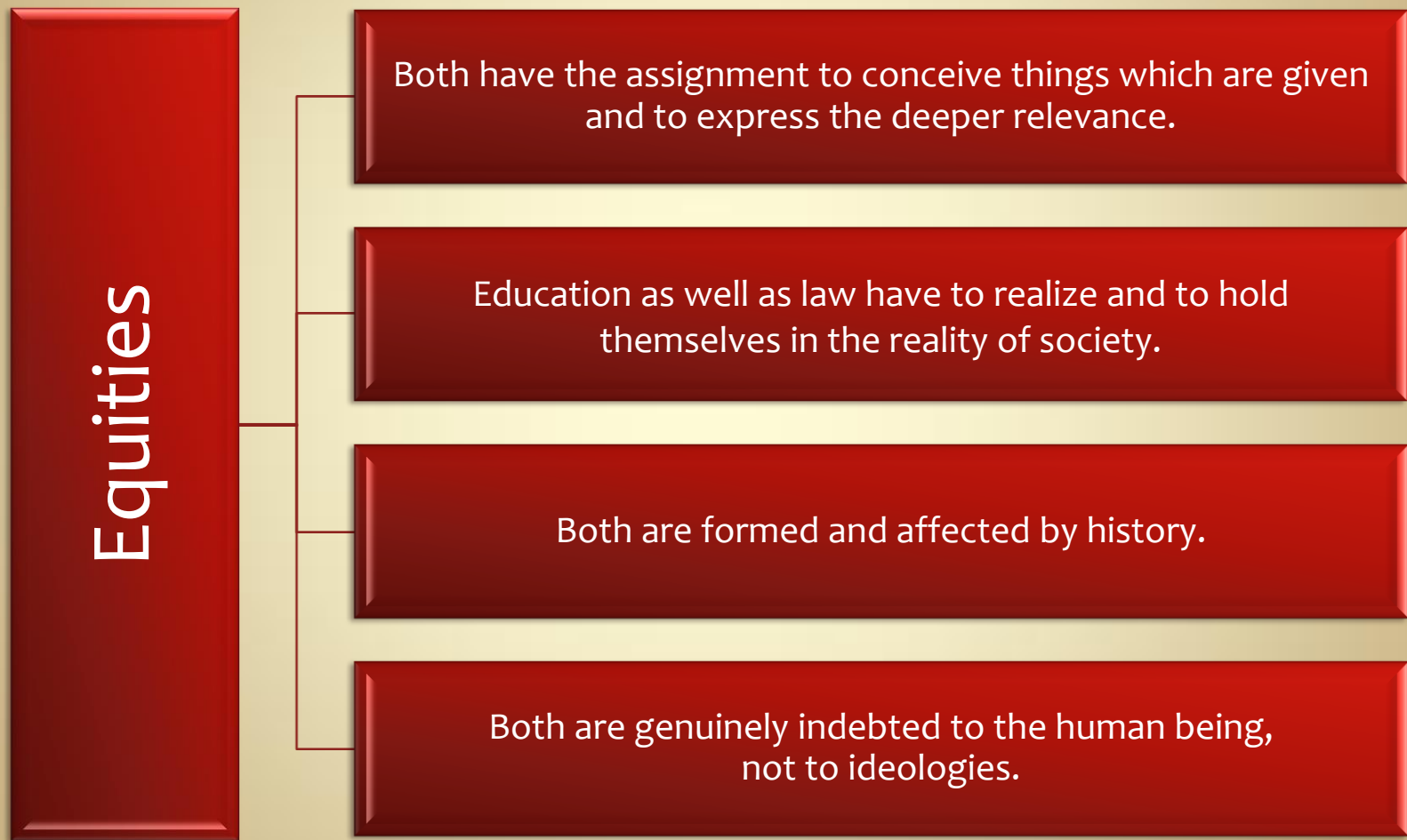
- Part I: Equal and Unequal Facets of Education and Law
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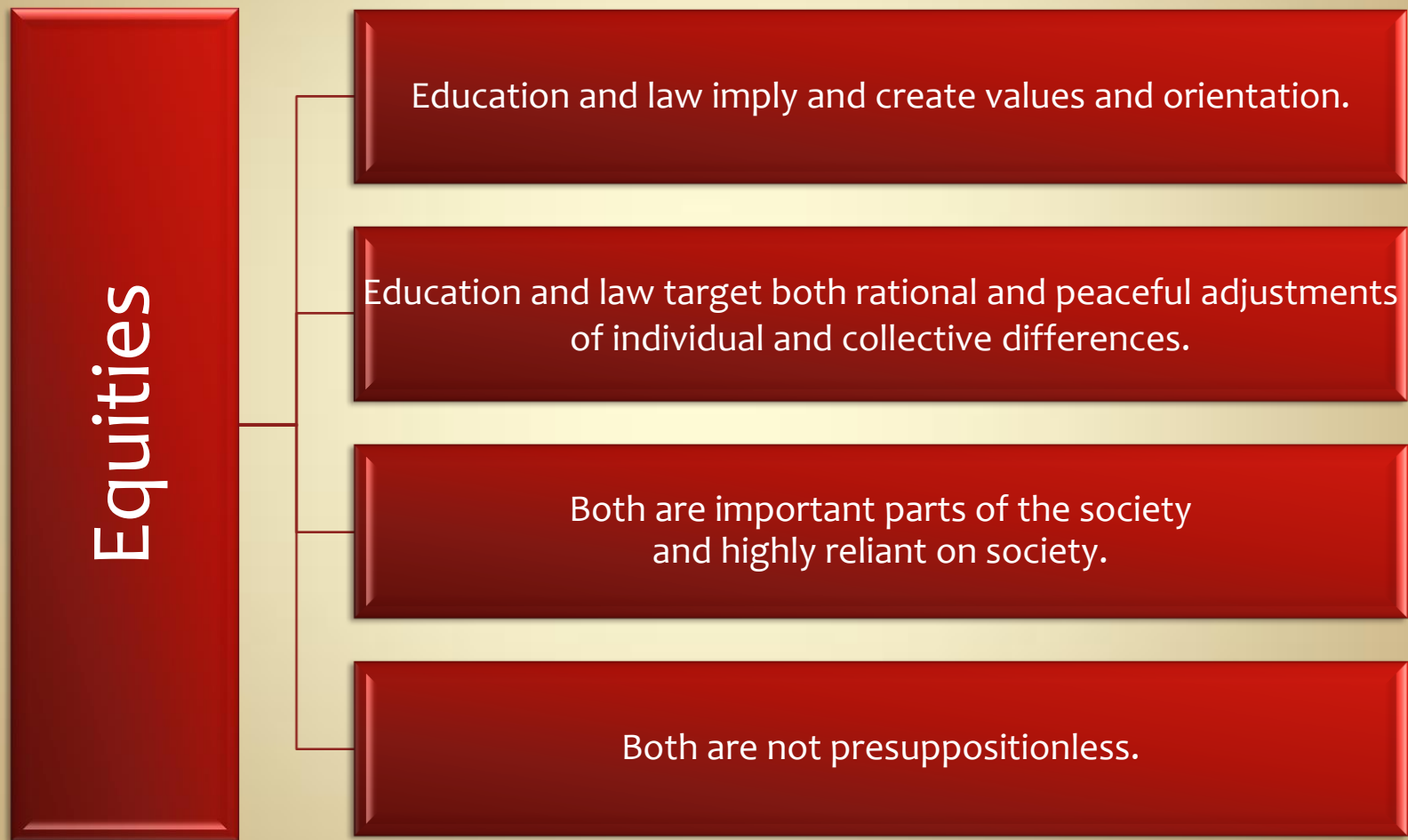
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# Equal Facets of Education and Law



# Equal Facets of Education and Law



# Unequal Facets of Education and Law

## Origin



```
graph TD; A[Origin] --- B[Education originates from the Greeks.]; A --- C[The Romans (re-)created the first sustainable jurisprudence.]
```

Education originates from the Greeks.

The Romans (re-)created the first sustainable jurisprudence.

# Unequal Facets of Education and Law

## Presuppositions

```
graph TD; A[Presuppositions] --- B[Reflection of practical experience inherently constitutes educational theory.]; A --- C[There is no jurisprudence without a predetermined regularity.]
```

Reflection of practical experience inherently constitutes educational theory.

There is no jurisprudence without a predetermined regularity.

# Unequal Facets of Education and Law

```
graph TD; A[Nature] --- B[The educator has to argue in terms of conducting, conciliating and guiding.]; A --- C[The lawyer has to argue in terms of pleading, judging and deciding.]
```

Nature

The educator has to argue in terms of conducting, conciliating and guiding.

The lawyer has to argue in terms of pleading, judging and deciding.

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# Change of stance

**The Idea of the antique greec humanitarianism**  
Demokrit  
Protagoras  
Platon  
Aristoteles

**The theocentric Middle Ages**  
Antique ideas of education in combination with christianity  
Monasteries as bearers and transmitters of culture

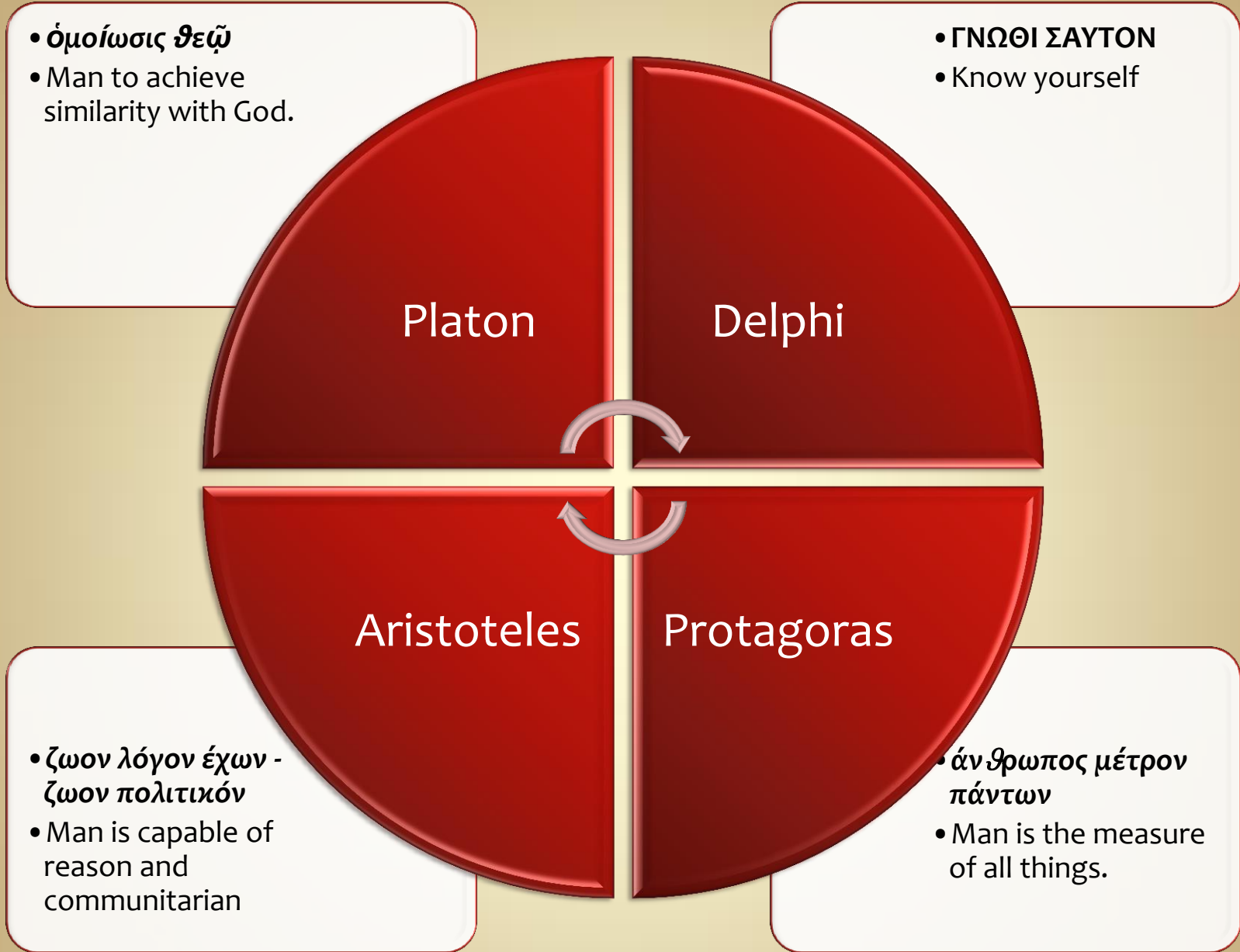
**The anthropocentric Humanism and Enlightenment**  
Humanism  
Renaissance  
Reformation  
Man as a free and independent individual

# Change of stance

**From idealism to materialism**  
Epidemic of nationalism, World Wars  
Homo oeconomicus  
Globalization

**From enlightenment to fundamental rights**  
Political, economical and social rights  
Fundamental rights for peoples and national groups  
Right to Development  
Sharing of common heritage of mankind

**Taking leave of fundamental rights?**  
The Glass Man?  
Security and consumption instead of freedom?



- ***Animal rationabile – animal rationale***
- „Animal“ as capable of reason – „Animal“ of reason

**Immanuel Kant**  
(1724-1804)

- ***Homo homini lupus***
- Man is wolf to man

**Thomas Hobbes**  
(1588-1679)

**Natural Sciences**

- „***You are what you eat***“
- „Nature“ of man determined by natural sciences only

**JJ. Rousseau**  
(1712-1778)

- ***Man is good by nature***
- Man is good by nature

# Immanuel Kant:

## The human being as a rational being

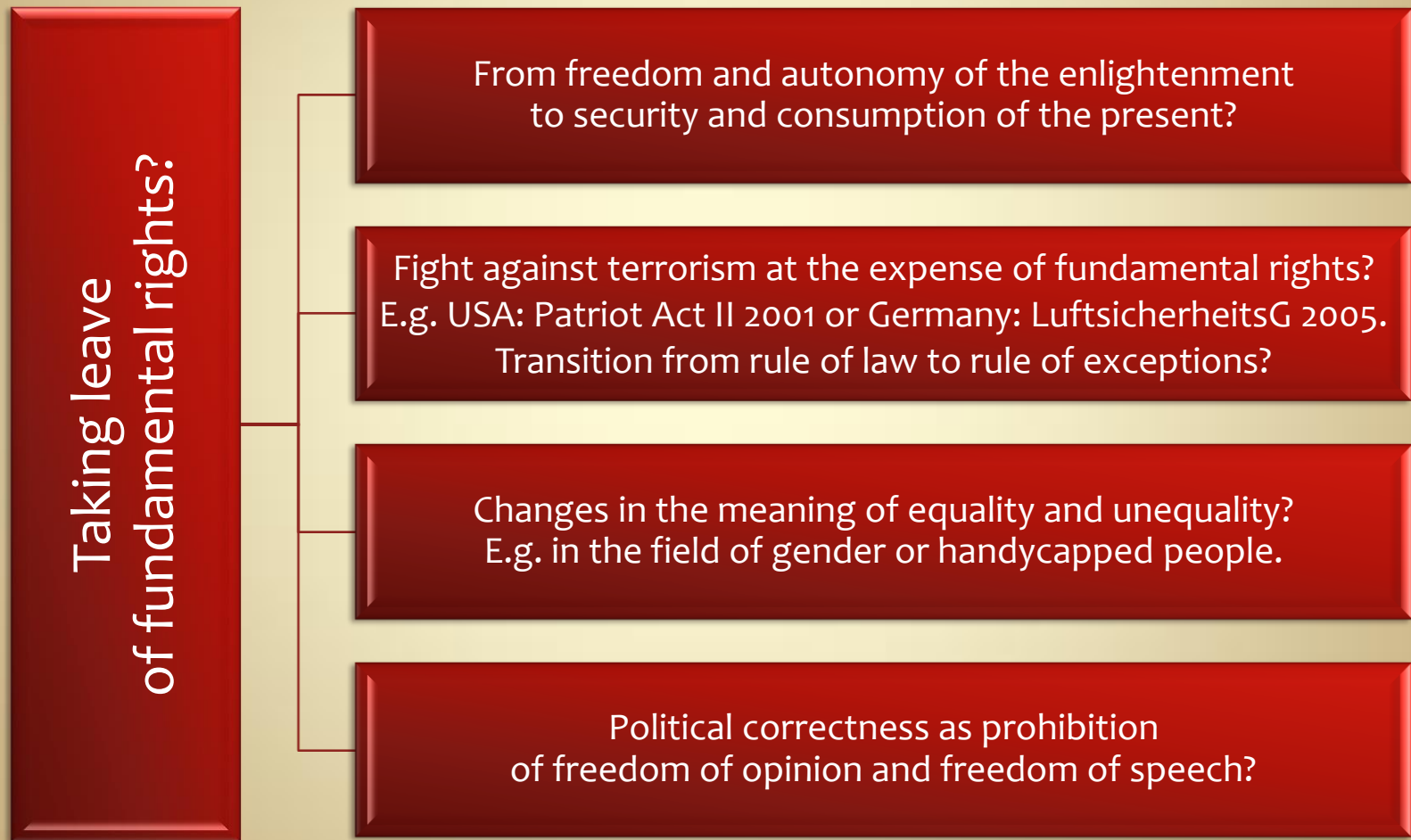
Immanuel Kant (1724-1804):  
Rational being

Answering the Question: What is Enlightenment?  
(Essay 1784)

Enlightenment is man's emergence from his self-imposed nonage.

Sapere aude! Dare to know!  
Have the encourage to use your own understanding!

# Taking leave of fundamental rights?







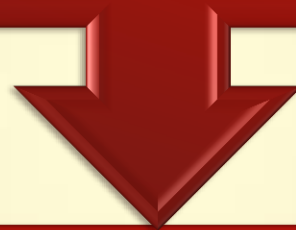
Videoclip:  
History of Humanities Republics



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Legal Systems as well as educational theories consciously or unconsciously do emanate from a certain conception of the human being. Therefore it is indispensable to ensure the presupposed conception of man.



Law as well as educational theory are depending on the changes and premises of the conception of the human being.

(see Mayer-Maly, Rechtsphilosophie, Wien 2001, 37)

- Regulations as benchmarks
- Risk: reduction the human being to regulations

- The human being as it is supposed to be
- Risk: ideological brainwashing

In normative terms

In ideal quintessential terms

In personal terms

In terms of affliction

- The human being as person, targeting personality
- Man as a subject, man as foundation and as aim of legal system

- The human being as it is: selfish, looking for it's own benefits
- Risk: reduction the human being to shortcomings

# Benchmarks of the Austrian Civil and Criminal Law

Every human being has  
inborn reasonable  
evident legal rights and  
is therefore to be seen  
as a person.  
(§ 16 ABGB)

Every human being has  
the right to be  
protected by law from  
conception onwards.  
(§ 22 ABGB)

Within the first 3  
months of pregnancy  
under certain  
conditions there is  
impunity of abortion.  
(§ 97 Par 1 Suppl 1 StGB)

In case of danger for  
the pregnant woman  
and in case of a  
probably disabled child  
impunity of abortion is  
given without any time-  
limit during pregnancy.  
(§ 97 Par 1 Suppl 2 StGB)

### **Wrongful Birth**

Parents of a congenitally diseased child claim their doctor failed to properly warn of their risk of giving birth to a child with serious genetic or congenital abnormalities.

Based on some controversial supreme court judgements in Austria the Austrian government emphasizes in it's intergovernmental convention:

**There is no doubting and taken for granted that the birth and the existence of a disabled child is no claim (loss / damage) , although sadness and sorrow of parents may be exorbitant.  
(P. 125)**

# Actual Topic

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# Council of Europe – European Union

- Council of Europe
  - The political 12 principles
  - The Convention on HR
- European Union
  - Charter of Fundamental Rights of the EU





# The European codifications

## ECHR

Convention for the Protection of Human Rights and Fundamental Freedoms

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world best maintained in effective political democracy and observance of human rights upon which they depend.

*Preamble, Rome 1950*

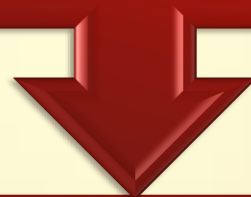
## CFR

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

*Proclaimed in 2000 and 2007  
Legal effect (Lisbon Treaty) in 2009*

# Right to Education (Art 2 Prot/ECHR)

No person shall be denied the right to education.



In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

# Prohibition of discrimination (Art 14 ECHR)

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status.



„On any ground“ implies the prohibition of discrimination on disabled people.

# Integration of disabled persons (Art 26 CFR)

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

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# The educational aims of the Austrian constitution

Art 14 Par 5a Federal Constitutional Law (B-VG):

Democracy, Humanity, solidarity, peace and justice as well as openness and tolerance towards people are the elementary values of the school, based on which it secures for the whole population, independent from origin, social situation and financial background a maximum of educational level, permanently safeguarding and developing optimal quality. In a partnership-like cooperation between pupils, parents and teachers, children and juveniles are to be allowed the optimal intellectual, mental and physical development to let them become healthy, selfconfident, happy, performance-oriented, dutiful, talented and creative humans capable to take over responsibility for themselves, fellow human beings, environment and following generations, oriented in social, religious and moral values. Any juvenile shall in accordance with his development and educational course be led to independent judgement and social understanding, be open to political, religious and ideological thinking of others and become capable to participate in the cultural and economic life of Austria, Europe and the world and participate in the common tasks of mankind, in love for freedom and peace.

# Elementary values and aims


The Austrian school has to secure a maximum of educational level for the whole population independent from origin, social situation and financial background based on the elementary values of

- ▶ Democracy, humanity and solidarity
- ▶ Peace and justice as well as
- ▶ Openness and tolerance




# Elementary values and aims

Children and juveniles are to be allowed the optimal intellectual, mental and physical development



Striving for healthy, selfconfident, happy, performance - oriented, dutiful, talented and creative humans



Orientation in social, religious and moral values  
Capability to take over responsibility for themselves, fellow human beings, environment and following generations

# Further goals

Independent judgement and social understanding



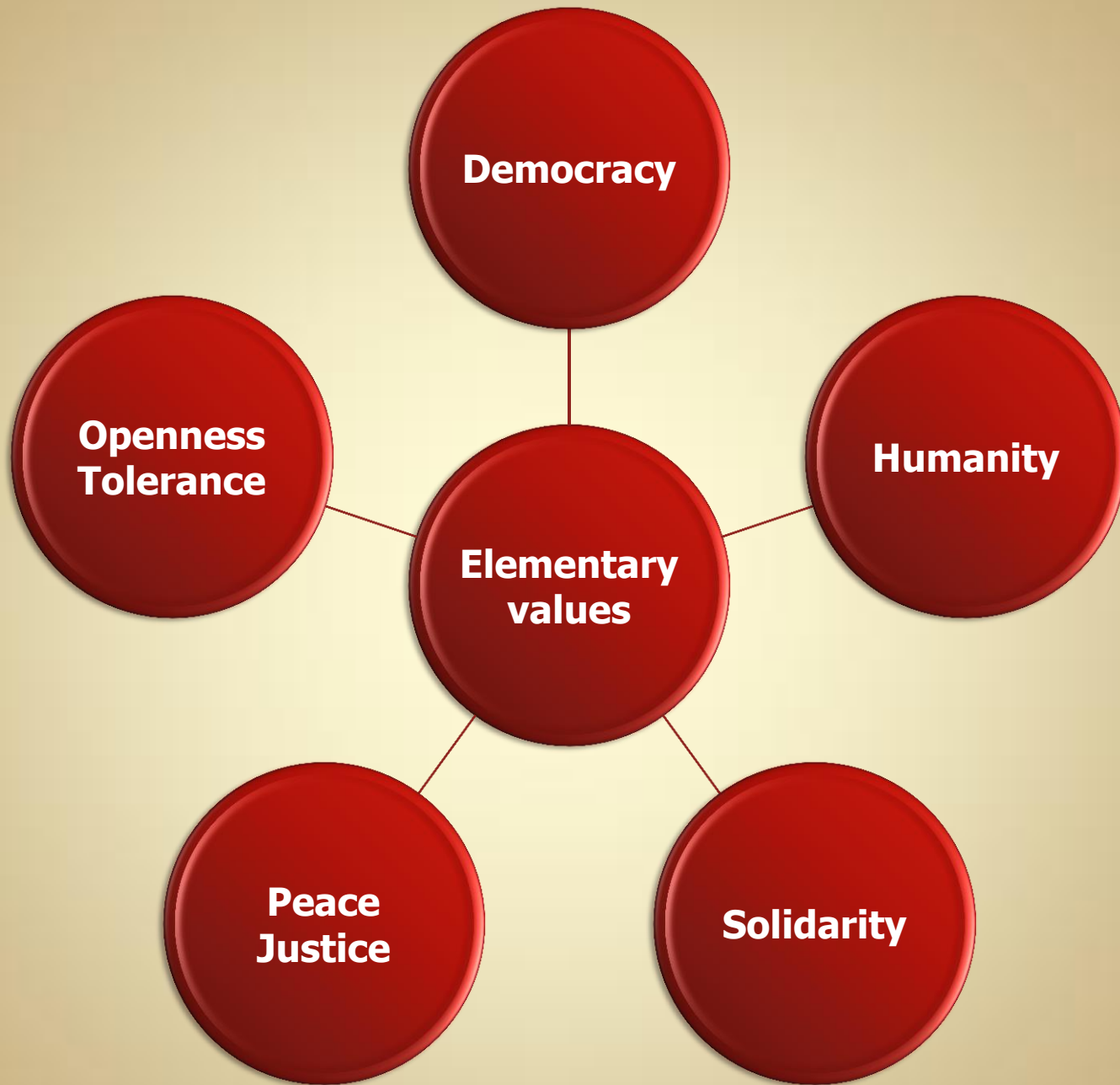
Openness to political, religious  
and ideological thinking of others

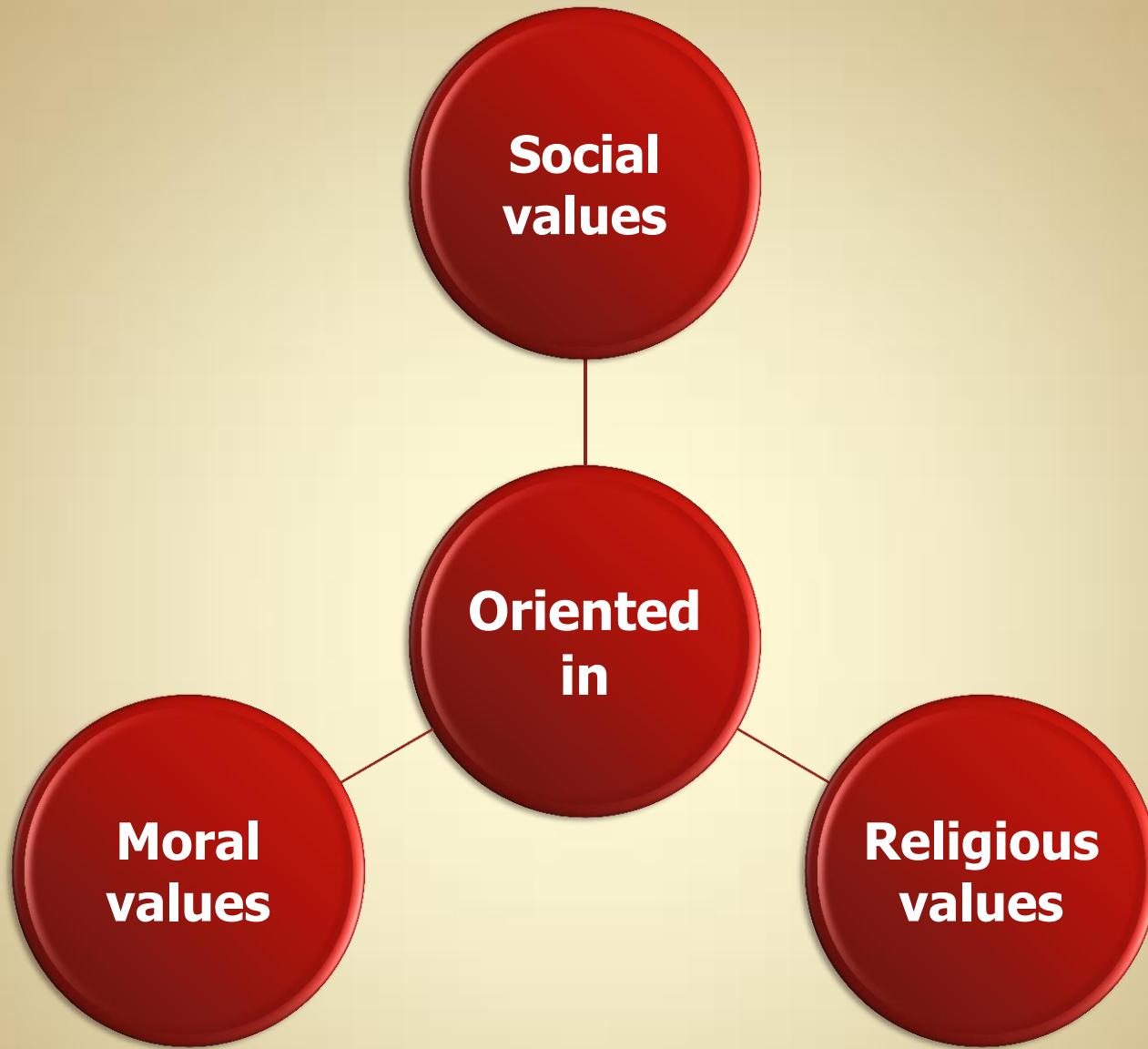


Capability to participate in the cultural and economic life  
of Austria, Europe and the world



Capability to participate in the common tasks of mankind,  
in love for freedom and peace







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# The basic principle: Human dignity

The axiom of human dignity is defined as a general postulate of the Austrian legal system indicating that no human being is allowed to be seen or to be treated as a mere instrument for whatever purposes. (VfGH 10.12.1993)

Art 1 CFR

Human dignity is inviolable.  
It must be respected and protected.



# Human dignity according to I. Kant

## Human dignity

**Core: Foundation and use  
of freedom**

**The autonomy of the will  
Morality**

**Intention to achieve morality  
Humanity**

# Human dignity according to I. Kant

**Dignity**

**Interior factual  
circumstances:**

**Person  
Personality**

**Exterior claim:**

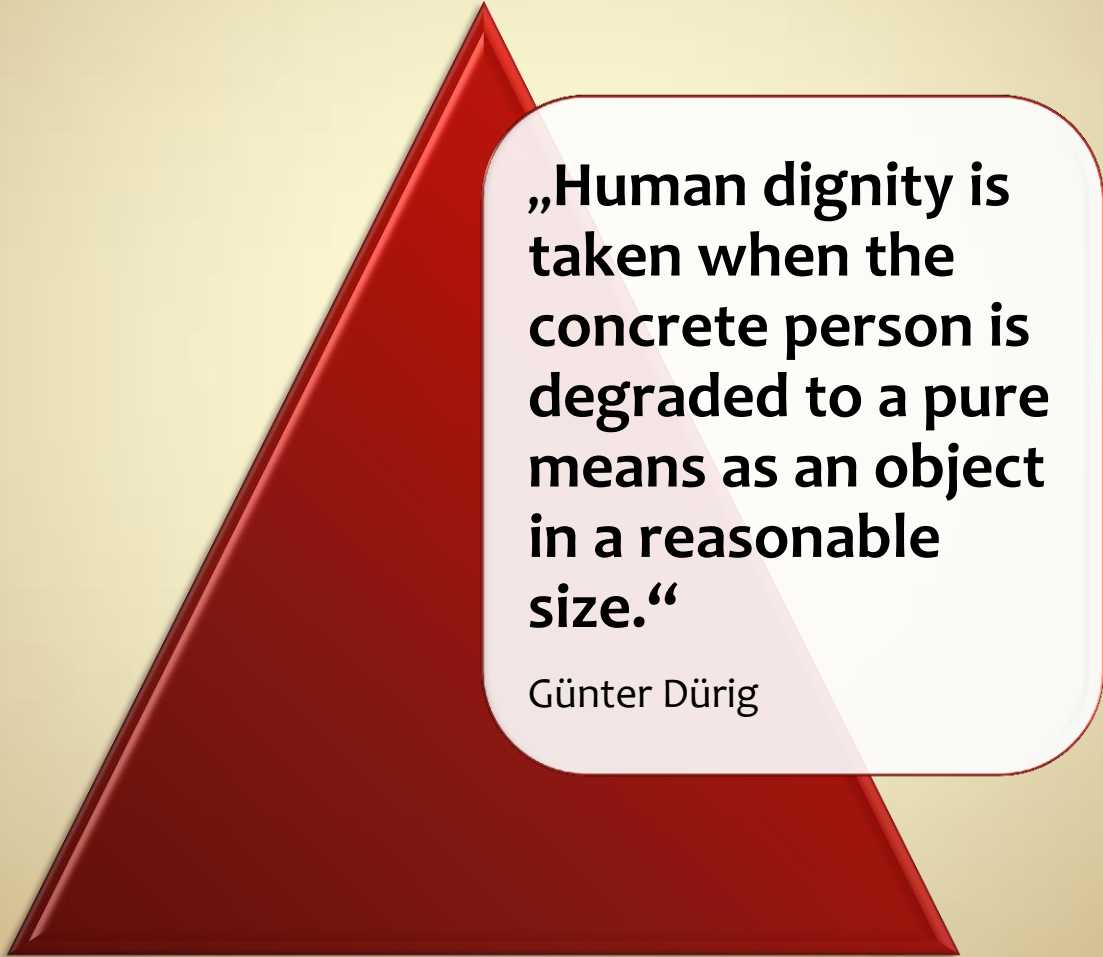
**Inherent and  
inalienable  
rights**

**Final analysis:**

**Human rights  
Codifications  
Constitutions**

# Human dignity object formulation

according to Günter Dürig  
based on Kant's ethics



**„Human dignity is taken when the concrete person is degraded to a pure means as an object in a reasonable size.“**

Günter Dürig

# Roots of human dignity



Ancient  
Egyptian  
Ma'at



בְּצַלְמֵ  
Man as  
image of  
God



Καὶ ὁ λόγος  
σὰρξ ἐγένετο  
Incarnation



ὁμοίωσις θεῷ  
Homoiosis  
Theo

# Legal implantation of human dignity



Art 7 BV  
1999



Art 1 Abs 1  
GG



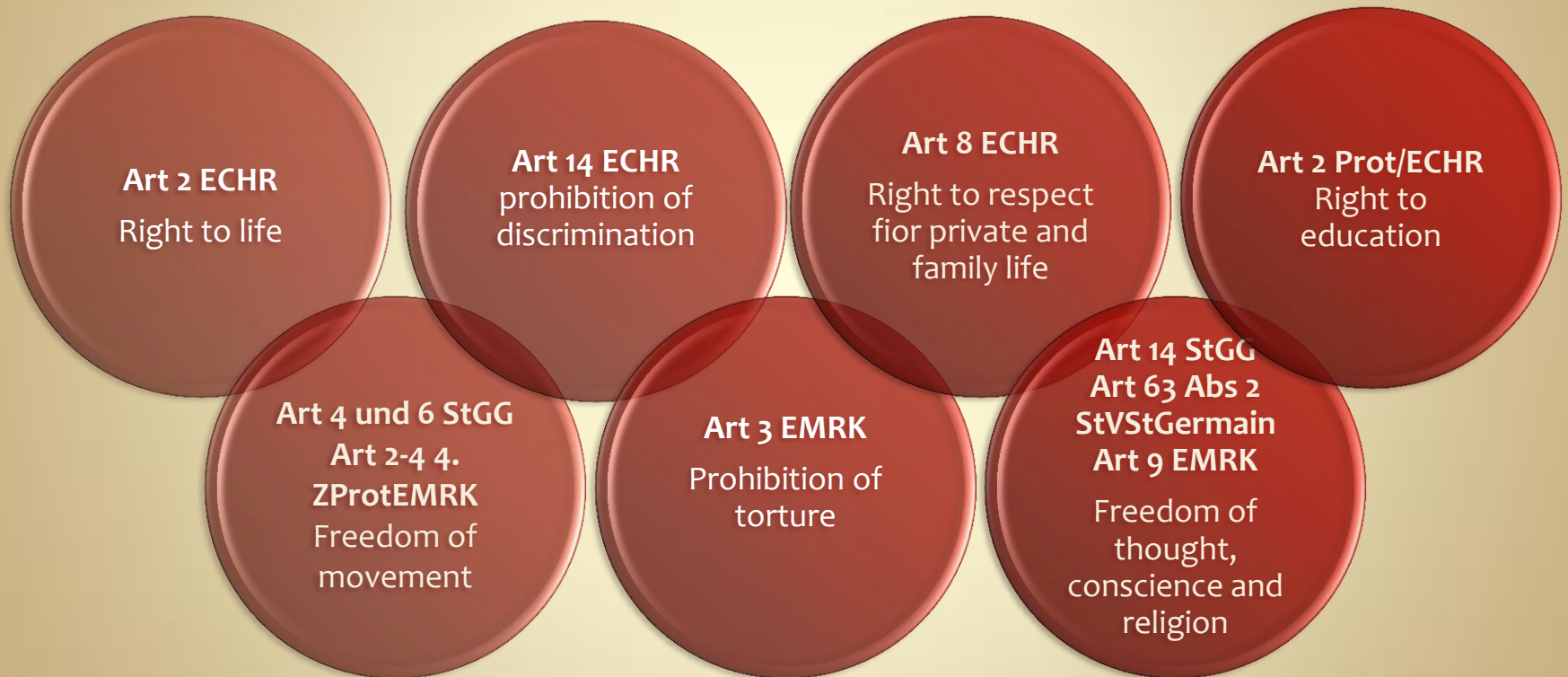
§ 16 ABGB  
VfGH: MW als  
allgemeiner  
Wertungsgrund-  
satz der  
Verfassung



Art 1 EGC



# Legal consequences





# What does „person“ mean?

## A philosophical approach

πρόσωπον: mask, screen, role (of actor e.g.)

The development of this philosophical concept of person is rooted in the patristic era of the early Christianity. Terms like „calling“, „charisma“, „freedom“, „responsibility“ and others more presuppose the human being as person in its full sense.

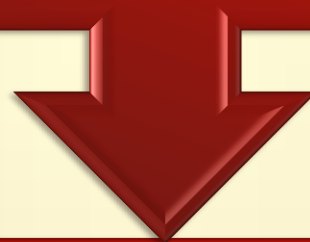
The first definition in a narrow sense comes from Boethius (480-525): „rationalis naturae individua substantia“ – Symbiosis of spirit being and individual substance.



# The concept of person in the tradition of John Locke

In the tradition of John Locke (1632-1704) being a person is realized as a condition or as an ability which the individual has to acquire and which also can be lost again.

But:



Who ever ties the personality of the human being to an actual condition of awareness or to an attribution of interests or to an articulation of self-esteem does not achieve at all the practical content of them as expression of the human being with respect to the fundamental human freedom. (Lutz-Bachmann)

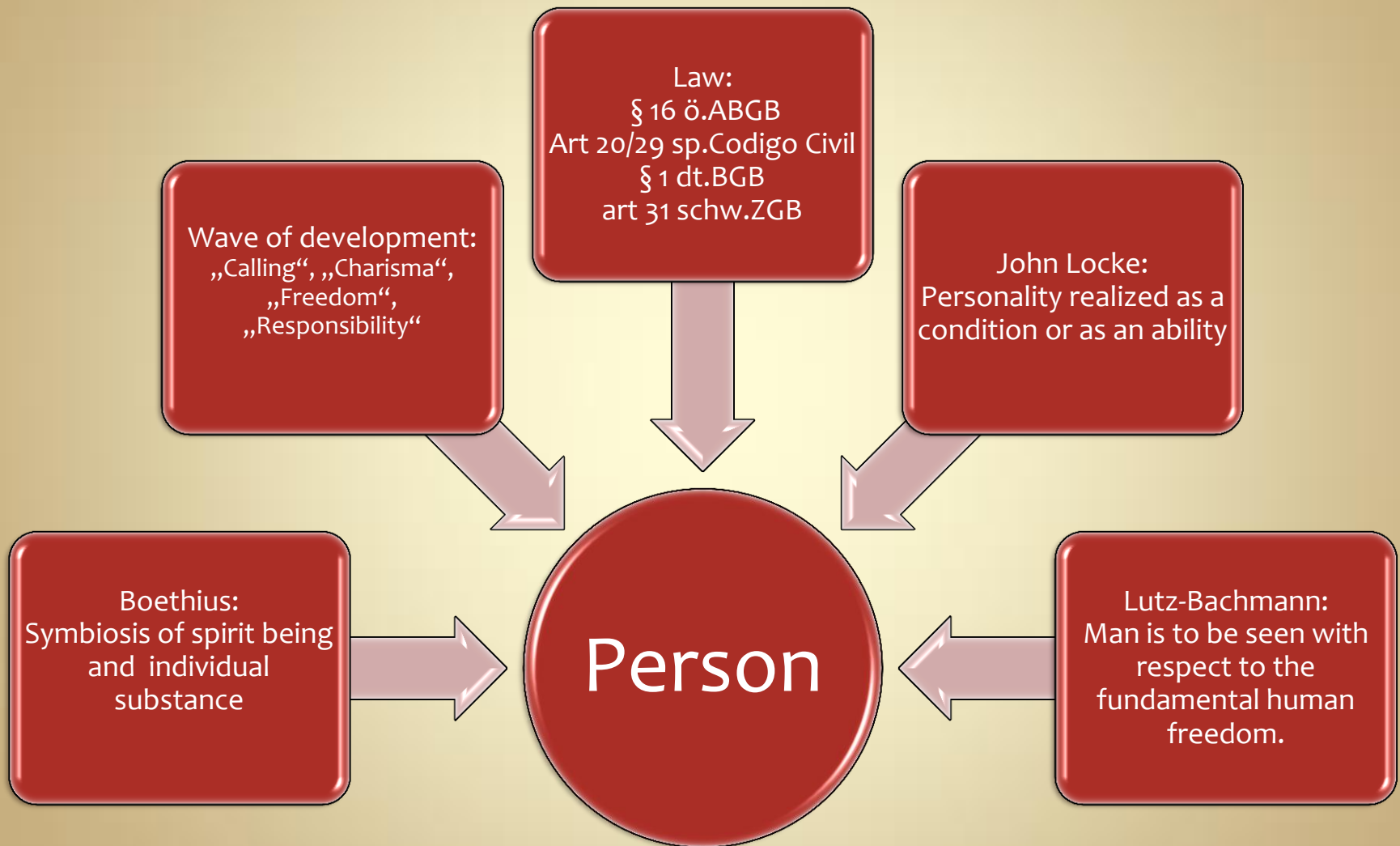
# Person

## as point of crystallization in the Austrian Law

**Every human being has inborn reasonable evident legal rights and is therefore to be seen as a person.**

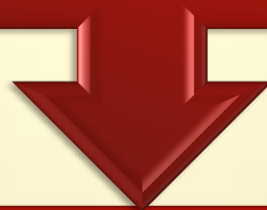
(§ 16 ABGB)

# The human being as a person



# Equality as fundamental right in the Austrian Federal Constitutional Law (Art 7 B-VG)

All nationals are equal before the law.  
Privileges based upon birth, sex, estate, class or religion  
are excluded.



No one shall be discriminated against because of his disability.  
The Republic (Federation, Laender and municipalities) commits  
itself to ensuring the equal treatment of disabled and non-  
disabled persons in all spheres of everyday life.

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# The Austrian educational system and the legal framework

ECHR

CFR/EU

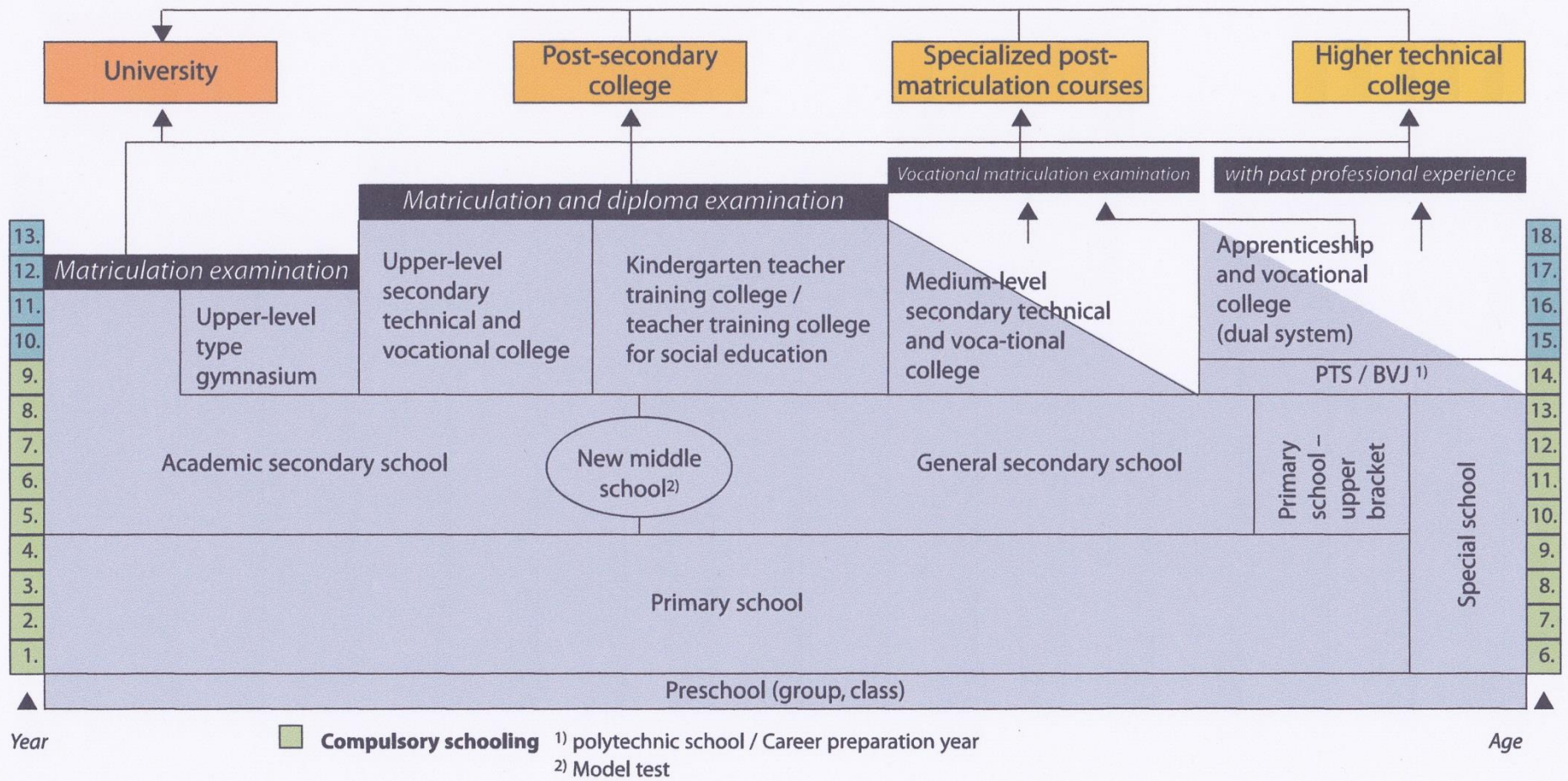


Austrian Federal Constitutional Law (B-VG)



Federal laws concerning the Organization of schools as well as the regulation of teaching and the like





This chart and the following 3 pages are taken from BMUKK, Federal Ministry of Education, Art and Culture: Educational Opportunities in Austria, Vienna 2008.



# Disability stereotypes

- Disability Stereotypes  
Videoclip of the Pontificia Universidad Javeriana, Bogotá
- Special kids need special education  
Videoclip of „learning world“ in association with „wise“-Quatar Foundation

# The Austrian legal framework for special needs education

**Integration  
of children with special educational needs**



- > in primary schools
  - > in general secondary schools / New middle schools
  - > in the first grade of academic secondary schools
- 

Integrative instruction and integrative counselling offer children and young people with and without disabilities the opportunity of learning together.

# The Austrian legal framework for special needs education

Sonderschule (special school)



- > Special schools comprise eight up to twelve years.
  - > Special schools comprise ten different branches.
- 

Students receive a basic education with teaching methods tailored to meet the individual requirements. This schooling is designed to prepare the student for career training or further education.

# The Austrian legal framework for special needs education

## Types of Austrian special schools with different curricula

General-purpose special school (ASO):  
for children with learning disabilities; special schools for blind and deaf children with serious handicaps

Special schools using the curriculum of primary schools, general secondary schools and polytechnic school

Special schools for the physically handicapped, for children with speech impairments, for the visually handicapped, for the hard-of-hearing, reform schools as well as hospital schools

Class in „career orientation in the 7th and 8th grades“ to open up possibilities to choose their own personal career paths. The „career preparation year“ in the 9th grade preparing young people with special educational needs for working and professional life.

# Integration or special schools?



**Integration**  
of children with  
special educational  
needs



**Special schools**  
for children with  
special educational  
needs

# Integration or special schools?




Social integration: (re-) integrating all children, irrespective of their stage of development, type and degree of their disability




Social integration within a group of disabled children  
No competition with children without disabilities

# Integration or special schools?



Social processes are possible  
in a group of all children with  
and without disabilities

Children with and without  
special educational needs  
can learn from each other



Social processes are possible  
among children with  
disabilities – without  
unequal competitions



Among all the pros and cons, among all the arguments for and against, among all the dos and donts we should never forget:

**It is the child who has always to be in the midst of educational activities and decisions.**

**The educational system has to provide the resources to enable children and young people to become persons in it's full meaning.**

**Thank you.**

## List of Videoclips

- History of Humanities Republics  
([http://www.youtube.com/watch?v=quTtK7\\_19Ak](http://www.youtube.com/watch?v=quTtK7_19Ak))
- The Convention ECHR belongs to you  
(<http://www.youtube.com/watch?v=SZzFaQyK-cM&list=PLE7D92247946BA7EA>)
- Charter of Fundamental Rights of the European Union  
(<http://www.youtube.com/watch?v=EjPAgZMg-Yw>)
- The 12 principles of good governance  
(<http://www.youtube.com/user/CouncilofEurope?gl=GB&hl=en-GB>)
- Disability Stereotypes  
(<http://www.youtube.com/watch?v=qWwJ7ku8UrY>)
- Special kids need special education  
(<http://www.euronews.com/2010/11/23/special-kids-need-special-education/>)

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