# Contents

Gratitude .................................................................................................................. 7

Introduction .................................................................................................................. 9

Chapter I. The idea of pluralism and human rights in democratic multicultural societies ................................................................................................. 19

1. Between the Scylla and Charibdis of cultural relativism ......................... 19
2. Cosmopolitanism: The philosophy of world citizenship ......................... 25
3. Ronald Dworkin’s right of equal treatment as the basis of liberal pluralistic society ........................................................................................................ 32
4. Human rights as the nature of intercultural consensus ......................... 38
   4.1. Human rights – the creation of “Western” imperialism? ............... 39
   4.2. Human dignity as the basis of human rights .............................. 45
5. Democracy in the globalization age ......................................................... 52
   5.1. Democracy in the 21st century .............................................. 52
   5.2. Are democracy and human rights compatible? ...................... 60

Chapter II. Discursive – ethical justification of human rights and democracy 64

1. The Ethics of Discourse in Karl-Otto Apel’s Transcendental-Pragmatic Philosophy ........................................................................................................ 64
   1.1. The basis of discourse ethics ............................................. 65
   1.2. Universalistic ethics of co-responsibility ......................... 69
2. Jürgen Habermas’ theory of discursive reconstruction of law ........ 80
   2.1. The role of procedural communicative rationality in justification of law ................................................................. 81
   2.2. Communicative reinforcement of democracy – deliberative policy .. 90
3. Main assumptions of Robert Alexy’s legal argumentation ............. 103
   3.1. The theory of discourse and human rights in Alexy’s philosophy of law ......................................................................................... 105
   3.2. Direct and indirect patterns of discursive justification of human rights ......................................................................................... 110
4. Critical character of discourse theory ............................................. 119

Chapter III. The principle of mutual recognition as a condition of intercultural legal discourse ................................................................. 121
1. Philosophical roots of the theory of recognition ........................................... 121
  1.1. Interpersonal character of human relations in Fichte’s idea of law ........ 121
  1.2. Mutual recognition in Hegel’s philosophy of law ............................. 125
2. General assumptions of the modern theory of recognition .................... 132
3. Patterns of intersubjective recognition: Axel Honneth’s moral grammar of social conflicts ................................................................. 136
  3.1. Love and the fight for recognition .................................................. 136
  3.2. The fight for recognition in the sphere of modern law ..................... 138
  3.3. The role of social respect in shaping mutual recognition .................. 147
  3.4. The principle of mutual recognition and the rules of discourse as constitutive elements for political and legal constructivist community ................................................................. 152

Chapter IV. Punishing as a negative reaction to illegal acts ...................... 175
  1. The notion and justification of punishment in an inclusive constructivist community ................................................................. 175
    1.1. Constructivist community as an exponent of the openness of democratic society ................................................................. 176
    1.2. Punishment as a manifestation of standard social practice ............. 183
  2. Double justification of punishment in Hegel’s philosophy of law .......... 188
    2.1. Argument from one’s right ..................................................... 189
    2.2. Argument from the relation of mutual recognition ..................... 191
  3. Participation in communicative activities and responsibility .............. 196
  4. The protection of interaction processes in the light of criminal law ....... 199
  5. Changing roles between the victim and the offender, and the justification of punishment ................................................................. 207
  6. Relation of criminal law to morality .............................................. 214

Chapter V. Punishing as a condition of maintaining social balance ............ 226
  1. Punishment as the restoration of balance ........................................ 226
  2. Public reaction to the evil in the form of condemning the offender ........ 235
  3. Punishment as a means of restoring the relation of mutual recognition .... 243
    3.1. Penal consequences of infringing the principle of mutual recognition 244
    3.2. Is the act of committing a crime a condition to exclude an offender from the community? ................................................................. 249
  4. Punishment as a message for society .............................................. 264
  5. Intercultural and international penal law ....................................... 266
    5.1. Notional relation of “intercultural” and “international” law ........... 268
    5.2. The idea of the “end of impunity” ......................................... 277

Conclusion ............................................................. 284

Literature .............................................................. 293